



# ADMINISTRATIVE REGISTER OF KENTUCKY

The submission deadline for this edition of the *Administrative Register of Kentucky* was noon, July 14, 2023.

## MEETING NOTICES

[Administrative Regulation Review Subcommittee](#) - tentatively scheduled to meet on August 8, 2023 at 1:00 p.m. in room 149 Capitol Annex.

ARRS Tentative Agenda - [297](#) [Online agenda is updated as needed](#)

## INDEXES & OTHER INFORMATION

Regulation Review Procedure .....	301
ARRS Report.....	574
Other Committee Reports .....	575
Locator Index - Effective Dates.....	B - 2

KRS Index.....	B - 8
Certifications .....	B - 12
Technical Amendments .....	B - 13
Subject Index.....	B - 14

## EMERGENCIES

### Education Professional Standards Board

016 KAR 002:240E. Interim certificate ..... 302

### Secretary of State

030 KAR 010:010E. Definitions for 30 KAR Chapter 10. 303

030 KAR 010:020E. Application and certification ..... 305

030 KAR 010:030E. Notification of expiration and  
recertification in the Safe at Home  
Program..... 307

030 KAR 010:040E. Cancellation, appeal, and  
withdrawal..... 309

030 KAR 010:050E. Application assistant training and  
designation ..... 311

030 KAR 010:060E. Release of participant information  
to criminal justice officials or  
agencies ..... 312

030 KAR 010:070E. School enrollment and record  
transfers..... 314

030 KAR 010:080E. Substitute address ..... 315

030 KAR 010:090E. Exercise of program participant's  
privileges ..... 317

030 KAR 010:100E. Attaining age of majority ..... 318

030 KAR 010:110E. Service of process ..... 320

030 KAR 010:120E. Recognition of certification in  
other state..... 321

### Personnel Board

101 KAR 001:365E. Appeal and hearing procedures ..... 324

### Board of Social Work

201 KAR 023:160E. Temporary permission to practice.. 326

### Kentucky Housing Corporation

202 KAR 002:020E. Rural Housing Trust Fund..... 329

### Kentucky Law Enforcement Council

503 KAR 001:140E. Peace officer, telecommunicator,  
and court security officer  
professional standards ..... 331

### Kentucky Horse Racing Commission

809 KAR 001:002E. Service provider licensing ..... 339

809 KAR 001:003E. Occupational licenses..... 341

809 KAR 010:001E. General provisions..... 346

809 KAR 010:002E. Standards for sports wagering.....349

809 KAR 010:003E. Technical requirements and  
oversight.....354

809 KAR 010:004E. Sports wagering accounts .....358

809 KAR 010:005E. Licensed premises .....362

809 KAR 010:006E. Audit and internal control  
standards .....369

809 KAR 010:007E. Responsible gaming and  
advertising .....375

809 KAR 010:008E. Disciplinary actions and hearings ...377

810 KAR 003:010E. Licensing of racing associations .....379

## AMENDED IN-PROCESS EMERGENCIES

### Department of Juvenile Justice

505 KAR 001:200E. Cell entry teams, emergency  
response teams, and emergency  
response training .....385

### Department for Community-Based Services

922 KAR 001:360E. Private child care placement,  
levels of care, and payment .....387

## AS AMENDED

**NONE – July's regulations were deferred and the  
meeting was cancelled.**

## AMENDED AFTER COMMENTS

### Office of Inspector General

900 KAR 005:020. State Health Plan for facilities and  
services .....395

900 KAR 006:075. Certificate of need nonsubstantive  
review .....396

## PROPOSED AMENDMENTS

### Registry of Election Finance

032 KAR 002:020. General provisions.....401

032 KAR 002:030. Complaints; internally-generated  
matters .....403

032 KAR 002:040. Investigatory procedures .....405

032 KAR 002:050. Conciliation.....407

032 KAR 002:060. Advisory opinions .....409

<b>Personnel Board</b>	
101 KAR 001:365. Appeal and hearing procedures .....	411
<b>Board of Veterinary Examiners</b>	
201 KAR 016:550. Authorization for animal control agencies to apply for a restricted controlled substances certificate from DEA .....	413
201 KAR 016:552. Responsibilities for certified animal control agencies; limitations on drugs.....	416
201 KAR 016:560. Certification as an animal euthanasia specialist.....	419
<b>Board of Nursing</b>	
201 KAR 020:620. Licensing requirements for licensed certified professional midwives .....	421
<b>Board of Physical Therapy</b>	
201 KAR 022:170. Physical Therapy Compact Commission .....	423
<b>Board of Social Work</b>	
201 KAR 023:055. Inactive status of license .....	424
<b>Board of Emergency Medical Services</b>	
202 KAR 007:550. Required equipment and vehicle standards .....	426
<b>Department of Fish and Wildlife Resources</b>	
301 KAR 001:115. Propagation of aquatic organisms .....	433
301 KAR 001:125. Transportation of fish .....	436
301 KAR 002:172. Deer hunting seasons, zone, and requirements .....	438
<b>Kentucky Law Enforcement Council</b>	
503 KAR 001:140. Peace office, telecommunicator, and court security officer professional standards .....	442
<b>Department of Insurance</b>	
806 KAR 017:290. Independent External Review Program.....	449
<b>Kentucky Horse Racing Commission</b>	
810 KAR 002:020. Thoroughbred and flat racing officials.....	455
810 KAR 002:070. Thoroughbred and other flat racing associations .....	458
810 KAR 003:010. Licensing of racing associations.....	462
810 KAR 004:001. Definitions for 810 Chapter 4 .....	467
810 KAR 004:010. Horses .....	470
810 KAR 004:030. Entries, subscriptions, and declarations .....	473
810 KAR 004:040. Running of the race.....	477
<b>Department for Community Based Services</b>	
922 KAR 001:580. Standards for children's advocacy centers.....	481

## **New Administrative Regulations**

<b>Council on Postsecondary Education</b>	
013 KAR 005:010. Healthcare training scholarships .....	486
013 KAR 005:020. Healthcare program incentives.....	488
<b>Education Professional Standards Board</b>	
016 KAR 002:240. Interim certificate .....	490
<b>Secretary of State</b>	
030 KAR 006:012. Repeal of 030 KAR 006:011 .....	492
030 KAR 010:010. Definitions for 30 KAR Chapter 10 .....	493
030 KAR 010:020. Application and certification .....	494
030 KAR 010:030. Notification of expiration and recertification in the Safe at Home Program.....	496
030 KAR 010:040. Cancellation, appeal, and withdrawal.....	498
030 KAR 010:050. Application assistant training and designation .....	500
030 KAR 010:060. Release of participant information to criminal justice officials or agencies .....	501
030 KAR 010:070. School enrollment and record transfers.....	502

030 KAR 010:080. Substitute address.....	504
030 KAR 010:090. Exercise of program participant's privileges .....	505
030 KAR 010:100. Attaining age of majority .....	506
030 KAR 010:110. Service of process .....	508
030 KAR 010:120. Recognition of certification in other state .....	509

## **Registry of Election Finance**

032 KAR 002:221. Repeal of 032 KAR 002:220 .....	511
032 KAR 002:230. Processing of records requests .....	512

## **Kentucky Public Pension Authority**

105 KAR 001:457. In-line-of-duty survivor benefits.....	514
---	-----

## **Board of Veterinary Examiners**

201 KAR 016:701. Standards for medical records .....	518
201 KAR 016:702. Standards for veterinary surgery.....	520
201 KAR 016:750. Licensed veterinary technicians (LVTs) – Scope of practice and supervisory requirements.....	522

## **Board of Social Work**

201 KAR 023:160. Temporary permission to practice.....	524
201 KAR 023:170. Telehealth and social work practice .....	527

## **Kentucky Housing Corporation**

202 KAR 002:020. Rural Housing Trust Fund .....	529
---	-----

## **Department of Insurance**

806 KAR 009:400. Public adjuster filings.....	531
---	-----

## **Kentucky Horse Racing Commission**

809 KAR 001:002. Service provider licensing.....	533
809 KAR 001:003. Occupational licenses.....	535
809 KAR 010:001. General provisions.....	540
809 KAR 010:002. Standards for sports wagering .....	543
809 KAR 010:003. Technical requirements and oversight.....	547
809 KAR 010:004. Sports wagering accounts .....	551
809 KAR 010:005. Licensed premises .....	555
809 KAR 010:006. Audit and internal control standards .....	561
809 KAR 010:007. Responsible gaming and advertising .....	567
809 KAR 010:008. Disciplinary actions and hearings .....	569

## **Department of Medicaid Services**

907 KAR 003:310. Community health worker services and reimbursement.....	571
--	-----

The **ADMINISTRATIVE REGISTER OF KENTUCKY** is the monthly supplement for the 2017 Edition of the  
**KENTUCKY ADMINISTRATIVE REGULATIONS SERVICE.**

**HOW TO CITE:** Cite all material in the **ADMINISTRATIVE REGISTER OF KENTUCKY** by Register Year number and Page number. Example: 50<sup>th</sup> Year of the Kentucky Register, page 318 (short form: 50 Ky.R. 318).

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

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

**ADMINISTRATIVE REGISTER OF KENTUCKY**

(ISSN 0096-1493)

© 2023 Legislative Research Commission, All Rights Reserved

The Administrative Register of Kentucky is published monthly by the Legislative Research Commission, 700 Capitol Avenue, Room 300, Frankfort, Kentucky 40601. Subscription rate, postpaid in the United States: \$120 (plus 6% Kentucky sales tax) per year for 12 issues, beginning in July and ending with the June issue of the subsequent year. Periodical postage paid at Frankfort, Kentucky.

POSTMASTER: Send address changes to Administrative Register of Kentucky, 700 Capitol Avenue, Room 64, State Capitol, Frankfort, Kentucky 40601.

**KENTUCKY LEGISLATIVE RESEARCH COMMISSION**

**Chairmen**

Senator Robert Stivers  
Senate President

Representative David W. Osborne  
Speaker of the House

**Senate and House Members**

Senator David Givens  
President Pro Tempore

Representative David Meade  
Speaker Pro Tempore

Senator Damon Thayer  
Majority Floor Leader

Representative Steven Rudy  
Majority Floor Leader

Senator Gerald A. Neal  
Minority Floor Leader

Representative Derrick Graham  
Minority Floor Leader

Senator Julie Raque Adams  
Majority Caucus Chair

Representative Suzanne Miles  
Majority Caucus Chair

Senator Reginald Thomas  
Minority Caucus Chair

Representative Cherlynn Stevenson  
Minority Caucus Chair

Senator Mike Wilson  
Majority Whip

Representative Chad McCoy  
Majority Whip

Senator David Yates  
Minority Whip

Representative Angie Hatton  
Minority Whip

Jay D. Hartz, Director  
Joe Cox, Printing and Publications Officer

**ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE**

**Members**

Senator Stephen West, Co-Chair  
Representative Derek Lewis, Co-Chair  
Senator Julie Raque Adams  
Senator Damon Thayer  
Senator David Yates  
Representative Randy Bridges  
Representative Deanna Frazier Gordon  
Representative Daniel Grossberg

**Staff**

Sarah Amburgey  
Stacy Auterson  
Emily Caudill  
Ange Darnell  
Emily Harkenrider  
Karen Howard  
Carrie Nichols



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



**Administrative Regulation Review Subcommittee**  
**TENTATIVE Meeting Agenda**  
**Tuesday, August 8, 2023 at 1:00 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) (Deferred from July)  
[016 KAR 009:080](#). University-based alternative certification program. (Filed with Emergency)  
[016 KAR 009:100E](#). Alternative Route to Certification Program. ("E" expires 01-21-2024) (Filed with Ordinary) (Deferred from July)  
[016 KAR 009:100](#). Alternative Route to Certification Institute. (Filed with Emergency)

**PERSONNEL CABINET**

**Personnel Cabinet; Classified**

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

**Personnel Cabinet; Unclassified**

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

**FINANCE AND ADMINISTRATION CABINET**

**Kentucky Public Pensions Authority**  
**General Rules**

- [105 KAR 001:220](#). Periodic disability review.

**BOARDS AND COMMISSIONS**

**Kentucky State Board of Accountancy**

- [201 KAR 001:050](#). License application.

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

- [201 KAR 006:060](#). Fees. (Deferred from August)

**Board of Architects**

- [201 KAR 019:225](#). Examinations required; general provisions.

**Board of Nursing**

- [201 KAR 020:240](#). Fees for applications and service.  
[201 KAR 020:700](#). Medication aide training programs and credentialing of medication aides.

**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) (Deferred from July)  
[201 KAR 021:042](#). Standards, applications and approval of continuing education. (Amended After Comments) (Deferred from July)  
[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 Physical Therapy**

- [201 KAR 022:045](#). Continued competency requirements and procedures.

**Board of Emergency Medical Services**

- [202 KAR 007:510](#). Air ambulance services.  
[202 KAR 007:555E](#). Ground agencies. ("E" expires 02-16-2024) (Filed with Ordinary)

**TOURISM, ARTS AND HERITAGE CABINET**

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

- [301 KAR 006:001](#). Definitions for 301 KAR Chapter 6. (Deferred from July)  
[301 KAR 006:020](#). Boating safety equipment. (Deferred from July)

## VOLUME 50, NUMBER 2– AUGUST 1, 2023

### Administrative

[301 KAR 011:020](#). Procurement of architectural and engineering services.

### JUSTICE AND PUBLIC SAFETY CABINET

#### Internal Investigation Branch

##### Special Law Enforcement Officers

[500 KAR 002:020](#). Filing and processing SLEO commissions. (Amended After Comments) (Deferred from July)

##### Special Local Peace Officers

[500 KAR 003:010](#). Definitions. (Deferred from July)

[500 KAR 003:020](#). Filing and processing SLPO commissions. (Deferred from July)

#### Department of Corrections

##### Office of the Secretary

[501 KAR 006:150](#). Eastern Kentucky Correctional Complex policies and procedures. (Amended After Comments) (Deferred from July)

#### Department of Juvenile Justice

##### Child Welfare

[505 KAR 001:010](#). Definitions.

[505 KAR 001:100](#). Admissions.

[505 KAR 001:180](#). Day treatment admissions.

[505 KAR 001:185](#). Day treatment programs.

[505 KAR 001:200E](#). Cell entry teams, emergency response teams, and emergency response training. ("E" expires 02-09-2024) (Filed with Ordinary) (Comments Received, SOC due 8-15-2023)

[505 KAR 001:200](#). Cell entry teams, emergency response teams, and emergency response training. (Filed with Emergency) (Emergency Amended After Comments)

[505 KAR 001:210E](#). Restraints and control methods. ("E" expires 02-09-2024) (Filed with Ordinary) (Emergency Not Amended After Comments)

[505 KAR 001:210](#). Restraints and control methods. (Filed with Emergency)

[505 KAR 001:220E](#). Transportation of juveniles. ("E" expires 02-09-2024) (Filed with Ordinary) (Emergency Not Amended After Comments)

[505 KAR 001:220](#). Transportation of juveniles. (Filed with Emergency)

[505 KAR 001:230](#). Facility, capacity, staffing, and population count.

### 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) (Deferred from July)

#### Horse Racing Commission

##### Flat and Steeplechase Racing

[810 KAR 004:090](#). Owners.

##### Incentive and Development Funds

[810 KAR 007:030](#). Kentucky Thoroughbred Development Fund.

[810 KAR 007:060](#). Kentucky Quarter Horse, Paint Horse, Appaloosa, and Arabian Development Fund.

##### Medication Guidelines

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

#### Housing, Buildings and Construction

##### Elevator Safety

[815 KAR 004:030](#). Elevator licensing. (Deferred from July)

##### Building Code

[815 KAR 007:130](#). Kentucky Industrialized Building Systems. (Deferred from July)

##### Heating, Ventilation, and Air Conditioning Licensing Requirements

[815 KAR 008:010](#). Licensing requirements for master HVAC contractors and journeyman HVAC mechanics. (Deferred from July)

##### Standards of Safety

[815 KAR 010:060](#). Standards of Safety. (Deferred from July)

##### Plumbing

[815 KAR 020:030](#). Plumbing licenses. (Deferred from July)

##### Manufactured Homes and Recreational Vehicles

[815 KAR 025:020](#). Recreational vehicles. (Deferred from July)

[815 KAR 025:060](#). Licensing and certifications with manufactured homes and mobile homes. (Deferred from July)

## VOLUME 50, NUMBER 2– AUGUST 1, 2023

### Electrical

[815 KAR 035:060](#). Licensing of electrical contractors, master electricians, and electricians. (Deferred from July)

### 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) (Amended After Comments)

##### Certificate of Need

[900 KAR 006:075](#). Certificate of need nonsubstantive review. (Filed with Emergency) (Amended After Comments)

[900 KAR 006:080E](#). Certificate of Need emergency circumstances. ("E" expires 02-13-2024) (Filed with Ordinary)

##### Essential Personal Care Visitor Program

[900 KAR 014:010](#). Essential personal care visitor programs; visitation guidelines. (Filed with Emergency) (Deferred from July)

##### Health Services and Facilities

[902 KAR 020:018](#). Operation and services; End Stage Renal Disease (ESRD) facilities. (Deferred from July)

##### Controlled Substances

[902 KAR 055:015](#). Schedules of controlled substances. (Filed with Emergency) (Deferred from July)

##### Office

[906 KAR 001:210](#). Health care services agencies.

### 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) (Deferred from July)

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

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

#### Payment and Services

[907 KAR 003:190](#). Reimbursement for treatment related to clinical trials. (Not Amended After Comments) (Deferred from July)

#### 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) (Deferred from July)

[907 KAR 020:010](#). 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. (Filed with Emergency)

[907 KAR 020:045E](#). Special income requirements for hospice and 1915(c) home and community based services. ("E" expires 01-15-2024) (Filed with Ordinary) (Deferred from July)

[907 KAR 020:045](#). Special income requirements for hospice and 1915(c) home and community based services. (Filed with Emergency)

[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) (Deferred from July)

[907 KAR 020:075](#). Eligibility provisions and requirements regarding former foster care individuals, and individuals who were in out-of-state equivalents to foster care. (Filed with Emergency)

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

[907 KAR 020:100](#). Modified Adjusted Gross Income (MAGI) Medicaid eligibility standards.

### Department for Aging and Independent Living

#### Brain Injury

[910 KAR 003:030](#). Traumatic brain injury trust fund operations program.

### Department for Community-Based Services

#### Child Support

[921 KAR 001:400](#). Establishment, review, and modification of child support and medical support orders.

#### Day Care

[922 KAR 002:180](#). Requirements for registered relative child care providers in the Child Care Assistance Program. (Filed with Emergency)

[922 KAR 002:245](#). Kentucky infant and toddler credential.

[922 KAR 002:255](#). Kentucky school-aged youth development credential.

## 3. REGULATIONS REMOVED FROM AUGUST'S AGENDA

### JUSTICE AND PUBLIC SAFETY CABINET

#### Department of Justice

##### Capital Punishment

[501 KAR 016:310](#). Pre-execution medical actions. (Comments Received; SOC due 08-15-2023)

## VOLUME 50, NUMBER 2– AUGUST 1, 2023

### PUBLIC PROTECTION CABINET

#### Horse Racing Commission

##### General

[810 KAR 002:100](#). Self-exclusion. (Deferred from August)

##### Flat and Steeplechase Racing

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

### CABINET FOR HEALTH AND FAMILY SERVICES

#### Department for Medicaid Services

[907 KAR 001:038](#). Hearing Program coverage provisions and requirements. (Filed with Emergency) (Comments Received, SOC ext., due 08-15-2023)

[907 KAR 001:126](#). Dental services' coverage provisions and requirements. (Filed with Emergency) (Comments Received, SOC ext., due 08-15-2023)

[907 KAR 001:632](#). Vision program coverage provisions and requirements. (Filed with Emergency) (Comments Received, SOC ext., due 08-15-2023)

#### 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) (Emergency Amended After Comments) (Deferred from August)

[922 KAR 001:360](#). Private child care placement, levels of care, and payment. (Filed with Emergency) (Comments Received, SOC due 8-15-2023)

***\*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. This index reflects the KRS Chapter 13A-established expiration dates. Other statutes or legislation may affect a regulation's actual end date.

**STATEMENT OF EMERGENCY**  
**16 KAR 2:240E**

This emergency administrative regulation is being promulgated in order to meet an imminent deadline for the promulgation of an administrative regulation that is established by state statute. During the 2023 legislative session, the General Assembly passed House Bill 319 and the Governor signed it into law on March 31, 2023. This legislation, which is slated to become effective on June 29, 2023, creates an interim certificate and gives the Education Professional Standards Board (EPSB) the authority to promulgate administrative regulations for the issuance of the certificate. As there are only ninety (90) days between the Governor signing this bill into law and its effective date, the ordinary administrative regulation process would not allow the EPSB time to promulgate an ordinary administrative regulation to be effective when the bill goes into effect. Therefore, the emergency regulation is necessary to establish the requirements for issuance of the interim certificate when the bill goes into effect. This emergency administrative regulation will be replaced by an ordinary administrative regulation because the interim certificate is available thru June 30, 2026. The ordinary administrative regulation is identical to this emergency administrative regulation.

ANDY BESHEAR, Governor  
JUSTIN MITCHELL, Chair

**EDUCATION AND LABOR CABINET**  
**Education Professional Standards Board**  
**(New Emergency Administrative Regulation)**

**16 KAR 2:240E. Interim certificate.**

EFFECTIVE: June 29, 2023

RELATES TO: KRS 161.020

STATUTORY AUTHORITY: HB 319 RS 2023

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.020(1) requires educators to hold a certificate of legal qualifications for the position, issued by the Education Professional Standards Board (EPSB). Section 8 of HB 319 RS 2023 creates an interim certificate and authorizes the EPSB to promulgate administrative regulations to issue the interim certificate.

Section 1. Interim Certificate. (1) A candidate shall be eligible for issuance of the one-year interim certificate upon application to the EPSB, compliance with 16 KAR 2:010, Section 3(1), and submission of the following documentation:

(a) A bachelor's degree or higher as evidenced by an official transcript from a nationally or regionally accredited institution of higher education;

(b) Confirmation from an employer of a minimum of four (4) years of work experience in the area in which certification is being sought; and

(c) An offer of employment in a Kentucky school district in the area in which certification is being sought.

(2) An applicant for certification in the area of career and technical education may substitute an additional four (4) years of work experience in the area in which certification is being sought to meet the requirements of subsection (1)(a) of this section.

(3) Work experience shall be considered in the area of certification if it includes the content taught by the certificate.

(4) The interim certificate shall be issued for the certification area that aligns with the applicant's work experience and job offer.

(5) The interim certificate shall be issued at the rank corresponding to the degree held by the teacher applicant in accordance with the requirements established in KRS 161.1211 and 16 KAR Chapter 8.

(6) An interim certificate shall not be valid after June 30, 2026.

Section 2. Renewal of the Interim Certificate. (1) A candidate shall be eligible for renewal of the one-year interim certificate upon application to the EPSB, compliance with 16 KAR 2:010, Section 3(1), and evidence of employment in a Kentucky school district in the content area or areas indicated on the initial certificate.

(2) The interim certificate may be renewed a maximum of two (2) times.

(3) The interim certificate shall not be renewed after June 30, 2026.

JUSTIN MITCHELL, Board Chair

APPROVED BY AGENCY: June 21, 2023

FILED WITH LRC: June 28, 2023 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on August 23, 2023, at 10:00 a.m. in the State Board Room, Fifth Floor, 300 Sower Boulevard, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 31, 2023. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Todd Allen, General Counsel, Kentucky Department of Education, 300 Sower Boulevard, 5th Floor, Frankfort, Kentucky 40601, phone 502-564-4474, fax 502-564-9321; email regcomments@education.ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Todd Allen

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for issuance of the interim certificate.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the procedures for issuance and renewal of the interim certificate.

(c) How this administrative regulation conforms to the content of the authorizing statutes: Section 8 of HB 319 RS 2023 creates an interim certificate and authorizes the EPSB to promulgate administrative regulations to issue the interim certificate.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation sets the requirements for the issuance and renewal of the interim certificate.

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 171 Kentucky school districts, and

individuals pursuing the interim certificate.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Applicants for the interim certificate will have to submit the application and documentation required 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 is no fee established by the Education Professional Standards Board in this regulation and there is no fee for the issuance of a one-year certificate.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Compliance will result in issuance of the interim certificate for interested applicants. Districts will be able to hire holders of the interim certificate as a teacher of record.

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

(a) Initially: There will be cost associated with the review and processing of applications for the interim certificate. At this time, it is unknown how many will pursue the certificate, so the cost is unknown.

(b) On a continuing basis: There will be continuing costs with the review and processing of the applications for the interim certificate, but it is unknown how many will pursue this certificate.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: General Fund and certification fees collected pursuant to 16 KAR 4:040.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: Certification fees are established by 16 KAR 4:040. No additional fees are established by this regulation.

(9) TIERING: Is tiering applied? Tiering is not applicable to the requirements of this regulation as all applicants are required to meet the requirements of the certificate sought.

#### 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 Education Professional Standards Board and public-school districts.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. HB 319 RS 2023.

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

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

(c) How much will it cost to administer this program for the first year? There will be costs associated with the review and processing of applications, but it is unknown how many will pursue this certificate.

(d) How much will it cost to administer this program for subsequent years? There will be costs associated with the review and processing of applications, but it is unknown how many will pursue this certificate.

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: At this time, it is unknown how many will pursue the interim certificate. It is anticipated that the current staff will be able to review and process the additional applications.

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? None anticipated.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? None anticipated.

(c) How much will it cost the regulated entities for the first year? There are no costs created by this amendment.

(d) How much will it cost the regulated entities for subsequent years? There are no costs created by this amendment.

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation: As this is a new certificate it is unknown how many applicants will pursue the interim certificate.

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] There is not an expected major economic impact from this regulation as it does not create costs for the regulated entities and the cost to the Education Professional Standards Board are expected to be minimal.

#### STATEMENT OF EMERGENCY 30 KAR 10:010E

This emergency administrative regulation is being promulgated in order to meet an imminent threat to public health, safety, or welfare. Kentucky victims of domestic violence are now able to apply to be certified in the Safe at Home Program to protect their home address from their abusers through new legislation which takes effect June 29, 2023. This administrative regulation is being filed on an emergency basis in order to ensure that Kentuckians who qualify under the new Safe at Home Program can be protected from their abusers. This emergency administrative regulation will be replaced by an identical administrative regulation to continue to protect victims of domestic violence and their families.

ANDY BESHEAR, Governor

MICHAEL ADAMS, Secretary of State

#### SECRETARY OF STATE (New Emergency Administrative Regulation)

#### 30 KAR 010:010E. Definitions for 30 KAR Chapter 10.

EFFECTIVE: June 29, 2023

RELATES TO: Ky Acts ch. 172

STATUTORY AUTHORITY: Ky Acts ch. 172

NECESSITY, FUNCTION, AND CONFORMITY: Ky Acts ch. 172 authorizes the Secretary of State to promulgate administrative regulations implementing Ky Acts ch. 172. This administrative regulation implements Ky Acts ch. 172.

Section 1. Definitions. (1) "Agency" means every elected or appointed state or local public office, public officer, or official, department, division, bureau, board, commission, committee, council, authority, agency, institution of higher education, or other unit of the executive, legislative, or judicial branch of the state; or

any city, county, city and county, town, special district, school district, local improvement district, or other statutory unit of state or local government or any functional subdivision of that agency, or any other kind of municipal, quasi-municipal, or public corporation.

(2) "Address" is defined by Ky Acts ch. 172.

(3) "Applicant" is defined by Ky Acts ch. 172.

(4) "Designated Address" is the address assigned to a program participant by the Secretary of State.

(5) "Mail" means first-class letters and flats delivered via the United States Postal Service, including priority, express, and certified mail.

(6) "Program Participant" is defined by Ky Acts ch. 172.

(7) "Safe at Home verification card" is the card provided to each program participant, that must contain the participant's name, substitute address designated by the Secretary of State, the participant's ID assigned by the Secretary of State, the participant's birthdate, the participant's picture, and the expiration date.

MICHAEL G. ADAMS, Secretary of State

APPROVED BY AGENCY: June 27, 2023

FILED WITH LRC: June 29, 2023 at 3:00 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. EST, at Office of the Secretary of State. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. This hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 31, 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: Jennifer Scutchfield, Assistant Secretary of State, 700 Capital Avenue, State Capitol, Suite 152, Frankfort, Kentucky 40601, phone (502) 782-7417, fax (502) 564-5687, email jscutchfield@ky.gov.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jennifer Scutchfield

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedures for the Safe at Home Program, previously known as the Address Confidentiality Program.

(b) The necessity of this administrative regulation: Safe at Home Program, previously known as the Address Confidentiality Program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: In order for the Secretary of State to fulfill its duties under KRS 14.300, 14.302, 14.304, 14.306 and 14.310, this administrative regulation is necessary to establish the procedures for the Safe at Home Program, previously known as the Address Confidentiality Program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation is necessary to establish procedures for the Safe at Home Program, previously known as the Address Confidentiality 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 regulation affects citizens of the Commonwealth that are impacted by domestic violence or others facing physical or mental abuse if their address were public record. It

also affects state and local agencies who have the victims address in their database or records.

(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 identified in question (3) will have to familiarize themselves with this regulation and contact our office with questions. Our Office will also conduct outreach to increase knowledge amongst public entities.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There should be no cost to the public agencies. The Secretary of State will incur costs with the administration of this program but have funding, at least in this budget year to cover the program.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The victims of domestic violence will be protected from persons who pose them danger by not allowing those people to access their location.

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

(a) Initially: The cost is minimal but will include purchase of a device to make identification cards, forwarding postal mail, training of assistance officers and contacting other agencies.

(b) On a continuing basis: As the program grows, the cost of the program will increase, especially for mailing costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The legislature provided funding for the Safe at Home 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 will not be necessary, at least initially.

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

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

#### FISCAL NOTE

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

This regulation will impact local and state agencies who hold addresses for victims of domestic violence.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This regulation is necessary because of 2023 RS SB 79 (2023 Regular Session Senate Bill 79) which creates the Safe at Home Program.

(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 minimal costs to state and local government agencies for the first full year the regulation would be in effect. The Office of the Secretary of State will have expenditures for mailing costs, card maker and creation of the Program.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? 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 actual cost is unknown, but after reviewing other programs around the country, the funds that are set aside for the Program by the legislature should cover the initial implementation of the Program. An estimate of first year costs are \$15,000.

(d) How much will it cost to administer this program for subsequent

years? The cost to administer the Program will depend on how many participants. An estimate of subsequent year costs are \$10,000.00 a year.

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

Revenues (+/-): None

Expenditures (+/-): estimate \$15,000

Other Explanation:

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect. The regulation will increase the expenditures of the Secretary of State but it is anticipated the fund created by the legislature will accommodate the costs.

(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? Approximately \$15,000.00

(d) How much will it cost the regulated entities for subsequent years? Approximately \$15,000.00

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.

#### STATEMENT OF EMERGENCY 30 KAR 10:020E

This emergency administrative regulation is being promulgated in order to meet an imminent threat to public health, safety, or welfare. Kentucky victims of domestic violence are now able to apply to be certified in the Safe at Home Program to protect their home address from their abusers through new legislation which takes effect June 29, 2023. This administrative regulation is being filed on an emergency basis in order to ensure that Kentuckians who qualify under the new Safe at Home Program can be protected from their abusers. This emergency administrative regulation will be replaced by an identical administrative regulation to continue to protect victims of domestic violence and their families.

ANDY BESHEAR, Governor  
MICHAEL ADAMS, Secretary of State

#### SECRETARY OF STATE (New Emergency Administrative Regulation)

##### 30 KAR 010:020E. Application and certification.

EFFECTIVE: June 29, 2023

RELATES TO: Ky Acts ch. 172

STATUTORY AUTHORITY: Ky Acts ch. 172

NECESSITY, FUNCTION, AND CONFORMITY: Ky Acts ch. 172

authorizes the Secretary of State to promulgate administrative regulations implementing. This administrative regulation implements Ky Acts ch. 172.

Section 1. Requirements for Application for Certification to Participate in the Safe at Home Program.

(1) Application for certification to participate in the safe at home

program shall be made to the Secretary of State by submitting a completed Application for Certification to Participate in the Safe at Home Program which contains:

(a) Full legal name;

(b) Date of birth;

(c) Other names that may appear on applicant's mail;

(d) County of residence;

(e) Residential address;

(f) Phone number;

(g) Email address; and

(h) Dependent's legal names and identifying information (if applicable).

(2) The application must include a sworn statement and acknowledge the following:

(a) I am an adult survivor of domestic violence, sexual assault, stalking or human trafficking or am the parent of a child or guardian of an adult individual who is such a survivor, or I am a household member of such a survivor;

(b) I am not applying to participate in Safe at Home in order to avoid prosecution of any kind. I confirm that I am not a sexually violent predator;

(c) I give permission to the Secretary of State's Office to verify my participation in Safe at Home state or local agencies when requested;

(d) I designate the Secretary of State as my agent for service of process and for the purpose of receipt of mail. Therefore, if Safe at Home accepts legal documents or certified mail addressed to me, it is as if I received them;

(e) I understand that my participation in Safe at Home may be cancelled for any of the following reasons:

1. I change my legal name and do not notify the Secretary of State's Office in writing prior to the change;

2. Mail forwarded by the Secretary of State's Office is returned as undeliverable by the United States Postal Service;

3. If the Secretary accepts service of process on my behalf, and I do not acknowledge such;

4. If my application contains false information;

(f) I understand that it is my responsibility to notify family, friends, businesses, and government agencies of my Safe at Home designated address. I recognize that if I share my confidential address, the Safe at Home program cannot control its distribution;

(g) I realize that my mail address may include an apartment number. Without this apartment number, my mail may be delayed or may never reach me. Safe at Home will forward only first-class, legal, and certified mail, as well as packages of prescriptions;

(h) I understand that I am enrolled in Safe at Home for a four (4) year term. At the end of this term, I realize I will have to renew my enrollment or be cancelled from the program;

(i) I authorize the Safe at Home Program to notify the State Board of Elections to remove my physical and mailing address from voter registration documents that can be viewed by the public but maintain my physical address for the purpose of remaining registered and populated in the correct precinct.

(j) I realize that if I purchase or sell real estate, my information will appear on public records;

(k) I understand that I must notify the Safe at Home program if any of the information on my original Safe at Home application changes within fourteen (14) days;

(l) I understand that once I am enrolled in the Safe at Home program, my actual address will be confidential unless an agency has a bona fide statutory or administrative requirement for use of my address; and

(m) My children under the age of eighteen (18) may be enrolled with me as dependents. Individuals over the age of eighteen (18) must enroll separately. Minors who turn eighteen (18) during participation in the program are responsible for completing a renewal form at that time to continue Safe at Home participation.

(3) The Application for Certification to Participate in Safe at Home shall be:

(a) Notarized; and

(b) In English.

Section 2. Certification in the Safe at Home Program. (1) The Secretary of State shall approve an Application for Certification to Participate in Safe at Home Program and certify the applicant as a program participant if the applicant and the Application for Certification to Participate in Safe at Home Program meet the requirements established in Ky Acts ch. 172 and this administrative regulation.

(2) The Secretary of State shall notify the applicant or filer whether the Application for Certification to Participate in Safe at Home Program was denied, or the applicant was certified as a program participant.

(a) If an Application for Certification to Participate in Safe at Home Program is denied, the Secretary of State shall inform the applicant or filer of the reason for the denial.

(b) If an applicant is certified as a program participant, the Secretary of State shall:

1. Assign to the program participant a participant number and designated address; and

2. Issue to the program participant a Safe at Home Program Participant Card.

3. Provide information about the Safe at Home Program with instructions, frequently asked question and answers and other information deemed necessary.

4. Provide a general letter from the Secretary of State the participant can provide to agencies.

(3) If an applicant is certified as a program participant, participation in the Safe at Home program shall be effective as of the date of the notification of certification.

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

(a) "Application for Certification to Participate in Safe at Home Program", July 2023;

(b) "Address Confidentiality Program Participant Card", July 2023;

(c) "Safe at Home Program Participant Change of Information Form", July 2023;

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

MICHAEL G. ADAMS, Secretary of State

APPROVED BY AGENCY: June 27, 2023

FILED WITH LRC: June 29, 2023 at 3:00 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. EST, at Office of the Secretary of State. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. This hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 31, 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: Jennifer Scutchfield, Assistant Secretary of State, 700 Capital Avenue, State Capitol, Suite 152, Frankfort, Kentucky 40601, phone (502) 782-7417, fax (502) 564-5687, email jscutchfield@ky.gov.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jennifer Scutchfield

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedures for the Safe at Home Program, previously known as the Address Confidentiality Program.

(b) The necessity of this administrative regulation: Safe at Home Program, previously known as the Address Confidentiality Program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: In order for the Secretary of State to fulfill its duties under KRS 14.300, 14.302, 14.304, 14.306 and 14.310, this administrative regulation is necessary to establish the procedures for the Safe at Home Program, previously known as the Address Confidentiality Program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation is necessary to establish procedures for the Safe at Home Program, previously known as the Address Confidentiality 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 regulation affects citizens of the Commonwealth that are impacted by domestic violence or others facing physical or mental abuse if their address were public record. It also affects state and local agencies who have the victims address in their database or records.

(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 identified in question (3) will have to familiarize themselves with this regulation and contact our office with questions. Our Office will also conduct outreach to increase knowledge amongst public entities.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There should be no cost to the public agencies. The Secretary of State will incur costs with the administration of this program but have funding, at least in this budget year to cover the program.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The victims of domestic violence will be protected from persons who pose them danger by not allowing those people to access their location.

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

(a) Initially: The cost is minimal, but will include purchase of a device to make identification cards, forwarding postal mail, training of assistance officers and contacting other agencies.

(b) On a continuing basis: As the program grows, the cost of the program will increase, especially for mailing costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The legislature provided funding for the Safe at Home 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 will not be necessary, at least initially.

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

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

#### FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This regulation will impact local and state agencies who hold addresses for victims of domestic violence.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This regulation is necessary because of 2023 RS SB 79 (2023 Regular Session Senate Bill 79) which creates the Safe at Home Program.

(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 minimal costs to state and local government agencies for the first full year the regulation would be in effect. The Office of the Secretary of State will have expenditures for mailing costs, card maker and creation of the Program.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? 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 actual cost is unknown, but after reviewing other programs around the country, the funds that are set aside for the Program by the legislature should cover the initial implementation of the Program. An estimate of first year costs are \$15,000.

(d) How much will it cost to administer this program for subsequent years? The cost to administer the Program will depend on how many participants. An estimate of subsequent year costs are \$10,000 a year.

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

Revenues (+/-): None

Expenditures (+/-): estimate \$15,000

Other Explanation:

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect. The regulation will increase the expenditures of the Secretary of State but it is anticipated the fund created by the legislature will accommodate the costs.

(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? Approximately \$15,000

(d) How much will it cost the regulated entities for subsequent years? Approximately \$15,000.

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.

#### STATEMENT OF EMERGENCY 30 KAR 10:030E

This emergency administrative regulation is being promulgated in order to meet an imminent threat to public health, safety, or welfare. Kentucky victims of domestic violence are now able to apply to be certified in the Safe at Home Program to protect their home address from their abusers through new legislation which takes effect June 29, 2023. This administrative regulation is being filed on an emergency basis in order to ensure that Kentuckians who qualify under the new Safe at Home Program can be protected from their abusers. This

emergency administrative regulation will be replaced by an identical administrative regulation to continue to protect victims of domestic violence and their families.

ANDY BESHEAR, Governor

MICHAEL ADAMS, Secretary of State

#### SECRETARY OF STATE (New Emergency Administrative Regulation)

#### 30 KAR 010:030E. Notification of expiration and recertification in the Safe at Home Program.

EFFECTIVE: June 29, 2023

RELATES TO: Ky Acts ch. 172

STATUTORY AUTHORITY: Ky Acts ch. 172

NECESSITY, FUNCTION, AND CONFORMITY: Ky Acts ch. 172 authorizes the Secretary of State to promulgate administrative regulations Ky Acts ch. 172. This administrative regulation implements Ky Acts ch. 172.

Section 1. Notification of Expiration. The Secretary of State shall send notification to the participant or filer of expiring certification at least four (4) weeks prior to expiration and provide an Application for Certification to Participate in Safe at Home Program.

Section 2. Application for Renewal of Certification in the Safe at Home Program.

(1) A program participant or filer wishing to renew certification in the Safe at Home Program shall submit to the Secretary of State at least five (5) business days prior to the date on which the program participant's certification expires an Application for Certification to Participate in Safe at Home Program pursuant 30 KAR 010:020.

(2) The Application for Certification to Participate in Safe at Home Program shall be considered timely submitted for purposes of renewal if it is date-stamped received by the Office of the Secretary of State at least five (5) business days prior to the date on which the program participant's certification expires.

Section 3. Review by the Secretary of State of a Renewal Application for Certification to Participate in Safe at Home Program.

(1) The Secretary of State shall approve a renewal Application for Certification to Participate in Safe at Home Program if the applicant and Application for Certification to Participate in Safe at Home Program meet the requirements established in Ky Acts ch. 172 and 30 KAR 010:020.

(2) The Secretary of State shall notify the program participant or filer whether the renewal Application for Certification to Participate in Safe at Home Program was denied or the program participant's certification was renewed within five (5) business days after it is date-stamped received by the Secretary of State.

(a) If a renewal Application for Certification to Participate in Safe at Home Program is denied, the Secretary of State shall inform the program participant or filer of the reason for denial.

(b) If a program participant's certification is renewed, the Secretary of State shall issue to the program participant a new Safe at Home Program Participant Card pursuant to 30 KAR 010:020, and the renewal shall be effective as of the date of the notification of renewal.

MICHAEL G. ADAMS, Secretary of State

APPROVED BY AGENCY: June 27, 2023

FILED WITH LRC: June 29, 2023 at 3:00 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. EST, at Office of the Secretary of State. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. This hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be

accepted until August 31, 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: Jennifer Scutchfield, Assistant Secretary of State, 700 Capital Avenue, State Capitol, Suite 152, Frankfort, Kentucky 40601, phone (502) 782-7417, fax (502) 564-5687, email jscutchfield@ky.gov.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jennifer Scutchfield

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedures for the Safe at Home Program, previously known as the Address Confidentiality Program.

(b) The necessity of this administrative regulation: Safe at Home Program, previously known as the Address Confidentiality Program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: In order for the Secretary of State to fulfill its duties under KRS 14.300, 14.302, 14.304, 14.306 and 14.310, this administrative regulation is necessary to establish the procedures for the Safe at Home Program, previously known as the Address Confidentiality Program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation is necessary to establish procedures for the Safe at Home Program, previously known as the Address Confidentiality 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 regulation affects citizens of the Commonwealth that are impacted by domestic violence or others facing physical or mental abuse if their address were public record. It also affects state and local agencies who have the victims address in their database or records.

(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 identified in question (3) will have to familiarize themselves with this regulation and contact our office with questions. Our Office will also conduct outreach to increase knowledge amongst public entities.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There should be no cost to the public agencies. The Secretary of State will incur costs with the administration of this program but have funding, at least in this budget year to cover the program.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The victims of domestic violence will be protected from persons who pose them danger by not allowing those people to access their location.

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

(a) Initially: The cost is minimal but will include purchase of a device to make identification cards, forwarding postal mail, training of assistance officers and contacting other agencies.

(b) On a continuing basis: As the program grows, the cost of the program will increase, especially for mailing costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The legislature provided funding for the Safe at Home 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 will not be necessary, at least initially.

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

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

#### FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This regulation will impact local and state agencies who hold addresses for victims of domestic violence.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This regulation is necessary because of 2023 RS SB 79 (2023 Regular Session Senate Bill 79) which creates the Safe at Home Program.

(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 minimal costs to state and local government agencies for the first full year the regulation would be in effect. The Office of the Secretary of State will have expenditures for mailing costs, card maker and creation of the Program.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? 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 actual cost is unknown, but after reviewing other programs around the country, the funds that are set aside for the Program by the legislature should cover the initial implementation of the Program. An estimate of first year costs are \$15,000.00.

(d) How much will it cost to administer this program for subsequent years? The cost to administer the Program will depend on how many participants. An estimate of subsequent year costs are \$10,000.00 a year.

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

Revenues (+/-): None

Expenditures (+/-): estimate \$15,000.00

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 regulation will increase the expenditures of the Secretary of State but it is anticipated the fund created by the legislature will accommodate the costs.

(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? Approximately \$15,000.00

(d) How much will it cost the regulated entities for subsequent years? Approximately \$15,000.00

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.

**STATEMENT OF EMERGENCY**  
**30 KAR 10:040E**

This emergency administrative regulation is being promulgated in order to meet an imminent threat to public health, safety, or welfare. Kentucky victims of domestic violence are now able to apply to be certified in the Safe at Home Program to protect their home address from their abusers through new legislation which takes effect June 29, 2023. This administrative regulation is being filed on an emergency basis in order to ensure that Kentuckians who qualify under the new Safe at Home Program can be protected from their abusers. This emergency administrative regulation will be replaced by an identical administrative regulation to continue to protect victims of domestic violence and their families

ANDY BESHEAR, Governor  
MICHAEL ADAMS, Secretary of State

**SECRETARY OF STATE**  
**(New Emergency Administrative Regulation)**

**30 KAR 010:040E. Cancellation, appeal, and withdrawal.**

EFFECTIVE: June 29, 2023

RELATES TO: Ky Acts ch. 172

STATUTORY AUTHORITY: Ky Acts ch. 172

NECESSITY, FUNCTION, AND CONFORMITY: Ky Acts ch. 172

authorizes the Secretary of State to promulgate administrative regulations implementing Ky Acts ch. 172. This administrative regulation implements Ky Acts ch. 172.

Section 1. Cancellation from Participation in Safe at Home Program.

(1) A program participant's certification in the Safe at Home Program shall be canceled if:

- (a) The program participant fails to notify the Secretary of State of a name change;
- (b) The program participant fails to notify the Secretary of State of an address change;
- (c) The Secretary of State determines the program participant applied using false information;
- (d) The program participant relocates outside of Kentucky;
- (e) The program participant is no longer eligible;
- (f) The program participant is required to register as a sex offender; or

(g) The program participant fails to submit an Application for Participation in the Safe at Home Program for renewal upon the expiration of the initial four (4) year enrollment.

(2) Upon cancellation, the Secretary of State shall send notice to the program participant of the cancellation of participation in the Safe at Home Program and include:

- (a) The reasons for the cancellation;
- (b) A copy of the Appeal from Cancellation of Certification in Safe at Home Program;
- (c) Notification that an appeal must be received within thirty (30) days.

Section 2. Appeal from Cancellation of Certification in Safe at Home Program.

(1) A program participant or filer wishing to appeal from a cancellation of certification in the Safe at Home Program shall submit to the Secretary of State an Appeal from Cancellation of Certification in Safe at Home Program form.

(2) The Appeal from Cancellation of Certification in Safe at Home Program shall be considered timely submitted if it is date-

stamped received by the Secretary of State within thirty (30) days of the date of the notice of certification cancellation.

(3) The Appeal from Cancellation of Certification in Safe at Home Program shall:

- (a) Be in writing;
- (b) Be in English;
- (c) Be signed by the program participant or filer; and
- (d) Include information as to why certification in the Safe at Home Program should not be cancelled.

(4) If an Appeal from Cancellation of Certification in Safe at Home Program is not timely submitted, cancellation of certification in the Safe at Home Program shall be effective upon the expiration of thirty (30) days after the date of the notice of certification cancellation.

Section 3. Review by the Assistant Secretary of State of an Appeal from Cancellation of Certification in Safe at Home Program.

(1) The Assistant Secretary of State shall approve or deny an Appeal from Cancellation of Certification in Safe at Home Program within five (5) business days after it is date-stamped received by the Office of the Secretary of State.

(a) The Assistant Secretary of State shall approve an Appeal from Cancellation of Certification in Safe at Home Program if he or she determines that grounds for cancellation pursuant to Ky Acts ch. 172 do not exist.

(b) The Assistant Secretary of State shall deny an Appeal from Cancellation of Certification in Safe at Home Program if he or she determines that grounds for cancellation pursuant to Ky Acts ch. 172 exist.

(2) The Assistant Secretary of State shall provide to the program participant or filer written notice of the decision regarding an Appeal from Cancellation of Certification in Safe at Home Program.

(3) If an Appeal from Cancellation of Certification in Safe at Home Program is timely submitted and denied pursuant to this section, cancellation of certification in the Safe at Home program shall be effective on the date on which the notice of denial is mailed.

(4) The decision of the Assistant Secretary of State shall conclude the appeal procedures pursuant to Ky Acts ch. 172 and this administrative regulation.

Section 4. Withdrawal from Participation in the Safe at Home Program.

(1) A program participant or filer wishing to withdraw from participation in the Safe at Home Program shall submit to the Secretary of State a Withdrawal from Participation in Safe at Home Program form.

(2) The Withdrawal from Participation in Safe at Home Program form shall be:

- (a) In writing;
- (b) In English;
- (c) Signed by the program participant or a filer; and
- (d) Notarized or signed by an Application Assistant.

Section 5. Confirmation by the Secretary of State of a Withdrawal from Participation in the Safe at Home Program.

(1) Upon receiving a Withdrawal from Participation in Safe at Home Program form, the Secretary of State shall mail to the program participant or filer a written confirmation of withdrawal.

(2) The written confirmation shall notify the program participant or filer:

(a) Of the date on which a Withdrawal from Participation in Safe at Home Program form was date stamped received by the Office of the Secretary of State; and

(b) That program participation shall be terminated ten (10) days following the date of the written confirmation of withdrawal, unless the program participant or a filer notifies the Secretary of State on or before that date that the withdrawal request was not legitimate because it was not voluntarily submitted by the program participant or a filer.

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

- (a) "Withdrawal from Participation in Safe at Home Program",

July 2023; and

(b) "Appeal from Cancellation of Certification in Safe at Home Program", July 2023.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Secretary of State's Office, 700 Capital Avenue, State Capitol, Suite 152, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m., or may be obtained at [www.sos.ky.gov](http://www.sos.ky.gov).

MICHAEL G. ADAMS, Secretary of State

APPROVED BY AGENCY: June 27, 2023

FILED WITH LRC: June 29, 2023 at 3:00 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. EST, at Office of the Secretary of State. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. This hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 31, 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: Jennifer Scutchfield, Assistant Secretary of State, 700 Capital Avenue, State Capitol, Suite 152, Frankfort, Kentucky 40601, phone (502) 782-7417, fax (502) 564-5687, email [jscutchfield@ky.gov](mailto:jscutchfield@ky.gov).

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jennifer Scutchfield

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedures for the Safe at Home Program, previously known as the Address Confidentiality Program.

(b) The necessity of this administrative regulation: Safe at Home Program, previously known as the Address Confidentiality Program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: In order for the Secretary of State to fulfill its duties under KRS 14.300, 14.302, 14.304, 14.306 and 14.310, this administrative regulation is necessary to establish the procedures for the Safe at Home Program, previously known as the Address Confidentiality Program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation is necessary to establish procedures for the Safe at Home Program, previously known as the Address Confidentiality 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 regulation affects citizens of the Commonwealth that are impacted by domestic violence or others facing physical or mental abuse if their address were public record. It also affects state and local agencies who have the victims address in their database or records.

(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 identified in question (3) will have to familiarize themselves with this regulation and contact our

office with questions. Our Office will also conduct outreach to increase knowledge amongst public entities.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There should be no cost to the public agencies. The Secretary of State will incur costs with the administration of this program but have funding, at least in this budget year to cover the program.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The victims of domestic violence will be protected from persons who pose them danger by not allowing those people to access their location.

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

(a) Initially: The cost is minimal but will include purchase of a device to make identification cards, forwarding postal mail, training of assistance officers and contacting other agencies.

(b) On a continuing basis: As the program grows, the cost of the program will increase, especially for mailing costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The legislature provided funding for the Safe at Home 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 will not be necessary, at least initially.

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

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

#### FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This regulation will impact local and state agencies who hold addresses for victims of domestic violence.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This regulation is necessary because of 2023 RS SB 79 (2023 Regular Session Senate Bill 79) which creates the Safe at Home Program.

(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 minimal costs to state and local government agencies for the first full year the regulation would be in effect. The Office of the Secretary of State will have expenditures for mailing costs, card maker and creation of the Program.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? 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 actual cost is unknown, but after reviewing other programs around the country, the funds that are set aside for the Program by the legislature should cover the initial implementation of the Program. An estimate of first year costs are \$15,000.00.

(d) How much will it cost to administer this program for subsequent years? The cost to administer the Program will depend on how many participants. An estimate of subsequent year costs are \$10,000.00 a year.

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

Revenues (+/-): None

Expenditures (+/-): estimate \$15,000.00

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 regulation will increase the expenditures of the Secretary of State but it is anticipated the fund created by the legislature will accommodate the costs.

(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? Approximately \$15,000.00

(d) How much will it cost the regulated entities for subsequent years? Approximately \$15,000.00

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.

#### **STATEMENT OF EMERGENCY 30 KAR 10:050E**

This emergency administrative regulation is being promulgated in order to meet an imminent threat to public health, safety, or welfare. Kentucky victims of domestic violence are now able to apply to be certified in the Safe at Home Program to protect their home address from their abusers through new legislation which takes effect June 29, 2023. This administrative regulation is being filed on an emergency basis in order to ensure that Kentuckians who qualify under the new Safe at Home Program can be protected from their abusers. This emergency administrative regulation will be replaced by an identical administrative regulation to continue to protect victims of domestic violence and their families.

ANDY BESHEAR, Governor  
MICHAEL ADAMS, Secretary of State

#### **SECRETARY OF STATE (New Emergency Administrative Regulation)**

**30 KAR 010:050E. Application assistant training and designation.**

EFFECTIVE: June 29, 2023

RELATES TO: Ky Acts ch. 172

STATUTORY AUTHORITY: Ky Acts ch. 172

NECESSITY, FUNCTION, AND CONFORMITY: Ky Acts ch. 172 authorizes the Secretary of State to promulgate administrative regulations Ky Acts ch. 172. This administrative regulation implements Ky Acts ch. 172.

Section 1. The Application Assistant training and designation process consists of:

(1) Completing an in-person or online training which is conducted or approved by the Secretary of State Safe at Home Program; and

(2) Submitting a completed Application Assistant Agreement.

Section 2. Valid Period. The Application Assistant designation is valid for a three (3) year period and may be renewed by submitting a new Application Assistant Agreement prior to the end of the three (3) year term.

#### **Section 3. Employment.**

(1) The Application Assistants must provide the Safe at Home Program with current employer and contact information.

(2) Application Assistants who change employment may retain their designation as long as they continue to meet the statutory criteria for the Application Assistant designation and submit an updated Application Assistant Agreement.

#### **Section 4. Expiration/Cancellation.**

(1) The Safe at Home Program will notify Application Assistants prior to the expiration of their designation using the contact information on record with the program.

(2) An Application Assistant designation will expire if the Application Assistant fails to submit a new Application Assistant Agreement before the end of his/her three (3) year term.

(3) An Application Assistant may cancel his or her designation at any time by notifying the Safe at Home Program.

#### **Section 5. Incorporation by Reference.**

(1) "Application Assistant Agreement", July 2023, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Secretary of State's Office, 700 Capital Avenue, State Capitol, Suite 152, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m., or may be obtained at [www.sos.ky.gov](http://www.sos.ky.gov).

MICHAEL G. ADAMS, Secretary of State

APPROVED BY AGENCY: June 27, 2023

FILED WITH LRC: June 29, 2023 at 3:00 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. EST, at Office of the Secretary of State. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. This hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 31, 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: Jennifer Scutchfield, Assistant Secretary of State, 700 Capital Avenue, State Capitol, Suite 152, Frankfort, Kentucky 40601, phone (502) 782-7417, fax (502) 564-5687, email [jscutchfield@ky.gov](mailto:jscutchfield@ky.gov).

#### **REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT**

Contact Person: Jennifer Scutchfield

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedures for the Safe at Home Program, previously known as the Address Confidentiality Program.

(b) The necessity of this administrative regulation: Safe at Home Program, previously known as the Address Confidentiality Program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: In order for the Secretary of State to fulfill its duties under KRS 14.300, 14.302, 14.304, 14.306 and 14.310, this administrative regulation is necessary to establish the procedures for the Safe at Home Program, previously known as the Address Confidentiality Program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation is necessary to establish procedures for the Safe at Home Program, previously known as the Address Confidentiality Program.

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

## VOLUME 50, NUMBER 2– AUGUST 1, 2023

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation affects citizens of the Commonwealth that are impacted by domestic violence or others facing physical or mental abuse if their address were public record. It also affects state and local agencies who have the victims address in their database or records.

(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 identified in question (3) will have to familiarize themselves with this regulation and contact our office with questions. Our Office will also conduct outreach to increase knowledge amongst public entities.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There should be no cost to the public agencies. The Secretary of State will incur costs with the administration of this program but have funding, at least in this budget year to cover the program.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The victims of domestic violence will be protected from persons who pose them danger by not allowing those people to access their location.

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

(a) Initially: The cost is minimal but will include purchase of a device to make identification cards, forwarding postal mail, training of assistance officers and contacting other agencies.

(b) On a continuing basis: As the program grows, the cost of the program will increase, especially for mailing costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The legislature provided funding for the Safe at Home 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 will not be necessary, at least initially.

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

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

### FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This regulation will impact local and state agencies who hold addresses for victims of domestic violence.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This regulation is necessary because of 2023 RS SB 79 (2023 Regular Session Senate Bill 79) which creates the Safe at Home Program.

(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 minimal costs to state and local government agencies for the first full year the regulation would be in effect. The Office of the Secretary of State will have expenditures for mailing costs, card maker and creation of the Program.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? 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 actual cost is unknown, but after reviewing other programs around the country, the funds that are set aside for the Program by the legislature should cover the initial implementation of the Program. An estimate of first year costs are \$15,000.00.

(d) How much will it cost to administer this program for subsequent years? The cost to administer the Program will depend on how many participants. An estimate of subsequent year costs are \$10,000.00 a year.

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

Revenues (+/-): None

Expenditures (+/-): Estimate \$15,000.00

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 regulation will increase the expenditures of the Secretary of State but it is anticipated the fund created by the legislature will accommodate the costs.

(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? Approximately \$15,000.00

(d) How much will it cost the regulated entities for subsequent years? Approximately \$15,000.00

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.

### STATEMENT OF EMERGENCY 30 KAR 10:060E

This emergency administrative regulation is being promulgated in order to meet an imminent threat to public health, safety, or welfare. Kentucky victims of domestic violence are now able to apply to be certified in the Safe at Home Program to protect their home address from their abusers through new legislation which takes effect June 29, 2023. This administrative regulation is being filed on an emergency basis in order to ensure that Kentuckians who qualify under the new Safe at Home Program can be protected from their abusers. This emergency administrative regulation will be replaced by an identical administrative regulation to continue to protect victims of domestic violence and their families.

ANDY BESHEAR, Governor  
MICHAEL ADAMS, Secretary of State

**SECRETARY OF STATE**  
**(New Emergency Administrative Regulation)**

**30 KAR 010:060E. Release of participant information to criminal justice officials or agencies.**

EFFECTIVE: June 28, 2023

RELATES TO: Ky Acts Ch. 172

STATUTORY AUTHORITY: Ky Acts Ch. 172

NECESSITY, FUNCTION, AND CONFORMITY: Ky Acts Ch. 172 authorizes the Secretary of State to promulgate administrative regulations implementing Ky Acts Ch. 172. This administrative regulation implements Ky Acts Ch. 172.

Section 1. Expedited release of participant information shall be granted in response to a written request setting forth the reason(s) requiring the expedited release of information to the criminal justice agency. The request must be on agency letterhead and signed by the employee of the criminal justice agency requesting such information and his or her direct supervisor or acting supervisor if the employee's direct supervisor is unavailable.

Section 2. If the participant indicates on their application he/she has reason to believe he or she is a victim of domestic violence, sexual assault, trafficking or stalking perpetrated by an employee of a law enforcement agency, the letter must be accompanied by a court order for release of records in the program participant's file.

MICHAEL G. ADAMS, Secretary of State

APPROVED BY AGENCY: June 27, 2023

FILED WITH LRC: June 29, 2023 at 3 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. EST, at Office of the Secretary of State. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. This hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 31, 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: Jennifer Scutchfield, Assistant Secretary of State, 700 Capital Avenue, State Capitol, Suite 152, Frankfort, Kentucky 40601, phone (502) 782-7417, fax (502) 564-5687, email jscutchfield@ky.gov.

**REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT**

Contact Person: Jennifer

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedures for the Safe at Home Program, previously known as the Address Confidentiality Program.

(b) The necessity of this administrative regulation: Safe at Home Program, previously known as the Address Confidentiality Program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: In order for the Secretary of State to fulfill its duties under KRS 14.300, 14.302, 14.304, 14.306 and 14.310, this administrative regulation is necessary to establish the procedures for the Safe at Home Program, previously known as the Address Confidentiality Program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation is necessary to establish procedures for the Safe at Home Program, previously known as the Address Confidentiality 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 regulation affects citizens of the Commonwealth that are impacted by domestic violence or others facing physical or mental abuse if their address were public record. It also affects state and local agencies who have the victims address in their database or records.

(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 identified in question (3) will have to familiarize themselves with this regulation and contact our office with questions. Our Office will also conduct outreach to increase knowledge amongst public entities.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There should be no cost to the public agencies. The Secretary of State will incur costs with the administration of this program but have funding, at least in this budget year to cover the program.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The victims of domestic violence will be protected from persons who pose them danger by not allowing those people to access their location.

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

(a) Initially: The cost is minimal but will include purchase of a device to make identification cards, forwarding postal mail, training of assistance officers and contacting other agencies.

(b) On a continuing basis: As the program grows, the cost of the program will increase, especially for mailing costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The legislature provided funding for the Safe at Home 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 will not be necessary, at least initially.

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

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

**FISCAL NOTE**

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This regulation will impact local and state agencies who hold addresses for victims of domestic violence.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This regulation is necessary because of 2023 RS SB 79 (2023 Regular Session Senate Bill 79) which creates the Safe at Home Program.

(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 minimal costs to state and local government agencies for the first full year the regulation would be in effect. The Office of the

Secretary of State will have expenditures for mailing costs, card maker and creation of the Program.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? 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 actual cost is unknown, but after reviewing other programs around the country, the funds that are set aside for the Program by the legislature should cover the initial implementation of the Program. An estimate of first year costs are \$15,000.00.

(d) How much will it cost to administer this program for subsequent years? The cost to administer the Program will depend on how many participants. An estimate of subsequent year costs are \$10,000.00 a year.

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

Revenues (+/-): None

Expenditures (+/-): estimate \$15,000.00

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 regulation will increase the expenditures of the Secretary of State but it is anticipated the fund created by the legislature will accommodate the costs.

(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? Approximately \$15,000.00

(d) How much will it cost the regulated entities for subsequent years? Approximately \$15,000.00

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.

#### STATEMENT OF EMERGENCY 30 KAR 10:070E

This emergency administrative regulation is being promulgated in order to meet an imminent threat to public health, safety, or welfare. Kentucky victims of domestic violence are now able to apply to be certified in the Safe at Home Program to protect their home address from their abusers through new legislation which takes effect June 29, 2023. This administrative regulation is being filed on an emergency basis in order to ensure that Kentuckians who qualify under the new Safe at Home Program can be protected from their abusers. This emergency administrative regulation will be replaced by an identical administrative regulation to continue to protect victims of domestic violence and their families.

ANDY BESHEAR, Governor

MICHAEL ADAMS, Secretary of State

#### SECRETARY OF STATE (New Emergency Administrative Regulation)

#### 30 KAR 010:070E. School enrollment and record transfers.

EFFECTIVE: June 29, 2023

RELATES TO: Ky Acts ch. 172

STATUTORY AUTHORITY: Ky Acts ch. 172

NECESSITY, FUNCTION, AND CONFORMITY: Ky Acts ch. 172 authorizes the Secretary of State to promulgate administrative regulations implementing Ky Acts ch. 172. This administrative regulation implements Ky Acts ch. 172.

Section 1. At the request of an enrolling school, the Safe at Home Program will determine the student/participant's school district eligibility based on the current residential address listed in the participant's program file. The Safe at Home Program will notify the enrolling school of district eligibility in writing. The Safe at Home Program will request a student's records for the purpose of transferring such records from one school to another upon receiving the written request and authorization from the student's parent or legal guardian.

MICHAEL G. ADAMS, Secretary of State

APPROVED BY AGENCY: June 27, 2023

FILED WITH LRC: June 29, 2023 at 3 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. EST, at Office of the Secretary of State. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. This hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 31, 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: Jennifer Scutchfield, Assistant Secretary of State, 700 Capital Avenue, State Capitol, Suite 152, Frankfort, Kentucky 40601, phone (502) 782-7417, fax (502) 564-5687, email jscutchfield@ky.gov.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jennifer Scutchfield

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedures for the Safe at Home Program, previously known as the Address Confidentiality Program.

(b) The necessity of this administrative regulation: Safe at Home Program, previously known as the Address Confidentiality Program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: In order for the Secretary of State to fulfill its duties under KRS 14.300, 14.302, 14.304, 14.306 and 14.310, this administrative regulation is necessary to establish the procedures for the Safe at Home Program, previously known as the Address Confidentiality Program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation is necessary to establish procedures for the Safe at Home Program, previously known as the Address Confidentiality 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 regulation affects citizens of the Commonwealth that are impacted by domestic violence or others facing physical or mental abuse if their address were public record. It also affects state and local agencies who have the victims address in their database or records.

(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 identified in question (3) will have to familiarize themselves with this regulation and contact our office with questions. Our Office will also conduct outreach to increase knowledge amongst public entities.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There should be no cost to the public agencies. The Secretary of State will incur costs with the administration of this program but have funding, at least in this budget year to cover the program.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The victims of domestic violence will be protected from persons who pose them danger by not allowing those people to access their location.

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

(a) Initially: The cost is minimal but will include purchase of a device to make identification cards, forwarding postal mail, training of assistance officers and contacting other agencies.

(b) On a continuing basis: As the program grows, the cost of the program will increase, especially for mailing costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The legislature provided funding for the Safe at Home 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 will not be necessary, at least initially.

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

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

#### FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This regulation will impact local and state agencies who hold addresses for victims of domestic violence.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This regulation is necessary because of 2023 RS SB 79 (2023 Regular Session Senate Bill 79) which creates the Safe at Home Program.

(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 minimal costs to state and local government agencies for the first full year the regulation would be in effect. The Office of the Secretary of State will have expenditures for mailing costs, card maker and creation of the Program.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? 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 actual cost is unknown, but after reviewing other programs around the country, the funds that are set aside for the Program by the legislature should cover the initial implementation of the Program. An estimate of first year costs are \$15,000.00.

(d) How much will it cost to administer this program for subsequent years? The cost to administer the Program will depend on how many participants. An estimate of subsequent year costs are \$10,000.00 a year.

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

Revenues (+/-): None

Expenditures (+/-): estimate \$15,000.00

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 regulation will increase the expenditures of the Secretary of State but it is anticipated the fund created by the legislature will accommodate the costs.

(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? Approximately \$15,000.00

(d) How much will it cost the regulated entities for subsequent years? Approximately \$15,000.00

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.

#### STATEMENT OF EMERGENCY 30 KAR 10:080E

This emergency administrative regulation is being promulgated in order to meet an imminent threat to public health, safety, or welfare. Kentucky victims of domestic violence are now able to apply to be certified in the Safe at Home Program to protect their home address from their abusers through new legislation which takes effect June 29, 2023. This administrative regulation is being filed on an emergency basis in order to ensure that Kentuckians who qualify under the new Safe at Home Program can be protected from their abusers. This emergency administrative regulation will be replaced by an identical administrative regulation to continue to protect victims of domestic violence and their families.

ANDY BESHEAR, Governor

MICHAEL ADAMS, Secretary of State

#### SECRETARY OF STATE (New Emergency Administrative Regulation)

30 KAR 010:080E. Substitute address.

EFFECTIVE: June 29, 2023

RELATES TO: Ky Acts ch. 172

STATUTORY AUTHORITY: Ky Acts ch. 172

NECESSITY, FUNCTION, AND CONFORMITY: Ky Acts ch. 172 authorizes the Secretary of State to promulgate administrative regulations implementing Ky Acts ch. 172. This administrative regulation implements Ky Acts ch. 172.

Section 1. (1) Program participants may use the substitute address provided by the Secretary of State when interacting with any state or local agency on all forms or applications that require an address.

(2) Every state or local government agency, or office, shall accept the substitute address issued by the Secretary of State as the only address for all program participants when the participant provides the address and authorization card and authorization number. Program participants are not required to respond to any question regarding the details or circumstances of the person's inclusion in the program. The public agency may contact the Secretary of State to verify program participation and for additional program information.

(3) The agency official creating a new record may make a file photocopy of the authorization card and will immediately return the authorization card to the program participant.

(4) The agency official may call the Safe at Home Program to verify an individual's participation status in the program and to confirm the participant's authorization number.

(5) The Secretary of State is the agent for receipt of all mail sent to program participants at the substitute address.

(6) All first-class mail specifically addressed to the program participant at the substitute address will be forwarded at least every second business day to each participant's mailing address, using "return service requested" designation on the envelope. The Secretary of State is not required to forward mail that is not specifically addressed to the participant.

(7) The Secretary of State may hold a participant's mail for up to three weeks if the participant provides a Mail Hold Request. The Secretary of State must compare the signature on the hold request with that on file for the participant prior to holding the mail.

Section 2. Incorporation by Reference. (1) "Safe at Home Mail Hold Request", July 2023, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Secretary of State's Office, 700 Capital Avenue, State Capitol, Suite 152, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m., or may be obtained at [www.sos.ky.gov](http://www.sos.ky.gov).

MICHAEL G. ADAMS Secretary of State

APPROVED BY AGENCY: June 27, 2023

FILED WITH LRC: June 29, 2023 at 3 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. EST, at Office of the Secretary of State. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. This hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 31, 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: Jennifer Scutchfield, Assistant Secretary of State, 700 Capital Avenue, State Capitol, Suite 152, Frankfort, Kentucky 40601, phone (502) 782-7417, fax (502) 564-5687, email [jscutchfield@ky.gov](mailto:jscutchfield@ky.gov).

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jennifer Scutchfield

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedures for the Safe at Home Program, previously known as the Address Confidentiality Program.

(b) The necessity of this administrative regulation: Safe at Home Program, previously known as the Address Confidentiality Program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: In order for the Secretary of State to fulfill its

duties under KRS 14.300, 14.302, 14.304, 14.306 and 14.310, this administrative regulation is necessary to establish the procedures for the Safe at Home Program, previously known as the Address Confidentiality Program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation is necessary to establish procedures for the Safe at Home Program, previously known as the Address Confidentiality 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 regulation affects citizens of the Commonwealth that are impacted by domestic violence or others facing physical or mental abuse if their address were public record. It also affects state and local agencies who have the victims address in their database or records.

(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 identified in question (3) will have to familiarize themselves with this regulation and contact our office with questions. Our Office will also conduct outreach to increase knowledge amongst public entities.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There should be no cost to the public agencies. The Secretary of State will incur costs with the administration of this program but have funding, at least in this budget year to cover the program.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The victims of domestic violence will be protected from persons who pose them danger by not allowing those people to access their location.

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

(a) Initially: The cost is minimal, but will include purchase of a device to make identification cards, forwarding postal mail, training of assistance officers and contacting other agencies.

(b) On a continuing basis: As the program grows, the cost of the program will increase, especially for mailing costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The legislature provided funding for the Safe at Home 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 will not be necessary, at least initially.

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

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

#### FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This regulation will impact local and state agencies who hold addresses for victims of domestic violence.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative



## VOLUME 50, NUMBER 2– AUGUST 1, 2023

regulation. This regulation is necessary because of 2023 RS SB 79 (2023 Regular Session Senate Bill 79) which creates the Safe at Home Program.

(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 minimal costs to state and local government agencies for the first full year the regulation would be in effect. The Office of the Secretary of State will have expenditures for mailing costs, card maker and creation of the Program.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? 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 actual cost is unknown, but after reviewing other programs around the country, the funds that are set aside for the Program by the legislature should cover the initial implementation of the Program. An estimate of first year costs are \$15,000.00.

(d) How much will it cost to administer this program for subsequent years? The cost to administer the Program will depend on how many participants. An estimate of subsequent year costs are \$10,000.00 a year.

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

Revenues (+/-): None

Expenditures (+/-): estimate \$15,000.00

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 regulation will increase the expenditures of the Secretary of State but it is anticipated the fund created by the legislature will accommodate the costs.

(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? Approximately \$15,000.00

(d) How much will it cost the regulated entities for subsequent years? Approximately \$15,000.00

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.

### STATEMENT OF EMERGENCY 30 KAR 10:090E

This emergency administrative regulation is being promulgated in order to meet an imminent threat to public health, safety, or welfare. Kentucky victims of domestic violence are now able to apply to be certified in the Safe at Home Program to protect their home address from their abusers through new legislation which takes effect June 29, 2023. This administrative regulation is being filed on an emergency basis in order to ensure that Kentuckians who qualify under the new Safe at Home Program can be protected from their abusers. This emergency administrative regulation will be replaced

by an identical administrative regulation to continue to protect victims of domestic violence and their families.

ANDY BESHEAR, Governor

MICHAEL ADAMS, Secretary of State

### SECRETARY OF STATE (New Emergency Administrative Regulation)

#### 30 KAR 010:090E. Exercise of program participant's privileges.

EFFECTIVE: June 29, 2023

RELATES TO: Ky Acts ch. 172

STATUTORY AUTHORITY: Ky Acts ch. 172

NECESSITY, FUNCTION, AND CONFORMITY: Ky Acts ch. 172 authorizes the Secretary of State to promulgate administrative regulations implementing Ky Acts ch. 172. This administrative regulation implements Ky Acts ch. 172.

Section 1. (1) At the time any state or local government agency creates a new record or updates an existing record, a program participant may request that the agency use the substitute mailing address as the participant's residence, work and/or school address.

(2) Program participants are solely responsible for requesting the use of a substitute address.

(3) A program participant shall show his/her authorization card to the agency official creating a new record and request address confidentiality through the use of the substitute mailing address as it appears on the authorization card, in lieu of the actual location.

MICHAEL G. ADAMS Secretary of State

APPROVED BY AGENCY: June 27, 2023

FILED WITH LRC: June 29, 2023 at 3 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. EST, at Office of the Secretary of State. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. This hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 31, 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: Jennifer Scutchfield, Assistant Secretary of State, 700 Capital Avenue, State Capitol, Suite 152, Frankfort, Kentucky 40601, phone (502) 782-7417, fax (502) 564-5687, email jscutchfield@ky.gov.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jennifer Scutchfield

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedures for the Safe at Home Program, previously known as the Address Confidentiality Program.

(b) The necessity of this administrative regulation: Safe at Home Program, previously known as the Address Confidentiality Program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: In order for the Secretary of State to fulfill its duties under KRS 14.300, 14.302, 14.304, 14.306 and 14.310, this administrative regulation is necessary to establish the procedures for the Safe at Home Program, previously known as the Address Confidentiality Program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation is necessary to establish procedures for the Safe at Home Program, previously known as the Address Confidentiality 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 regulation affects citizens of the Commonwealth that are impacted by domestic violence or others facing physical or mental abuse if their address were public record. It also affects state and local agencies who have the victims address in their database or records.

(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 identified in question (3) will have to familiarize themselves with this regulation and contact our office with questions. Our Office will also conduct outreach to increase knowledge amongst public entities.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There should be no cost to the public agencies. The Secretary of State will incur costs with the administration of this program but have funding, at least in this budget year to cover the program.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The victims of domestic violence will be protected from persons who pose them danger by not allowing those people to access their location.

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

(a) Initially: The cost is minimal, but will include purchase of a device to make identification cards, forwarding postal mail, training of assistance officers and contacting other agencies.

(b) On a continuing basis: As the program grows, the cost of the program will increase, especially for mailing costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The legislature provided funding for the Safe at Home 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 will not be necessary, at least initially.

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

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

#### FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This regulation will impact local and state agencies who hold addresses for victims of domestic violence.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This regulation is necessary because of 2023 RS SB 79 (2023 Regular Session Senate Bill 79) which creates the Safe at Home Program.

(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 minimal costs to state and local government agencies for the first

full year the regulation would be in effect. The Office of the Secretary of State will have expenditures for mailing costs, card maker and creation of the Program.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? 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 actual cost is unknown, but after reviewing other programs around the country, the funds that are set aside for the Program by the legislature should cover the initial implementation of the Program. An estimate of first year costs are \$15,000.00.

(d) How much will it cost to administer this program for subsequent years? The cost to administer the Program will depend on how many participants. An estimate of subsequent year costs are \$10,000.00 a year.

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

Revenues (+/-): None

Expenditures (+/-): estimate \$15,000.00

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 regulation will increase the expenditures of the Secretary of State but it is anticipated the fund created by the legislature will accommodate the costs.

(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? Approximately \$15,000.00

(d) How much will it cost the regulated entities for subsequent years? Approximately \$15,000.00

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.

#### STATEMENT OF EMERGENCY 30 KAR 10:100E

This emergency administrative regulation is being promulgated in order to meet an imminent threat to public health, safety, or welfare. Kentucky victims of domestic violence are now able to apply to be certified in the Safe at Home Program to protect their home address from their abusers through new legislation which takes effect June 29, 2023. This administrative regulation is being filed on an emergency basis in order to ensure that Kentuckians who qualify under the new Safe at Home Program can be protected from their abusers. This emergency administrative regulation will be replaced by an identical administrative regulation to continue to protect victims of domestic violence and their families.

ANDY BESHEAR, Governor

MICHAEL ADAMS, Secretary of State

**SECRETARY OF STATE**  
**(New Emergency Administrative Regulation)**

**30 KAR 010:100E. Attaining age of majority.**

EFFECTIVE: June 29, 2023

RELATES TO: Ky Acts ch. 172

STATUTORY AUTHORITY: Ky Acts ch. 172

NECESSITY, FUNCTION, AND CONFORMITY: Ky Acts ch. 172 authorizes the Secretary of State to promulgate administrative regulations implementing Ky Acts ch. 172. This administrative regulation implements Ky Acts ch. 172.

Section 1. When the Secretary of State becomes aware that a minor child participant has reached the age of eighteen (18), the Secretary of State will inform the minor child participant of options related to continued participation in the Safe at Home Program. These options include leaving the program and reapplying on their own behalf.

(1) In anticipation of the minor child participant's 18<sup>th</sup> birthday, the Secretary of State will send an application packet via first class mail to the participant's address. The packet will include instructions on actions to be taken by age eighteen (18). The packet will include notice that if the participant does not respond within thirty (30) days they will be removed from the program, and mail forwarding will stop. If thirty (30) days pass without contact from the participant, the Secretary of State will mail a final notice that the participant's certification will be canceled if the participant fails to submit the Application for Certification within ten (10) days.

(2) The packet will include the application form.

(3) The Secretary of State shall renew the certification of a participant upon receipt of a properly completed application form.

(4) A participant who reaches age eighteen (18) and changes residence may reapply or withdraw.

(5) Program participants that have reached age eighteen (18) who have withdrawn or allowed certification to expire, may reapply on their own behalf.

MICHAEL G. ADAMS, Secretary of State

APPROVED BY AGENCY: June 27, 2023

FILED WITH LRC: June 29, 2023 at 3 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. EST, at Office of the Secretary of State. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. This hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 31, 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: Jennifer Scutchfield, Assistant Secretary of State, 700 Capital Avenue, State Capitol, Suite 152, Frankfort, Kentucky 40601, phone (502) 782-7417, fax (502) 564-5687, email jscutchfield@ky.gov.

**REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT**

Contact Person: Jennifer Scutchfield

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedures for the Safe at Home Program, previously known as the Address Confidentiality Program.

(b) The necessity of this administrative regulation: Safe at Home Program, previously known as the Address Confidentiality Program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: In order for the Secretary of State to fulfill its duties under KRS 14.300, 14.302, 14.304, 14.306 and 14.310, this administrative regulation is necessary to establish the procedures for the Safe at Home Program, previously known as the Address

Confidentiality Program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation is necessary to establish procedures for the Safe at Home Program, previously known as the Address Confidentiality 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 regulation affects citizens of the Commonwealth that are impacted by domestic violence or others facing physical or mental abuse if their address were public record. It also affects state and local agencies who have the victims address in their database or records.

(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 identified in question (3) will have to familiarize themselves with this regulation and contact our office with questions. Our Office will also conduct outreach to increase knowledge amongst public entities.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There should be no cost to the public agencies. The Secretary of State will incur costs with the administration of this program but have funding, at least in this budget year to cover the program.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The victims of domestic violence will be protected from persons who pose them danger by not allowing those people to access their location.

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

(a) Initially: The cost is minimal, but will include purchase of a device to make identification cards, forwarding postal mail, training of assistance officers and contacting other agencies.

(b) On a continuing basis: As the program grows, the cost of the program will increase, especially for mailing costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The legislature provided funding for the Safe at Home 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 will not be necessary, at least initially.

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

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

**FISCAL NOTE**

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This regulation will impact local and state agencies who hold addresses for victims of domestic violence.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This regulation is necessary because of 2023 RS SB 79 (2023 Regular Session Senate Bill 79) which creates the Safe at Home Program.

(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 minimal costs to state and local government agencies for the first full year the regulation would be in effect. The Office of the Secretary of State will have expenditures for mailing costs, card maker and creation of the Program.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? 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 actual cost is unknown, but after reviewing other programs around the country, the funds that are set aside for the Program by the legislature should cover the initial implementation of the Program. An estimate of first year costs are \$15,000.00.

(d) How much will it cost to administer this program for subsequent years? The cost to administer the Program will depend on how many participants. An estimate of subsequent year costs are \$10,000.00 a year.

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

Revenues (+/-): None

Expenditures (+/-): Estimate \$15,000.00

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 regulation will increase the expenditures of the Secretary of State but it is anticipated the fund created by the legislature will accommodate the costs.

(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? Approximately \$15,000.00

(d) How much will it cost the regulated entities for subsequent years? Approximately \$15,000.00

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.

#### STATEMENT OF EMERGENCY 30 KAR 10:110E

This emergency administrative regulation is being promulgated in order to meet an imminent threat to public health, safety, or welfare. Kentucky victims of domestic violence are now able to apply to be certified in the Safe at Home Program to protect their home address from their abusers through new legislation which takes effect June 29, 2023. This administrative regulation is being filed on an emergency basis in order to ensure that Kentuckians who qualify under the new Safe at Home Program can be protected from their abusers. This emergency administrative regulation will be replaced by an identical administrative regulation to continue to protect victims of domestic violence and their families.

ANDY BESHEAR, Governor  
MICHAEL ADAMS, Secretary of State

#### SECRETARY OF STATE (New Emergency Administrative Regulation)

#### 30 KAR 010:110E. Service of process.

EFFECTIVE: June 29, 2023

RELATES TO: Ky Acts ch. 172

STATUTORY AUTHORITY: Ky Acts ch. 172

NECESSITY, FUNCTION, AND CONFORMITY: Ky Acts ch. 172 authorizes the Secretary of State to promulgate administrative regulations implementing Ky Acts ch. 172. This administrative regulation implements Ky Acts ch. 172.

Section 1. Service of Process. (1) The Secretary of State shall be an agent of the program participant upon whom any summons, writ, notice, demand or process may be served;

(2) Service on the Secretary of State of any such summons, writ, demand, notice, or process shall be made by mailing to the designated address or by delivering to the Secretary of State at his/her office in Frankfort, Kentucky;

(3) If a summons, writ, notice, demand, or process is served on the Secretary of State, the Secretary of State shall immediately forward a copy summons, writ, notice, demand or process at the participant's mailing address shown on the records;

(4) The Secretary of State shall maintain in the program participant's file, a record of all summonses, writs, notices, demands, and processes served upon the Secretary of State for that participant, which shall include the date of such service and the Secretary of State's action.

MICHAEL G. ADAMS, Secretary of State

APPROVED BY AGENCY: June 27, 2023

FILED WITH LRC: June 29, 2023 at 3 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. EST, at Office of the Secretary of State. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. This hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 31, 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: Jennifer Scutchfield, Assistant Secretary of State, 700 Capital Avenue, State Capitol, Suite 152, Frankfort, Kentucky 40601, phone (502) 782-7417, fax (502) 564-5687, email jscutchfield@ky.gov.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jennifer Scutchfield

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedures for the Safe at Home Program, previously known as the Address Confidentiality Program.

(b) The necessity of this administrative regulation: Safe at Home Program, previously known as the Address Confidentiality Program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: In order for the Secretary of State to fulfill its duties under KRS 14.300, 14.302, 14.304, 14.306 and 14.310, this administrative regulation is necessary to establish the procedures for the Safe at Home Program, previously known as the Address Confidentiality Program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation is necessary to establish procedures for the Safe at Home

Program, previously known as the Address Confidentiality 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 regulation affects citizens of the Commonwealth that are impacted by domestic violence or others facing physical or mental abuse if their address were public record. It also affects state and local agencies who have the victims address in their database or records.

(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 identified in question (3) will have to familiarize themselves with this regulation and contact our office with questions. Our Office will also conduct outreach to increase knowledge amongst public entities.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There should be no cost to the public agencies. The Secretary of State will incur costs with the administration of this program but have funding, at least in this budget year to cover the program.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The victims of domestic violence will be protected from persons who pose them danger by not allowing those people to access their location.

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

(a) Initially: The cost is minimal, but will include purchase of a device to make identification cards, forwarding postal mail, training of assistance officers and contacting other agencies.

(b) On a continuing basis: As the program grows, the cost of the program will increase, especially for mailing costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The legislature provided funding for the Safe at Home 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 will not be necessary, at least initially.

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

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

#### FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This regulation will impact local and state agencies who hold addresses for victims of domestic violence.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This regulation is necessary because of 2023 RS SB 79 (2023 Regular Session Senate Bill 79) which creates the Safe at Home Program.

(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 minimal costs to state and local government agencies for the first full year the regulation would be in effect. The Office of the Secretary of State will have expenditures for mailing costs, card maker and creation of the Program.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? 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 actual cost is unknown, but after reviewing other programs around the country, the funds that are set aside for the Program by the legislature should cover the initial implementation of the Program. An estimate of first year costs are \$15,000.00.

(d) How much will it cost to administer this program for subsequent years? The cost to administer the Program will depend on how many participants. An estimate of subsequent year costs are \$10,000.00 a year.

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

Revenues (+/-): None

Expenditures (+/-): estimate \$15,000.00

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 regulation will increase the expenditures of the Secretary of State but it is anticipated the fund created by the legislature will accommodate the costs.

(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? Approximately \$15,000.00

(d) How much will it cost the regulated entities for subsequent years? Approximately \$15,000.00

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.

#### STATEMENT OF EMERGENCY 30 KAR 10:120E

This emergency administrative regulation is being promulgated in order to meet an imminent threat to public health, safety, or welfare. Kentucky victims of domestic violence are now able to apply to be certified in the Safe at Home Program to protect their home address from their abusers through new legislation which takes effect June 29, 2023. This administrative regulation is being filed on an emergency basis in order to ensure that Kentuckians who qualify under the new Safe at Home Program can be protected from their abusers. This emergency administrative regulation will be replaced by an identical administrative regulation to continue to protect victims of domestic violence and their families.

ANDY BESHEAR, Governor

MICHAEL ADAMS, Secretary of State

**SECRETARY OF STATE**  
**(New Emergency Administrative Regulation)**

**30 KAR 010:120E. Recognition of certification in other state.**

EFFECTIVE: June 29, 2023

RELATES TO: Ky Acts ch. 172

STATUTORY AUTHORITY: Ky Acts ch. 172

NECESSITY, FUNCTION, AND CONFORMITY: Ky Acts ch. 172 authorizes the Secretary of State to promulgate administrative regulations implementing Ky Acts ch. 172. This administrative regulation implements Ky Acts ch. 172.

Section 1. A participant in a program in another state that is similar to the Safe at Home Program may apply for approval in the Kentucky Secretary of State Safe at Home Program.

(1) The application for recognition shall be made to the Secretary of State by submitting a completed Application for Recognition of Out of State Participant which contains:

- (a) Full legal name;
  - (b) Date of birth;
  - (c) Other names that may appear on applicant's mail;
  - (d) County of residence;
  - (e) Residential address;
  - (f) Phone number;
  - (g) Email address; and
  - (h) Dependent's legal names and identifying information (if applicable).
- (i) The State where applicant is currently enrolled.
- (j) Contact information for the other State's administrator of the similar program.

(k) Whether the applicant is permanently moving to the Commonwealth, temporarily living in the Commonwealth or doing business or engaged in other transactions in the Commonwealth.

(2) The application must include a sworn statement and acknowledge the following:

(a) I am an adult survivor of domestic abuse, domestic abuse assault, sexual abuse, stalking, or human trafficking or I am the parent/guardian of a child or incapacitated individual who is such a survivor. I fear for my safety, the safety of those who reside in my household, or the safety of the person on whose behalf I completed this application;

(b) I am not applying to participate in Safe at Home in order to avoid prosecution of any kind. I confirm that I am not a sexually violent predator;

(c) I give permission to the Secretary of State's Office to verify my participation in Safe at Home to third parties when requested;

(d) I designate the Secretary of State as my agent for service of process and for the purpose of receipt of mail. Therefore, if Safe at Home accepts legal documents or certified mail addressed to me, it is as if I received them;

(e) I understand that my participation in Safe at Home may be cancelled for any of the following reasons:

- 1. I change my legal name and do not notify the Secretary of State's Office in writing prior to the change,
- 2. Mail forwarded by the Secretary of State's Office is returned as undeliverable by the United States Postal Service,
- 3. If I do not accept service of process or am unavailable for delivery of service of process,
- 4. If my application contains false information,
- 5. I become ineligible for Safe at Home in the original state certification;

(f) I understand that it is my responsibility to notify family, friends, businesses, and government agencies of my Safe at Home designated address. I recognize that if I share my confidential address, the Safe at Home program cannot control its distribution;

(g) I realize that my mail address could include an apt. number. Without this apt. number, my mail may be delayed or may never reach me. Safe at Home will forward only first-class, legal, and certified mail, as well as packages of prescriptions;

(h) I understand that my approval in Safe at Home is for a one-year term. At the end of this term, I realize I will have to renew my enrollment or be cancelled from the program;

(i) I realize that if I purchase real estate, my information will appear on public records;

(j) I understand that I must notify the Safe at Home program if any of the information on my original Safe at Home application changes;

(k) I understand that once I am enrolled in the Safe at Home program, my actual address will be confidential unless otherwise ordered by a court or released by the lawful custodian of the record. The Safe at Home program may release my information to the Department of Public Safety, who may release it to law enforcement upon verification that it will aid in responding to an emergency situation, criminal complaint, or an ongoing investigation; and

(l) My children under the age of eighteen (18) may be enrolled with me as dependents. Individuals over the age of eighteen (18) must enroll separately. Minors who turn eighteen (18) during participation in the program are responsible for completing a renewal form at that time to continue Safe at Home participation.

Section 2. Certification in the Safe at Home Program. (1) The Secretary of State shall approve an Application for Certification to Participate in Safe at Home Program and certify the applicant as a program participant if the applicant and the Application for Certification to Participate in the Safe at Home Program meet the requirements established in Ky Acts ch. 172 and this administrative regulation.

(2) The Secretary of State shall notify the applicant or filer whether the Application for Certification to Participate in the Safe at Home Program was denied, or the applicant was certified as a program participant.

(a) If an Application for Certification to Participate in the Safe at Home Program is denied, the Secretary of State shall inform the applicant or filer of the reason for the denial.

(b) If an applicant is certified as a program participant, the Secretary of State shall:

- 1. Assign to the program participant a participant number and designated address; and
- 2. Issue to the program participant a Safe at Home Program Participant Card.

3. Provide information about the Safe at Home Program with instructions, frequently asked question and answers and other information deemed necessary.

4. Provide a general letter from the Secretary of State the participant can provide to agencies.

(3) If an applicant is certified as a program participant, participation in the Safe at Home program shall be effective as of the date of the notification of certification.

Section 3. Incorporation by Reference. (1) "Application for Recognition of Out of State Participant", July 2023; is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Secretary of State's Office, 700 Capital Avenue, State Capitol, Suite 152, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m., or may be obtained at [www.sos.ky.gov](http://www.sos.ky.gov).

MICHAEL G. ADAMS, Secretary of State

APPROVED BY AGENCY: June 27, 2023

FILED WITH LRC: June 29, 2023 at 3 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. EST, at Office of the Secretary of State. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. This hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 31, 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: Jennifer Scutchfield, Assistant Secretary of

State, 700 Capital Avenue, State Capitol, Suite 152, Frankfort, Kentucky 40601, phone (502) 782-7417, fax (502) 564-5687, email jscutchfield@ky.gov.

# REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jennifer Scutchfield

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedures for the Safe at Home Program, previously known as the Address Confidentiality Program.

(b) The necessity of this administrative regulation: Safe at Home Program, previously known as the Address Confidentiality Program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: In order for the Secretary of State to fulfill its duties under KRS 14.300, 14.302, 14.304, 14.306 and 14.310, this administrative regulation is necessary to establish the procedures for the Safe at Home Program, previously known as the Address Confidentiality Program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation is necessary to establish procedures for the Safe at Home Program, previously known as the Address Confidentiality 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 regulation affects citizens of the Commonwealth that are impacted by domestic violence or others facing physical or mental abuse if their address were public record. It also affects state and local agencies who have the victims address in their database or records.

(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 identified in question (3) will have to familiarize themselves with this regulation and contact our office with questions. Our Office will also conduct outreach to increase knowledge amongst public entities.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There should be no cost to the public agencies. The Secretary of State will incur costs with the administration of this program but have funding, at least in this budget year to cover the program.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The victims of domestic violence will be protected from persons who pose them danger by not allowing those people to access their location.

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

(a) Initially: The cost is minimal, but will include purchase of a device to make identification cards, forwarding postal mail, training of assistance officers and contacting other agencies.

(b) On a continuing basis: As the program grows, the cost of the program will increase, especially for mailing costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The legislature provided funding for the Safe at Home 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 will not be necessary, at least initially.

(8) State whether or not this administrative regulation establishes

any fees or directly or indirectly increases any fees: This administrative regulation neither establishes nor increases any fees.

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

## FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This regulation will impact local and state agencies who hold addresses for victims of domestic violence.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This regulation is necessary because of 2023 RS SB 79 (2023 Regular Session Senate Bill 79) which creates the Safe at Home Program.

(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 minimal costs to state and local government agencies for the first full year the regulation would be in effect. The Office of the Secretary of State will have expenditures for mailing costs, card maker and creation of the Program.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? 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 actual cost is unknown, but after reviewing other programs around the country, the funds that are set aside for the Program by the legislature should cover the initial implementation of the Program. An estimate of first year costs are \$15,000.00.

(d) How much will it cost to administer this program for subsequent years? The cost to administer the Program will depend on how many participants. An estimate of subsequent year costs are \$10,000 a year.

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

Revenues (+/-): None

Expenditures (+/-): estimate \$15,000.00

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 regulation will increase the expenditures of the Secretary of State but it is anticipated the fund created by the legislature will accommodate the costs.

(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? Approximately \$15,000.00

(d) How much will it cost the regulated entities for subsequent years? Approximately \$15,000.00

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.

**STATEMENT OF EMERGENCY**  
**101 KAR 1:365E**

This emergency administrative regulation is necessary to be in compliance with Senate Bill 153, which significantly altered the merit system as set out in KRS Chapter 18A and goes into effect on June 29, 2023. Due to the significant alterations to the merit system resulting from Senate Bill 153, the Personnel Board has been required to create a new Appeal Form reflecting the alteration of state government employees' merit system rights and changes to the Personnel Board's jurisdiction. The Personnel Board Appeal Form is incorporated by reference in 101 KAR 1:365E and adoption of this emergency administrative regulation is necessary to permit the Personnel Board to issue the new Appeal Form in compliance with Senate Bill 153. This emergency administrative regulation is deemed to be an emergency pursuant to KRS 13B.190(1)(a)3. In order to meet an imminent deadline for the promulgation of an administrative regulation that is established by state statute or federal law, specifically, the June 29, 2023, effective date of Senate Bill 153. This emergency administrative regulation will be replaced by an ordinary administrative regulation. The companion ordinary administrative regulation is identical to this emergency administrative regulation.

ANDY BESHEAR, Governor  
MARK A. SIPEK, Executive Director

**GENERAL GOVERNMENT CABINET**  
**Personnel Board**  
**(Emergency Amendment)**

**101 KAR 1:365E. Appeal and hearing procedures.**

EFFECTIVE: July 11, 2023

RELATES TO: KRS Chapter 13B, 18A.075, 18A.0751, 18A.095, 344.030

STATUTORY AUTHORITY: KRS 13B.170, 18A.075, 18A.0751  
NECESSITY, FUNCTION, AND CONFORMITY: KRS 13B.170 authorizes an agency to promulgate administrative regulations to carry out the provisions of KRS Chapter 13B and enact administrative hearing procedures. KRS 18A.075 provides that[requires] the Personnel Board shall[te] promulgate comprehensive administrative regulations consistent with the provisions of KRS 18A.005 to[through] 18A.200. KRS 18A.0751 provides that[requires] the Personnel Board shall[te] promulgate comprehensive administrative regulations providing for the procedures to be utilized by the board in the conduct of hearings. This administrative regulation establishes Personnel Board hearing procedures.

**Section 1. Definitions.**

- (1) "Because of sex" or "on the basis of sex" is defined by KRS 344.030(8).
- (2) "Qualified individual with a disability" is defined by KRS 344.030(1).
- (3) "Reasonable accommodation" is defined by KRS 344.030(6).
- (4) "Religion" is defined by KRS 344.030(7).
- (5) "Undue hardship" is defined by KRS 344.030(9).

**Section 2.** An appeal of an action alleged to be based on discrimination shall be governed by the terms defined in Section 1 of this administrative regulation.

**Section 3. Filing.**

- (1) An appeal or a document relating to an appeal shall be filed with the Personnel Board through the office of the executive director within the time period established in KRS 18A.095.
- (2)
  - (a) An appeal, motion, request, objection, exception, response, witness list, or other document may be filed by a party with the board by means of facsimile transmission or other electronic means including email.
  - (b) If a party transmits a document to the board by facsimile transmission or other electronic means, the party shall attempt to transmit the document to all parties by the same method.

(3) To be timely filed, a document transmitted by facsimile or other electronic means shall be received by the board within the statutory or regulatory times established for filing and be received by the board no later than midnight on the last day for filing.

(4) The submission of an original copy of a facsimile transmission or email shall not be required, unless requested.

(5) A state employee shall not use state time, equipment, materials, or personnel in pursuing an appeal without the advance written permission of an appointing authority in their employing agency.

(6) An appeal shall be heard in Franklin County, Kentucky.

**Section 4. Designation of Hearing Officer.**

(1) Unless otherwise directed by the board, the executive director shall assign a hearing officer or officers to an appeal.

(2) If more than one (1) hearing officer is assigned, one (1) shall be designated as chief hearing officer.

(3) If an appeal will be heard by the full board, the board shall designate a chief hearing officer.

**Section 5. Continuances.**

(1) A continuance of a scheduled hearing may be granted by a hearing officer for good cause.

(2) The hearing officer ~~has~~shall have the discretion to require that a request for continuance shall:

- (a) Be written;
- (b) State the reason for the request;
- (c) Include proposed dates for rescheduling the hearing; and
- (d) Be filed with the board.

(3) The hearing officer ~~has~~shall have the discretion to require that any objection to a request for continuance shall:

- (a) Be written;
- (b) State the reason for the objection to the request for continuance; and
- (c) Be filed with the board.
- (4)

(a) At the direction of the hearing officer, the executive director may execute and transmit to all parties an interim order either granting or denying the request for continuance.

(b) If the request for continuance is granted, the interim order shall state the date on which the hearing has been rescheduled or that the hearing has been continued generally.

**Section 6. Prehearing Procedures.**

(1) A motion, request, or filing shall be in writing, filed with the board through the office of the executive director, and served on all parties.

(2) Unless an interim order provides for review by the board prior to the conclusion of a hearing, which shall only be granted at the sole discretion of the hearing officer, the board shall review an interim order when it considers the recommended order, record, and exceptions.

(3) If an employee retains counsel subsequent to filing an appeal, that attorney may be required to file a written entry of appearance.

(4) An employee shall notify all parties and the board in writing of a change of address.

(5)

(a) A Kentucky Personnel Board subpoena form shall be available in the office of the executive director and shall be issued by the executive director.

(b) Preparation and service of the subpoena and compliance with the subpoena shall be the responsibility of the party requesting the subpoena.

(6) A deposition may be taken in an extraordinary circumstance and upon authorization by the hearing officer. A request to take a deposition shall be filed at least fifteen (15) calendar days prior to the scheduled hearing. An objection to the request shall be filed prior to the scheduled hearing.

(7) At the discretion of the hearing officer, two (2) or more appeals that involve the same or similar facts may be consolidated. Upon motion of a party, or upon the hearing officer's own motion, the hearing officer may join other parties as necessary to appropriately consider the matter.



(8) An agreed settlement shall be submitted in writing for review by the Personnel Cabinet Secretary and final action by the board.

Section 7. Conduct of Hearing.

(1) Unless the appeal is heard by the full board, the hearing officer assigned shall hear the appeal.

(2) A party shall provide at least four (4) copies of an exhibit that is to be introduced as evidence. The parties may exchange documents through appropriate electronic means, including email. The hearing officer shall have the discretion to appropriately fashion the evidentiary record at all times.

Section 8. Board Review and Action.

(1) A response to a written exception to a recommended order may be filed by a party within fifteen (15) calendar days after the date the written exception is filed with the board. A response shall be:

- (a) In writing; and
- (b) Served on all parties.

(2) At the request of a party or on its own motion, the board may permit oral arguments before the full board. A request for oral argument shall be:

- (a) In writing; and
- (b) Filed with the board within fifteen (15) days of issuance of a recommended order.

(3) A final order shall be prepared, executed, and entered at the direction of the board by the secretary to the board.

Section 9. Incorporation by Reference.

(1) The following forms are incorporated by reference:

(a) "Kentucky Personnel Board Appeal Form (6-29-2023)[(4-2018)]"; and

(b) "Kentucky Personnel Board Subpoena Form (2-90)."

(2) These forms may be inspected, copied, or obtained at the office of the Personnel Board, 1025 Capital Center Drive, Suite 105, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. and the Web site of the Personnel Board, [personnelboard.ky.gov](http://personnelboard.ky.gov).

MARK A. SIPEK, Executive Director

APPROVED BY AGENCY: July 11, 2023

FILED WITH LRC: July 11, 2023 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 21, 2023, at 9:30 a.m. Eastern Time at 1025 Capital Center Drive, Suite 105, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing 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: Stafford Easterling General Counsel, Personnel Board, 1025 Capital Center Drive, Suite 105, Frankfort, Kentucky 40601, phone (502) 564-7830, fax (502) 695-5799, email [stafford.easterling@ky.gov](mailto:stafford.easterling@ky.gov).

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stafford Easterling

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation governs the Personnel Board's appeal and hearing procedures.

(b) The necessity of this administrative regulation: This regulation is necessary in order to provide more granular detail as to the Personnel Board's procedures and guidelines as to how the Board will process appeals and conduct hearings.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 18A.075, 18A.0751, and KRS 13B.170 mandate that the Board promulgate administrative regulations that detail the procedures and guidelines that must be used by the Board when conducting hearings and processing appeals.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will continue to enable the Board to ensure the effective administration of the merit system in addition to assisting the Board in meeting its statutory requirements to establish appeal and hearing procedures.

(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 language of the administrative regulation itself will not change. This amendment merely effectuates alterations to the Personnel Board Appeal form already incorporated by reference.

(b) The necessity of the amendment to this administrative regulation: The Personnel Board's Appeal Form, which is incorporated by reference, need to be modernized.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 18A.075, 18A.0751, and KRS 13B.170 mandate that the Board promulgate regulations that detail the procedures and guidelines that must be used by the Board when conducting hearings and processing appeals. The updating of the form does not change the content of this regulation and the amendment of the form attached by reference conforms with the Board's mandate to effectively administer state government's merit system, as provided by KRS Chapter 18A.

(d) How the amendment will assist in the effective administration of the statutes: Updating the Personnel Board's Appeal form will allow the Board to capture more information about the nature of an appeal before an initial pre-hearing conference, which is a more efficient use of the Board's extremely limited resources, in addition to making it easier for those utilizing the Board's Appeal form to submit information relevant to their appeals, which should permit all participants in Board appeals to more effectively resolve appeal through a more transparent streamlined process.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation affects all state government agencies and all individuals with rights secured by KRS Chapter 18A, including, primarily, current state employees.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No entity identified in the Board's response will be required to undertake any significant new actions in order to comply with the amendment. Such entities will merely be required to handle and distribute the new amended Personnel Board Appeal form in the exact same manner that they handled and distributed the Board's old, unamended Appeal form.

(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 additional cost to the entities to comply with this regulation. The only foreseeable cost would be incurred in printing the new form to replace the old form to the extent that distribution of the form is not done electronically.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): In addition to the universal benefits conveyed by adopting more modern procedures and ensuring more uniformity in the appeal process and hearing procedures, by amending the Board's Appeal form to capture more information relevant to each appeal, all participants in Board appeals should benefit through a more transparent streamlined process.

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

(a) Initially: Minimal printing costs up front to replace the old Board Appeal form with the new form.

(b) On a continuing basis: After the initial expense, there will be no ongoing cost to implement this amendment.

(6) What is the source of the funding to be used for the

implementation and enforcement of this administrative regulation: Given the minimal costs involved, there is no need for a source of funding to implement and enforce this regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There will not be an increase in fees and there is no necessity to secure a source of funding in order to implement this amendment.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This regulation, as amended, is not anticipated to generate any fees nor will any entity endure increased fees, directly or indirectly.

(9) TIERING: Is tiering applied? No. This regulation, as amended assures hearings are held equally and appeals processed uniformly.

#### FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This regulation affects all state government agencies and all individuals with rights secured by KRS Chapter 18A, including, primarily, current state employees.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 18A.075, KRS 18A.0751, 18A.005 to 18A.200, and KRS 13B.170.

(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. No effect on expenditures and revenues to any 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? 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 minimal costs incurred to distribute new Board Appeal forms are so insignificant that the Board cannot provide detailed estimated costs to administer the amendments to this regulation, especially if participating state agencies chose to distribute the amended Personnel Board forms electronically.

(d) How much will it cost to administer this program for subsequent years? Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation. There are no estimated costs for subsequent years to administer the amendments to this regulation.

Revenues (+/-): Zero

Expenditures (+/-): Zero

Other Explanation: There should be no increase or decrease in the cost to administer this administrative 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? Zero

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

(c) How much will it cost the regulated entities for the first year? Minimal.

(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 (+/-): Zero

Expenditures (+/-): Zero

Other Explanation: There should be no increase or decrease in the cost for the regulated entities caused by this administrative regulation.

(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.

#### STATEMENT OF EMERGENCY 201 KAR 23:160E

This emergency administrative regulation is being promulgated pursuant to KRS 335.070(3) and KRS 13A.190(1)(a)(1) to meet an imminent threat to public health, safety, or welfare. This administrative regulation is necessary to mitigate the shortage of social work professionals in the Commonwealth of Kentucky at this time because 201 KAR 23:016 is being withdrawn at the same time this emergency regulation is being submitted to replace 201 KAR 23:016. This administrative regulation more clearly distinguishes between clinical and non-clinical social work practice under a temporary permit. This administrative regulation allows for the certified social worker who is permitted to provide clinical social work to be able to move from the temporary permit to full licensure because this regulation is consistent with KRS 335.080(3), which requires a contract with a licensed clinical social worker for supervision. This administrative regulation provides for non-resident social workers to have a temporary permit for ninety (90) days which is not in 201 KAR 23:016. The need for care continues to increase while the availability of practitioners to provide that care lags behind. Specifically, this administrative regulation allows individuals that meet the appropriate educational requirements to practice social work under a temporary permit, under the appropriate supervision of a licensed social worker, until such time as they are able to obtain licensure pursuant to KRS 335.080, 335.090, or 335.100. Access to temporary licensure would create a significant increase in access to services for the citizens of the Commonwealth and provide new social workers access to employment opportunities shortly after graduation. This administrative regulation will be replaced with an ordinary regulation in due course. The ordinary administrative regulation is identical to this emergency administrative regulation.

WHITNEY CASSITY-CAWOOD, LCSW, PhD, Board Chair  
ANDY BESHEAR, Governor

#### BOARDS AND COMMISSIONS Board of Social Work (New Emergency Administrative Regulation)

##### 201 KAR 23:160E. Temporary permission to practice.

EFFECTIVE: June 28, 2023

RELATES TO: KRS 335.080, 335.090, 335.100

STATUTORY AUTHORITY: KRS 335.070(1), (3), (9)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 335.070(1) requires the board to evaluate and approve the qualifications of applicants for licensure. KRS 335.070(3) authorizes the board to promulgate administrative regulations. KRS 335.070(9) authorizes the board to establish requirements for temporary permits to practice social work. This administrative regulation establishes the requirements for the granting of temporary permission to engage in the practice of social work.

##### Section 1. Temporary Permits without the Examination.

(1) A temporary permit to engage in the practice of social work shall be granted, if requested, to an applicant who has applied for licensure under the provisions of KRS 335.080 or 335.090 and completed all of the requirements for licensure except having passed the required examination.

(2) The application required by subsection (1) of this section shall be made to the board or to the online application management system and shall:

- (a) Include a certification by the applicant that the:
  - 1. Information in the application is true, correct, and complete to the best of their knowledge and belief; and
  - 2. The applicant is aware that the board may take disciplinary action if the application contains a misrepresentation or falsification;
- (b) Be accompanied by payment of the application fee that shall:
  - 1. Be made payable to the Kentucky State Treasurer if the application is processed through the board; or
  - 2. Be made to the online application management system as directed by the board.
- (3) A person practicing social work under a temporary permit as a licensed social worker or a certified social worker shall be under the supervision of a certified social worker or licensed clinical social worker licensed in Kentucky, who becomes the supervisor of record.
- (4) A supervisor of record for a temporary permit holder not practicing clinical social work must have been licensed in Kentucky for two (2) years.
- (5) Any changes to the terms of the temporary permit shall be submitted to the board and approved by the board before the temporary permit holder continues social work practice.
- (6)(a) A temporary permit shall not extend for more than 180 days after the temporary permit is approved by the board unless renewed.
- (b) A person may re-apply for a temporary permit before the issued permit expires, and this permit shall not extend for more than 180 days after the temporary permit is approved by the board for a maximum of 360 days.
- (7) Temporary permit holders shall not practice telehealth outside of Kentucky, which means that the location of the temporary permit holder and the client at the time of service must be in Kentucky.
- (8) The applicant shall pay the required fee for the permit and any renewal.
- (9) Receipt of applications, contracts, and notification of approvals can be done by mail or electronically.

Section 2. Temporary Permits to Practice Clinical Social Work without the Examination.

- (1) Section 1(1), (2), (7), (8), and (9) are the same for this section.
- (2) A certified social worker who seeks to practice clinical social work under a temporary permit shall be under the supervision of a licensed clinical social worker who qualifies to provide supervision under 201 KAR 23:070.
- (3) A person practicing under a temporary permit as a certified social worker to provide clinical social work shall not accumulate hours towards the supervision requirements of KRS 335.100(1)(b).
- (4) The application for a temporary permit to practice clinical social work shall include a contract/letter signed by the proposed supervisor acknowledging the responsibility for supervision and for the practice of the person holding the temporary permit.
- (5) A licensee shall not serve as the supervisor for more than two (2) persons holding a temporary permit at any one (1) time.
- (6) A licensed clinical social worker who qualifies to provide supervision under 201 KAR 23:070 must include temporary permit persons in the required limit of six (6) supervisees as supervisor of record.
- (7) Supervision during the period of temporary permission to practice shall be a minimum of one (1) hour of individual, face-to-face, or virtual supervision per week.
- (8) A person practicing under a temporary permit as a certified social worker to provide clinical social work shall be valid until the applicant for the Certified Social Work license is denied under the provisions of KRS 335.080, or the temporary permit expires.
- (9) The temporary permit to practice clinical social work shall only be issued with an approved contract as required in KRS 335.080(3).
  - (a) The temporary permit applicant must complete the temporary permit application that includes a contract with an approved supervisor.
  - (b) The temporary permit remains in effect until a new contract is approved after the Certified Social Work license is issued under KRS 335.080, even when the maximum of 360 days of the permit is

exceeded.

(c) A new application for a temporary permit shall be submitted to the board immediately for approval if the supervisee changes their:

- 1. Supervisor of record; or
  - 2. Place of employment.
- (10) A temporary permit holder shall cease and desist the practice of clinical social work if:
- (a) The supervisor of record terminates supervision; or
  - (b) The temporary permit holder ceases employment listed on the application.
- (11) Any changes to the terms of the temporary permit to practice clinical social shall be submitted to the board and approved by the board before the temporary permit holder continues social work practice.
- (12) Temporary permit holders who violate the provisions of the section are subject to disciplinary action by the board.

Section 3. Temporary Permits for Out-of-state Independent Clinical License Holders. A temporary permit can be issued for clinical social work practice in Kentucky if requested, as prescribed when:

- (1) A temporary permit to provide clinical social work in Kentucky may be granted for not more than ninety consecutive days in one calendar year from the date of application is approved.
- (2) A temporary permit to provide clinical social work in Kentucky may be granted for not more than ninety consecutive days in one (1) calendar year from the date of application is approved.
- (3) A temporary permit holder under this provision is subject to the complaint procedures of the Kentucky Board of Social Work. Any complaints are reportable to the license board of the jurisdiction where the permit holder/applicant is licensed.
- (4) The temporary permit applicant is not a resident of Kentucky.
- (5) The temporary permit holder informs the client of the limited nature of their services and that the person is not currently licensed in Kentucky.
- (6) The permit applicant has no complaints filed against their license in their current jurisdiction or in the National Practitioner Database or the Public Protection Database.
- (7) A permit holder may be required to submit billing records or other records to demonstrate compliance with the requirements of this section.
- (8) The permit holder must pay the required fee for the permit.
- (9) The applicant shall maintain licensure in the other jurisdiction during the time period of the temporary license.
- (10) The person informs the client of the limited nature of their services and that the person is not currently licensed in Kentucky.
- (11) The person informs the client of how to make a complaint to the board for improper practice.
- (12) The permit holder is allowed to practice telehealth in Kentucky so long as the permit holder:
  - (a) Provides evidence to the board of appropriate training for telehealth practice;
  - (b) Is complying with all telehealth laws and regulations of Kentucky; and
  - (c) Has written consent for telehealth with clients.

Section 4. Temporary Permits for Out-of-state Social Workers. A temporary permit can be issued for social work practice in this state, if requested, for not more than ninety consecutive days during any one calendar year from the date of application approval as prescribed when:

- (1) A person who is currently licensed, certified, or regulated pursuant to another jurisdiction or pursuant to the laws of a federally recognized tribe and who provides social work services within the person's scope of practice,
- (2) A temporary permit holder under this provision is subject to the complaint procedures of the Kentucky Board of Social Work. Any complaints are reportable to the license board of the jurisdiction where the permit holder/applicant is licensed.
- (3) The person seeks permission to practice social work within the state of Kentucky.
- (4) The person is not a resident of Kentucky.

- (5) The person pays the required fee.
- (6) The person completes the required application and is approved.
- (7) The person ceases practice when the permit expires.
- (8) The person has no disciplinary actions against their license in their current jurisdiction.
- (9) A temporary permit holder under this provision is subject to the complaint procedures of the Kentucky Board of Social Work. Any complaints are reportable to the license board of the jurisdiction where the permit holder/applicant is licensed.
- (10) The person provides evidence to the board of appropriate training for social work telehealth practice.
- (11) The person informs the client of the limited nature of their services and that the person is only temporarily licensed in Kentucky.
- (12) The person informs the client of how to make a complaint to the board for improper practice.

#### Section 5. Incorporation by Reference.

- (1) The following material is incorporated by reference:
  - (a) "Temporary Non-Clinical Social Work Application", 6/15/2023;
  - (b) "Temporary Clinical Social Work Application", 6/15/2023;
  - (c) "Temporary Non-Resident Social Work Application", 6/15/2023; and
  - (d) "Temporary Social Work Non-Clinical and Non-Resident Application", 6/15/2023.
- (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Social Work, 125 Holmes Street, Suite 310, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m., or from its Web site at <https://telehealth.ky.gov>.

WHITNEY CASSITY-CAWOOD, LCSW, PhD., Board Chair

APPROVED BY AGENCY: June 22, 2023

FILED WITH LRC: June 28, 2023 at 3:00 p.m.

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:** A public hearing on this administrative regulation shall be held on August 21, 2023, at 10:00 a.m. ET at the Justice and Public Safety Building, Third Floor Board Room, 125 Holmes Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be 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 notice of intent to be heard or written comments on the proposed administrative regulation to the contact person.

**CONTACT PERSON:** Marc Kelly, Executive Director, Kentucky Board of Social Work, 125 Holmes Street, Suite 310, Frankfort, Kentucky 40601, phone (502) 564-2350 or (502) 782-2856, or email [marc.kelly@ky.gov](mailto:marc.kelly@ky.gov).

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Marc Kelly

- (1) Provide a brief summary of:

(a) What this administrative regulation does: This emergency administrative regulation is being promulgated pursuant to KRS 13A.180 and KRS 13A.190(1)(a)(1) to meet an imminent threat to public health, safety, or welfare. This regulation is necessary to mitigate the shortage of social work professionals in the Commonwealth of Kentucky at this time. The need for care continues to increase while the availability of practitioners to provide that care lags behind. Specifically, this regulation allows individuals that meet the appropriate educational requirements to practice social work under a license. Access to licensure would maintain the current access to services to the citizens of the Commonwealth and provide social workers access to current employment opportunities. This regulation

will be replaced with an ordinary regulation in due course.

(b) The necessity of this administrative regulation: This emergency administrative regulation is necessary to address the shortage of social work professionals in the Commonwealth of Kentucky at this time.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 335.070(3) authorizes the board to promulgate administrative regulations to carry out of the provisions of KRS 335.10 to 335.160 and KRS 335.990. KRS 39A.180(2) permits the board to suspend its written administrative regulations during a period of emergency, KRS 13A.190(1)(a)(1) authorizes the board to promulgate an emergency administration regulation to meet an imminent threat to public health, safety, or welfare, and KRS 335.070(7) authorizes the board to establish requirements for a license to practice social work.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This emergency administrative regulation will assist the board in lawfully addressing the ability of individuals who meet certain educational requirements to practice social work under licensure pursuant to KRS 335.080, 335.090 or 335.100.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of: This emergency administrative regulation replaces 201 KAR 23:016E, which has been withdrawn. This administrative regulation more clearly distinguishes between clinical and non-clinical social work practice under a temporary permit. This new administrative regulation allows for the certified social worker who is permitted to provide clinical social work to be able to move from the temporary permit to full licensure because this regulation is consistent with KRS 335.080(3), which requires a contract with a licensed clinical social worker for supervision. This regulation also provides for non-resident social workers to have a temporary permit for 90 days to provide time for the transition of care, the social worker to obtain a Kentucky license or proper closure of services.

(a) How the amendment will change this existing administrative regulation: The amendment will distinguish between general social work practice and clinical social work practice. The amendment will allow non-resident social workers to obtain a temporary permit in Kentucky to accommodate telehealth and greater access for citizens.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to ensure the proper supervision for the temporary certified social worker and continuity of care between the time the temporary license ends and the full license begins. The amendment ensures increased access to social work services by citizens.

(c) How the amendment conforms to the content of the authorizing statutes: LRS 335.080(3) requires a contract for certified social workers to practice clinical social work. The amendment conforms to this statute more than 201 KAR 23:016 did. The amendment will allow non-resident social workers to practice in Kentucky for the first time.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist the Board and the approved supervisors, and the certified social workers practicing clinical social to move from the temporary license to the full license without a lapse in services which occurs under 201 KAR 23:016. The amendment makes the contracting for supervision more efficient for the Executive Director to administer. The amendment will allow non-resident social workers to practice in Kentucky for the first time and allows the Board to exercise protection of the public through disciplinary action, and prevents social workers with disciplinary action from practicing in Kentucky.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This emergency administrative regulation will affect approximately 7,000 licensed social workers, licensed clinical social workers, and certified social workers in Kentucky, public schools, hospitals, community mental health centers, public and private agencies.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative

regulation or amendment: Individuals meeting the appropriate educational and testing requirements will be able to apply for a renewal or reinstatement immediately upon the filing of the emergency administrative regulation or will have their prior license validated.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The board does not anticipate that there will be a cost increase to any of the entities and will waive any fees incurred.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The board believes that the entities will benefit from the ability to provide services to clients more efficiently and quickly without any disruptions.

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

(a) Initially: The board estimates that it will incur no additional costs to implement this emergency administrative regulation.

(b) On a continuing basis: The board estimates that it will incur no additional costs to implement this emergency administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operations are wholly self-funded by fees paid by licensees, applicants, and continuing education providers and sponsors.

(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 emergency administrative regulation does not directly establish or increase fees.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No, this amendment does not.

(9) TIERING: Is tiering applied? No, tiering was not applied. This emergency administrative regulation is applied uniformly to each certified social worker practicing clinical social work under board-approved supervision.

#### 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 Social Work and entities that employ licensed social workers to provide social work services will be impacted by this administrative regulation. These entities include public school districts, hospitals, community mental health centers, and other public agencies and private businesses.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation KRS 39A.180, 13A.190, 335.070(3) and (7) and 335.158(3).

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. None.

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

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

(c) How much will it cost to administer this program for the first year? None.

(d) How much will it cost to administer this program for subsequent years? None.

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

Revenues (+/-): \$0.00

Expenditures (+/-): \$0.00

Other Explanation: There are no fiscal impacts of this regulation; no fee increase.

(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. None

(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? None.

(d) How much will it cost the regulated entities for subsequent years? None.

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

Cost Savings (+/-): \$0.00

Expenditures (+/-): \$0.00

Other Explanation: There may be an increase in income to the Board depending on the number of out-of-state social workers who apply for a temporary 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 will not have a major economic impact.

#### STATEMENT OF EMERGENCY 202 KAR 002:020E

This emergency administrative regulation is necessary to allow the lending and granting of funds to assist recovery of rural housing units in the areas named in Presidential Declaration of a Major Disaster, designated FEMA-4663-DR-KY, in the eastern Kentucky region to recover from the devastation caused by the storms and flooding. This emergency regulation is also necessary to allow the lending and granting of funds to assist recovery of rural housing units in the areas named in the Presidential Declaration of a Major Disaster, designated FEMA-4630-DR-KY, in the western Kentucky region to recover from the devastation caused by the storms and tornadoes. This emergency administrative regulation is being promulgated pursuant to KRS 13A.190(1)(a)1, to meet an imminent threat to public health, safety, and welfare by providing funding for safe, sanitary, and secure shelter for citizens in the impacted areas. An ordinary administrative regulation is not sufficient because the areas named in each Presidential Declaration of a Major Disaster lack sufficient safe, sanitary, and secure shelter. Delaying the effective date of the ordinary regulation will further impact the health, safety, and welfare of citizens in the affected areas by delaying construction and repair of housing units. Enacting an emergency regulation would mitigate this risk. 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

WINSTON E. MILLER, Executive Director

#### KENTUCKY HOUSING CORPORATION (New Emergency Administrative Regulation)

#### 202 KAR 002:020E. Rural Housing Trust Fund.

EFFECTIVE: July 5, 2023

RELATES TO: KRS 198A.740 to 198A.750

STATUTORY AUTHORITY: KRS 198A.746(5), 198A.748(5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 198A.744 authorizes Kentucky Housing Corporation to administer the Rural Housing Trust Fund by providing loans or grants for eligible activities, as established in KRS 198A.746, in order to create new sources of funding or to supplement existing sources of funding for the development of housing for moderate-income individuals or families in rural areas. KRS 198A.746 authorizes Kentucky Housing Corporation to define relocation costs to be paid if the development of rural housing displaces moderate-income individuals or families. This administrative regulation is necessary to establish additional

criteria to qualify for the loans and grants and to establish the procedures to be followed in paying relocation costs.

Section 1. Qualification Criteria. (1) Applications shall be prioritized based on the priorities established in KRS 198A.748(6).

(2) Single-family project applications shall be competitively ranked based on the following criteria:

- (a) Willingness to serve those in the most impacted and distressed disaster counties;
- (b) Readiness to proceed;
- (c) Number of units to be addressed by the project;
- (d) Demonstrated experience in development or repair of housing;
- (e) Projects to house disaster survivors still living in shelters, doubled up with family, or in another unsustainable housing situation;
- (f) Established relationships and mechanisms to ensure a pipeline of moderate-income homebuyer referrals;
- (g) Demonstrated expansion of capacity to develop at scale; and
- (h) Demonstrated financial capacity to carry out larger-scale housing projects.

(3) Multifamily project applications shall be competitively ranked based on the following criteria:

- (a) Willingness to serve those in the most impacted and distressed western Kentucky disaster counties;
  - (b) Readiness to proceed;
  - (c) Experience in development of multifamily housing utilizing Kentucky Housing Corporation financing resources;
  - (d) Demonstrated financial capacity to carry out larger-scale housing projects; and
  - (e) Projects awarded under the Kentucky Housing Corporation tax exempt bond notice of funding availability in accordance with the terms of such notice of funding availability.
- (4) Approval of applications shall be based on the numerical ranking received and the availability of funds.

Section 2. Relocation Costs. In the development of rural housing under the Rural Housing Trust Fund, displacement of moderate-income individuals or families is not permitted unless the project pays all reasonable relocation costs. Reasonable relocation costs shall be determined on a case-by-case basis based on the following criteria:

- (1) Provision of relocation advisory services to displaced tenants and owner occupants;
- (2) Provision of a minimum of ninety (90) days written notice to vacate prior to requiring possession;
- (3) Reimbursement for moving expenses; and
- (4) Provision of payments for the added cost of renting or purchasing comparable replacement housing.

WINSTON E. MILLER, Executive Director

APPROVED BY AGENCY: June 29, 2023

FILED WITH LRC: July 5, 2023 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 30, 2023 at 1:00 p.m. at Kentucky Housing Corporation, 1231 Louisville Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until 11:59 p.m. on 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: Samuel Thorner, General Counsel, Kentucky Housing Corporation, 1231 Louisville Road, Frankfort, Kentucky 40601, phone (502) 564-7630, fax (502) 564-7322, email

sthorne@kyhousing.org.

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Samuel Thorner

(1) Provide a brief summary of:

(a) What this administrative regulation does: Establishes uniform criteria for qualifying for Rural Housing Trust Fund grants and loans and establishes criteria for the payment of relocation costs.

(b) The necessity of this administrative regulation: Sets standards to create new sources of funding or to supplement existing sources of funding for the development of housing for moderate-income individuals or families in rural areas. Sets standards for payment of relocation costs if development of rural housing displaces moderate-income individuals or families.

(c) How this administrative regulation conforms to the content of the authorizing statutes: Kentucky Housing Corporation may administer the Rural Housing Trust Fund, by KRS 198A.744, KRS 198A.746, and KRS 198A.748, to promote development of housing for moderate-income individuals and families in rural areas. This regulation establishes uniform standards for the use of funds and standards for relocation costs, in furtherance of those goals.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By providing clear notice to organizations eligible for funding of any standards and rules which exist in regard to the use of funds in housing development and relocation costs.

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

(a) How the amendment will change this existing administrative regulation: This is not applicable.

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

(c) How the amendment conforms to the content of the authorizing statutes: This is not applicable.

(d) How the amendment will assist in the effective administration of the statutes: This is not applicable.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This emergency administrative regulation affects all potential applicants seeking to apply for loans or grants for eligible activities under the Rural Housing Trust Fund, which includes local governments, local government housing authorities, nonprofit organizations, regional or statewide housing assistance organizations, and business organizations that undertake new construction or rehabilitation of rural housing units for moderate-income individuals.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This regulation establishes criteria for selection of applications for funding under the Rural Housing Trust Fund and defines reasonable relocation costs. The identified entities shall ensure the project pays all reasonable relocation costs in the event it involves displacement of moderate-income individuals or families.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This regulation establishes criteria for selection of applications for funding under the Rural Housing Trust Fund and defines reasonable relocation costs. There is no cost to complying with the criteria portion of the regulation. In the event reasonable relocation projects shall be paid, those costs will be paid by the project, not the identified entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This regulation establishes criteria for the evaluation and selection of applications for funding under the Rural Housing Trust Fund. The more criteria a project application meets, the more likely it is to be funded. The portion of the regulation establishing reasonable relocation costs will not cause any benefits to accrue to the identified entities.

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

(a) Initially: Administrative costs associated with notifying appropriate organizations of funding, designing and reviewing applications, administering funding to eligible applicants and monitoring funded agencies.

(b) On a continuing basis: There will be some long-term direct costs associated with continued monitoring of funded agencies to ensure long-term compliance.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Administrative fees charged to the Rural Housing Trust Fund.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: There are no fees directly or indirectly increased by this emergency administrative regulation.

(9) TIERING: Is tiering applied? Tiering is not applied, all organizations applying for funds will be subject to the same requirements to provide a fair and equitable selection process.

#### 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 regulation impacts the Kentucky Housing Corporation and organizations eligible for funding from the Rural Housing Trust Fund which includes all local governments, local government housing authorities, nonprofit organizations, regional or statewide housing assistance organizations, and business organizations that undertake new construction or rehabilitation of rural housing units for moderate-income individuals.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 198A.744, KRS 198A.746, and KRS 198A.748.

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

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

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

(c) How much will it cost to administer this program for the first year? Kentucky Housing Corporation estimates it will cost approximately 7.5% of expenditures. All costs shall be charged to the Rural Housing Trust Fund as administrative costs.

(d) How much will it cost to administer this program for subsequent years? Kentucky Housing Corporation estimates it will cost approximately 7.5% of expenditures. All costs shall be charged to the Rural Housing Trust Fund as administrative 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: Kentucky Housing Corporation is unable to determine specific dollar estimates for costs at this time. The percentage of expenditures is given as an estimate.

(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? No additional costs.

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

Note: If specific dollar estimates cannot be determined, provide a

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation: No additional costs.

(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 administrative bodies. [KRS 13A.010(13)]. There is not an expected major economic impact from this regulation.

#### STATEMENT OF EMERGENCY 503 KAR 1:140E

An emergency regulation, pursuant to KRS 13A.190(1)(a)(1), is necessary to comply with Section 1 of House Bill (HB) 380, enacted during the 2023 Regular Session, which creates a new section of KRS Chapter 15 that is codified as 15.408. Specifically, Section 1 of HB 380 requires KLEC to allow individuals to attend basic training courses who are at least twenty years old and who will be twenty-one years old at the time they become certified as peace officers. House Bill 380 becomes effective on June 29, 2023. In accordance with the new law, this emergency regulation revises two forms used by the Kentucky Law Enforcement Council ("KLEC"): "KLEC Form A – Testing Registration- Attesting to Minimum Standards" and "KLEC Form D – All Standards Met", which are incorporated by reference in 503 KAR 1:140, Sec. 14(1). An ordinary administrative regulation will not go into effect by June 29, 2023. Therefore, this emergency administrative regulation is necessary for KLEC to comply with statutory mandates. This administrative regulation will be replaced by an ordinary administrative regulation that is being filed with the emergency administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation. An emergency administrative regulation governing the same subject matter has not been filed within the previous nine months.

ANDY BESHEAR, Governor  
JOHN MOBERLY, Executive Director

#### JUSTICE AND PUBLIC SAFETY CABINET Kentucky Law Enforcement Council (Emergency Amendment)

**503 KAR 1:140E. Peace officer, telecommunicator, and court security officer professional standards.**

EFFECTIVE: June 27, 2023

RELATES TO: KRS Chapter 13B, 15.330(1)(f), 15.330(1)(h), 15.380, 15.382, 15.384(1), 15.392, 15.394(1), 15.396(1), 15.3971, 15.400(1), 15.408, 15.440, 15.540, 15.565, 15.580

STATUTORY AUTHORITY: KRS 15.330(1)(f), 15.330(1)(h), 15.382, 15.408, 15.440, 15.590

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15.330(1)(f) and (h) and 15.590 authorize the Kentucky Law Enforcement Council to promulgate reasonable administrative regulations to accomplish the purposes of KRS 15.310 to 15.404 and to approve law enforcement officers, telecommunicators, and other persons having met requirements under KRS 15.310 to 15.510, 15.530 to 15.590, and 15.990 to 15.592. KRS 15.440 authorizes the council to promulgate administrative regulations for approval of basic training credit for out-of-state basic training and work experience. This administrative regulation establishes the guidelines and procedures necessary to implement and administer peace officer, telecommunicator, and court security officer certification.

Section 1. Approval of Agency's Validated Job Task Analysis and Associated Agency Testing.

(1) Application. If an agency desires to use its own job task

analysis and any associated agency testing, the agency shall submit to the KLEC office completed KLEC Forms J and Q along with a copy of the proposed job task analysis. The agency shall supply:

- (a) The name of the entity that completed the analysis;
- (b) The date on which the analysis was completed;
- (c) A curricula vitae, resume, or company profile of the entity that completed the analysis; and
- (d) A listing of all job task analyses previously completed by the person or entity, including the dates of the analyses.

(2) Criteria for assessment. The submitted job task analysis shall be assessed based upon the following criteria:

- (a) Credentials and history of the entity conducting the analysis.
  - 1. Education, with a preference given to degrees in law enforcement, statistics, or a related area.
  - 2. Work experience, with a preference given to emphasis in law enforcement, statistics, or a related area.
  - 3. Number and quality of job task analyses completed.
- (b) Methodological approach.
  - 1. Reasonable, standardized format of the study and the report.
  - 2. Relative reliability and validity of the study's sampling techniques and practice.
  - 3. Other considerations that reflect sound practice of the scientific method.
  - 4. Specificity of the analysis. The job task analysis shall establish minimum entry qualifications, specific training requirements, and description of duties of officers.

(3) Initial review.

(a) Within five (5) business days of receipt of the application, the KLEC office shall notify the agency that:

- 1. The application has been received and is complete; or
- 2. The application is incomplete. The notice that an application is incomplete shall identify the specific information to be supplemented to process the application. The agency shall submit the necessary information within ten (10) business days of the agency's receipt of the notice of insufficiency. If the agency fails to submit the supplementary information within the specified time period, the application shall be considered abandoned and the agency shall resubmit an application for consideration of its job task analysis and associated agency testing.

(b) The KLEC office recommendation. Within thirty (30) days of receipt of the completed application, the KLEC office shall forward the application to KLEC along with a recommendation to approve or reject the job task analysis and associated agency tests and the specific reasons supporting a recommendation to reject.

(c) KLEC review. The KLEC Professional Standards Committee shall review the application and recommendation of the KLEC office and forward its recommendation to KLEC for final review. Within sixty (60) days of their receipt of the application, KLEC shall issue written notice to the agency indicating whether the application has been approved or found to be insufficient or erroneous.

(d) If an application is found to be insufficient or erroneous, the KLEC shall notify the agency of:

- 1. The reasons for the finding; and
- 2. The requirement that the council file a declaratory action in accordance with KRS 15.394(1).

#### Section 2. Agency Testing Procedures.

(1) Each agency participating in certification shall submit a completed KLEC Form Q or KLEC Form tele-Q to the KLEC office prior to any applicant testing. The KLEC office shall be notified of any changes in the Form Q or KLEC Form tele-Q within ten (10) days.

(2) Initial review. Within fifteen (15) business days of receipt of KLEC Form Q, the KLEC office shall notify the agency that the form:

- (a) Has been received and is complete; or
- (b) Is incomplete. The notice that an application is incomplete shall identify the specific information to be supplemented to process the form. The agency shall submit the necessary information within ten (10) business days of the agency's receipt of the notice of insufficiency. Applicants shall not be tested or certified by KLEC until the form is complete.

(3) The KLEC office review of requests for agency testing. Within thirty (30) days of receipt of the completed form, the KLEC office

shall review requests for agency testing from those agencies without a validated job task analysis to determine if the proposed tests are consistent with the minimum standards for KLEC testing as established in Section 4 of this administrative regulation. The KLEC office shall notify the agency if the proposed testing is acceptable. If the KLEC office determines that the minimum standards are not met, it shall forward the form to KLEC along with the specific reasons supporting a recommendation to reject the agency testing.

(4) KLEC Review. The KLEC Professional Standards Committee shall review the form and the recommendation of the KLEC office and forward its recommendation to KLEC for final review. Within sixty (60) days of receipt of the form, KLEC shall issue written notice to the agency indicating whether the request for agency testing has been approved or rejected and the specific reasons supporting the rejection.

(5)

(a) An agency may appeal a decision made by KLEC to reject an agency test by filing a written notice of appeal:

- 1. With the Secretary of the Justice and Public Safety Cabinet; and
  - 2. Within thirty (30) days of receipt of the notice of rejection.
- (b) The notice of appeal shall be submitted:
- 1. In writing; and
  - 2. With a copy of the notice of rejection of agency testing attached.

(c) A copy of the notice of appeal shall also be mailed to the KLEC office by certified mail.

(d) The Secretary of the Justice and Public Safety Cabinet shall schedule a hearing within thirty (30) days of receipt of the notice of appeal.

(e) The administrative hearing shall be conducted in accordance with KRS Chapter 13B.

Section 3. Certification of peace officers, telecommunicators, and court security officers.

(1) Officers exempted from certification requirements pursuant to KRS 15.380(5) who are requesting certification shall submit KLEC Form E to the KLEC office.

(2) State peace officers employed pursuant to KRS Chapter 18A who have had certification requirements adopted pursuant to KRS 15.380(2) shall submit KLEC Form E to the KLEC office.

(3) An agency may request that peace officers identified in KRS 15.380(4), who have completed law enforcement basic training, and part-time telecommunicators, who have completed the Telecommunications Academy, participate in certification by submitting KLEC Form E to the KLEC office.

(4) Peace officers, telecommunicators, and court security officers entitled to certified status pursuant to the grandfather provision of KRS 15.400(1), 15.3971, 15.560, or 15.565 shall submit KLEC Form C.

Section 4. Suitability Minimum Requirements: The minimum requirements and procedures established for KLEC testing by this section shall be followed.

(1) The background investigation as specified in KRS 15.382(12) and 15.3971(1)(k) shall consist of the following minimum requirements, using the KLEC Form H-1 Background Investigation and personal history questionnaire.

- (a) Biographical history;
- (b) Family history;
- (c) Education;
- (d) Employment history;
- (e) Interview with the applicant's references;
- (f) Criminal history including domestic violence protective orders; and
- (g) Credit history.

(2) Fingerprinting. An applicant shall be fingerprinted and a criminal background check shall be conducted as specified in KRS 15.382(5), 15.3971(1)(e), and 15.540(1)(c) through the procedure established by this subsection.

(a) The applicant shall be fingerprinted by the Kentucky State Police, who shall input the fingerprints into the AFIS System and complete a state records check. The fingerprints shall also be sent



to the FBI for a records check.

(b) The KSP shall forward the results of state and FBI records check to the employing agency.

(c) Final certification shall not be issued until results consistent with certification requirements and acceptable to the agency are received from the FBI.

(d) The agency may employ the peace officer, telecommunicator, or court security officer contingent upon the pending FBI results.

(3) Psychological screening, as specified in KRS 15.382(15), 15.3971(1)(m), and 15.540(1)(d), shall consist of the minimum requirements established by this subsection.

(a) Screening shall measure a broad spectrum of abilities which are relevant to job related duties, including:

1. Cognitive abilities;
2. Personality characteristics; and
3. Related constructs, including:
  - a. Integrity; and
  - b. Conscientiousness.

(b) Screening shall contain a minimum of two (2) independent and objectively scored psychometric measures which shall be constructed and validated in accordance with the Standards for Educational and Psychological Testing, American Educational Research Association, American Psychological Association, National Council on Measurement in Education, Joint Committee on Standards for Educational and Psychological Testing, 2014.

(c)

1. Assessment results and predictions shall include a recommendation and summary statement regarding the applicant's overall suitability for employment as a peace officer, telecommunicator, or court security officer;

2. The summary statement shall classify applicants as:

- a. Essentially suitable;
- b. May be unsuitable; or
- c. Borderline suitability; and

3. If an applicant is classified as borderline suitability or may be unsuitable, the report shall contain specific concerns and negative indicators for investigation and reconciliation by the employing agency.

(d) Screening shall be administered in accordance with the Standards for Educational and Psychological Testing, American Educational Research Association, American Psychological Association, National Council on Measurement in Education, Joint Committee on Standards for Educational and Psychological Testing, 2014.

(4) Physical ability testing as specified in KRS 15.382(16) shall consist of the minimum requirements established by this subsection.

(a) Precertification status.

1. To obtain precertification status under KRS 15.386(1), the applicant shall successfully complete each of the events in the following order as instructed and evaluated by KLEC personnel who shall administer the test in conformity with the KLEC Physical Fitness Testing Protocols:

- a. Bench press;
- b. Sit-ups;
- c. 300 meter run;
- d. Push-ups; and
- e. One and five-tenths (1.5) mile run.

2. An applicant shall pass the physical ability test for precertification status if he or she achieves a cumulative score of fifty (50) points or more, based upon the following scoring of the physical training events listed in subparagraph 1 of this paragraph:

a. Bench press, based upon a percentage of the recruit's body weight:

- (i) 9 points - Recruit shall bench press at least fifty-five and three-tenths (55.3) percent of body weight;
- (ii) 9.5 points - Recruit shall bench press at least fifty-nine and seven-tenths (59.7) percent of body weight;
- (iii) 10 points - Recruit shall bench press at least sixty-four (64) percent of body weight;
- (iv) 10.5 points - Recruit shall bench press at least sixty-eight and five-tenths (68.5) percent of body weight; and
- (v) 11 points - Recruit shall bench press at least seventy-three

(73) percent or more of body weight;

b. Sit-ups:

- (i) 9 points - Recruit shall complete at least thirteen (13) repetitions in one (1) minute;
- (ii) 9.5 points - Recruit shall complete at least sixteen (16) repetitions in one (1) minute;
- (iii) 10 points - Recruit shall complete at least eighteen (18) repetitions in one (1) minute; and
- (iv) 11 points - Recruit shall complete nineteen (19) repetitions or more in one (1) minute;

c. 300 meter run:

- (i) 9 points - Recruit shall complete in sixty-eight (68) seconds or less;
- (ii) 9.5 points - Recruit shall complete in sixty-seven (67) seconds or less;
- (iii) 10 points - Recruit shall complete in sixty-five (65) seconds; and
- (iv) 11 points - Recruit shall complete in less than sixty-five (65) seconds;

d. Push-ups:

- (i) 9 points - Recruit shall complete at least fourteen (14) repetitions in two (2) minutes;
- (ii) 9.5 points - Recruit shall complete at least seventeen (17) repetitions in two (2) minutes;
- (iii) 10 points - Recruit shall complete at least twenty (20) repetitions in two (2) minutes;
- (iv) 10.5 points - Recruit shall complete at least twenty-three (23) repetitions in two (2) minutes; and
- (v) 11 points - Recruit shall complete twenty-five (25) repetitions or more in two (2) minutes; and

e. One and five-tenths (1.5) mile run:

- (i) 9 points - Recruit shall complete in 1,076 seconds (17:56) or less;
- (ii) 9.5 points - Recruit shall complete in 1,054 seconds (17:34) or less;
- (iii) 10 points - Recruit shall complete in 1,032 seconds (17:12) or less;
- (iv) 10.5 points - Recruit shall complete in at least 1,004 seconds (16:44) or less; and
- (v) 11 points - Recruit shall complete in 975 seconds (16:15) or less.

3. An applicant shall not be awarded more than eleven (11) points in any one (1) of the five (5) physical ability events.

4. An applicant shall fail the physical ability test for precertification status if he or she does not achieve:

- a. A cumulative score of at least fifty (50) points for all five (5) events; and
- b. At least nine (9) points on each physical training event.

5. At the sole discretion of the hiring agency, an applicant who fails to meet the lowest performance level in a test event, thus earning a zero point value for that event, shall be granted a retest opportunity in that event without having to retest in the other events for which a point value was obtained, subject to the conditions established by this subparagraph.

a. A retest shall not be granted unless the maximum value of eleven (11) points would allow the applicant to meet the required cumulative fifty (50) point minimum.

b. A retest shall not occur any sooner than forty-eight (48) hours or any later than sixty (60) days from the date of the initial test attempt.

6. If an applicant obtains a point value for each event, but does not obtain a cumulative score of at least fifty (50) points, the applicant may attempt the test battery again, in its entirety. This shall be considered a second test administration and not a retest.

7. An applicant may participate in the physical ability test for precertification status in its entirety, four (4) times in a one (1) year period, which shall be calculated from the first date of testing.

8. An applicant may participate in one (1) physical ability retest for each physical ability test taken for precertification status.

(b) Certification status.

1. To obtain certification status under KRS 15.386(2), the applicant shall successfully complete each of the following physical ability requirements within ten (10) days of graduation from law

enforcement basic training, which shall be administered in the same order and in conformity with the KLEC Physical Fitness Testing Protocols:

a. Bench press. One (1) repetition of maximum (RM) bench press equal to seventy-three (73) percent of the applicant's body weight;

b. Sit-ups. Nineteen (19) sit-ups in one (1) minute;

c. 300 meter run in less than sixty-five (65) seconds;

d. Push-ups. Twenty-five (25) push-ups; and

e. One and five-tenths (1.5) mile run in sixteen (16) minutes, fifteen (15) seconds.

2. If an applicant passes all events when participating in the physical ability test in its entirety, the applicant shall have met the physical ability minimum requirements for certification status.

3. Retest. If an applicant fails to pass all events when participating in the physical ability test for certification status during the training graduation test:

a. The applicant shall not retest in the failed events earlier than forty-eight (48) hours after the date the test is originally administered;

b. All failed events shall be retested on the same date; and

c. If the applicant passes all previously failed events on the date of the retest, the applicant shall have met the physical ability test requirements for certification status.

(5) Medical screening as specified in KRS 15.382(10) shall consist of the minimum requirements established by this subsection.

(a) The applicant shall complete KLEC Form G-2, Medical History Statement, which, along with KLEC Form G-3, Medical Screening Guidelines Implementation Manual, shall be provided to the physician, nurse practitioner, or physician's assistant, duly licensed to practice in the Commonwealth of Kentucky, who shall examine the applicant in conformity with the guidelines.

(b) The agency shall provide the examining physician, nurse practitioner, or physician's assistant with a copy of the KLEC Form T-1a, Physician's Medical Release Form.

(c) The physician, nurse practitioner, or physician's assistant shall complete KLEC Form G-1, Medical Examination Report, and forward it to the employing agency.

(6) Drug screening as specified in KRS 15.382(11), 15.3971(1)(j), and 15.540(1)(f) shall consist of the minimum requirements established by this subsection.

(a) The applicant shall execute KLEC Form K-1 and submit a urine sample that shall be screened and if necessary confirmed using the guidelines as outlined in the Mandatory Guidelines for Federal Workplace Drug Testing Programs, 82 Fed. Reg. 7920-1 (Jan. 23, 2017). The screening and confirmatory cutoff concentrations are as follows:

SCREENING	
Marijuana metabolites	50 ng/mL
Cocaine metabolite (Benzoylecgonine)	150 ng/mL
Codeine / Morphine	2,000 ng/mL
Hydrocodone / Hydromorphone	300 ng/mL
Oxycodone / Oxymorphone	100 ng/mL
6-Acetylmorphine	10 ng/mL
Phencyclidine (PCP)	25 ng/mL
Amphetamine / Methamphetamine	500 ng/mL
MDMA / MDA	500 ng/mL
CONFIRMATION	
THC/THCA	15 ng/mL
Benzoylecgonine	100 ng/mL
Codeine	2,000 ng/mL
Morphine	2,000 ng/mL
Hydrocodone	100 ng/mL
Hydromorphone	100 ng/mL
Oxycodone	100 ng/mL
Oxymorphone	100 ng/mL
6-Acetylmorphine	10 ng/mL
Phencyclidine (PCP)	25 ng/mL
Amphetamine	250 ng/mL
Methamphetamine	250 ng/mL
MDMA	250 ng/mL
MDA	250 ng/mL

(b) The integrity of the urine sample shall be documented on KLEC Form K-2, Drug Screening through Urinalysis Chain of Custody.

(7) For the polygraph examination as specified in KRS 15.382(17), 15.3971(1)(n), and 15.540(1)(e), the applicant shall complete KLEC Form I-1, Consent for Pre-employment Polygraph Examination, and KLEC Form I-2, Pre-employment Polygraph Questionnaire, which shall be provided to the polygraph examiner, duly licensed in the commonwealth of Kentucky, who shall perform a polygraph examination of the applicant.

(8) The agency shall ensure that the applicant receives and has read KLEC Form L-1, Code of Ethics and KLEC Form L-2, Canon of Ethics.

(9) High school diploma.

(a) The high school graduate requirement of KRS 15.382(3), 15.3971(1)(c), or 15.540(1)(b) shall be met by:

1. Submission of a copy of a diploma or transcript from a public high school; or

2. Submission of a diploma or transcript from a private high school that:

a. Is certified by or recognized by the Kentucky Department of Education; or

b. Has complied with all provisions of Kentucky law relating to private or other non-public secondary schools as applicable, including days and hours of attendance and course curriculum. The applicant shall also submit a completed Applicant Education Verification form.

(b) A document purporting to be a high school or college diploma and obtained through the internet or by mail order shall not satisfy the requirement of KRS 15.382(3), 15.3971(1)(c), or 15.540(1)(b).

#### Section 5. KLEC Administered Testing Procedures.

(1) An applicant shall execute all releases required for KLEC testing, including:

(a) KLEC Form I-1 - Consent for Pre-employment Polygraph Examination;

(b) KLEC Form K-1 - Drug Screening through Urinalysis Applicant Consent Form;

(c) KLEC Form T-1 - Medical Release - Phase I Testing; and

(d) KLEC Form T-2 - Liability Waiver - Phase I Testing.

(2) Testing schedule.

(a) The KLEC office shall publish online or otherwise make available to all law enforcement and telecommunications agencies in the commonwealth a list of sites and dates for KLEC administered testing.

(b) Testing sites shall be statewide and accommodations shall be made where reasonable to ensure testing sites are accessible based upon need.

(c) Advance notice of the schedule shall be made public prior to the testing.

(d) The KLEC office shall reschedule testing if cancellation is necessary due to inclement weather or other unforeseen circumstances. Emergency testing shall be made available if possible at the Department of Criminal Justice Training as needed.

(3) Registration for KLEC administered testing. The KLEC office shall receive KLEC Form A from the employing agency at least five (5) business days prior to testing.

(a) Applicants shall provide current photographic identification when the testing is administered.

(b) The KLEC office shall receive the completed polygraph questionnaire KLEC Form I-2 when the testing is administered.

#### Section 6. Test Reporting by KLEC.

(1) Results of tests provided by or through the KLEC office shall be forwarded to the employing agency head.

(2) The agency shall certify that the applicant has met all suitability requirements by submitting KLEC Form D. The information from the completed form shall be provided to DOJT for Kentucky Law Enforcement Foundation Program Fund and training authorization purposes.

(3) Length of test result validity.

(a) Physical ability for precertification status results shall be considered current and valid one (1) year from the passing date of

the test.

(b) Suitability screening results shall be considered current and valid for one (1) year from the date of the screening. If the applicant experiences a significant life change during the one (1) year period, for example, a divorce or the death of a close family member or friend, the applicant shall notify the employing agency who shall schedule a new suitability screening for the applicant.

(c) Polygraph examination results shall be considered current and valid for a period of one (1) year from the date of the examination. If the applicant experiences a significant life change during the one (1) year period, for example, a divorce or the death of a close family member or friend, the applicant shall notify the employing agency who shall schedule a new polygraph examination for the applicant.

(d) Drug screening results shall be considered current and valid only for the agency that requested or performed the test and only during that employment process. An applicant who leaves and reenters the testing process for preselection screening shall submit to another drug screening.

(4) Updating test results. The employing agency shall update test results if necessary by submitting KLEC Form D to the KLEC office.

(5) Agency access to prior test results.

(a) It shall be at the applicant and individual agency's discretion to allow another employing agency access and use of the initial agency's certification testing, which is still current and valid.

(b) If agencies enter into an agreement with the written permission of the applicant, the new employing agency shall receive the medical, suitability, and polygraph results directly from the agency that initially requested testing of the applicant.

(c) Costs incurred for duplicate KLEC test results shall be the responsibility of the agency obtaining the results.

#### Section 7. Test Reporting by Agency.

(1) An agency that performs physical ability testing based upon the requirements in Section 4 of this administrative regulation shall report all test results by submitting a POPS Form PT-1, Physical Agility Test Session Report, to the KLEC within ten (10) days of administering the test.

(2) An agency that performs physical ability testing based upon its own validated job task analysis in accordance with KRS 15.382(16), shall report the test results of every applicant tested in writing to the KLEC office within ten (10) days of administering the test.

(3) Physical ability test results shall be reported to the KLEC office regardless of whether the applicant:

(a) Passes or fails the test; or

(b) Performs or completes every component of the physical ability test.

#### Section 8. KLEC Administered Testing Costs.

(1) The employing agency shall reimburse KLEC within sixty (60) days of receipt of the invoice for the cost of KLEC administered testing provided at the agency's request as follows:

(a) Sixty-five (65) dollars for each psychological screening;

(b) \$100 for each polygraph examination; and

(c) Sixteen (16) dollars for each drug screening.

(2) If an agency has scheduled KLEC testing for an applicant who fails to appear or complete the testing, the agency shall be responsible for fifty (50) percent of the cost of the test had it been completed.

(3) Financial hardship.

(a) Application. An employing agency may apply for a waiver of costs for KLEC testing pursuant to KRS 15.384(1) by demonstrating undue financial hardship. The agency shall submit to the KLEC office:

1. The actual approved budget of the governmental unit for the current and the preceding year;

2. The number of certification applicants for the current and preceding year;

3. The actual revenue receipts of the governmental unit for the current and the preceding year; and

4. A detailed explanation of why the governmental unit cannot

meet the cost of providing the testing, including the reason that adequate funding was not budgeted to cover the cost of testing.

(b) Initial review. Within five (5) business days of receipt of the application, the KLEC office shall mail a notification to the agency that:

1. The application has been received and is complete; or

2. The application is incomplete and shall identify the specific information to be supplemented to process the application. The KLEC office shall receive the necessary information within ten (10) business days of the agency's receipt of the notice of insufficiency. If the agency fails to submit the supplementary information within the specified time period, the application shall be considered abandoned and the agency shall resubmit an application for financial hardship.

(c) Recommendation. Within thirty (30) days of their receipt of the completed application, the KLEC office shall forward the application to KLEC along with a recommendation to approve or reject the application for financial hardship and the specific reasons supporting a recommendation to reject.

(d) KLEC review.

1. The KLEC Committee on Professional Standards shall review the application and the recommendation of the KLEC office and forward their recommendation to KLEC for final review.

2. Within sixty (60) days of their receipt of the application, KLEC shall issue written notice to the agency indicating whether the application has been approved or rejected and shall provide the specific reasons supporting the rejection.

(e) Appeal.

1. An agency may appeal a decision made by KLEC to reject an agency's application for financial hardship by filing a written notice of appeal to the Secretary of the Justice and Public Safety Cabinet.

2. The notice shall be filed within thirty (30) days of receipt of the notice of rejection.

3. The notice of appeal shall be submitted in writing with a copy of the notice of rejection of financial hardship attached.

4. A copy of the notice of appeal shall be delivered to the KLEC office by certified mail.

5. The Secretary of the Justice and Public Safety Cabinet shall render an opinion within sixty (60) days of receipt of the notice of appeal.

(4) If an agency knowingly employs or appoints a person who fails to meet minimum certification standards pursuant to KRS 15.396(1) the KLEC office shall immediately notify DOJT.

#### Section 9. Employment Changes.

(1) Pursuant to KRS 15.392 and 15.580 if a certified peace officer, telecommunicator, or court security officer leaves an agency, the agency shall submit KLEC Form F.

(2) If the peace officer, telecommunicator, or court security officer is reemployed by another agency the employing agency shall submit KLEC Form F within five (5) business days of the employment or appointment. Additionally, the agency shall submit KLEC Form D-1 for returning peace officers or court security officers.

(3) Information from completed KLEC Forms F shall be provided to DOJT for Kentucky Law Enforcement Foundation Program Fund and training authorization purposes.

#### Section 10. Out-of-state, Military, and Federal Law Enforcement and Telecommunications Basic Training.

(1) An applicant to a Kentucky law enforcement or telecommunications agency who has graduated from a basic training course or academy in another state may be certified by the KLEC if:

(a) The basic training course or academy was equal to or exceeded the course content and number of hours required for Kentucky peace officers, telecommunicators, or court security officers when the course was completed by the applicant, as determined by the executive director of the Office of Kentucky Law Enforcement Support;

(b) The basic training course or academy is a single, stand-alone course;

(c) The peace officer, telecommunicator, or court security officer has been employed in a full-time capacity in the state of graduation

for a period of at least one (1) year before applying with the Kentucky agency; and

(d) The peace officer completes the following courses presented by the Department of Criminal Justice Training within one (1) year of his or her hiring by the Kentucky law enforcement agency. For purposes of meeting the hourly requirement in paragraph (a) of this subsection, the number of hours of these courses shall be added to the number of hours taken in the out-of-state basic training course:

1. The twenty-four (24) hour legal update Penal Code course;
2. The sixteen (16) hour legal update constitutional procedure course;

3. On-line Federal Emergency Management Agency ICS 100, ICS 200, and IS 700 courses (or current equivalent). A Certificate of Completion or official transcript shall satisfy this requirement; and

4. One (1) of the following forty (40) hour courses which is most appropriate for the officer's duty assignment:

- a. Basic officer skills;
- b. Orientation for new police chiefs; or
- c. Mandatory duties of the sheriff.

(2) An applicant to a Kentucky law enforcement agency who has graduated from a basic training course or academy in another state may be certified by the KLEC if:

(a) The basic training course or academy was at least 300 hours, but less than the number of hours required for Kentucky peace officers;

(b) The peace officer has been employed in a full-time capacity as a peace officer for three (3) or more years with at least one (1) year in the state in which he or she completed his or her basic training course or academy;

(c) The basic training course or academy is a single, stand-alone course; and

(d) The peace officer completes the courses as required in subsection (1)(d) of this section with the number of hours of these courses added to the number of hours taken in the out-of-state basic training course in subsection (2)(a) of this section.

(3) An applicant to a Kentucky law enforcement or telecommunications agency who has graduated from a law enforcement or telecommunications basic training course or academy while serving in the United States military may be certified by the KLEC if:

(a)

1. The basic training course or academy corresponded with or exceeded the course content and number of hours required for Kentucky peace officers, telecommunicators, or court security officers at the time the course was completed by the applicant, as determined by the Executive Director of the Office of Kentucky Law Enforcement Support; or

2. The basic training course or academy did not correspond with or exceed the course content and number of hours required for Kentucky peace officers, telecommunicators, or court security officers at the time the course was completed by the applicant, a basic training credit of fifty (50) hours for each year of his or her full-time peace officer service together with the basic training course hours shall be granted to allow compliance with the total hours required by KRS 15.440, 503 KAR 1:110, or another administrative regulation modifying the hours; and

(b) The basic training course or academy was a single, stand-alone course.

(4) An applicant to a Kentucky law enforcement agency who has graduated from one (1) of the following Federal law enforcement basic training courses may be certified by the KLEC:

- (a) Federal Bureau of Investigation;
- (b) Bureau of Alcohol, Tobacco, and Firearms;
- (c) Drug Enforcement Administration; or
- (d) United States Secret Service.

(5) The KLEC shall not approve a basic training course or academy that consists of two (2) or more courses added together to meet the minimum number of basic training hours for a Kentucky peace officer, telecommunicator, or court security officer.

(6) An agency may request certification for a peace officer who has completed an out-of-state law enforcement basic training by submitting for the applicant:

- (a) A certificate of completion or other official documentation

showing completion of basic training;

(b) A transcript of classes for basic training with individual class hours specified; and

(c) A letter from an employing agency signed by the chief or a direct supervisor of the applicant certifying, or other official documentation showing, that the applicant was employed in a full-time capacity as a peace officer for:

1. At least one (1) year; or
2. Three (3) or more years with at least one (1) year in the state in which he or she completed his or her basic training course or academy.

(7) An applicant to a Kentucky law enforcement or telecommunications agency seeking certification under this section shall not be certified unless he or she has worked in a full-time capacity as a peace officer within five (5) years of applying for certification in Kentucky.

#### Section 11. Records.

(1) Records retention. The KLEC office shall retain all certification records in electronic or original medium consistent with the records retention schedule established by the Kentucky Department of Library and Archives, pursuant to 725 KAR 1:030.

(2) Security. The KLEC office and employing agencies shall maintain records in a manner to ensure their security. To properly maintain the confidentiality of certification records as required by KRS 15.400(3) and 15.540(2), a law enforcement or telecommunications agency shall keep all records relating to certification in a file separate from any personnel file maintained by the hiring authority.

(3) For KLEC audit purposes, an agency that has a separate human resources or personnel department may complete and maintain in the agency file a KLEC FORM POPS P, Certification of Peace Officer Professional Standards Testing Procedures, KLEC Form Q-3 – Drug Screening Approval, KLEC Form Q-4 – Polygraph Approval, and KLEC Form Q-5 – Suitability Screener Approval, indicating that the following testing procedures have been completed:

- (a) Polygraph;
- (b) Suitability screening;
- (c) Drug screen; and
- (d) Medical examination or history statement.

(4) Agencies shall retain all documentation pertaining to certification for five (5) years following the cessation of certification of the peace officer, telecommunicator, or court security officer regardless of where the certified peace officer, telecommunicator, or court security officer is employed in the commonwealth.

(5) An agency that knowingly discloses confidential information in violation of KRS 15.400(3) and 15.540(2) may be denied participation in KLEC polygraph examinations and psychological examinations.

#### Section 12. Applicant Conduct and Behavior.

(1) An applicant who has engaged in behavior constituting dishonesty, cheating, falsification of documents, or any other fraudulent behavior for the purpose of wrongfully receiving certification shall be removed from the testing process and, subject to an administrative hearing in accordance with KRS Chapter 13B, may be barred from further consideration for certification.

(2) Use of alcohol or other intoxicants.

(a) An applicant shall not possess, consume, or be under the influence of alcoholic beverages, controlled substances, or other intoxicating substances not therapeutically prescribed by a physician while participating in the testing process.

(b) An applicant shall advise the KLEC test administrator in writing of the use of a controlled substance or medication whether or not it has been prescribed by a physician.

(c) An applicant shall not participate in physical ability testing if:

1. The applicant has taken:
  - a. A controlled substance as prescribed by a physician; or
  - b. Any other medication, whether prescribed or not; and
2. The applicant is under the influence of the controlled substance or medication to the extent that the applicant may be impaired or is a danger to self or others.

(3) Termination of a dangerous or disruptive situation. If the conduct or condition of an applicant constitutes an immediate danger or an immediate threat of danger to self or others, or is disruptive of testing, or is an immediate threat to be disruptive of testing, a KLEC staff member may take all reasonable steps necessary to terminate the situation, including removal of the applicant from testing.

(4) The KLEC shall notify the applicant and the employing agency within five (5) days following the removal stating that the applicant has been removed or barred from testing. The notice shall state the supporting reasons and circumstances of the removal and whether the agency may reschedule testing.

#### Section 13. Compliance.

(1) Inspection. Test results, testing procedures, and all other certification documentation shall be retained by the agency and be available for inspection and audit at any time by agents authorized by KLEC.

(2) KLEC may initiate an inspection and audit of an agency's certification documentation randomly to assure routine compliance or to investigate a specific complaint.

(3) KLEC shall have access to the services of the DOCJT Compliance and Audit Section, as coordinated through the DOCJT Commissioner, to audit specific applicants and agencies to ensure compliance with certification requirements.

(4) If during the course of an audit conducted by the DOCJT Compliance and Audit Section a violation of certification is detected, the DOCJT Compliance and Audit Section shall report the possible violation to KLEC.

(5) Denial of participation in Kentucky Law Enforcement Foundation Program Fund (KLEFPF). If KLEC determines that an agency has knowingly employed or appointed a person who fails to meet minimum certification standards, KLEC shall immediately notify the administrator of KLEFPF.

Section 14. Issuance of Certification. All identification cards issued to a peace officer, telecommunicator, or court security officer verifying certification remain the property of KLEC and shall be returned to the KLEC office upon loss of certification.

#### Section 15. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Standards for Educational and Psychological Testing", American Educational Research Association, American Psychological Association, National Council on Measurement in Education, Joint Committee on Standards for Educational and Psychological Testing, 2014;

(b) "KLEC Form A - Testing Registration - Attesting to Minimum Standards", 2023[2024];

(c) "KLEC Form C - Grandfather Information", 2021;

(d) "KLEC Form D - All Standards Met", 2023[2022];

(e) "KLEC Form D-1 – All Standards Met – Inactive to Active Status", October 2022;

(f) "KLEC Form E - Request for Certification for Exempt Officers", March 1, 1999;

(g) "KLEC Form F - Status Update", 2021;

(h) "KLEC Form G-1 - Medical Examination Report", 2021;

(i) "KLEC Form G-2 - Medical History Statement", 2021;

(j) "KLEC Form G-3 - Medical Screening Guidelines Implementation Manual", 2021;

(k) "KLEC Form H-1 - Background Investigation", 2021;

(l) "KLEC Form I-1 - Consent for Pre-employment Polygraph Examination", 2021;

(m) "KLEC Form I-2 - Pre-employment Polygraph Questionnaire", 2021;

(n) "KLEC Form J - JTA Submission", January 19, 1999;

(o) "KLEC Form K-1 - Drug Screening Through Urinalysis Applicant Consent Form", 2021;

(p) "KLEC Form K-2 - Drug Screening Through Urinalysis Chain of Custody Form", 2021;

(q) "KLEC Form L-1 - Code of Ethics", 2021;

(r) "KLEC Form L-2 - Canon of Ethics", 2021;

(s) "KLEC Form Q - Agency Submission Form", 2021;

(t) "KLEC Form Q-3 - Drug Screening Approval", 2021;

(u) "KLEC Form Q-4 - Polygraph Approval", 2021;

(v) "KLEC Form Q-5 – Suitability Screener Approval", 2021;

(w) "KLEC Form tele-Q - Agency Submission Form", 2021;

(x) "KLEC Form T-1 - Medical Release - Phase I Testing", 2021;

(y) "KLEC Form T-1a - Physician's Medical Release Form", 2021;

(z) "KLEC Form T-2 - Liability Waiver - Phase I Testing", 2021;

(aa) "POPS Form PT-1 - Physical Agility Test Session Report", 2021;

(bb) "POPS Form P - Certification of Peace Officer Professional Standards Testing Procedures", July 2004;

(cc) "KLEC Physical Fitness Testing Protocols", 2021; and

(dd) "KLEC Education Form - Applicant Education Verification", 2021.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Kentucky Law Enforcement Council, 4449 Kit Carson Drive, Richmond, Kentucky 40475-3102, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available on the council's Web site at <https://klecs.ky.gov/>.

JOHN MOBERLY, Executive Director

APPROVED BY AGENCY: June 26, 2023

FILED WITH LRC: June 27, 2023 at 9 a.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: Jonathan Gifford, Staff Attorney III, Justice and Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-3279, fax (502) 564-6686, email [Justice.RegContact@ky.gov](mailto:Justice.RegContact@ky.gov).

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jonathan Gifford

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes approval requirements to show compliance with professional standards to meet certification requirements for law enforcement officers and telecommunicators employed by law enforcement agencies, and court security officers.

(b) The necessity of this administrative regulation: KRS 15.330 requires the Kentucky Law Enforcement Council (KLEC) to set minimum standards for training for certification and approving law enforcement officers and telecommunicators who have met the requirements for certification. This regulation establishes the minimum standards and approval process.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 15.330 authorizes the council to promulgate administrative regulations to accomplish the purposes of KRS 15.310 to 15.404. KRS 15.330(1)(h) and KRS 15.590 authorize the council to promulgate administrative regulations to accomplish the purposes of KRS 15.310 to 15.404 and concerning training, in-service training, and telecommunications practices.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The administrative regulation gives staff and applicants for certification guidance on the requirements to be approved by the council.

(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 revises two forms incorporated by

reference to comply with a new section of KRS Chapter 15, which requires the Kentucky Law Enforcement Council to admit applicants to its basic training program who are at least twenty years old, and will be twenty-one years old before they are certified as peace officers.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary due to Section 1 of House Bill (HB) 380 enacted during the 2023 Regular Session that creates a new section of KRS Chapter 15.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 15.330 authorizes the KLEC to approve law enforcement officers, telecommunicators, and court security officers as having met requirements under KRS 15.310 to 15.510 and 15.530 to 15.590. KRS 15.330(1)(h) authorizes the KLEC to promulgate reasonable rules and administrative regulations to accomplish the purposes of KRS 15.310 to 15.404. KRS 15.440 allows the council to promulgate administrative regulations for approval of basic training credit for out of state basic training and work experience. The amendment addresses the newly created KRS 15.408 that changes the minimum age required to attend basic training for law enforcement officers. The council has authority over the forms used in the certification process.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the process for individuals becoming certified peace officers.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: KLEC, the approximately 400 law enforcement agencies in the Commonwealth, the approximately 10,000 law enforcement and court security personnel who are required to be certified in the Commonwealth, and any individuals seeking certification as law enforcement or court security personnel.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The revised forms will need to be used for peace officer and court security officer certification applications.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Additional costs are not anticipated from the form changes.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The applications will comply with the new statutory minimum age requirement for basic training for peace officer and court security officer certification.

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

(a) Initially: Additional costs are not anticipated.

(b) On a continuing basis: Additional costs are not anticipated.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This amendment is not anticipated to increase implementation or enforcement costs for the council or for any regulated entity. Generally, the council is funded through appropriations from the Kentucky Law Enforcement Foundation Program Fund (KLEFPF).

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: 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 existing regulation established fees for testing. The amendment does not establish or increase any fees.

(9) TIERING: Is tiering applied? No. Tiering was not applied 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 Kentucky Law Enforcement Council and various law enforcement and telecommunications agencies whose employees must be certified.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 15.330, 15.380, 15.408, 15.440, 15.590.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This amendment does not provide revenue to any government entity, aside from the nominal testing fees already charged under the existing administrative regulation.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This amendment does not provide revenue to any government entity, aside from the nominal testing fees already charged under the existing administrative regulation.

(c) How much will it cost to administer this program for the first year? The amendment is not anticipated to increase costs.

(d) How much will it cost to administer this program for subsequent years? The amendment is not anticipated 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 from the form changes to comply with the statute revisions.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? Cost savings are not anticipated from the form changes to comply with the statute revisions.

(c) How much will it cost the regulated entities for the first year? Additional costs are not anticipated from the form changes to comply with the statute revisions.

(d) How much will it cost the regulated entities for subsequent years? Additional costs are not anticipated from the form changes to comply with the statute revisions.

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 form changes are made to comply with statute revisions and a major economic impact is not anticipated.

**STATEMENT OF EMERGENCY**  
**809 KAR 1:002E**

This emergency regulatory amendment is promulgated to prevent a loss of state funds that are required to be deposited with the State Treasury pursuant to KRS 230.817, and to meet an imminent deadline for the promulgation of an administrative regulation that is established by state statute. More specifically, this administrative regulation is filed on an emergency basis to ensure: (1) that funds are timely remitted to the State Treasury in accordance with the General Assembly's statutory mandate set out in KRS 230.817; and (2) that a fully functioning sports wagering system is established within six (6) months of the effective date of House Bill 551 (2023 Regular Session), pursuant to the timeline established in KRS 230.361. The Kentucky Horse Racing Commission therefore seeks to implement sports wagering on an emergency basis, in order to comply with the above-referenced statutory requirements. This emergency regulation will be replaced by an ordinary administrative regulation at this time. The ordinary administrative regulation is identical to this emergency administrative regulation.

ANDY BESHEAR, Governor  
RAY PERRY, Secretary

**PUBLIC PROTECTION CABINET**  
**Kentucky Horse Racing Commission**  
**(New Emergency Administrative Regulation)**

**809 KAR 1:002E. Service provider licensing.**

EFFECTIVE: July 10, 2023

RELATES TO: KRS Chapter 230

STATUTORY AUTHORITY: KRS 230.260, KRS 230.361, KRS 230.811, KRS 230.814

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.260 requires the commission to "promulgate administrative regulations to establish standards for the conduct of sports wagering." KRS 230.361 states the "racing commission shall promulgate administrative regulations to establish a fully functioning sports wagering system...." KRS 230.811 and KRS 230.814 permit a licensed service provider to conduct sports wagering in Kentucky. This administrative regulation establishes clear requirements and guidelines concerning the process by which applications for a service provider license for sports wagering in Kentucky are reviewed and approved.

**Section 1. Definitions.**

- (1) "Applicant" means a person applying for a service provider license under KRS 230.814.
- (2) "Application" means "Initial/Renewal Application for Service Provider License," KHRC 01-003-01, 06/2023.
- (3) "Service provider" is defined by KRS 230.210.
- (4) "Service provider license" means a license granted to a service provider that has a contract with an operator to provide sports wagering services pursuant to KRS 230.814.
- (5) "Substantial owner" means a person who owns five (5) percent or more of the company.

**Section 2. Applications for Sports Wagering Service Providers.**

- (1) Initial applications. An applicant shall apply to the commission for a service provider license pursuant to KRS 230.814.
- (2) Renewal applications. A service provider license shall be renewed annually in accordance with KRS 230.814.
- (3) An initial or renewal application for a service provider license shall be submitted on the form "Initial/Renewal Application for a Service Provider License," KHRC 01-003-01, 06/2023, pursuant to Section 6 of this administrative regulation.

**Section 3. License Fees.**

- (1) An applicant shall submit the initial fee of \$50,000 with an initial application for a service provider license. The initial fee shall not be refundable.
- (2) A service provider shall submit the renewal fee of \$10,000

with a renewal application for a service provider license. The renewal fee shall not be refundable.

(3) Pursuant to KRS 230.811, the fees in this section shall be deposited into the fund established by KRS 230.817.

(4) Renewal applications for a service provider license shall be received by the commission 120 days before the expiration of the current license.

**Section 4. Licensing Criteria.** The commission shall grant a service provider application if the commission determines that the applicant's participation as a sports wagering service provider is in the best interests of sports wagering in Kentucky. The commission shall consider, at a minimum, the following factors:

- (1) Whether the applicant otherwise qualifies to receive a license under KRS Chapter 230;
- (2) Whether the applicant's key persons and substantial owners qualify to receive applicable occupational licenses under 809 KAR 1:003;
- (3) Whether the applicant, in the case of an individual, or the applicant's substantial owners, is at least eighteen (18) years of age;
- (4) Whether the applicant demonstrates a level of skill, experience, knowledge, and ability necessary to operate as a service provider as required under this administrative regulation;
- (5) Whether the applicant was convicted or charged with any offense for a violation of a gaming law in any jurisdiction;
- (6) Whether the applicant appears on the exclusion list of any jurisdiction for having violated a rule of gaming;
- (7) Whether the applicant has at least one (1) contract to provide services pursuant to KRS 230.814 to a sports wagering operator; and
- (8) Whether the applicant or the applicant's substantial owners are in substantial compliance with all state and federal tax laws.

**Section 5. Temporary Licensing.**

- (1) The commission may grant a temporary license after an applicant submits an initial application.
- (2) An applicant issued a temporary license pursuant to this administrative regulation or KRS 230.260 shall not be entitled to receive any refund of the license fee submitted in connection with the license application.
- (3) The commission may change a temporary license issued pursuant to this administrative regulation into an annual license if:
  - (a) All investigations into the license application are complete;
  - (b) The commission is satisfied the holder of a temporary license qualifies to hold an annual license; and
  - (c) The applicant, its parent company, or affiliate subsidiaries have demonstrated that it is licensed to provide gaming services in at least three (3) other United States gaming jurisdictions.
- (4) When the commission changes a temporary license into an annual license, the date of issuance of the annual license shall be deemed to be the date that the commission approved the annual license.
- (5) A temporary authorization may expire of its own accord, or it may be suspended, revoked, or summarily suspended under the same terms and conditions as an annual license.
- (6) The temporary license shall not extend beyond one (1) year and shall expire at the end of the calendar year for which it was issued.

**Section 6. Application Procedure.**

- (1) Application procedures for service providers shall be as follows:
  - (a) A material misrepresentation or omission made with respect to an application may be grounds for denial of the application.
  - (b) An application shall be deemed filed when the commission receives the completed application forms, including all additional information that the commission requires.
  - (c) The completed applications shall be filed as follows:
    1. An applicant shall submit an original and five (5) copies of a fully-executed hard copy application to the commission at the commission's office in Lexington, Kentucky or shall submit the application online at <https://khrc.ky.gov/>.
    2. Applicants shall submit the application prior to November 1 of each year.

(d) An applicant shall be under a continuing duty to disclose any changes in the information submitted to the commission.

(e) Any service provider license holder that enters into a contract with a new operator licensed under 810 KAR 3:010 shall provide notice to the commission and a copy of the contract within fourteen (14) calendar days.

(f) Any service provider license holder that enters into a contract with a new occupational licensee that is an information services provider shall provide notice to the commission within fourteen (14) calendar days and, as requested, a copy of the contract.

(g) If a service provider license holder ceases to offer goods and services to an operator licensee, then the service provider shall notify the commission.

(2) An application for a service provider's license shall include the following information:

(a) The name, address, and legal information of the applicant that allows the commission to verify the applicant's legal existence, status, and eligibility for a license, including the applicant's:

1. Business registration details,
2. Business structure, and
3. Business identification number.

(b) A Key Employee License Application for a substantial owner or key person;

(c) A description of all sports wagering services, equipment, devices, and supplies offered for sale or lease by the applicant in connection with sports wagering;

(d) Details regarding the corporate form of the applicant, including the legal structure or type of business applying for the license;

(e) Relevant contracts related to the sports wagering;

(f) Disclosure of any criminal, civil, or administrative action brought against the applicant;

(g) Description of all other licenses held by the applicant;

(h) The applicant's audited financial statements for each of the three (3) fiscal years immediately preceding the application; and

(i) Organizational and ownership charts of the applicant.

(3) Initial applications completed for sports wagering conducted in 2023 may also serve as the renewal application for sports wagering conducted in 2024.

(4) For sports wagering conducted in 2025 and thereafter, an application shall be filed with the commission prior to November 1 of the preceding calendar year.

Section 7. Duty to Maintain Suitability; Duty to Disclose; Transfer of Ownership Interest.

(1) A service provider shall have a continuing duty to maintain suitability for licensure. A license issued under this administrative regulation does not create a property right but shall be a revocable privilege granted by the commission contingent upon continuing suitability for licensure.

(2) A service provider shall be responsible for the following:

(a) Ensuring that all aspects of the sports wagering operation are conducted in accordance with 809 KAR 10:001 through 809 KAR 10:007;

(b) The acts of its employees and agents in the course of their employment; and

(c) Notification of a material change in the information submitted in the application, or a matter that renders the service provider ineligible to hold a service provider license.

(3) A substantial change in ownership shall not occur without prior approval from the commission.

Section 8. Incorporation by Reference. "Initial/Renewal Application for Service Provider License", KHRC 01-002-001, 06/2023, is incorporated by reference.

JONATHAN RABINOWITZ, Chair

RAY PERRY, Secretary

APPROVED BY AGENCY: July 10, 2023

FILED WITH LRC: July 10, 2023 at 4:00 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 Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511.

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: Jennifer Wolsing, General Counsel, Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859) 246-2039, email jennifer.wolsing@ky.gov.

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jennifer Wolsing

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes the procedures and requirements for applying for a service provider license for sports wagering.

(b) The necessity of this administrative regulation: This regulation is necessary to establish clear requirements and guidelines concerning the process by which applications for a service provider license for sports wagering in Kentucky are reviewed and approved.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.260 requires the commission to "promulgate administrative regulations to establish standards for the conduct of sports wagering." KRS 230.361 states the "racing commission shall promulgate administrative regulations to establish a fully functioning sports wagering system...." KRS 230.811 and KRS 230.814 permit a licensed service provider to conduct sports wagering in Kentucky.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation enables the commission to issue licenses to conduct sports wagering pursuant to KRS 230.811 and KRS 230.814 in a consistent and systematic way.

(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 regulation.

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation affects applicants for a service provider license for sports wagering 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: Applicants for a service provider license for sports wagering will be required to file initial and renewal applications and pay corresponding fees to obtain and maintain a service provider license. Service providers must also maintain suitability for licensure.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Applicants for a service provider license are assessed a fee of \$50,000. Applicants seeking to renew a sports wagering license are assessed a fee of \$10,000.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance, service providers will be permitted to contract with licensed racing associations to conduct sports wagering in Kentucky.

(5) Provide an estimate of how much it will cost the administrative



## VOLUME 50, NUMBER 2– AUGUST 1, 2023

body to implement this administrative regulation:

(a) Initially: It is estimated that the commission will spend approximately \$2.4 million to implement sports wagering in Kentucky in the first year.

(b) On a continuing basis: It is further estimated that the commission will spend approximately \$1.2 million annually to continue regulating sports wagering in Kentucky on a yearly basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The funding to implement and enforce sports wagering in Kentucky will come from the sports wagering administrative fund, as established in KRS 230.817.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: This regulation establishes licensure fees for initial and renewal applicants for service provider licenses.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This regulation establishes licensure fees for initial and renewal applicants for service provider licenses.

(9) TIERING: Is tiering applied? Tiering was not applied, because this amended regulation will apply to all similarly-situated entities in an equal manner.

### FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Horse Racing Commission 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 230.260, 230.361, 230.811, and 230.814.

(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 licensure of racing associations will not generate additional revenue for state or local government for the first year. It is estimated that the licensure of sports wagering facilities will generate approximately \$5 million for the Sports Wagering Administration Fund for the first year. It is anticipated that sports wagers will generate additional tax revenue 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? The licensure of racing associations will not generate additional revenue for state or local government for subsequent years. It is estimated that the licensure of sports wagering facilities will generate approximately \$500,000 in renewal fees per year for the Sports Wagering Administration Fund for subsequent years. As above, it is anticipated that sports wagers will generate additional tax revenue during subsequent years.

(c) How much will it cost to administer this program for the first year? It is estimated that the commission will spend approximately \$2.4 million in the first year to implement sports wagering in Kentucky.

(d) How much will it cost to administer this program for subsequent years? It is further estimated that the commission will spend approximately \$1.2 million annually to continue regulating sports wagering in Kentucky 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 (+/-): Any revenue increase will be dependent on the number of initial license applicants and renewal applicants. It is estimated that revenues will be increased by approximately \$5 million during the first year and \$500,000 during subsequent years. Revenues will also be increased by sports wagering taxes. The exact amount cannot be determined at this date, as it will depend on the

number and type of wagers and the location of those wagers (i.e., online or in a retail location).

Expenditures (+/-): Any revenue increase will be dependent on the number of initial license applicants and renewal applicants. It is estimated that expenditures will increase by \$2.4 million during the first year and \$1.2 million during subsequent years.

Other Explanation: N/A

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

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

(c) How much will it cost the regulated entities for the first year? Service providers seeking an initial license to conduct sports wagering will pay an initial fee of \$50,000.

(d) How much will it cost the regulated entities for subsequent years? Service providers seeking to renew a license to conduct sports wagering will pay a renewal fee of \$10,000.

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

Cost Savings (+/-): \$0.00

Expenditures (+/-): Please see the answers to (c) and (d) above.

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 will have a major economic impact. Service providers seeking a license to conduct sports wagering will pay an initial fee of \$50,000 and/or a renewal fee of \$10,000. It is estimated that the commission will spend approximately \$2.4 million to implement sports wagering in Kentucky in the first year. It is further estimated that the commission will spend approximately \$1.2 million annually to continue regulating sports wagering in Kentucky in subsequent years. It is estimated that revenues will be increased by approximately \$5 million during the first year and \$500,000 during subsequent years. This estimate does not include tax revenue obtained from sports wagers, which cannot be estimated at this time.

### STATEMENT OF EMERGENCY 809 KAR 1:003E

This emergency regulatory amendment is promulgated to prevent a loss of state funds that are required to be deposited with the State Treasury pursuant to KRS 230.817, and to meet an imminent deadline for the promulgation of an administrative regulation that is established by state statute. More specifically, this administrative regulation is filed on an emergency basis to ensure: (1) that funds are timely remitted to the State Treasury in accordance with the General Assembly's statutory mandate set out in KRS 230.817; and (2) that a fully functioning sports wagering system is established within six (6) months of the effective date of House Bill 551 (2023 Regular Session), pursuant to the timeline established in KRS 230.361. The Kentucky Horse Racing Commission therefore seeks to implement sports wagering on an emergency basis, in order to comply with the above-referenced statutory requirements. This emergency regulation will be replaced by an ordinary administrative regulation at this time. The ordinary administrative regulation is identical to this emergency administrative regulation.

ANDY BESHEAR, Governor  
RAY PERRY, Secretary

**PUBLIC PROTECTION CABINET  
Kentucky Horse Racing Commission  
(New Emergency Administrative Regulation)**

**809 KAR 1:003E. Occupational licenses.**

EFFECTIVE: July 10, 2023

RELATES TO: KRS Chapter 230

STATUTORY AUTHORITY: 230.260(9), 230.310(2)

NECESSITY, FUNCTION AND CONFORMITY: KRS 230.260(16) requires the commission to promulgate administrative regulations to establish standards for the conduct of sports wagering. KRS 230.310(2) requires the commission to license applicants for occupations related to sports wagering, particularly those who have the capacity to affect the outcome of sports wagering and their supervisors. This administrative regulation establishes occupational licensing application procedures and requirements for individuals involved in the conduct and management of sports wagering in the Commonwealth.

**Section 1. Definitions.**

(1) "Annual license" means the occupational license issued by the commission after a thorough review of an application, valid for the calendar year for which it is applied.

(2) "Applicant" means a person that applies for an occupational license.

(3) "Background check" means a review of an applicant's criminal, financial, and personal history conducted by the commission.

(4) "Critical component" means any sub-system for which failure or compromise can lead to loss of player entitlements, government revenue or unauthorized access to data used for generating reports for the regulatory body.

(5) "Fees" mean the administrative charges levied by the commission for the processing, issuance, and renewal of occupational licenses.

(6) "Information technology professional license" means a category of occupational license, which is required for all individuals who are responsible for managing, maintaining, developing, and securing the digital and technical assets and systems of an Operator or Service Provider.

(7) "Key employee license" means a category of occupational license, which is required for all significant employees working for an Operator or a Service Provider who have substantial decision-making power.

(8) "Licensee" means any individual or entity that has been granted an occupational license by the commission.

(9) "Occupational license" means the categories of licenses established by the commission for participants in sports wagering pursuant to KRS 230.210.

(10) "Race and sportsbook employee license" means a category of occupational license, which is required for all individuals listed in Section 6 of this administrative regulation.

(11) "Temporary license" means a provisional license granted by the commission during the process of evaluating an application for a permanent license.

**Section 2. General Requirements for Applications.**

(1) Eligibility: Any individual or entity desiring to participate professionally in sports wagering activities in the Commonwealth shall apply to the commission for an occupational license as categorized in Section 4 of this administrative regulation. This type of license shall be required for certain persons working in a licensed facility for sports wagering, supervisors of individuals who can influence the outcome of sports wagering, specific individuals who have the capability to affect the outcome of sports wagering through the deployment of code and other persons required under this KAR Title 809.

(2) Submission timeframe: Applications for licenses shall be submitted annually. Licenses granted shall remain active only for the calendar year for which they have been applied.

(3) Legal compliance: All applicants shall demonstrate compliance with all laws and regulations regulating sports wagering

in Kentucky and any other regulatory, state, federal, or taxing authority.

(4) Lack of material misrepresentation: All information provided on the application form shall be accurate and complete. Material misrepresentation on the application may result in immediate suspension, revocation, denial of the license, or imposition of fines by the commission.

(5) Minimum age: The minimum age requirement for an occupational license in sports wagering shall be eighteen (18) years.

(6) Transparency in entities: If an entity consisting of multiple individuals applies for a license, the entity shall fully disclose the identities and the type of ownership held by all controlling individuals. This information shall include the degree and type of ownership held by each individual in the entity.

(7) Categories of licenses: Different roles within the sports wagering industry may require distinct categories of licenses as set forth in Section 5 of this administrative regulation.

**Section 3. Application Fees.**

(1) All required application fees described under this section shall be submitted to the commission in the form of a certified check, ACH payment, or cashier's check made payable to the commission, or other form as prescribed by the commission.

(2) The following fees shall accompany applications for the following categories of occupational license:

(a) Race and Sportsbook Employee License: \$150;

(b) Information Services Provider: \$5,000; and

(c) Key Employee: \$1,500.

(3) All occupational licenses shall be renewed annually. The renewal fee for each category shall be the same as the initial licensing fee.

(4) If additional costs become necessary to investigate an applicant for a license, the commission may assess an additional investigation fee at its discretion. Failure to submit an additional requested payment shall result in suspension of the processing of the license application and may result in denial of the license. The investigative fee shall be based on actual costs. If any portion of the investigative fee remains after the investigation is concluded, the remaining portion shall be returned to the applicant or licensee.

(5) Except as noted in subsection (4) of this section, all fees are non-refundable, regardless of whether the application is approved, denied, withdrawn, or if the license is surrendered or revoked.

**Section 4. Applications.**

(1) Application procedures shall be as follows:

(a) An application shall be deemed filed when the commission has received the completed application forms, including the information that the commission has required.

(b) Applicants shall submit the application online at <https://khrc.ky.gov/> or in hard copy to the commission's office in Lexington, Kentucky.

(c) An applicant shall be under a continuing duty to disclose any changes in the information submitted to the commission.

(d) Any change in information required for licensing shall be submitted in writing and filed at the commission's office in Lexington, Kentucky, within thirty (30) days of the change, unless it is information listed in (e) of this section.

(e) Alternatively, any change in information may be reported online via a method approved by the commission,

(f) The applicant shall report changes in information in writing within five (5) days of the occurrence for these items:

1. Criminal charges;

2. Criminal convictions;

3. License denials and license suspensions of ten (10) days or more;

4. License revocations or fines of \$500 or more in other jurisdictions;

5. Racing related disciplinary charges pending in other jurisdictions; and

6. Withdrawal, with or without prejudice, of a license application by the licensee in any jurisdiction.

(2) An applicant for a racing and sportsbook employee license or an information services license shall include with its application

an agreement or statement of intent indicating that a licensed operator or service provider shall utilize the applicant for the provision of goods and services. For 2023, the agreement or statement of intent supporting the applicant's claims may come from a person applying for an operator or service provider license.

(3) The application forms shall be accompanied and supplemented by such documents and information as may be specified or required by the commission. Failure to supply the information requested within five (5) days after the request has been made by the commission shall constitute grounds for delaying consideration of the application.

(4) Renewal applications for licenses may be submitted and may be renewed upon the filing and approval of an application for renewal. Renewal applications for occupational licenses shall be received by the commission sixty (60) days before the expiration of the current license. Renewal applicants who fail to submit their completed applications when due shall not be considered to have made a timely and sufficient application for renewal.

#### Section 5. Temporary Licenses.

(1) The commission may issue a temporary license in accordance with KRS 230.805.

(2) The commission may issue the applicant a temporary license if the application and a criminal history check completed by the commission reveals that the applicant:

- (a) has not been charged or convicted of a felony under state or federal law;
- (b) has not been charged or convicted of a misdemeanor related to gaming; and
- (c) otherwise meets the statutory criteria set forth in KRS Chapter 230.

(3) A temporary license issued under this section shall include, at a minimum, the following:

- (a) The applicant's name and business address;
- (b) A temporary license number assigned by the commission;
- (c) Signature of the executive director, the commission chair, or their designee;
- (d) The date the temporary license was issued;
- (e) The date the temporary license will expire; and
- (f) A reference to any conditions placed on the temporary license.

(4) If the commission grants an annual license to a temporary license holder, the temporary license shall automatically expire upon the start date of the annual license.

(5) A temporary license shall not be transferred without prior approval by the commission.

(6) Failure to advise the commission that the applicant has failed to begin or has ceased providing a licensee with goods and services shall be grounds for the commission to withdraw the temporary license and deny licensure in the future.

#### Section 6. Categories of Occupational Licenses.

(1) Race and sportsbook employee licenses

(a) Race and sportsbook employee license holders shall include the following categories of people, except as otherwise provided in this section:

1. Individuals who work directly in a licensed facility for sports wagering regarding the sports wagering aspect of the facility, including:

- a. Sports wagering customer service representatives;
- b. Sports wagering ticket writers;
- c. Sports wagering supervisors;
- d. Sports wagering security personnel; and
- e. Sports wagering facility management;

2. Individuals directly supervising other employees in any licensed Kentucky sports wagering business who have the capability of affecting the outcome of sports wagering;

3. Employees in any licensed Kentucky sports wagering business who have the capability to affect the outcome of sports wagering through the deployment of code to production for any critical component of a sports wagering system; and

4. Employees whose duties are performed in the licensed facility for sports wagering that involve money obtained as a result of sports

wagering, including the handling of tickets, money, or performing accounting and auditing functions.

(b) The following people shall hold a race and sportsbook employee license, even if they do not work directly in a licensed facility for sports wagering regarding the sports wagering aspect of the facility:

- 1. Audit manager;
- 2. Chief of security;
- 3. Chief of surveillance;
- 4. Chief financial officer or controller;
- 5. General manager;
- 6. Support operations manager;
- 7. Change management employees; and
- 8. Compliance employee supervisors;
- 9. Information technology professionals responsible for maintaining the technology infrastructure of the sports wagering system; and
- 10. Any other employee of an operator or service provider whose duties:

a. Are performed in the licensed facility for sports wagering and whose duties affect sports wagering;

b. Affect the flow of money obtained as a direct result of sports wagering operations; or

c. Include accounting and auditing functions and whose duties relate to money obtained as a result of sports wagering;

(2) Information services licenses. All business entities that provide information services to sports wagering licensees in Kentucky shall obtain an information services license, such as:

- (a) Sports Wagering Oddsmakers or Traders;
- (b) Sports Wagering Data Source;
- (c) Sports Wagering Risk Management;
- (d) Sports Wagering Player Account Management; and
- (e) Sports Wagering Platform Providers, including geolocation technology, Know Your Customer, or Sports Wagering Equipment Manufacturer.

(3) Key employee licenses.

(a) Each person applying for a license under this administrative regulation that is not an individual shall designate an individual with decision-making authority for its day-to-day operations to apply for a key employee license.

(b) Additionally, a licensed sports wagering business operating in Kentucky shall designate a supervisor for the following areas to apply for a key employee license:

- 1. Compliance;
- 2. Trading;
- 3. Customer Service;
- 4. Finance and Audit;
- 5. Risk and Payments; and
- 6. Information Technology.

#### Section 7. Waiver for Race and Sports Book Employee License or Key Employee License.

(1) At any time, an applicant shall submit a written request for a waiver to be exempt from licensure to prevent dual licensing for one individual across multiple disciplines. This waiver shall be submitted to the commission's office in Lexington, Kentucky on form Race & Sportsbook and Key Employee License Waiver Form, KHRC 01-003-04 or online at <http://khrc.ky.gov>.

(2) The written request for waiver shall include at least the following information:

- (a) The name and contact information of the waiver applicant;
- (b) All gaming licenses issued to the waiver applicant;
- (c) All horse racing licenses issued to the waiver applicant; and
- (d) The waiver applicant's current position and job description.

(3) Upon receipt of a waiver request, the commission may grant or deny a waiver, upon consideration of at least the following factors:

- (a) The nature of the employee's duties; and
- (b) The best interests and integrity of horse racing, pari-mutuel wagering, and sports wagering.

#### Section 8. Background Checks. After an applicant files a license application, the commission may:

- (1) Investigate the criminal background, employment history,

and gaming history record of the applicant;

(2) Verify information provided by the applicant; or

(3) Engage in research and interviews to determine the applicant's character and qualifications.

Section 9. License Denial, Revocation, or Suspension.

(1) The commission or its designee shall deny, suspend, or revoke a license, or otherwise penalize in accordance with KRS 230.310, 230.260, or 230.814 a sports wagering licensee, for any of the following reasons:

(a) Lack of suitability as set forth in KRS Chapter 230;

(b) Adverse effect on public interest, failure to uphold the integrity of the regulatory activities, or engagement in conduct that is otherwise against the best interest of sports wagering, pari-mutuel wagering, or horse racing;

(c) Any criminal conviction, pending charges, or violation of regulatory laws;

(d) Previous license denial, suspension, or revocation by any authority of any state or federal jurisdiction;

(e) Material misrepresentation, falsification, or omission of information in a license application;

(f) Violation or attempt to manipulate outcomes of regulated activities, such as sports wagering, pari-mutuel wager, or horse racing, in any jurisdiction;

(g) Financial irresponsibility or engagement in actions against the best interest of the regulated activities;

(h) Failure to comply with rulings, orders, or requirements of the commission, such as failure to cooperate with a commission investigation;

(i) Misconduct or disorderly behavior on regulated grounds; or

(j) Possession of prohibited substances or devices, or employment of unlicensed personnel.

(2) A license suspension, revocation, or denial shall be reported in writing to the applicant by the commission or its designee.

(3) Licensees or applicants may appeal the suspension, revocation or denial accordance with KRS Chapters 13B and 230.

Section 10. Reciprocity. If a person's license has been denied, suspended, or revoked in another jurisdiction, the commission may require reinstatement of the license in that jurisdiction before a license is granted by the commission.

Section 11. Changes in Application Information.

(1) Any changes in the information provided by the licensee or applicant required for obtaining or maintaining a license shall be promptly reported to the commission in writing.

(2) Changes in information that are not detailed in subsection (2) shall be reported to the commission within thirty (30) days of the change occurring.

(3) The licensee or applicant shall report the following changes in information to the commission in writing within five (5) days:

(a) The licensee or applicant is charged with criminal activity related to sports wagering;

(b) The licensee or applicant is convicted of a crime related to sports wagering;

(c) The licensee or applicant's sports wagering license is denied or suspended for ten (10) days or more in any jurisdiction; and

(d) The licensee or applicant's sports wagering license is revoked or they are fined \$500 or more in other jurisdictions;

Section 12. License Identification and Display.

(1) For each issued license, the commission shall provide an identification badge to individuals or a certificate of licensure to entities.

(2) All individuals working in a licensed facility for sports wagering shall wear an identification badge.

(3) Operators or service providers shall disable the work badge of any person whose license has been revoked or suspended.

(4) Each identification badge or license shall contain essential details, including, but not limited to, the licensee's name, license number, date of issuance, and expiration date.

(5) Individual licensees shall be required to wear their identification badges visibly at all times during their working hours in

any licensed facility for sports wagering.

(6) In cases where a licensee fails to display their badge or license as required, the commission may impose penalties, which may include fines, suspension, or revocation of the license.

(7) Loss, theft, or damage of an identification badge or license shall be reported to the commission immediately. The commission shall provide a process for obtaining replacement badges or licenses under these circumstances.

(8) Any attempt to falsify, alter, or misuse an identification badge or License shall be considered a severe violation and may result in immediate revocation of the license and potential legal action.

Section 13. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Information Services License Application Form", KHRC 01-003-01, 06/2023;

(b) "Multi-Jurisdictional Key Employee License Form", KHRC 01-003-02, 06/2023;

(c) "Race and Sportsbook Employee Application Form", KHRC 01-003-03, 06/2023; and

(d) "Race & Sportsbook and Key Employee License Waiver Form", KHRC 01-003-04, 06/2023.

(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 may also be obtained at the commission's Web site at <http://khrc.ky.gov>.

JONATHAN RABINOWITZ, Chair

RAY PERRY, Secretary

APPROVED BY AGENCY: July 10, 2023

FILED WITH LRC: July 10, 2023 at 4:00 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 Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511. 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: Jennifer Wolsing, General Counsel, Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859) 246-2039, email [jennifer.wolsing@ky.gov](mailto:jennifer.wolsing@ky.gov).

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jennifer Wolsing

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes the procedures and requirements for applying for occupational licenses related to sports wagering in the Commonwealth of Kentucky.

(b) The necessity of this administrative regulation: This regulation is necessary to establish clear requirements and guidelines concerning the process by which applications for occupational licenses related to sports wagering in Kentucky are reviewed and approved.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.260(16) requires the commission to promulgate administrative regulations to establish standards for the conduct of sports wagering. KRS 230.310(2) requires the commission to license applicants for occupations related to sports wagering. This regulation sets forth the procedures and requirements for applying for an occupational license.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation enables the commission to issue occupational licenses to conduct sports wagering pursuant to KRS 230.310(2) in a consistent and systematic way.

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation directly affects individuals who will apply to be licensed to engage in certain occupations to conduct sports wagering in the Commonwealth. Since this is a new regulation creating new types of licenses, it is unknown how many individuals will be impacted by this regulation. This regulation may also affect licensed racing associations that offer sports wagering and choose to hire occupational licensees. There are currently nine (9) licensed tracks operating in the Commonwealth.

(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 a license to conduct sports wagering under this regulation will be required to file initial and renewal applications and corresponding fees to obtain and maintain a license to conduct sports wagering in the Commonwealth.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Applicants for a new race and sportsbook employee license are assessed a fee of \$150. Applicants for an information services provider license are assessed a fee of \$5,000. Applicants for a key employee license are assessed a \$1,500 fee. The same fees apply to renew these licenses.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance with the occupational license application requirements, licensees will be allowed to work in certain occupations in the sports wagering industry.

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

(a) Initially: It is estimated that the commission will spend approximately \$2.4 million to implement sports wagering in Kentucky in the first year.

(b) On a continuing basis: It is further estimated that the commission will spend approximately \$1.2 million annually to continue regulating sports wagering in Kentucky on a yearly basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No additional funding is required for the implementation and enforcement of the sports wagering occupational licensure regulation. The funding to implement and enforce sports wagering in Kentucky will come from the sports wagering administrative fund, as established in KRS 230.817.

(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 establishment of fees will be necessary to implement this regulation, because the regulation establishes licensure fees for initial and renewal applicants for sports wagering occupational licenses.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This regulation establishes licensure fees for initial and renewal applicants for sports wagering occupational licenses.

(9) TIERING: Is tiering applied? Tiering was not applied because this regulation will apply to all similarly-situated entities in an equal manner.

(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 Horse Racing Commission and individuals applying for sports wagering occupational licenses 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 230.260(9) and KRS 230.310(2).

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? It is unknown how much revenue this occupational licensure regulation will generate for state government during the first year, as it is unknown how many people will apply for occupational licenses.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? It is unknown how much revenue this occupational licensure regulation will generate for state government during subsequent years, as it is unknown how many people will apply for occupational licenses.

(c) How much will it cost to administer this program for the first year? It is estimated that the commission will spend approximately \$2.4 million in the first year to implement sports wagering in Kentucky.

(d) How much will it cost to administer this program for subsequent years? It is further estimated that the commission will spend approximately \$1.2 million annually to continue regulating sports wagering in Kentucky 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 (+/-): Any revenue will be dependent on the number of initial license applicants and renewal applicants, which is unknown at this time.

Expenditures (+/-): Any expenditures will be dependent on the number of initial license applicants and renewal applicants, which is unknown at this time. It is estimated that expenditures will increase by \$2.4 million during the first year and \$1.2 million during subsequent years.

Other Explanation: N/A

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

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

(c) How much will it cost the regulated entities for the first year? Applicants for a new race and sportsbook employee license are assessed a fee of \$150. Applicants for an information services provider license are assessed a fee of \$5,000. Applicants for a key employee license are assessed a \$1,500 fee.

(d) How much will it cost the regulated entities for subsequent years? The cost of renewing these licenses is the same cost as the initial application fee.

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 (+/-): Please see answers to (c) and (d) above.

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)]. It is unknown whether this regulation will have a major economic impact. It is estimated that applicants seeking a race and sportsbook employee license will pay an initial license fee of \$150 and another \$150 each year they seek to renew their license. Applicants seeking licensure as an information services provider will pay an initial fee of \$5,000 and a renewal fee of \$5,000 each year they seek renewal. It is estimated that applicants seeking licensure as a key employee will pay an application fee of \$1,500 for an initial license and a renewal fee of \$1,500 each year they seek to renew the license. It is unknown how many people will apply for occupational licenses in the Commonwealth.

**STATEMENT OF EMERGENCY  
809 KAR 10:001E**

This emergency regulatory amendment is promulgated to prevent a loss of state funds that are required to be deposited with the State Treasury pursuant to KRS 230.817, and to meet an imminent deadline for the promulgation of an administrative regulation that is established by state statute. More specifically, this administrative regulation is filed on an emergency basis to ensure: (1) that funds are timely remitted to the State Treasury in accordance with the General Assembly's statutory mandate set out in KRS 230.817; and (2) that a fully functioning sports wagering system is established within six (6) months of the effective date of House Bill 551 (2023 Regular Session), pursuant to the timeline established in KRS 230.361. The Kentucky Horse Racing Commission therefore seeks to implement sports wagering on an emergency basis, in order to comply with the above-referenced statutory requirements. This emergency regulation will be replaced by an ordinary administrative regulation at this time. The ordinary administrative regulation is identical to this emergency administrative regulation.

ANDY BESHEAR, Governor  
RAY PERRY, Secretary

**PUBLIC PROTECTION CABINET  
Kentucky Horse Racing Commission  
(New Emergency Administrative Regulation)**

**809 KAR 10:001E. General provisions.**

EFFECTIVE: July 10, 2023

RELATES TO: KRS Chapter 230

STATUTORY AUTHORITY: KRS 230.260(16), 230.210

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.260(16) requires the commission to promulgate administrative regulations to establish standards for the conduct of sports wagering. This administrative regulation establishes definitions of various terms used throughout the commission's sports wagering administrative regulations.

**Section 1. Definitions.**

- (1) "Abnormal wagering activity" means wagering activity exhibited by one (1) or more patrons and considered by a licensee to be an indicator of suspicious or illegal wagering activity.
- (2) "Account holder" means an individual for whom the licensee has opened a sports wagering account.
- (3) "Act" means 2023 Ky. Acts Ch. 147, of the Kentucky Revised Statutes, the Kentucky Sports Wagering Act of 2023.
- (4) "Adjusted gross revenue" is defined by KRS 138.552.
- (5) "Affiliate" means a person that, owns, controls, manages, or is operationally interdependent with a licensee.
- (6) "Amateur youth sporting event" is defined by KRS 230.210.
- (7) "Applicant" means a person that applies with the racing commission to be an authorized licensee.
- (8) "Cancelled wager" means a sports wager that was valid at the time it was made but has since been invalidated in a manner

acceptable by the commission due to an event or action that prevents its completion.

(9) "Card" means the list of sporting events and types of wager from which a patron can make selections for a given pool.

(10) "Cash" means U.S. currency.

(11) "Cash equivalent" means an asset convertible to cash for use in connection with authorized sports wagering, as follows:

- (a) Traveler's checks;
- (b) Foreign currency and coin;
- (c) Certified checks, cashier's checks, and money orders;
- (d) Personal checks and drafts;
- (e) Digital, crypto, and virtual currencies;
- (f) Online and mobile payment systems that support online money transfers; and
- (g) Electronic devices with prepaid access, as defined by 31 C.F.R. Section 1010.100(ww).

(12) "Confidential information" means:

- (a) The amount of money credited to, debited from, withdrawn from, or present in any particular sports wagering account;
- (b) The amount of money wagered by a particular patron on any event or series of events;

(c) The unique sports wagering account ID or username and authentication credentials that identify the particular account holder;

(d) The identities of particular sporting events or types of wagers on which the patron is wagering or has wagered; and

(e) Unless otherwise authorized by the patron, the name, address, and other information in possession of the licensee that would identify the patron to anyone other than the racing commission or the licensee.

(13) "Communications technology" means the methods used and the components employed to facilitate the transmission of information, such as electronic communications, and transmission and reception systems based on wire, cable, radio, microwave, light, optics, or computer data networks or any similar electronic agent, such as the internet and intranets.

(14) "Critical employee" means any employee whose duties directly impact the integrity of sports wagering in the Commonwealth, including:

(a) An individual who has the capability of affecting the outcome of sports wagering through deployment of code to production for any critical components of a sports wagering system;

(b) An individual who can deploy code to production and directly supervises individuals who have the capability of affecting the outcome of sports wagering in Kentucky through deployment of code to production for other than read-only or the equivalent access to any critical components of a sports wagering system;

(c) An individual who directly manages a licensee or who directly supervises an individual who directly manages a licensee; or

(d) An individual who has the capability to directly affect the outcome of a sports wager or a payout to a patron.

(15) "Data source" means a supplier that sells league or event data, participant, or team statistics necessary to enable sports wagering.

(16) "Department" means Department of Revenue.

(17) "Electronic sports, e-sports, and competitive video game events" or "electronic sporting events" means leagues, competitive circuits, tournaments, or similar competitions where individuals or teams play video games, typically for spectators, either in-person or online, for the purpose of prizes, money, or entertainment.

(18) "Electronic sporting event operator" means a person or entity which sanctions, regulates, or organizes an electronic sporting event.

(19) "Geofence" is defined by KRS 230.210.

(20) "GLI-CMP Guide" means the Gaming Laboratories International, GLI-CMP: Change Management Program Guide, Version 1.0, Published May 6, 2020.

(21) "GLI-33 Standards" means the Gaming Laboratories International, GLI-33: Standards for Event Wagering Systems, Version. 1.1, and its appendices, Revised May 14, 2019.

(22) "Integrity monitoring" means the monitoring of sports wagering to identify abnormal or suspicious wagering activities from a match-fixing and sporting corruption standpoint.

(23) "Internal controls," "minimum internal control standards," or

"control standards" means a system of internal procedures, as well as administrative and accounting controls related to the integrity of sports wagering. This type of system shall include wagering rules and shall be required by the racing commission as a condition to sports wagering, pursuant to the license conditions issued by the racing commission pursuant to KRS 230.290(3).

(24) "Layoff wager" means a wager placed by a licensee with another licensee for the purpose of offsetting sports wagers.

(25) "Licensed premises" is defined in KRS 230.210.

(26) "Licensed facility for sports wagering" is defined in KRS 230.210

(27) "Licensee" means the holder of a sports wagering operator's license or a service provider license, as applicable.

(28) "License holder" means any person who holds a sports wagering operator's license, a service provider license, or an occupational license.

(29) "Mobile sports wagering" means the conduct of sports wagering through or by means of Web sites, mobile applications, or other off-site technology approved by the commission.

(30) "Multi-factor authentication" means a type of authentication which uses two (2) or more of the following to verify a person's identity:

(a) Information known only to the person (e.g., a password, pattern or answers to challenge questions);

(b) An item possessed by a person (e.g., an electronic token, physical token or an identification card); or

(c) A person's biometric data (e.g., fingerprints, facial or voice recognition).

(31) "Operator licensee" or "sports wagering operator" or means a Kentucky racing association licensed to conduct sports wagering pursuant to KRS 230.805.

(32) "Person" is defined by KRS 230.210.

(33) "Personal identifying information" means any sensitive information that could potentially be used to identify a particular patron, such as a legal name, date of birth, place of birth, social security number (or equivalent government identification number), driver's license number, passport number, residential address, phone number, email address, debit instrument number, credit card number, or bank account number.

(34) "Patron" means a person who wagers on sporting events.

(35) "Pool" means an offering where patrons may make selections of outcomes on a set number of sporting events and types of wager on a card in order to enter for a chance to win all or a portion of the prize pool.

(36) "Prize pool" means the prize available for an individual tournament, contest, or pool.

(37) "Prohibited patron" means:

(a) Any underage person;

(b) Any individual wagering while not in the authorized geographic boundaries within the Commonwealth of Kentucky;

(c) Any individual wagering on behalf of another;

(d) Any restricted patron wagering in violation of their restrictions;

(e) Any voluntarily or involuntarily excluded person; or

(f) Any individual wagering in violation of commonwealth, local, or federal law.

(38) "Race and sports book" means the area designated by the licensee and approved by the commission that is utilized as the primary location for displaying sporting events and offering sports wagering on the licensed premises.

(39) "Racing commission" is defined by KRS 230.210.

(40) "Rake" means the fee that is deducted by a licensee from entry fees paid by patrons who participate in a tournament, contest, or pool.

(41) "Rake adjustment" means an adjustment made by a licensee to account for any shortfall in connection with a tournament, contest, or pool.

(42) "Restricted patron" means any patron restricted by KRS 230.820 or 230.823 and close family members of the persons included in KRS 230.823, who are defined as parents, children, grandparents, and siblings.

(43) "Self-exclusion list" means a list of individuals who voluntarily excluded themselves from establishing or maintaining a

sports wagering account with a licensee.

(44) "Sensitive information" means personal identifying information, transactional wagering data, authentication credentials, and other data that shall be handled in a secure manner such as PINs and passwords, and secure seeds and keys used in encryption.

(45) "Service provider" is defined by KRS 230.210.

(46) "Shared liquidity pool" means a tournament, contest, or pool offering in Kentucky and at least one other jurisdiction where patrons may make selections of outcomes on a set number of sporting events and types of wager on a card in order to enter for a chance to win all or a portion of the prize pool.

(47) "Sporting event" is defined by KRS 230.210.

(48) "Sports governing body" is defined by KRS 230.210.

(49) "Sports wagering" is defined by KRS 230.210.

(50) "Sports wagering account" or "account" means an account established by an account holder for use in sports wagering with a specific identifiable record of deposits, wagers, and withdrawals.

(51) "Sports wagering device" is defined by KRS 230.210.

(52) "Sports wagering kiosk" means a sports wagering device within a licensed facility for sports wagering that, at a minimum, may be used for the submission of wagers placed by a patron directly and may be used for redemption of applicable awards or prizes.

(53) "Sports wagering service provider" or "service provider" is defined by KRS 230.210.

(54) "Sports wagering system" means the hardware, software, firmware, communications technology, other equipment, as well as procedures implemented in order to allow patron participation in sports wagering, and, if supported, the corresponding equipment related to the display of the wager outcomes, and other similar information necessary to facilitate patron participation.

(55) "Sports wagering ticket" or "ticket" means a printed record, or digital representation thereof, issued by a sports wagering system that contains information pertaining to a sports wager.

(56) "Sports wagering voucher" or "voucher" means a printed record, or digital representation thereof, issued by a sports wagering system that may be used to fund a sports wager or may be redeemable for cash.

(57) "Sufficient clarity" means the capacity of a surveillance system to record images at a minimum of twenty (20) frames per second or equivalent recording speed, or other recording speed approved by the commission, and at a resolution determined by the racing commission to clearly identify the intended activity, person, object, or location.

(58) "Surveillance operation room(s)" means the secured area(s) where surveillance takes place or where active surveillance equipment is located.

(59) "Surveillance system" means a system of video cameras, monitors, recorders, video printers, switches, selectors, and other equipment used for surveillance.

(60) "Suspicious or illegal wagering activity" means abnormal wagering activity that cannot be explained and is indicative of any prohibited activity or conduct that may corrupt the outcome of an event, including the following:

(a) Match-fixing;

(b) The manipulation of an event;

(c) Misuse of inside information;

(d) A potential breach of a sports governing body's or equivalent's internal rules or code of conduct pertaining to sports wagering; or

(e) Any other conduct that corrupts the outcome of an event.

(61) "Supplier" means a person who provides services, goods, software, or other components necessary for the creation of sports wagering markets and determination of sports wager outcomes, to any licensee involved in the acceptance of sports wagers, such as: providers of data feeds and odds services, internet platform providers, risk management providers, integrity monitoring providers.

(62) "Ticket writer station" means a sports wagering device that at a minimum will be used by a ticket writer for the execution or formalization of wagers placed on behalf of a patron.

(63) "Type of wager" means the form of a wager offered by a licensee, such as single game bets, teaser bets, parlays, over-under

bets, money line bets, pools, in-game wagering, in-play bets, proposition bets, and straight bets.

(64) "Underage person" means any person under eighteen (18) years of age.

(65) "Void wager" or "voided wager" means a sports wager that was not valid at the time it was placed or a sports wager that was valid at the time it was placed but has since become invalid as defined in 809 KAR 10:002, Section 8.

(66) "Voluntarily excluded person" means any individual whose name is included, at their own request, on a self-exclusion list.

(67) "Wager" or "sports wager" means a sum of money or representation of value that is risked on an occurrence for which the outcome is uncertain.

(68) "Wagering windows" means teller windows dedicated to the receipt and processing of sports wagers and pari-mutuel wagers on horse racing in the race and sports book location of a licensed facility for sports wagering.

(69) "Website or mobile application" means a website or application on a mobile phone or other device through which an individual is able to place a sports wager.

(70) "Winnings" means the total cash value of all property or sums, such as the currency or instruments of monetary value paid to a patron by a licensee as a direct result of a winning sports wager.

#### Section 2. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Gaming Laboratories International, GLI-33: Standards for Event Wagering Systems, Version 1.1, and its appendices, May 14, 2019 Revision Date", KHRC 10-001-1, 06/2023; and

(b) "Gaming Laboratories International, GLI-CMP: Change Management Program Guide, Version 1.0, Published May 6, 2020", KHRC 10-001-02, 06/2023.

(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 may also be obtained at the commission's Web site at <http://khrc.ky.gov>.

JONATHAN RABINOWITZ, Chair

RAY PERRY, Secretary

APPROVED BY AGENCY: July 10, 2023

FILED WITH LRC: July 10, 2023 at 4:00 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 Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511. 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: Jennifer Wolsing, General Counsel, Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859) 246-2039, email [jennifer.wolsing@ky.gov](mailto:jennifer.wolsing@ky.gov).

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jennifer Wolsing

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes definitions for terms used in 809 KAR Chapter 10.

(b) The necessity of this administrative regulation: This regulation is necessary to ensure that various terms in 809 KAR Chapter 10 are properly and precisely defined.

(c) How this administrative regulation conforms to the content of

the authorizing statutes: KRS 230.260 requires the commission to promulgate administrative regulations to establish standards for the conduct of sports wagering. This regulation sets forth the defined terms that are used in the regulations in 809 KAR Chapter 10.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation fulfills the commission's statutory mandate to prescribe the conditions under which sports wagering is conducted in the Commonwealth by defining terms used in 809 KAR Chapter 10.

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation affects the licensed tracks that apply for and receive a license to conduct sports wagering in the Commonwealth. There are currently nine (9) licensed tracks operating in the Commonwealth. Each track is allowed to contract with up to three(3) service providers. Therefore, up to 27 service providers may be affected by the definitions in this regulation. Additionally, there are an unknown number of entities and persons who may apply for and receive an occupational license for sports wagering, who may also be affected by the definitions in 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: This amendment establishes definitions only. The regulated entities do not have to take actions to comply with definitions.

(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 costs for compliance with this definitional regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This amendment establishes definitions only. The regulated entities do not have to take actions to comply with definitions.

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

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

(b) On a continuing basis: There will be no continuing cost 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: No funding is necessary to implement and enforce this administrative regulation.

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

(9) TIERING: Is tiering applied? Tiering is not applied, because this administrative regulation will apply to all similarly situated entities in an equal manner.

#### FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Horse Racing Commission 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 230.260(16) authorizes the action taken by this regulation.

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

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

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

(c) How much will it cost to administer this program for the first year? It is estimated that the commission will spend approximately \$2.4 million in the first year to implement sports wagering in Kentucky.

(d) How much will it cost to administer this program for subsequent years? It is further estimated that the commission will spend approximately \$1.2 million annually to continue regulating sports wagering in Kentucky in subsequent years.

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

Revenues (+/-): Neutral.

Expenditures (+/-): Neutral.

Other Explanation: 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 definitional regulation will not generate any cost savings for regulated entities for the first year.

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

(c) How much will it cost the regulated entities for the first year? There will be no cost to the regulated entities for the first year.

(d) How much will it cost the regulated entities for subsequent years? There will be no cost to 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 (+/-): Neutral.

Expenditures (+/-): Neutral.

Other Explanation: N/A

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] This regulation is not anticipated to have a major economic impact on Kentucky for the reasons stated above.

#### STATEMENT OF EMERGENCY 809 KAR 10:002E

This emergency regulatory amendment is promulgated to prevent a loss of state funds that are required to be deposited with the State Treasury pursuant to KRS 230.817, and to meet an imminent deadline for the promulgation of an administrative regulation that is established by state statute. More specifically, this administrative regulation is filed on an emergency basis to ensure: (1) that funds are timely remitted to the State Treasury in accordance with the General Assembly's statutory mandate set out in KRS

230.817; and (2) that a fully functioning sports wagering system is established within six (6) months of the effective date of House Bill 551 (2023 Regular Session), pursuant to the timeline established in KRS 230.361. The Kentucky Horse Racing Commission therefore seeks to implement sports wagering on an emergency basis, in order to comply with the above-referenced statutory requirements. This emergency regulation will be replaced by an ordinary administrative regulation at this time. The ordinary administrative regulation is identical to this emergency administrative regulation.

ANDY BESHEAR, Governor

RAY PERRY, Secretary

#### PUBLIC PROTECTION CABINET Kentucky Horse Racing Commission (New Emergency Administrative Regulation)

#### 809 KAR 10:002E. Standards for sports wagering.

EFFECTIVE: July 10, 2023

RELATES TO: KRS Chapter 230

STATUTORY AUTHORITY: KRS 230.260(16), 230.361, 230.808

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.260 requires the commission to "promulgate administrative regulations to establish standards for the conduct of sports wagering." KRS 230.361 states the "racing commission shall promulgate administrative regulations to establish a fully functioning sports wagering system...." KRS 230.808 lists the categories of sporting events that may be wagered upon and permits a sports governing body to submit a request to the commission to restrict, limit, or exclude a type, form, or category of sports wagering. This administrative regulation establishes standards for sports wagering in Kentucky, including authorized and prohibited sporting events and types of wagers and data sources for sports wagering

Section 1. Authorized and Prohibited Sporting Events and Types of Wagers.

(1) Sporting events that may be wagered upon include those listed in KRS 230.808.

(2) Of those events listed in KRS 230.808, only those categories of sporting events and their types of wager authorized by the racing commission in accordance with Section 2 of this administrative regulation and posted on the racing commission's Web site may be offered for sports wagering by a licensee.

(3) Notwithstanding any contrary provisions of this regulation, any wager which complies with the following criteria and does not involve any criteria listed in subsection (4) of this section is generally approved and does not need specific approval under Section 2 of this administrative regulation prior to being offered by a licensee:

(a) It is decided based on an outcome or outcomes determined because of a sporting event or sporting events sanctioned by a sports governing body or equivalent that is approved by the racing commission;

(b) It is based on statistical results that can be verified by a data source, box score, aggregation of box scores, or other statistical analysis;

(c) It is based on the performance of a single or group of rostered or otherwise registered participants; and

(d) It is based on the result of an outcome on the field of play.

(4) A licensee shall not offer sports wagering on:

(a) Any electronic sporting event that:

1. Is not sanctioned by an approved sports governing body or equivalent; or

2. Has not been approved by the racing commission pursuant to the regulations established in Section 2 of this administrative regulation;

(b) Any occurrence of injuries or penalties;

(c) Any outcome of replay reviews;

(d) Any disciplinary proceedings against a participant in a sporting event;

(e) Any amateur youth sporting events in which the majority of participants are under the age of eighteen (18) or are competing on

behalf of or under the sponsorship of one or more public or private preschools or public or private elementary, middle or junior high, or high schools;

(f) Any sporting event or type of wager in which the outcome has already been determined and is publicly known;

(g) Any dog or horse races; and

(h) Any categories of sporting event or type of wager until the sporting event or type of wager has been approved by the racing commission in accordance with Section 2 of this administrative regulation.

Section 2. Petition for a category of sporting event or type of wager except as provided in Section 1(3) of this administrative regulation, all types of wagers and categories of sporting events shall be reviewed and approved by the racing commission before a Licensee is permitted to offer the wager to the public. A licensee may petition the racing commission for approval of a new category of sporting event or type of wager.

(1) A proposed new sporting event or type of wager may be a variation of an authorized sporting event or type of wager, a composite of authorized sporting events or types of wager, or a new sporting event or type of wager.

(2) A petition for a proposed new sporting event or type of wager shall be in writing and shall include the following information or material as requested by the racing commission:

(a) The name(s) and address(es) of petitioner(s);

(b) The name of the sporting event or type of wager;

(c) Whether the sporting event or type of wager is a variation of an authorized sporting event or type of wager, a composite of authorized sporting events or types of wager, or a new sporting event or type of wager;

(d) The name of the licensee serving as a sponsor of the new sporting event or type of wager variation petition;

(e) A complete and detailed description of the sporting event or type of wager for which approval is sought, including:

1. A summary of the sporting event or type of wager and the manner in which sports wagers would be placed and winning sports wagers would be determined;

2. A draft of the proposed wagering rules, which includes a description of any technology that would be used to offer the sporting event or type of wager;

3. Any rules or voting procedures related to the sporting event or type of wager; and

4. Written attestation that the sporting event or type of wager meets the requirements of subsection (3) of this section;

(f) For the approval of an electronic sporting event, complete information about:

1. The proposed location(s) of the electronic sporting event;

2. The video game used for the electronic sporting event, including the key role of game publishers as creators of the underlying video game;

3. The electronic sporting event operator, whether the electronic sporting event operator is approved to host events by the video game publisher, and whether the electronic sporting event operator has any affiliation with the video game publisher; and

4. The manner in which the electronic sporting event is conducted by the electronic sporting event operator, including electronic sporting event rules; and

5. As required by the commission, certification from a third party, such as an electronic sporting event operator or game publisher certifies that the electronic sporting event meets all event integrity requirements of the racing commission;

(g) The name of the sports governing body or equivalent; and

(h) A description of the licensee's policies and procedures regarding event integrity.

(3) The type of wager being requested shall meet the following criteria before the request may be approved:

(a) The outcome can be verified;

(b) The outcome can be generated by a reliable and independent process;

(c) The sporting event generating the outcome is conducted in a manner that ensures sufficient integrity monitoring controls exist so the outcome can be trusted;

(d) The outcome is not likely to be affected by any sports wager placed; and

(e) The sporting event is conducted in conformity with applicable laws.

(4) The racing commission shall approve types of wagers and categories of sporting events in a reasonable time frame. The racing commission will consider the request, all provided materials and any relevant input from the sports governing body or equivalent, or the conductor of the sporting event, prior to authorizing a sporting event or type of wager.

(5) The racing commission may require an appropriate test or experimental period before granting final approval to a sporting event or type of wager. The racing commission may subject any technology that would be used to offer a sporting event or type of wager to such testing, investigation, and approval.

(6) The racing commission may grant, deny, limit, restrict, or condition a request made pursuant to this procedure for reasonable cause, in order to ensure the integrity of sports wagering in the commonwealth. The racing commission may issue an order revoking, suspending, or modifying any approval of a sporting event or type of wager granted under this procedure for reasonable cause.

(7) The racing commission shall notify all licensees of any additions, deletions, or changes regarding authorized sporting events and types of wager. Once a particular category of sporting event or type of wager is approved for its first use, it may be used on multiple events without further approval. The racing commission may issue general approval for licensees to offer wagers on enumerated categories of sporting events and types of wagers.

(8) The racing commission reserves the right to prohibit the acceptance of any sports wagers and may order the cancellation of sports wagers and require refunds on any sporting event or type of wager for which wagering would be contrary to the public policies of the Commonwealth.

(9) If it is determined that a Licensee has offered an unauthorized or prohibited sporting event or type of wager, the licensee shall immediately cancel and refund all sports wagers associated with the unauthorized or prohibited sporting event or type of wager. The licensee shall notify the racing commission promptly after cancelling and refunding the sports wagers. This notice shall include, without limitation, which sports wagers were cancelled or refunded and the reasons for the cancellations or refund.

(10) The racing commission may use any information it considers appropriate, such as information received from a sports governing body or equivalent, to determine whether to authorize or prohibit wagering on a particular sporting event or type of wager, consistent with industry standards.

(11) The racing commission may restrict, limit, or exclude a certain type, form, or category of sports wagering if the racing commission determines that the restriction, limitation, or exclusion is necessary to ensure the integrity of the licensee.

Section 3. Limitations on Certain Sports Wagering for Good Cause. A sports governing body may submit a request to the racing commission to restrict, limit, or exclude a certain type, form, or category of sports wagering pursuant to KRS 230.808.

(1) The sports governing body shall provide the racing commission with notice of a request to restrict, limit, or exclude a certain type, form, or category of sports wagering, which shall contain information required by the racing commission, including:

(a) The identity of the sports governing body and contact information for at least one specific individual who will be the primary point of contact for questions related to the request;

(b) A description of the sports wagering information, event, or wager type that is the subject of the request; and

(c) Information explaining why granting the request is necessary to protect the integrity of the event, or public confidence in the integrity of the event, that is the subject of the request. This may include information regarding any credible threat to the integrity of the event that is beyond the control of the sports governing body to preemptively remedy or mitigate.

(2) The request shall be sent to the racing commission at least ten (10) calendar days before the particular sporting event. At any time, however, a sports governing body shall report information to

the racing commission if it involves allegations of prohibited activity, such as match-fixing, the manipulation of an event, or misuse of inside information.

(3) The racing commission shall request comment from licensees on all requests made under subsection (1) of this section. The request for comment shall include the date by which written comments shall be submitted to the racing commission.

(4) The racing commission shall grant or deny the request pursuant to the criteria established in KRS 230.808.

(5) The racing commission may provisionally grant the request pursuant to the criteria established in KRS 230.808.

(6) The racing commission may reconsider its decision if there is a material change in the circumstances related to the original request.

Section 4. Data Sources for Sports Wagering. A licensee shall report to the racing commission in its sports wagering license application the data source that it uses to resolve sports wagers. The racing commission may disapprove of a data source for any reason in the best interest of sports wagering integrity.

(1) The data source and corresponding data shall be complete, accurate, reliable, timely, and available.

(2) The data source shall be appropriate to settle the category of sporting events and types of wagers for which it is used.

Section 5. Wagering Rules. The licensee shall adopt comprehensive wagering rules, which shall be approved by the racing commission.

(1) The wagering rules shall be conspicuously displayed on the licensee's Web site or mobile application and within the race and sports book location, and copies shall be made readily available to individuals and patrons. Licensees may elect to display copies of comprehensive wagering rules solely in electronic form on sports wagering kiosks, provided such licensees display commission-approved short-form house rules in race and sports book locations.

(2) The wagering rules shall comply with GLI-33 Standards and shall specify the amount to be paid on winning wagers and the effect of schedule changes.

(3) The licensee shall not implement any changes or modifications of the practices, procedures, or representations upon which the approval of wagering rules was based without the prior approval of the racing commission. Failure by a licensee to act in accordance with its approved wagering rules may result in disciplinary action.

#### Section 6. Tournaments, Contests, and Pools.

(1) No sports wagering tournament, contest, or pool shall be conducted unless the Licensee, before the first time a tournament, contest, or pool type is offered, files written notice with the racing commission of its intent to offer that tournament, contest, or pool type and obtains approval from the racing commission. The licensee may file a master list with the racing commission to satisfy this requirement.

(2) The request shall provide a detailed description of the tournament, contest, or pool type and shall include the rules of the tournament, contest, or pool, the requirements for entry, the entry fees, the rake, and potential payouts. The request shall also indicate whether the proposed type involves a shared liquidity pool available to patrons in Kentucky and other jurisdictions with the prize pool being comprised of entry fees collected from patrons in multiple jurisdictions.

(3) The request shall be submitted to the commission in writing via electronic mail and in hard copy. All such requests shall be submitted at least ten (10) business days prior to start date of the tournament, contest, or pool.

(4) Once a licensee receives approval to offer a tournament, contest, or pool type the licensee shall not be required to seek additional approvals from the racing commission for each subsequent type that has only minor variations, such as to the size, number of entries permitted, entry fee, rake, or prize structure.

(5) Each licensee shall maintain a record of each tournament, contest, or pool it offers for five (5) years. These records shall include the following:

- (a) Name or identification of the tournament, contest, or pool;
- (b) The date and time the tournament, contest, or pool occurred or will occur (if known);
- (c) Sporting events and types of wager;
- (d) Rules concerning tournament, contest, or pool play and participation; and
- (e) For each patron:
  - 1. Unique patron identification;
  - 2. Amount of entry fee collected, including any promotional or bonus credits, and the date collected;
  - 3. Patron scorings or rankings; and
  - 4. Amount of payouts paid, including any promotional or bonus credits, and the date paid;
- (f) Total amount of entry fees collected, including any promotional or bonus credits;
- (g) Total amount of payouts paid to patrons, including any promotional or bonus credits;
- (h) Total rake, takeout, or fees collected;
- (i) Funding source amount or amounts comprising the prize pool, such as buy-ins, re-buys, or add-ons;
- (j) Prize structure on payout;
- (k) Methodology for determining winner or winners; and
- (l) The current status of the tournament, contest, or pool, such as whether the event is in-progress, complete, interrupted, cancelled.

(6) The licensee shall be responsible for the rake. At no time shall the calculation resulting from a rake or rake adjustment be negative.

(7) For a contest, tournament, or pool which utilizes shared liquidity available to patrons in Kentucky and other jurisdictions, the rake rate shall be the same for all jurisdictions participating.

#### Section 7. Acceptance of Wagers.

(1) A licensee shall comply with GLI-33 Standards when accepting wagers.

(2) A licensee shall not set lines or odds or offer wagering propositions designed for the purposes of ensuring that a patron will win a sports wager or a series of sports wagers, unless the lines, odds, or wagering propositions are offered in connection with a promotion or bonus conducted in accordance with Section 9 of this administrative regulation.

(3) A Licensee shall not accept a sports wager on a sporting event unless a wagering proposition is posted by electronic or manual means.

(4) Sports wagers may only be made by patrons using forms of payment approved by the racing commission including the following:

- (a) Cash;
- (b) Cash equivalents converted to cash;
- (c) Credit or debit cards;
- (d) Electronic funds transfers (EFTs) including automated clearing house and other electronic methods;
- (e) Promotional or bonus credit;
- (f) Winning sports wagering tickets or vouchers; and
- (g) Funds within a sports wagering account.

(5) The licensee shall debit the amount wagered by a patron from their sports wagering account. Wagers shall not be accepted in an amount in excess of a sports wagering account balance.

(6) No licensee shall accept a sports wager from a person on the sports wagering account of or for any other person.

(7) The licensee shall operate and communicate with the sports wagering system in a way that does not provide or facilitate a wagering advantage based on access to information and processing of mobile sports wagers by account holders relative to patrons who wager at a licensed premises.

Section 8. Cancelled or Voided Wagers. Wagers shall not be cancelled or voided without prior approval of the commission, unless the wagers are cancelled or voided by an authorized supervisory employee of the licensee, in accordance with GLI-33 standards and this section.

(1) Cancellation of an otherwise validly placed sports wager by a licensee shall be nondiscretionary. A licensee may cancel or void a sports wager without prior authorization of the racing commission

only under the following circumstances:

(a) Any sports wager where after a patron has placed a sports wager, the sporting event is cancelled, postponed or rescheduled to a different date prior to completion of the sporting event;

1. In the case of a sports wager on a portion of a sporting event, that wager shall be valid when the event is canceled, postponed, or rescheduled if the outcome of the affected portion was determined prior to the cancellation, postponement or rescheduling; or

2. A licensee may establish a timeframe in which an event may be rescheduled or postponed without canceling the sports wager. This timeframe shall be tied to specific sporting events, subject to the approval of the racing commission, and documented in the internal controls;

(b) A change in the venue where a sporting event was scheduled to be held occurs after a patron has placed a sports wager and the licensee cancels or voids the sports wager prior to the commencement of the sporting event;

(c) Any sports wager when an individual participant fails to participate in a sporting event and the outcome of the wager is solely based upon that individual participant's performance;

(d) Any sports wager received for an act, or set of acts, to be performed during a sporting event when such act or acts does not occur and the ability to wager on the non-occurrence of the event was not offered;

(e) Any wager received on whether a team will qualify to participate in post-season competitions when the number of teams allowed to participate in the post-season changes after a patron has placed a wager;

(f) Changes to rules are made by a sports governing body or equivalent regarding the format or number of participants scheduled to participate in a defined phase of a sporting event or that particular phase is not played at all;

(g) Where the licensee has reasonable basis to believe there was an obvious error in the placement or acceptance of the wager, including:

1. The wager was placed with incorrect odds;
2. Human error in the placement of the wager; or
3. Any other obvious error specifically defined in the licensee's internal controls.

(h) When a patron requests a sports wager be cancelled or voided prior to the commencement of the sporting event due to an error in communicating the type, amount or parameters of the sports wager; or

(i) When authorized or ordered by the racing commission pursuant to this section.

(2) A licensee may cancel or void at sports wager for a material change in circumstances for a given sporting event or type of wager occurs, provided:

- (a) The racing commission approves the material change;
- (b) The licensee documents the material change in its internal controls; and

(c) The licensee displays the material change to a patron at the time of placement of the sports wager;

(3) For all circumstances that are not established in subsection (1), a licensee may request the racing commission authorize the cancellation or voiding of all sports wagers of a specific type, kind, or subject. A licensee shall submit its request to cancel or void the sports wager in writing, and such request shall contain the following:

(a) A description of the type, kind, or subject of sports wager the licensee is requesting to cancel or void;

(b) A description of any facts relevant to the request; and

(c) An explanation why cancelling or voiding the sports wager is in the best interests of the Commonwealth or ensures the integrity of the sports wagering industry.

(4) The racing commission shall issue a written order granting or denying the request to cancel or void the sports wager. In determining whether to grant or deny the request, the racing commission shall consider at least the following factors:

(a) Whether the alleged facts implicate the integrity of the sporting event subject to the wager or the sports wagering industry;

(b) Whether the alleged facts implicate possible illegal activity relating to the sporting event or the sports wagering industry;

(c) Whether allowing the wager would be unfair to patrons; or

(d) Whether allowing the wager is contrary to public policy.

(5) No sports wager subject to the request to cancel or void shall be redeemed, cancelled, or voided, until the racing commission or its designee issues an order granting the request to cancel.

(6) If the racing commission or its designee grants the request to cancel or void, the licensee shall make commercially and technologically reasonable efforts to notify patrons of the cancellation or voiding of the sports wager.

(7) The racing commission or its designee has discretion to order all licensees to cancel or void all wagers on a specific sporting event or wagers of a specific type or kind on a specific sporting event. In exercising its discretion, the racing commission shall apply the same factors described in subsection (1).

(8) A patron may request the racing commission or its designee review any sports wager declared cancelled or voided by a licensee. If the racing commission or its designee concludes there is no reasonable basis to believe there was obvious error in the placement or acceptance of the sports wager, the racing commission or its designee may order the licensee to honor the sports wager.

(9) A sports wager shall not be declared canceled or voided without the approval of an authorized supervisory employee of the licensee pursuant to the licensee's internal controls, unless the racing commission or its designee has issued an order requiring the sports wager to be canceled or voided.

(10) If a sports wager is declared canceled or voided, the sports wager shall be refunded to the patron and that amount shall be deducted from the adjusted gross revenue.

Section 9. Promotional or Bonus Wagering. A licensee may conduct sports wagering promotions or bonuses in accordance with this section:

(1) Procedures for the issuance, acceptance, and tracking of promotions or bonuses shall be defined in the licensee's internal controls.

(2) A licensee shall maintain a record of all promotions or bonuses related to sports wagering to facilitate the racing commission's tracking of promotional or bonus activity, which shall address the following:

- (a) Unique ID for each promotion or bonus;
- (b) The date and time the promotion or bonus was or is scheduled to be available;
- (c) Current balance for promotional or bonus awards;
- (d) Total amount of promotional or bonus awards issued;
- (e) Total amount of promotional or bonus awards redeemed;
- (f) Total amount of promotional or bonus awards expired;
- (g) Total amount of promotional or bonus award adjustments;
- (h) The current status of the promotion or bonus (active, disabled, decommissioned, etc.); and
- (i) The date and time the promotion or bonus was or is scheduled to be decommissioned.

(3) All promotion or bonus rules shall be full, accurate, concise, transparent, and shall not contain misleading information. Promotion or bonus rules shall be readily accessible by the patron and provide unambiguous notice of the:

- (a) Date and time the promotion or bonus is active and expires;
- (b) Rules of play;
- (c) Nature and value of prizes or awards;
- (d) Eligibility restrictions or limitations;
- (e) Wagering and redemption requirements, which shall include a description of any limitations on such;
- (f) How the patron is notified when they have received an award;
- (g) Order in which funds are used for wagers;
- (h) Eligible events or wagers; and
- (i) Cancellation requirements.

(4) Promotions or bonuses shall not be described as free or risk-free if those promotions or bonuses require the patron to incur any loss or risk the patron's own money to use or withdraw winnings from the free wager;

(5) A licensee shall provide a clear and conspicuous method for a patron to cancel their participation in a promotion or bonus that utilizes restricted wagering credits that cannot be cashed out until a wagering requirement or other restriction associated with the credits is met:

(a) Upon request for cancellation, the licensee shall inform the patron of the amount of unrestricted funds that will be returned upon cancellation and the value of restricted wagering credits that will be removed from the sports wagering account; and

(b) If a patron elects to proceed with cancellation, unrestricted funds remaining in a patron's sports wagering account shall be returned according to the rules of a promotion or bonus.

(6) Once a patron has met the terms of a promotion or bonus, a licensee shall not limit winnings earned while participating in the promotion or bonus.

JONATHAN RABINOWITZ, Chair

RAY PERRY, Secretary

APPROVED BY AGENCY: July 10, 2023

FILED WITH LRC: July 10, 2023 at 4:00 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 Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511. 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:** Jennifer Wolsing, General Counsel, Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859) 246-2039, email jennifer.wolsing@ky.gov.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jennifer Wolsing

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation specifies standards for sports wagering in Kentucky related to authorized and prohibited sporting events, types of wagers, and data sources for sports wagering.

(b) The necessity of this administrative regulation: This regulation is necessary to establish standards for sports wagering in Kentucky, including authorized and prohibited sporting events and types of wagers and data sources for sports wagering.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.260 requires the commission to "promulgate administrative regulations to establish standards for the conduct of sports wagering." KRS 230.361 states the "racing commission shall promulgate administrative regulations to establish a fully functioning sports wagering system...." KRS 230.808 lists the categories of sporting events that may be wagered upon and permits a sports governing body to submit a request to the commission to restrict, limit, or exclude a type, form, or category of sports wagering.

(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 the statutes by establishing standards for sports wagering in Kentucky, including authorized and prohibited sporting events and types of wagers and data sources for sports wagering.

(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 regulation. KRS 230.361 states the "racing commission shall promulgate administrative regulations to establish a fully functioning sports wagering system" KRS 230.808 lists the categories of sporting events that may be wagered upon and permits a sports governing body to submit a request to the commission to restrict, limit, or exclude a type, form, or category of sports wagering.

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

prohibited sporting events and types of wagers and data sources for sports wagering.

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation affects the licensed tracks that apply for and receive a license to conduct sports wagering in the Commonwealth. There are currently nine (9) licensed tracks operating in the Commonwealth. Each track is allowed to contract with up to three (3) service providers. Therefore, up to 27 service providers may be affected by this regulation. Additionally, there are an unknown number of patrons who will choose to engage in sports wagering. Sports Governing Bodies also may be affected 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: Licensed tracks and service providers offering sports wagering must observe the regulatory requirements when offering wagers. Sports Governing Bodies must follow the regulatory requirements to request to restrict, limit, or exclude a certain type, form, or category of sports wagering.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Compliance costs are uncertain, but licensed tracks and service providers offering sports wagering are likely to incur costs to comply with the regulations. Sports Governing Bodies may incur costs to comply with this regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Licensed tracks and service providers will benefit from having clear standards for sports wagering. Kentuckians will benefit from the effective administration of sports wagering. Sports Governing Bodies will have the opportunity to request the commission restrict certain types, forms, or categories of sports wagering.

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

(a) Initially: It is estimated that the commission will spend approximately \$2.4 million to implement sports wagering in Kentucky in the first year.

(b) On a continuing basis: It is further estimated that the commission will spend approximately \$1.2 million annually to continue regulating sports wagering in Kentucky on a yearly basis. wagering administrative fund, as established in KRS 230.817.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The funding to implement and enforce sports wagering in Kentucky will come from the sports wagering administrative fund, as established in KRS 230.817.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied, because this amended regulation will apply similarly to all similarly situated entities in an equal manner.

#### FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Horse Racing Commission 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 230.260(16), KRS 230.361, and KRS 230.808 require

or authorize the actions taken by this regulation.

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

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

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

(c) How much will it cost to administer this program for the first year? It is estimated that the commission will spend approximately \$2.4 million in the first year to implement sports wagering in Kentucky.

(d) How much will it cost to administer this program for subsequent years? It is further estimated that the commission will spend approximately \$1.2 million annually to continue regulating sports wagering in Kentucky in subsequent years.

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

Revenues (+/-): Neutral.

Expenditures (+/-): See answers to (c) and (d) above.

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 regulation is not expected to generate cost savings for the first year.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? Licensed tracks and service providers offering sports wagering and Sports Governing Bodies may incur costs to ensure compliance with the regulations.

(c) How much will it cost the regulated entities for the first year? Licensed tracks and service providers offering sports wagering and Sports Governing Bodies may incur costs to ensure compliance with the regulations.

(d) How much will it cost the regulated entities for subsequent years? Licensed tracks and service providers offering sports wagering and Sports Governing Bodies may incur costs to ensure compliance with the regulations.

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

Cost Savings (+/-): \$0.00

Expenditures (+/-): Licensed tracks and service providers offering sports wagering and Sports Governing Bodies may incur costs to ensure compliance with regulations.

(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 is not anticipated to have a major economic impact on Kentucky for the reasons stated above.

#### STATEMENT OF EMERGENCY 809 KAR 10:003E

This emergency regulatory amendment is promulgated to prevent a loss of state funds that are required to be deposited with the State Treasury pursuant to KRS 230.817, and to meet an imminent deadline for the promulgation of an administrative regulation that is established by state statute. More specifically, this administrative regulation is filed on an emergency basis to ensure: (1) that funds are timely remitted to the State Treasury in accordance with the General Assembly's statutory mandate set out in KRS

230.817; and (2) that a fully functioning sports wagering system is established within six (6) months of the effective date of House Bill 551 (2023 Regular Session), pursuant to the timeline established in KRS 230.361. The Kentucky Horse Racing Commission therefore seeks to implement sports wagering on an emergency basis, in order to comply with the above-referenced statutory requirements. This emergency regulation will be replaced by an ordinary administrative regulation at this time. The ordinary administrative regulation is identical to this emergency administrative regulation.

ANDY BESHEAR, Governor  
RAY PERRY, Secretary

#### PUBLIC PROTECTION CABINET Kentucky Horse Racing Commission (New Emergency Administrative Regulation)

#### 809 KAR 10:003E. Technical requirements and oversight.

EFFECTIVE: July 10, 2023

RELATES TO: KRS Chapter 230

STATUTORY AUTHORITY: KRS 230.260(16), 230.805, 230.811(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.260(16)(a) requires the racing commission to promulgate regulations to establish standards related to sports wagering, including standards for "maintaining and auditing books and financial records, securely maintaining records of bets and wagers, integrity requirements for sports wagering and related data, ... surveillance and monitoring systems, and other reasonable technical criteria related to conducting sports wagering." KRS 230.811(2) requires tracks and service providers to "comply with the standards established by the racing commission. ... to ensure the integrity of the system of sports wagering." KRS 230.805 establishes requirements for geolocation, technology, and servers. This administrative regulation establishes the technical standards for sports wagering technology within the state, establish testing procedures, as well the handling of changes in sports wagering technology.

Section 1. Sports Wagering Standards. A licensee shall use a sports wagering system to offer, conduct, or operate sports wagering in accordance with applicable laws and these regulations. Only an approved licensee may process, accept, offer, or solicit sports wagers.

(1) The licensee shall operate in conformity with the license conditions issued by the racing commission pursuant to KRS 230.290(3) and GLI-33 Standards.

(2) A sports wagering system shall meet the specifications established in subsection (1) of this section and these regulations. Failure to comply with the approved specifications, internal controls, or technical specifications may result in disciplinary action by the racing commission.

Section 2. Testing and Certification of Sports Wagering System. Prior to conducting sports wagering, and annually thereafter, the sports wagering system utilized by the licensee shall be submitted to a nationally recognized, independent testing laboratory approved by the racing commission for certification testing. Certification and racing commission approval shall be received prior to the use of any sports wagering system to conduct sports wagering. The licensee is responsible for all costs associated with testing and obtaining such certifications.

(1) To obtain a temporary license, a licensee may submit to the racing commission a certification report of an independent testing laboratory of a system in operation in another jurisdiction in the United States where the licensee is currently licensed or permitted. The report must certify the system to either the GLI-33 Standards or, at the discretion of the racing commission, a standard deemed to be the equivalent of the GLI-33 Standards. This alternative certification report must include a list of all critical files and associated signatures and an appendix which lists the differences of any controlled items or processes required to be certified in Kentucky which were not

certified in the jurisdiction in which the report was issued. Upon review of the certification report, the racing commission will make a determination on whether to accept the certification or require additional information or documentation or testing.

(2) Unless otherwise authorized by the racing commission, the independent testing laboratory shall be provided access to the sports wagering system's controlled software source code along with the means to verify compilation of such source code. The result of the compiled source code shall be identical to that in the software submitted for evaluation.

(3) If the sports wagering system meets or exceeds the GLI-33 Standards and the commission's regulatory requirements in KAR Title 809, the independent testing laboratory approved by the racing commission shall certify the sports wagering system. Licensees are prohibited from offering sports wagering in Kentucky without such certification.

**Section 3. Integration Requirements.** The licensee shall be responsible for sports wagering offered by the licensee through other service providers and suppliers, and other licensees where applicable.

(1) The servers and equipment of service providers and suppliers will be considered part of the licensee's sports wagering system and shall comply with these regulations.

(2) The licensee shall guarantee that any integration with the servers and other equipment of another licensee is completed in a way that complies with these regulations.

(3) An independent testing laboratory shall conduct integration testing and certification for each server and other equipment with the licensee's sports wagering system prior to its deployment and as requested by the racing commission.

**Section 4. Change Management Processes.** The licensee shall submit change management processes to the racing commission for approval. The change management processes shall detail evaluation procedures for identifying the criticality of updates and determining which updates shall be submitted to the approved independent testing laboratory for review and certification.

(1) These change management processes shall be:

(a) Developed in accordance with the Kentucky Horse Racing Commission license conditions issued by the commission pursuant to KRS 230.290(3) and the GLI-CMP Guide;

(b) Approved by the racing commission prior to its deployment; and

(c) Available for audit by the racing commission or its designee at any time.

(2) Quarterly change reports shall be issued to the racing commission for review to ensure risk is being assessed according to the change management processes and all documentation for all changes to the critical components are complete.

(3) At least once annually, each product operating under the approved change management processes shall be fully certified to the specifications established in these regulations and other technical specifications as prescribed by the racing commission and accompanied by formal certification documentation from an independent testing laboratory. The licensee shall be allowed to seek approval for extension beyond the annual approval if hardship can be demonstrated. Granting of a hardship waiver is the sole discretion of the racing commission, upon written proof of good cause by the licensee.

**Section 5. Geolocation Requirements.** Mobile sports wagers shall be initiated, received, and otherwise placed in the authorized geographic boundaries within the Commonwealth of Kentucky.

(1) The geographic boundaries shall be approved by the racing commission.

(2) The licensee shall use geolocation or geofencing technology pursuant to KRS 230.805 and to monitor and block unauthorized attempts to place sports wagers when an individual or patron is physically outside the authorized geographic boundaries within the Commonwealth of Kentucky at the time the sports wager is placed.

(3) The licensee shall trigger:

(a) A geolocation check prior to the placement of the first wager after login or upon a change of IP address;

(b) Recurring periodic geolocation checks as follows:

1. For static connections, at least every twenty (20) minutes or five (5) minutes if within one (1) mile of the border; and

2. For mobile connections, at intervals to be based on a patron's proximity to the border with an assumed travel velocity of seventy (70) miles per hour or a demonstrated average velocity of a roadway/path, not to exceed twenty (20) minutes.

(4) Mechanisms shall be in place to detect software, programs, virtualization, and other technology that may obscure or falsify the patron's physical location for the purpose of placing sports wagers.

(5) The geolocation services used by the licensee shall be certified by the approved independent testing laboratory, including, without limitation, applicable field testing as authorized by the commission, before its deployment.

(6) The racing commission may enter into agreements with other jurisdictions or entities to facilitate, administer, and regulate multi-jurisdictional sports wagering by licensees pursuant to KRS 230.805.

**Section 6. Data Security.** A licensee's data security policies shall comply with KRS 230.805. Nothing in this section shall preclude the use of internet or cloud-based hosting of such data and information or disclosure as required by Commonwealth or federal law or a court order.

**Section 7. Location of Servers, Security, and Cloud Storage.** A licensee shall maintain in secure locations in the Commonwealth its primary servers used to transmit information for purposes of accepting or settling of wagers on a sporting event placed by patrons in the Commonwealth.

(1) The location of all other technology and servers used by a licensee in connection with sports wagering shall be approved by the racing commission and shall be accessible by the racing commission.

(2) The racing commission may approve of the use of internet or cloud-based hosting of duplicate data or data not related to transactional wagering data upon written request of a licensee.

**Section 8. Integrity and Security Assessments.** Each licensee shall run integrity and security assessments that comply with GLI-33 Standards.

(1) Each licensee shall, within ninety (90) calendar days after commencing operations in Kentucky, and annually thereafter, have integrity and security assessments of the sports wagering system conducted by a third-party contractor experienced in security procedures, including, without limitation, computer security and systems security. The third-party contractor shall be selected by the licensee and shall be subject to approval of the racing commission. Such integrity and security assessments shall include a review of the following:

(a) Network vulnerability;

(b) Application vulnerability;

(c) Application code;

(d) Wireless security;

(e) Security policy and processes;

(f) Security and privacy program management;

(g) Technology infrastructure and security controls;

(h) Security organization and governance; and

(i) Operational effectiveness.

(2) The scope of the integrity and security assessments is subject to approval of the racing commission and shall include the following:

(a) A vulnerability assessment of all digital platforms, Web sites, mobile applications, internal, external, and wireless networks with the intent of identifying vulnerabilities of all devices, the sports wagering systems, and applications transferring, storing, or processing Personally Identifiable Information or other sensitive information connected to or present on the networks;

(b) A penetration test of all digital platforms, Web sites, mobile applications, internal, external, and wireless networks to confirm if identified vulnerabilities of all devices, the sports wagering systems,

and applications are susceptible to compromise;

(c) A review of the firewall rules to verify the operating condition of the firewall and the effectiveness of its security configuration and rule sets performed on all of the perimeter firewalls and the internal firewalls;

(d) A security control assessment conducted in accordance with the provisions outlined in the racing commission's regulations, including the technical security controls specified within the GLI-33 Standards, and with generally accepted professional standards approved by the racing commission.

(e) If a cloud service provider is in use, an assessment performed on the access controls, account management, logging and monitoring, and over security configurations of their cloud tenant; and

(f) An evaluation of information security services, payment services such as financial institutions and payment processors, geolocation services, and any other services which may be offered directly by the sports wagering licensee or involve the use of service providers.

(3) To qualify as a third-party contractor, the third-party contractor shall demonstrate to the commission's satisfaction, at minimum, the following qualifications:

(a) Relevant education background or in other ways provide relevant qualifications in assessing sports wagering systems;

(b) Certifications sufficient to demonstrate proficiency and expertise as a network penetration tester by recognized certification boards, either nationally or internationally; and

(c) At least three (3) years' experience performing integrity and security assessments on sports wagering systems; and

(4) The third-party contractor's full security audit report containing the overall evaluation of sports wagering in terms of each aspect of security shall be provided to the racing commission no later than thirty (30) calendar days after the assessment is conducted and shall include the following:

(a) Scope of review;

(b) Name and company affiliation, contact information, and qualifications of the individual or individuals who conducted the assessment;

(c) Date of assessment;

(d) Findings;

(e) Recommended corrective action, if applicable; and

(f) The licensee's response to the findings and recommended corrective action.

(5) It is acceptable to reuse the results of prior assessments within the past year conducted by the same third-party contractor when the testing was conducted pursuant to accepted industry standards as approved by the commission, such as International Organization for Standardization ("ISO")/International Electrotechnical Commission ("IEC") standards, the NIST Cybersecurity Framework ("CSF"), the Payment Card Industry Data Security Standards ("PCI-DSS"), or the equivalent. Such reuse shall be noted in the third-party contractor's security audit report. This reuse option does not include any critical components of a sports wagering system unique to the Commonwealth which will require fresh assessments.

(6) If the third-party contractor's security audit report recommends corrective action, the licensee shall provide the racing commission with a remediation plan and any risk mitigation plans which detail the Licensee's actions and schedule to implement the corrective action.

(a) The remediation and risk mediation plans shall be presented within a time period prescribed by the racing commission, which shall be based on at least the following factors:

1. The severity of the problem to be corrected;

2. The complexity of the problem to be corrected; and

3. The risks associated with the problem to be corrected.

(b) The commission may require suspension of operations until implementation of any critical corrective action(s).

(c) Once the corrective action has been taken, the licensee shall provide the racing commission with documentation evidencing completion.

Section 9. Quarterly Vulnerability Scans. Internal and external

network vulnerability scans shall be run at least quarterly and after any significant change to the sports wagering system or network infrastructure.

(1) Testing procedures shall include protocol verifying that four (4) quarterly internal and external scans took place in the past twelve (12) months and that re-scans occurred until all "Medium Risk" (CVSS 4.0 or Higher) vulnerabilities were resolved or accepted via a formal risk acceptance program approved by the racing commission. Internal scans should be performed from an authenticated scan perspective. External scans can be performed from an uncredentialed perspective.

(2) The quarterly scans can be performed by either a qualified employee of the licensee or a qualified third-party contractor selected by the licensee and subject to approval of the racing commission.

(3) Verification of scans shall be submitted to the racing commission on a quarterly basis and within thirty (30) calendar days of running the scan. The scan verifications shall include a remediation plan and any risk mitigation plans for those vulnerabilities not able to be resolved. The commission may impose disciplinary action in the event of critical unresolved vulnerabilities or vulnerabilities that continue unabated.

JONATHAN RABINOWITZ, Chair

RAY PERRY, Secretary

APPROVED BY AGENCY: July 10, 2023

FILED WITH LRC: July 10, 2023 at 4:00 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 Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511. 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:** Jennifer Wolsing, General Counsel, Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859) 246-2039, email jennifer.wolsing@ky.gov.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jennifer Wolsing

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes technical standards for sports wagering systems and establishes testing procedures to ensure the integrity of the systems.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish technical standards for sports wagering systems in the Commonwealth of Kentucky and a process by which the systems can be tested and certified by independent laboratories.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.260(16)(a) requires the racing commission to promulgate regulations to establish standards related to sports wagering, including standards for "maintaining and auditing books and financial records, securely maintaining records of bets and wagers, integrity requirements for sports wagering and related data, surveillance and monitoring systems, and other reasonable technical criteria related to conducting sports wagering." KRS 230.811(2) requires tracks and service providers to "comply with the standards established by the racing commission to ensure the integrity of the system of sports wagering." KRS 230.805(g) establishes requirements for geolocation, technology, and servers.

(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 the statutes by establishing standards for sports wagering in Kentucky, including technical standards for sports wagering systems.

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation affects the licensed tracks that apply for and receive a license to conduct sports wagering in the Commonwealth. There are currently nine (9) licensed tracks operating in the Commonwealth. Each track is allowed to contract with up to three (3) service providers. Therefore, up to 27 service providers may be affected by this regulation. Independent testing labs that certify these systems will be impacted by this regulation. Additionally, there is an unknown number of patrons who will choose to engage in sports wagering.

(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 tracks and service providers offering sports wagering must observe the regulatory requirements when offering wagers. Independent testing labs must certify that sports wagering systems comply with the technical standards of this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Compliance costs are uncertain, but licensed tracks and service providers offering sports wagering are likely to incur costs to comply with the regulations, including the cost of paying independent labs to certify their systems.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Licensed tracks, independent testing laboratories, and service providers will benefit from having clear standards for sports wagering. Kentuckians will benefit from the effective administration of sports wagering.

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

(a) Initially: It is estimated that the commission will spend approximately \$2.4 million to implement sports wagering in Kentucky in the first year.

(b) On a continuing basis: It is further estimated that the commission will spend approximately \$1.2 million annually to continue regulating sports wagering in Kentucky on a yearly basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The funding to implement and enforce sports wagering in Kentucky will come from the sports wagering administrative fund, as established in KRS 230.817. The service providers will be required to pay the labs to test and certify their systems.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied, because this amended regulation will apply similarly to all similarly situated entities in an equal manner.

## FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Horse Racing Commission 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 230.260(16), KRS 230.805, and KRS 230.811(2) authorize the actions taken by this regulation.

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

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

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

(c) How much will it cost to administer this program for the first year? It is estimated that the commission will spend approximately \$2.4 million in the first year to implement sports wagering in Kentucky.

(d) How much will it cost to administer this program for subsequent years? It is further estimated that the commission will spend approximately \$1.2 million annually to continue regulating sports wagering in Kentucky in subsequent years.

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

Revenues (+/-): Neutral

Expenditures (+/-): Neutral

Other Explanation: N/A

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

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

(c) How much will it cost the regulated entities for the first year? In the first year, licensed tracks offering sports wagering and service providers will likely incur costs to have their systems tested and certified by independent labs. Licensed tracks and service providers may incur additional costs to ensure compliance with the regulations.

(d) How much will it cost the regulated entities for subsequent years? In subsequent years, service providers will likely incur costs to have their systems tested and certified by independent labs. Licensed tracks and service providers offering sports wagering may incur additional costs to ensure compliance with the regulations.

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

Cost Savings (+/-): None.

Expenditures (+/-): Expenditures are uncertain. See (c) and (d) above.

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 is not anticipated to have a major economic impact on Kentucky for the reasons stated above.

**STATEMENT OF EMERGENCY  
809 KAR 10:004E**

This emergency regulatory amendment is promulgated to prevent a loss of state funds that are required to be deposited with the State Treasury pursuant to KRS 230.817, and to meet an imminent deadline for the promulgation of an administrative regulation that is established by state statute. More specifically, this administrative regulation is filed on an emergency basis to ensure: (1) that funds are timely remitted to the State Treasury in accordance with the General Assembly's statutory mandate set out in KRS 230.817; and (2) that a fully functioning sports wagering system is established within six (6) months of the effective date of House Bill 551 (2023 Regular Session), pursuant to the timeline established in KRS 230.361. The Kentucky Horse Racing Commission therefore seeks to implement sports wagering on an emergency basis, in order to comply with the above-referenced statutory requirements. This emergency regulation will be replaced by an ordinary administrative regulation at this time. The ordinary administrative regulation is identical to this emergency administrative regulation.

ANDY BESHEAR, Governor  
RAY PERRY, Secretary

**PUBLIC PROTECTION CABINET  
Kentucky Horse Racing Commission  
(New Emergency Administrative Regulation)**

**809 KAR 10:004E. Sports wagering accounts.**

EFFECTIVE: July 10, 2023

RELATES TO: KRS Chapter 230

STATUTORY AUTHORITY: KRS 230.260(16), 230.361(2), 230.805

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.260 requires the commission to "promulgate administrative regulations to establish standards for the conduct of sports wagering." KRS 230.361(2) requires the commission to "promulgate administrative regulations governing and regulating sports wagering, including administrative regulations for the deposit of funds by credit or debit cards or other means of electronic funds transfer." KRS 230.805(3) establishes additional requirements for registration of sports wagering patrons' accounts, such as account registration and wager placement. This administrative regulation establishes sports wagering account requirements, dormant and closed account requirements, and responsible gaming limits.

Section 1. Sports Wagering Account Requirements. Patrons shall register their sports wagering accounts with the licensee pursuant to KRS 230.805. Licensees shall adopt account registration policies pursuant to KRS 230.805. All account registration policies shall be subject to approval by the commission. Nothing in this section shall be interpreted to prohibit the licensee from accepting anonymous wagers by a sports wagering device within the licensed premises.

(1) An account shall only be established in the name of an account holder who is a natural person and shall not be in the name of any beneficiary, custodian, joint trust, corporation, partnership, or any other entity.

(2) A licensee shall collect the following personally identifiable information from each account holder through the sports wagering system:

(a) The account holder's full legal name;

(b) The account holder's date of birth;

(c) The account holder's Social Security number, or the last four (4) digits of the Social Security number, or an equivalent government identification number for a noncitizen, such as a passport or taxpayer identification number; and

(d) All data required by KRS 230.805.

(3) During the sports wagering account registration process, the licensee shall:

(a) Deny patrons the ability to register for account if they submit a birth date which indicates that they are an underage person; and

(b) Inform the patron on the account application which information fields are "required," which are not, and what will be the consequences of not filling in the required fields.

(4) During the sports wagering account registration process, patrons shall:

(a) Agree to the terms and conditions and privacy policies of the licensee;

(b) Acknowledge that they are prohibited from:

1. Transferring or selling an account or account balance;

2. Using any technology that may obscure or falsify the account holder's physical location for the purpose of placing sports wagers;

3. Allowing any unauthorized person to access or use their account; and

4. Any form of collusion, cheating, or other unlawful activity.

(c) Consent to the monitoring and recording of the use of their account by the licensee and the racing commission;

(d) Attest that:

1. The account holder meets all eligibility requirements to place a wager with a licensee in this Commonwealth; and

2. The personally identifiable information the account holder is providing to open the account is accurate.

(e) Authorize the provision of notices and other required communications either through a designated mobile or other interface or to an electronic mail address designated by the account holder.

(5) A licensee shall maintain an electronic patron file, which shall include the following for each sports wagering account:

(a) Unique sports wagering account ID and username (if different);

(b) The information indicated in subsection (2) of this section to register an account holder and create the account;

(c) The date and method of identity verification:

1. Where applicable, the licensee shall maintain the document number of the government-issued identification credential examined and its date of expiration.

2. If a government-issued identification credential is not required for registration, the electronic record that details the process used to confirm the account holder's identity shall be recorded.

(d) The date of account holder agreement to the terms and conditions and privacy policies;

(e) Previous sports wagering accounts, if any, and reason for de-activation;

(f) The date and method from which the sports wagering account was registered;

(g) The date and time a sports wagering account is accessed by any person;

(h) The IP address at which a sports wagering account is accessed by any person;

(i) A history of financial transactions, including deposits, withdrawals, and account adjustments;

(j) Account details and current balance, including any incentive credits. All restricted wagering credits and unrestricted funds that have a possible expiration shall be maintained separately; and

(k) The current status of the sports wagering account (e.g., active, dormant, closed, suspended, excluded).

(6) The following information maintained as part of the electronic patron file shall be stored in encrypted form:

(a) The account holder's government identification number, or portion(s) thereof;

(b) The account holder's previous and current password(s), PIN(s), or other authentication credential(s); and

(c) The account holder's previous and current debit instrument number(s), credit or debit card number(s), bank account number(s) or other personal financial information.

(7) A licensee may allow the account holder to update authentication credentials, registration information and the account used for financial transactions. A multi-factor authentication process shall be employed for these purposes.

Section 2. Age and Identity Verification. The licensee shall comply with KRS 230.805. The licensee shall also adopt commercially and technologically reasonable policies and procedures to verify and authenticate the age and identity of each

account holder.

(1) Only eligible persons may create a sports wagering account, deposit funds, or participate in sports wagering. The licensee shall make commercially and technologically reasonable efforts to deny the ability to create a sports wagering account, deposit funds, or participate in sports wagering to any prohibited patron. This section shall not be construed to prevent a restricted patron from creating a sports wagering account and depositing funds into such an account even if they are prohibited from placing certain wagers.

(2) At the time of account establishment, the licensee shall employ electronic verification with respect to the following:

- (a) All information required by KRS 230.805, and
- (b) Each account holder's government identification number or portion(s) thereof.

(3) The electronic verification information shall be verified by a commission-approved independent reference company, or through an alternative process approved by the commission.

(4) The following data shall be verified before account holders can initiate activity including deposits, withdrawals, and wagering:

- (a) Items that require an exact match:
  - 1. The account holder's last name;
  - 2. The account holder's date of birth;
  - 3. The account holder's government identification number, or portion(s) thereof.

(b) Items that permit flexible match for common interpretations of names and abbreviations used in the address fields:

- 1. The account holder's first name; and
- 2. The account holder's principal residential address.

(5) Reasonable measures shall be taken to ensure the person providing identity information is truly the owner of the identity before an account holder can initiate any activity including deposits, withdrawals, and wagering. One (1) of the following methods, or another method approved by the racing commission, is required:

- (a) Correctly answer three dynamic knowledge-based questions compiled from public and private data such as public records, credit reports, marketing data and other recorded facts;
- (b) Verification that the account holder's phone number or e-mail address match the information provided by the account holder; or
- (c) Valid government issued identification credential.

(6) The licensee may refuse to establish an account if it is found that any of the information supplied is false or incomplete or for any other reason the licensee deems sufficient.

(7) A licensee shall use commercially available and demonstrable standards to confirm that an individual attempting to create a sports wagering account is not prohibited from placing a wager.

(8) A licensee shall periodically re-verify an account holder's identification upon reasonable suspicion that the account holder's identification has been compromised.

**Section 3. Limitation to One (1) Account per Account Holder.** A Licensee shall use all commercially and technologically reasonable means to ensure that each individual is limited to one (1) sports wagering account with that licensee in the Commonwealth.

(1) The licensee shall implement procedures to terminate all accounts of any account holder that establishes or seeks to establish more than one (1) username or more than one (1) account, whether directly or by use of another person as proxy.

(2) Such procedures may allow an account holder that establishes or seeks to establish more than one (1) username or more than one (1) account to retain one (1) account provided that the licensee investigates and makes a good-faith determination that the account holder's conduct was not intended to obtain a competitive advantage.

(3) This section shall not be construed to prevent an individual from holding other sports wagering accounts in other jurisdictions.

(4) If an operator licensee has contracted with multiple service provider licensees to offer mobile sports wagering on its behalf, individuals may have one (1) sports wagering account with each service provider licensee offering mobile sports wagering.

**Section 4. Terms and Conditions and Privacy Policies for Sports Wagering Accounts.** All terms and conditions and privacy policies for

sports wagering accounts shall be included in the internal controls of the licensee and shall be readily accessible to the account holder before and after registration and noticed when materially updated.

(1) All terms and conditions for sports wagering accounts shall address all aspects of the licensee, including:

(a) A statement that only individuals located in the authorized geographic boundaries within the Commonwealth of Kentucky can participate in sports wagering;

(b) A statement that prohibited patrons are prohibited from participating in sports wagering;

(c) Advice to the account holder to keep their authentication credentials (e.g., password and username) secure;

(d) All processes for dealing with lost authentication credentials, forced password changes, password strength and other related items as required by the racing commission;

(e) Full explanation of all rules applicable to dormant sports wagering accounts, including the conditions under which an account is declared dormant and what actions will be undertaken on the account once this declaration is made;

(f) Actions that will be taken on the account holder's pending wagers placed prior to any exclusion or suspension, including the return of all wagers, or settling all wagers, as appropriate;

(g) Information about timeframes and limits regarding deposits to and withdrawals from sports wagering accounts, including a clear and concise explanation of all fees, if applicable; and

(h) Statements indicating that the licensee has the right to:

- 1. Refuse to establish a sports wagering account for what it deems good and sufficient reason;
- 2. Refuse deposits to or withdrawals from sports wagering accounts for what it deems good and sufficient reason; and
- 3. Unless there is a pending investigation or dispute, suspend or close any sports wagering account at any time pursuant to the terms and conditions between the licensee and the account holder.

(2) All privacy policies for sports wagering accounts shall address all aspects of the personally identifiable information protection, including:

- (a) The personally identifiable information required to be collected;
- (b) The purpose and legal basis for personally identifiable information collection and of every processing activity for which consent is being sought;
- (c) The period in which the personally identifiable information is stored, or, if no period can be possibly set, the criteria used to set this;
- (d) The conditions under which personally identifiable information may be disclosed;
- (e) An affirmation that measures are in place to prevent the unauthorized or unnecessary disclosure of the personally identifiable information; and
- (f) The identity and contact details on the licensee who is seeking the consent.

**Section 5. Account Access.**

(1) The sports wagering system shall use authentication credentials, such as a username (or similar) and a password or a secure alternative means to assure that only the account holder has access to the sports wagering account. Allowable authentication credentials are subject to the discretion of the racing commission as necessary. The requirement does not prohibit the option for more than one (1) method of authentication being available for an account holder to access their account.

(2) If the sports wagering system does not recognize the authentication credentials when entered, an explanatory message shall be displayed to the account holder which prompts the account holder to try again. The error message shall be the same regardless of which authentication credential is incorrect.

(3) Account holders shall be given the option to use a multi-factor authentication process when accessing their sports wagering account. In addition, a multi-factor authentication shall be employed for the retrieval or reset of an account holder's forgotten or lost authentication credentials.

(4) Current account balance information, such as any restricted wagering credits and unrestricted funds, and transaction options

shall be available to the account holder once authenticated. All restricted wagering credits and unrestricted funds that have a possible expiration shall be indicated separately.

(5) The sports wagering system shall support a mechanism that allows for an account to be locked if suspicious activity is detected, such as three (3) consecutive failed access attempts in a thirty (30) minute period. A multi-factor authentication process shall be employed for the account to be unlocked.

#### Section 6. Financial Transactions.

(1) Licensees shall provide the account holder written confirmation or denial of every financial transaction initiated on sports wagering accounts, including:

(a) The type of transaction (deposit or withdrawal);

(b) The transaction value; and

(c) For denied transactions, a descriptive message, if appropriate and available, as to why the transaction did not complete as initiated.

(2) A sports wagering account may be funded using acceptable form of payment or advance deposit method which shall produce a sufficient audit trail for verification of the source of the wagers.

(a) Payment or advance deposit methods for funding sports wagering accounts may be funded by forms or methods approved by the racing commission including:

1. All forms of payment authorized in KRS 230.805;

2. Cash equivalents converted to cash;

3. Electronic funds transfers (EFTs), such as automated clearing house and other electronic methods;

4. Promotional or bonus credit;

5. Winnings;

6. Adjustments made by the licensee with documented notification to the account holder; and

7. Any other form of payment authorized by the commission.

(b) The sports wagering account shall be credited for any deposit in accordance with the internal controls as submitted by the licensee and approved by the racing commission.

(c) For credit or debit cards, and EFTs, the account holder may be liable for any charges imposed by the transmitting or receiving licensee and the charges may be deducted from the account holder's sports wagering account.

(3) Where financial transactions are conducted through EFT, the licensee shall have security measures and controls to prevent EFT fraud. A failed EFT attempt is not considered fraudulent if the account holder has successfully performed an EFT on a previous occasion with no outstanding chargebacks. Otherwise, the licensee shall do the following:

(a) Temporarily block the account holder's sports wagering account for investigation of fraud after five (5) consecutive failed EFT attempts within a ten (10) minute period. If there is no evidence of fraud, the block may be vacated; and

(b) Suspend the account holder's sports wagering account after five (5) additional consecutive failed EFT attempts within a ten (10) minute period.

(4) An account holder shall be allowed to withdraw the funds maintained in their sports wagering account, whether the account is open or closed, except as otherwise provided in these regulations, or any other applicable state or federal laws.

(a) A licensee shall employ a mechanism that can detect and prevent any withdrawal activity initiated by an account holder that would result in a negative balance of the sports wagering account.

(b) A licensee shall not allow a sports wagering account to be overdrawn unless caused by payment processing issues outside the control of the licensee.

(c) A licensee shall honor the account holder's request to withdraw funds within five (5) business days after the request, unless the conditions established in paragraph (d) of this subsection are met.

(d) The licensee may decline to honor an account holder's request to withdraw funds only if the licensee believes in good faith that the account holder engaged in either fraudulent conduct or other conduct that would put the licensee in violation of the act and these regulations. In such cases, the licensee shall do the following:

1. Suspend the account holder's sports wagering account and provide notice to the account holder; and

2. Conduct its investigation in a reasonable and expedient fashion, providing the account holder additional written notice of the status of the sports wagering account every 10th business day starting from the day the original notice was provided to the account holder.

(e) For purposes of this subsection, a request for withdrawal is considered honored if it is processed by the licensee notwithstanding a delay by a payment processor, credit or debit card issuer, or the custodian of a financial account.

(5) All adjustments to sports wagering accounts for amounts of \$500 or less shall be periodically reviewed by supervisory personnel as established in the licensee's internal controls. All other adjustments shall be authorized by an authorized supervisory personnel of the licensee before being entered.

Section 7. Account Information. Upon request of the account holder, the licensee shall provide a statement detailing account activity for the past year, including wagers, deposit amounts, withdrawal amounts, and bonus or promotion information.

Section 8. Patron-Imposed Limits. A licensee shall allow an account holder to limit the amount of money that may be deposited into an account and spent through an account.

(1) A deposit limit shall be offered on a daily, weekly and monthly basis and shall specify the maximum amount of money an account holder may deposit into their sports wagering account during a particular period of time.

(2) A wager limit shall be offered on a daily, weekly and monthly basis and shall specify the maximum amount of account holder funds that may be put at risk during a particular period of time.

(3) Any decrease to these limits shall be effective immediately or at the point in time (e.g., next login, next day) that was clearly indicated to the account holder. Any increase to these limits shall become effective only after the time period of the previous limit (e.g., day, week, month, etc.) has expired and the account holder reaffirms the requested increase.

#### Section 9. Breaks from Wagering.

(1) A licensee shall enable an account holder to request a break from wagering for a period of time the account holder specifies, which shall not be less than seventy-two (72) hours, by submitting a request to the licensee through its Web site or mobile application.

(2) The licensee shall provide to an account holder who requests a break from wagering information concerning:

(a) Available resources addressing addiction and compulsive behavior;

(b) How to close an account and restrictions on opening a new account during the break;

(c) Requirements to reinstate an account at the end of the break;

(d) The ability to enroll in the voluntary self-exclusion program and a link to such site; and

(e) How the licensee addresses bonuses or promotions and account balances during and after the break, and when the account holder closes their sports wagering account.

#### Section 10. Suspension and Restoration of Sports Wagering Accounts.

(1) A sports wagering account may be placed into a suspended mode by the Licensee for any reason, not otherwise prohibited by state or federal law, at the sole discretion of the licensee.

(2) A sports wagering account shall be placed into a suspended mode by the licensee under any of the following conditions:

(a) When the account holder requests a break from wagering under subsection (1) of this section;

(b) When required by the racing commission;

(c) If the licensee determines it lacks sufficient information to verify the age and eligibility of the account holder;

(d) Upon a determination by a licensee that an account holder:

1. Has provided any false or misleading information in connection with the opening of the account or has engaged in collusion, cheating or other unlawful conduct;

2. Is barred from placing sports wagers in the Commonwealth of Kentucky; or

3. Is a prohibited patron; or

(e) When the licensee has evidence that indicates any of the following:

1. Illegal activity including providing any false or misleading information in connection with the opening of the account, or engaging in collusion, cheating, or other unlawful conduct;
2. A negative sports wagering account balance; or
3. A violation of the terms and conditions has taken place on an account holder's sports wagering account.

(3) When a sports wagering account is in a suspended mode, the licensee shall:

- (a) Prevent the account holder from placing sports wagers;
- (b) Prevent the account holder from depositing funds unless the account is suspended due to having a negative sports wagering account balance but only to the extent the sports wagering account balance is brought back to zero dollars;
- (c) Prevent the account holder from withdrawing funds from their sports wagering account, unless the licensee acknowledges that the funds have cleared, and that the reason(s) for suspension would not prohibit a withdrawal;
- (d) Prevent the account holder from making changes to their sports wagering account;
- (e) Prevent the removal of the sports wagering account from the sports wagering system;
- (f) Prominently display to the account holder that the sports wagering account is in a suspended mode, the restrictions placed on the sports wagering account, and any further course of action needed to remove the suspended mode; and
- (g) Remove the account holder from any advertising or marketing distribution lists.

(4) A sports wagering account in a suspended mode may be restored for any of the following reasons:

- (a) Upon completion of the break from wagering established by the account holder under subsection (1) of this section;
  - (b) If authorized by the racing commission;
  - (c) When the account holder is no longer a prohibited patron; or
  - (d) When the licensee has lifted the suspended status.
- (5) If the sports wagering account is terminated in accordance with this section, any funds remaining in the sports wagering account shall be refunded to the account holder, provided that the licensee acknowledges that the funds have cleared, and that the reason(s) for termination would not prohibit a withdrawal.

#### Section 11. Account Closure.

(1) A sports wagering system shall provide a conspicuous and readily accessible method for an account holder to close their sports wagering account through the account management or similar page or through the licensee's customer support team.

(2) Upon closure, any funds remaining in the sports wagering account shall be refunded to the account holder, provided that the licensee acknowledges that the funds have cleared and no racing commission investigation regarding the funds is pending.

Section 12. Dormant Accounts. Any sports wagering account with no log-in activity for at least three (3) years may be closed. When a sports wagering account is closed, the licensee shall issue any funds, less processing fees, within five (5) business days to the account holder's last-known address.

Section 13. Test Accounts. A licensee may establish test accounts to be used to test the various components and operation of a licensee pursuant to the internal controls, which shall address the following:

- (1) The procedures for issuing funds used for testing, including the identification of who may issue the funds and the maximum amount of funds that may be issued;
- (2) The procedures for assigning each test account for use by only one (1) individual, unless each user's activities are separately logged;
- (3) The maintenance of a record for all test accounts, to include when they are active, to whom they are issued, and the employer of the individual to whom they are issued;
- (4) The procedures for auditing testing activity by the licensee to ensure the accountability of funds used for testing and proper adjustments to adjusted gross revenue; and

(5) The procedures for authorizing and auditing out-of-state test activity.

JONATHAN RABINOWITZ, Chair

RAY PERRY, Secretary

APPROVED BY AGENCY: July 10, 2023

FILED WITH LRC: July 10, 2023 at 4:00 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 Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511. 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 September 30, 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: Jennifer Wolsing, General Counsel, Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859) 246-2039, email jennifer.wolsing@ky.gov.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jennifer Wolsing

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation specifies the sports wagering account requirements and responsible gaming limits, and also establishes requirements for dormant and closed accounts.

(b) The necessity of this administrative regulation: This regulation is necessary to provide specific rules concerning the establishment and maintenance of sports wagering accounts.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.260 requires the commission to "promulgate administrative regulations to establish standards for the conduct of sports wagering." KRS 230.361(2) requires the commission to "promulgate administrative regulations governing and regulating sports wagering, including administrative regulations for the deposit of funds by credit or debit cards or other means of electronic funds transfer." KRS 230.805(3) establishes additional requirements for registration of sports wagering patrons' accounts, such as account registration and wager placement. This regulation proscribes the conditions relating to the establishment and maintenance of sports wagering accounts, which includes patrons' account registration, identity verifications, and wager placements.

(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 statutes by ensuring that sports wagering providers properly establish and maintain patrons' sports wagering accounts.

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation affects the licensed tracks that apply for and receive a license to conduct sports wagering in the Commonwealth. There are currently nine (9) licensed tracks operating in the Commonwealth. Each track is allowed to contract with up to three (3) service providers. Therefore, up to 27 service providers may

be affected by the definitions in this regulation. Additionally, there are an unknown number of patrons who will choose to set up a sports wagering account.

(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 tracks that obtain a sports wagering license, as well as service providers, must observe the regulatory requirements when allowing patrons to use their sports wagering accounts.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Compliance costs are uncertain. Tracks may incur the costs of contracting with service providers to manage patrons' accounts.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance, tracks will benefit from having clear standards for patrons' sports wagering accounts. Kentuckians will benefit because people under 18 will be precluded from placing sports wagers. Sports wagering patrons will benefit from secure accounts that only allow authorized financial transactions. Patrons will also benefit from being able to request a break from wagering if needed.

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

(a) Initially: It is estimated that the commission will spend approximately \$2.4 million to implement sports wagering in Kentucky in the first year.

(b) On a continuing basis: It is further estimated that the commission will spend approximately \$1.2 million annually to continue regulating sports wagering in Kentucky on a yearly basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The funding to implement and enforce sports wagering in Kentucky will come from the sports wagering administrative fund, as established in KRS 230.817. No additional funding is required 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: No increase in fees or funding will be necessary to implement this administrative regulation.

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

(9) TIERING: Is tiering applied? Tiering is not applied, because this amended regulation will apply similarly to all similarly situated entities in an equal manner.

#### FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Horse Racing Commission 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 230.260(16), KRS 230.361(2), and KRS 230.805 require or authorize the actions taken by this regulation.

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

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

(c) How much will it cost to administer this program for the first year? It is estimated that the commission will spend approximately \$2.4 million in the first year to implement sports wagering in Kentucky.

(d) How much will it cost to administer this program for subsequent years? It is further estimated that the commission will spend approximately \$1.2 million annually to continue regulating sports wagering in Kentucky in subsequent years.

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

Revenues (+/-): Neutral.

Expenditures (+/-): Neutral.

Other Explanation: 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 regulation may generate cost savings in establishing regulatory criteria for patron account confidentiality and security. This could prevent costs associated with hackers or phishing attacks.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? This regulation may generate cost savings in establishing regulatory criteria for patron account confidentiality and security. This could prevent costs associated with successful hacking or phishing attacks.

(c) How much will it cost the regulated entities for the first year? Tracks may incur the costs of contracting with service providers to manage patrons' accounts.

(d) How much will it cost the regulated entities for subsequent years? Tracks may incur the costs of contracting with service providers to manage patrons' accounts.

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

Cost Savings (+/-): This regulation may prevent costs associated with successful hacking or phishing attacks.

Expenditures (+/-): Tracks may incur the costs of contracting with service providers to manage patrons' accounts.

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 regulation is not anticipated to have a major economic impact on Kentucky for the reasons stated above.

#### STATEMENT OF EMERGENCY 809 KAR 10:005E

This emergency regulatory amendment is promulgated to prevent a loss of state funds that are required to be deposited with the State Treasury pursuant to KRS 230.817, and to meet an imminent deadline for the promulgation of an administrative regulation that is established by state statute. More specifically, this administrative regulation is filed on an emergency basis to ensure: (1) that funds are timely remitted to the State Treasury in accordance with the General Assembly's statutory mandate set out in KRS 230.817; and (2) that a fully functioning sports wagering system is established within six (6) months of the effective date of House Bill 551 (2023 Regular Session), pursuant to the timeline established in KRS 230.361. The Kentucky Horse Racing Commission therefore seeks to implement sports wagering on an emergency basis, in order to comply with the above-referenced statutory requirements. This emergency regulation will be replaced by an ordinary administrative regulation at this time. The ordinary administrative regulation is identical to this emergency administrative regulation.

ANDY BESHEAR, Governor  
RAY PERRY, Secretary

**PUBLIC PROTECTION CABINET  
Kentucky Horse Racing Commission  
(New Emergency Administrative Regulation)**

**809 KAR 10:005E. Licensed premises.**

EFFECTIVE: July 10, 2023

RELATES TO: KRS Chapter 230

STATUTORY AUTHORITY: KRS 230.260(16), 230.361, 230.805

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.260 requires the commission to "promulgate administrative regulations to establish standards for the conduct of sports wagering." KRS 230.361 states the "racing commission shall promulgate administrative regulations to establish a fully functioning sports wagering system...." KRS 230.805 permits sports wagering at a licensed facility for sports wagering on licensed premises. This administrative regulation establishes controls for sports wagering on licensed premises, including the floor plan, security, surveillance, sports wagering windows, sports wagering kiosks, sports wagers and vouchers, drop and count, and incident reporting.

**Section 1. Floor Plan.**

(1) An applicant for a sports wagering operator's license shall specify where sports wagering will take place within the licensed facility for sports wagering, if any, by providing the following information:

(a) A drawing to scale of the building, and each floor thereof, in which sports wagering shall be conducted, at a scale sufficient to identify all of the information established in this section.

(b) The drawing shall depict the following information:

1. The total square footage of the race and sports book location;
2. A diagram, outlined in red, of the proposed designated area for the sports wagering, if any, on each floor within the building;
3. The race and sports book locations, including each wagering window;
4. The locations of each sports wagering kiosk. Notwithstanding the foregoing, licensees may move sports wagering kiosks from one location to another with approval of the racing commission;
5. Any race and sports book location that is, or is from time to time, a restricted race and sports book location, specifying the nature of the restrictions and when they will apply;
6. Each cage;
7. The count room;
8. The vault;
9. Any other restricted areas; and
10. All areas subject to surveillance.

(c) A certificate of compliance approved by the local fire and building officials which has been approved; and a written statement by the appropriate local official that handicapped access to the designated licensed facility for sports wagering has been provided.

(2)(a) The race and sports book shall include both sports wagering and pari-mutuel products.

(b) All floor plans for a race and sports book shall be approved by the commission. In considering a request related to a floor plan, the commission shall consider, among other things:

1. The equitable number, size, and picture clarity of displays or other equipment used to show broadcasts of horse racing and sporting events;
2. The equitable number of sports wagering kiosks and pari-mutuel wagering terminals; and,
3. The presence of a live sports wagering teller on the licensed premises.

(3) The designated licensed facility for sports wagering and simulcasting areas shall be approved by the commission as a condition of license approval.

(4) A floor plan may be amended upon request by the licensed premises and approval by the racing commission. Such a request shall be filed with the racing commission in writing at least seventy-two (72) hours prior to the time for which implementation of the amendment(s) is sought.

(5) If a licensee includes a sports wagering kiosk in a simulcast area, the layout of the simulcast area shall be subject to commission

approval.

Section 2. Race and Sports Book Locations. Designated race and sports book locations within the licensed premises shall be established so as to control access by the general public and prevent entry by any patron who is under eighteen (18) years of age or is otherwise not permitted to place wagers.

Section 3. Underage Persons Prohibited from Wagering. An underage person shall not be permitted by any licensee to purchase or cash a sports wagering ticket or voucher.

Section 4. Anonymous Wagers and Payouts Greater Than \$10,000. The requirements of this section only apply for wagers and payouts not associated with a sports wagering account.

(1) Prior to accepting any wager in excess of \$10,000 or making a payout in excess of \$10,000 on a winning wager, a licensee shall obtain and record the following information:

- (a) The patron's full legal name;
- (b) The patron's date of birth;
- (c) The patron's principal physical address other than a post office box;

(d) The patron's Social Security number, or the last four (4) digits of the Social Security number, or an equivalent government identification number for a noncitizen, such as a passport or taxpayer identification number; and

(e) The document number from one of the following valid identification credentials collected from the patron to verify their identity:

1. Driver's license;
2. Passport;
3. Non-resident alien identification card;
4. Other reliable government-issued identification credentials; or
5. Other picture identification credential normally acceptable as a means of identification when cashing checks.

(2) Subsequent to accepting a wager in excess of \$10,000 or making a payout in excess of \$10,000 on a winning wager the licensee shall maintain records for five (5) years that include:

- (a) The time and date of the wager or payout;
- (b) The amount of the wager or payout;
- (c) The patron's full legal name;
- (d) The ticket writer or other identification of the location where the wager or payout occurred; and
- (e) The identification of the employee(s) accepting or approving the wager and payout on the wager.

(3) Licensees shall monitor all wagers and payouts to ensure patrons are not circumventing the recording and reporting requirements of this section.

**Section 5. Wagering Windows.**

(1) Each licensed premises may have one or more wagering windows located in the race and sports book location or other window locations as approved by the racing commission.

(2) A wagering window shall:

(a) Be designed and constructed to provide maximum security for the materials stored and the activities performed therein, in a manner approved by the racing commission;

(b) Include one (1) or more ticket writer stations, each of which shall:

1. Interface with the Sports Wagering System for all sports wagers placed;
2. Contain a permanently affixed number, which shall be visible to the surveillance system;
3. Contain manually triggered silent alarm systems, which shall be connected directly to the surveillance operation room(s); and
4. Contain full enclosures, unless funds are either secured in a drop safe approved by the racing commission or transferred to the vault or cage;

(c) Include manually triggered silent alarm systems, which shall be connected directly to the surveillance operation room(s);

(d) Provide for surveillance equipment capable of accurate visual monitoring and recording of any activities; and

(e) Require any emergency exit door that is not a mantrap to be

alarmed.

(3) A wagering window shall have access to a secure location, such as a vault, for the purpose of storing funds issued by a cage to be used in the operation of Sports Wagering. The secure location shall:

(a) Be a fully enclosed room, located in an area not accessible to the public;

(b) Have a metal door with a locking mechanism that shall be maintained and controlled by the wagering manager;

(c) Have an alarm device that signals surveillance personnel if the door to the secure location is opened; and

(d) Have surveillance equipment capable of accurate visual monitoring and recording of all activities in the secure location.

(4) A wagering window shall have an operating balance not to exceed an amount specified in the licensee's internal controls and approved by the racing commission. Funds in excess of the operating balance shall be transferred to the cage in a secured container by an employee of the counter accompanied by a security officer. Prior to transporting the funds, security personnel shall notify surveillance personnel that the transfer will take place. Surveillance personnel shall monitor the transfer. The funds shall be transferred with appropriate documentation as set forth in the internal controls, as approved by the commission.

(5) The assets for which each ticket writer is responsible shall be maintained on an imprest basis. A ticket writer shall not permit any other person to access the ticket writer's imprest inventory.

(6) A ticket writer shall begin a shift with an imprest amount of currency and coin to be known as the "wagering inventory." No funds shall be added to or removed from the wagering inventory during such shift except:

(a) In collection of sports wagers;

(b) In order to make change for a patron placing a wager;

(c) In collection for the issuance of vouchers;

(d) In payment of winning or properly cancelled or refunded wagers;

(e) In payment of vouchers;

(f) To process deposits or withdrawals to or from a sports wagering account, where supported;

(g) In exchanges with the cashier's cage, a satellite cage, or vault supported by proper documentation which documentation shall be sufficient for accounting reconciliation purposes; or

(h) In payment of appeasement payments.

(7) A wagering inventory slip shall be completed and signed by the wagering manager, and the following information shall be recorded thereon at the commencement of a shift:

(a) The date, time, and shift of preparation;

(b) The denomination of currency and coin in the wagering inventory issued to the ticket writer;

(c) The total amount of each denomination of currency and coin in the Wagering inventory issued to the ticket writer;

(d) The ticket writer station to which the ticket writer is assigned; and

(e) The signature of the wagering manager.

(8) A ticket writer assigned to a ticket writer station shall count and verify the wagering inventory at the vault or other approved location and shall reconcile the count to the wagering inventory slip. The ticket writer shall sign the count sheet attesting to the accuracy of the information recorded thereon. The wagering inventory shall be placed in a ticket writer's drawer and transported directly to the appropriate ticket writer station by the ticket writer.

(9) If funds are transferred from the vault to a ticket writer, the wagering manager responsible for the vault shall prepare a two-part Writer Transfer-Out form. Upon completion of the form, the original shall be retained by the vault manager and the duplicate shall be retained by the ticket writer. The form shall include:

(a) Date and time of the transfer;

(b) Designation of the vault location;

(c) Ticket writer station to where the funds are being transferred to;

(d) Amount of each denomination being transferred;

(e) Total amount of the transfer;

(f) Signature of the preparer of the transfer;

(g) Signature of the manager verifying and issuing the funds;

and

(h) Signature of the ticket writer verifying and receiving the funds.

(10) If funds are transferred from the ticket writer to a vault, a two-part Writer Transfer-In form shall be prepared. Upon completion of the form, the original shall be retained by the ticket writer and the duplicate shall be immediately returned with the funds to the vault. The form shall include:

(a) Date and time of the transfer;

(b) Designation of the vault location where the funds are being transferred to;

(c) Ticket writer station to where the funds are being transferred from;

(d) Amount of each denomination being transferred;

(e) Total amount of the transfer;

(f) Signature of the ticket writer verifying and sending the funds to the vault; and

(g) Signature of the manager verifying and receiving the funds.

(11) At the conclusion of a ticket writer's shift, the ticket writer's drawer and its contents shall be transported directly to the vault or to a location approved by the racing commission in the wagering window, where the ticket writer shall count the contents of the drawer and record on the Wagering Inventory Slip the following information:

(a) The date, time, and shift of preparation;

(b) The denomination of currency and coupons in the drawer;

(c) The total amount of each denomination of currency and coupons in the drawer;

(d) The total of the Writer Transfer-Out forms;

(e) The total of the Writer Transfer-In forms;

(f) The total amount in the drawer; and

(g) The signature of the ticket writer.

(12) The wagering manager shall compare the ticket writer closing balance to the wagering inventory slip total, record any over or short amount, and sign the wagering inventory slip.

(13) If the wagering inventory slip lists an overage or shortage, the ticket writer and the wagering manager shall attempt to determine the cause of the discrepancy in the count. If the discrepancy cannot be resolved, such discrepancy shall be reported to surveillance personnel and the wagering manager or supervisor in charge at such time. Any discrepancy in excess of \$500 shall be reported to the racing commission. Such report shall include:

(a) Date on which the discrepancy occurred;

(b) Shift during which the discrepancy occurred;

(c) Name of the ticket writer;

(d) Name of the wagering manager;

(e) Ticket writer station number; and

(f) Amount of the discrepancy.

(14) If funds are transferred from the vault to the cashier's cage, the wagering manager responsible for the vault shall prepare a two (2) part Vault Transfer-Out form. Upon completion of the form, the original shall be retained by the vault manager and the duplicate shall be transferred with the funds to the cashier's cage. The form shall include:

(a) Date and time of the transfer;

(b) Designation of the vault location;

(c) Designation of the cage location;

(d) Amount of each denomination being transferred;

(e) Total amount of the transfer;

(f) Signature of the preparer of the transfer;

(g) Signature of the vault manager verifying and issuing the funds; and

(h) Signature of the cage cashier verifying and receiving the funds.

(15) If funds are transferred from the cashier's cage to a vault, a two-part Vault Transfer-In form shall be prepared. Upon completion of the form, the original shall be retained by the cage cashier and the duplicate shall be transferred with the funds to the vault. The form shall include:

(a) Date and time of the transfer;

(b) Designation of the vault location where the funds are being transferred to;

(c) Cashier location where the funds are being transferred from;

(d) Amount of each denomination being transferred;



- (e) Total amount of the transfer;
  - (f) Signature of the cage cashier verifying and sending the funds to the vault; and
  - (g) Signature of the vault manager verifying and receiving the funds.
- (16) In lieu of separate wagering windows with live tellers, cage personnel may write and cash tickets.

Section 6. Wrong Ticket Claims. Subject to a ticket writer's discretion, any claim by a patron that he or she has been issued a sports wagering ticket other than that requested shall be made before the patron has left the wagering window or before the ticket writer has initiated a transaction with another patron.

Section 7. Sports Wagering Kiosks. A licensee may utilize sports wagering kiosks located in a licensed premises for wagering transactions in conjunction with a sports wagering system in a location approved by the commission. A sports wagering kiosk shall be established and operated as follows:

(1) All aspects of a sports wagering kiosk, including the computer and any related hardware, software, or related devices, shall be submitted to a nationally recognized, independent testing laboratory approved by the racing commission for certification testing and approved by the racing commission prior to use by a licensee. The racing commission may require any additional testing or field inspection of the sports wagering kiosk it deems necessary prior to or after approval;

(2) To obtain a temporary license, a licensee may submit to the racing commission a certification report of an independent testing laboratory of kiosk components in operation in another jurisdiction in the United States where the licensee is currently licensed or permitted. The report must certify the kiosk components to either the GLI-33 Standards or, at the discretion of the racing commission, a standard deemed to be the equivalent of the GLI-33 Standards. This alternative certification report must include a list of all critical files and associated signatures and an appendix which lists the differences of any controlled items or processes required to be certified in Kentucky which were not certified in the jurisdiction in which the report was issued. Upon review of the certification report, the racing commission will make a determination on whether to accept the certification or require additional information or documentation or testing.

(3) Each sports wagering kiosk shall be configured not to:

(a) Issue a sports wagering ticket with a wager in excess of \$10,000;

(b) Redeem a winning sports wagering ticket with a value in excess of \$10,000 or other limits set by the IRS; or

(c) Issue or redeem a sports wagering voucher with a value in excess of \$10,000 or other limits set by the IRS;

(4) All sports wagering kiosks shall have a sign permanently affixed to the kiosk notifying the public that patrons shall not be Underage Persons, as approved by the commission;

(5) On a schedule approved by the commission, a licensee shall remove the drop boxes in the sports wagering kiosks. The drop boxes shall be monitored and recorded by surveillance. The licensee shall submit the sports wagering kiosk drop schedule to the commission or its designee; and

(6) The licensee shall reconcile the sports wagering kiosks on a schedule approved by the commission pursuant to internal controls. Any variance of \$500 dollars or more shall be documented by the accounting department and reported in writing to the racing commission within five (5) business days after drop and count of sports wagering kiosks. The report shall indicate the cause of the variance and shall contain any documentation required to support the stated explanation.

(7) In locations where sports wagering kiosks do not allow for redemption, the licensee shall display prominently the methods of paying out or cashing out vouchers near each sports wagering kiosk.

#### Section 8. Drop and Count.

(1) A licensed premises shall have a count room whose physical access shall be limited to count team employees, designated staff, commission employees, and other persons authorized by the

licensee, and shall remain locked unless entry and exist is required by authorized persons.

(a) Count team employees shall not exit or enter the count room during the count except for emergencies or scheduled breaks.

(b) Surveillance staff shall be notified if count room employees exit or enter the count room during the count.

(c) A licensee shall establish a count team policy that shall address the transportation of extraneous personal items such as personal belongings, toolboxes, beverage containers, into or out of the count room.

(2) Security of the count and the count room shall be ensured to prevent unauthorized access, misappropriation of funds, forgery, theft, or fraud.

(a) All counts shall be performed by at least two (2) employees.

(b) At no time during the count shall there be fewer than two (2) count team employees in the count room until the drop proceeds have been accepted into cage or vault accountability.

(c) Count team employees shall be independent of the department being counted. A cage or vault employee may be used if they are not the sole recorder of the count and do not participate in the transfer of drop proceeds to the cage or vault. An accounting employee may be used if there is an independent audit of all count documentation.

(3) Currency cassettes and drop boxes shall be securely removed from sports wagering kiosks.

(a) Surveillance shall be notified prior to the drop boxes or currency cassettes being accessed in a kiosk.

(b) At least two employees shall be involved in the collection of currency cassettes and drop boxes from kiosks and at least one employee should be independent of kiosk accountability.

(c) Currency cassettes and drop boxes shall be secured in a manner that restricts access to only employees authorized by the licensee.

(d) If applicable, redeemed vouchers collected from the kiosk shall be secured and delivered to the appropriate department (cage or accounting) for reconciliation.

(e) Controls shall be established, and procedures implemented to ensure that currency cassettes contain the correct denominations and have been properly installed.

(f) Access to stored full kiosk drop boxes and currency cassettes shall be restricted to:

1. Employees authorized by the licensee; and

2. In an emergency, additional persons authorized for the resolution of a problem.

(g) The kiosk count shall be performed in a secure area, such as the cage or count room.

(h) If counts from kiosks and any other areas requiring counts occur simultaneously in the count room, procedures shall be in effect that prevent the commingling of funds from the kiosks with any other areas requiring counts.

(i) The kiosk drop boxes and currency cassettes shall be individually emptied and counted so as to prevent the commingling of funds between kiosks until the count of the kiosk contents has been recorded.

(j) Procedures shall be implemented to ensure that any corrections to the count documentation are permanent and identifiable, and that the original, corrected information remains legible. Corrections shall be verified by two (2) employees.

#### Section 9. Winning Wagers and Vouchers.

(1) Payment on valid sports wagering tickets shall be made only if presented and surrendered within one (1) year following the settling of the sporting event, or, in the event of a parlay, the last-in-time sporting event to settle on the ticket. Failure to present a ticket within one (1) year shall constitute a waiver of the right to receive payment on the ticket.

(2) Sports wagering vouchers shall be valid for one (1) year after the date of issuance. Failure to present any voucher for redemption within one (1) year of issuance shall constitute a waiver of the right to receive payment on the voucher.

(3) A mutilated sports wagering ticket or voucher that cannot be identified as a valid ticket or voucher shall not be accepted for payment.

(4) A licensee shall establish a written procedure for granting patrons an opportunity to file a claim on a lost sports wagering ticket or voucher and provide a copy to the racing commission.

Section 10. Cashiers, Windows, and Cages.

(1) Each licensed premises shall have on or immediately adjacent to the race and sports book location a physical structure known as a cashiers' cage to house the cashiers, which is located in or within close proximity to the race and sports book location. Each licensed premises may also have one or more satellite cages in or within close proximity to the race and sports book location.

(2) A cage or satellite cage shall be fully enclosed and shall have the following features:

(a) Perform financial transactions related to sports wagering;

(b) Be designed and constructed to provide maximum security for the materials stored and the activities performed therein, in a manner approved by the racing commission;

(c) Include openings at one or more numbered cashier windows through which financial transactions related to sports wagering will be conducted, each of which shall contain a cashier's drawer;

(d) Include manually triggered silent alarm systems, which shall be connected directly to the surveillance and the security operation room(s);

(e) Provide for surveillance equipment capable of accurate visual monitoring and recording of any activities; and

(f) Include a mantrap if the cage or satellite cage secure assets having a value greater than an amount established by the racing commission. The outer door of the mantrap shall be controlled by security personnel and the inner door shall be controlled by accounting personnel. The doors of the mantrap shall have separate and distinct locking mechanisms on each door of the double door entry and exit system. The mantrap shall be subject to continuous surveillance coverage.

(3) Each licensed premises may have one or more service windows to serve as a location in the facility to conduct financial transactions. Such window shall be designed and constructed in accordance with subsection (2)(b) of this section, and access shall be controlled by an accounting supervisor.

(4) If approved paperless systems are not in use, the internal controls shall require that documents regarding the funds stored in cages shall be transported between cages in a secure manner approved by the racing commission and accompanied by security.

(5) Each licensed premises shall have on hand in the cage, or readily available such as in a restricted bank account or by bond, a reserve of cash to pay winning patrons.

(6) A cashiers' cage and any satellite cage shall be segregated by personnel such that no single person has both control and approval for any aspect of cage operations maintained.

(7) A qualified supervisor may perform the functions of a cashier provided the functions are not incompatible with proper separation of duties. A supervisor shall not operate from another cashier or supervisor's imprest inventory.

(8) The assets for which each cashier is responsible shall be maintained on an imprest basis. A cashier shall not permit any other person to access his or her imprest inventory. Cashier functions shall include the following:

(a) Perform check consolidations, total or partial redemptions, or substitutions for patrons;

(b) Receive cash, authorized cash equivalents and authorized electronic transfers from patrons in exchange for currency or sports wagering vouchers;

(c) Perform deposit and withdrawal transactions for sports wagering accounts, where supported;

(d) Process exchanges with cashiers, supported by documentation with signatures thereon, for the effective segregation of functions in the cashiers' cage;

(e) Receive sports wagering tickets or vouchers from patrons or authorized employees in exchange for cash; and

(f) Exchange and reconcile imprest funds used by attendants, including imprest change/pouch payout funds.

(9) A licensee premises may consolidate the cashier functions, provided that the cashier is qualified to perform all functions and performs no functions incompatible with proper separation of duties.

Section 11. Security and Surveillance.

(1) The licensed premises shall have appropriate physical security and surveillance controls that:

(a) Enable a suitable response to any security issue within the licensed premises; and

(b) Prevent any person from tampering with or interfering with the operation of any sports wagering or equipment.

(2) The licensed premises shall establish provisions describing the duties and operation of its security department, which shall include details relative to the design, construction, and location of primary and secondary armored car routes, including provisions for the security of such routes.

(3) Licensed premises shall install, maintain, and operate a surveillance system that has the capability to monitor and record continuous unobstructed views of all sports wagering and financial transactions as well as any dynamic displays of sports wagering information.

(4) The surveillance system shall:

(a) Have the capability to display all camera views on a monitor; and

(b) Record all camera views.

(5) The surveillance system shall be maintained and operated from a surveillance operation room(s) or, when authorized by the racing commission, a secured location, such as a locked cabinet.

(a) The surveillance operation room(s) shall be secured to prevent unauthorized entry.

(b) The location of the surveillance operation room or rooms shall ensure the interior is not visible to the public and employees who do not work in the surveillance room or rooms.

(c) Access to the surveillance operation room(s) shall be limited to surveillance personnel, the racing commission, and other persons authorized by the licensee.

(d) Surveillance operation room(s) access logs shall be maintained, recording all entries and exits.

(e) No personal recording devices of any kind are permitted in the surveillance operation room. This includes devices such as cameras, video recorders, and mobile phones.

(f) Surveillance operation room equipment shall have total override capability over all other satellite surveillance equipment.

(6) If a power loss to the surveillance system occurs, alternative security procedures, such as additional supervisory or security employees, shall be implemented immediately.

(7) The surveillance system shall record an accurate date and time stamp on recorded events. The displayed date and time shall not significantly obstruct the recorded view.

(8) All surveillance employees shall be trained in the use of the equipment and wagering rules.

(9) A periodic inspection of the surveillance systems shall be conducted. When a dedicated camera stops providing coverage in the racing and sports book or to sports wagering kiosks, the coverage failure and necessary repairs shall be documented, and repairs initiated within seventy-two (72) hours.

(a) If a dedicated camera stops providing coverage, alternative security procedures, such as additional supervisory or security personnel, shall be implemented immediately.

(b) The racing commission shall be notified of any coverage failure for more than twenty-four (24) hours and the alternative security measures being implemented.

(10) Surveillance coverage shall be provided for the following areas as follows:

(a) For public entrances to the licensed facility for sports wagering:

1. Each entrance shall have sufficient coverage of at least two (2) cameras that shall be able to positively identify each person entering; and

2. Each security check-in point at the entrances shall have a dedicated camera to capture an unobstructed facial view of all persons entering the licensed premises.

(b) For non-public entrances to the licensed facility for sports wagering, including loading docks and emergency exits:

1. Each entrance shall have sufficient camera coverage, of at least two cameras with sufficient image quality to be able to

positively identify each person entering;

2. Employee entrances shall be secured either via the use of digitally controlled access systems or by in-person verification conducted by security; and

3. Policies shall be in place requiring that employees entering the licensed facility for sports wagering be identifiable and of sufficient quality to positively identify each person entering.

(c) For restricted areas of the licensed facility for sports wagering:

1. All restricted areas shall have surveillance coverage sufficient that all persons in the area can be clearly identified;

2. All restricted areas shall have sufficient coverage and resolution that all cash-handling and gaming equipment and currency and currency equivalents are identifiable;

3. All restricted areas shall have additional camera coverage sufficient to provide asset protection as approved by the racing commission; and

4. Access to coverage of the surveillance operation room is limited to senior management and the racing commission.

(d) For all race and sports book locations:

1. The surveillance system shall monitor and record general activities, to include the ticket writer and cashier areas, with sufficient clarity to identify the personnel performing the different functions; and

2. All race and sports book locations shall have sufficient coverage that a patron can be tracked throughout the entirety of the race and sports book location.

(e) For ticket writer stations:

1. All ticket writer stations shall have sufficient coverage to identify currency amounts;

2. Any ticket writer stations that can be utilized for placing wagers shall have surveillance coverage sufficient to identify the patron and employee involved in the transaction; and

3. Surveillance personnel shall have access to the ticket writer stations to access transaction amounts.

(f) For sports wagering kiosks, the surveillance system shall monitor and record activities occurring at each sports wagering kiosk with:

1. Sufficient clarity to identify the activity and the individuals performing it, including maintenance, drops or fills, and redemption of sports wagering tickets or vouchers; and

2. Accurate time stamps.

(g) For the cage and vault:

1. The surveillance system shall monitor and record activities occurring in each cage and vault area with:

a. Sufficient clarity to identify individuals within the cage and patrons and staff members at the window areas, and to confirm the amount of each cash transaction; and

b. Accurate time stamps.

2. Each cashier station shall be equipped with one (1) dedicated overhead camera covering the transaction area; and

3. The cage or vault area in which exchange and transfer transactions occur shall be monitored and recorded by a dedicated camera or motion activated dedicated camera that provides coverage with sufficient clarity to identify the amounts on the exchange and transfer documentation. Controls provided by a computerized exchange and transfer system constitute an adequate alternative to viewing the amounts on the exchange and transfer documentation.

(h) For count rooms, the surveillance system shall:

1. Monitor and record with sufficient clarity a general overview of all areas where cash or cash equivalents may be stored or counted; and

2. Provide coverage of count equipment with sufficient clarity to view any attempted manipulation of the recorded data.

(i) All machines capable of dispensing cash shall have sufficient coverage to view the transaction and the currency amount being dispensed and the individuals at the machine.

(11) The licensed premises shall utilize an incident reporting system to document incidents and activities, as set forth in paragraph (a) of this subsection.

(a) Security and surveillance procedures approved by the racing commission shall be implemented for reporting:

1. An individual engaged in, attempting to engage in, or suspected of cheating, theft, embezzlement, or other illegal activities;

2. An individual possessing a firearm, electronic control device, dangerous weapon, or other device or object prohibited KAR Title 809;

3. An individual in the race and sports book location who is a prohibited person, the subject of a law enforcement contact by the licensee, or a potential victim of human trafficking.

4. All camera, system, or recording outages;

5. Any routine tasks accomplished by security or surveillance personnel at the request of another team; and

6. Any suspicious incidents observed.

(b) Any violation of the Act or KAR Title 809 shall be identified as such in the incident reporting system.

(c) The racing commission shall have real-time, read-only access to the incident reporting system.

(d) The incident reporting system shall be capable of generating reports that detail all incident types and such reports shall be delivered to the racing commission upon request.

(e) The incident reporting system shall be in an electronic format equipped with software that prevents modification of an entry after it has been initially entered into the system.

(f) The incident reporting system shall document the following:

1. Assignment number of the incident;

2. Date and time;

3. Name and identification license of the individual covering the incident;

4. Nature of the incident; and

5. Resolution of the incident.

(g) All recordings required by this section shall be retained for a minimum retention period of ninety (90) calendar days. Suspected crimes, illegal activity, or detentions by security personnel discovered within the initial retention period shall be copied and retained for a time period not less than five (5) years.

JONATHAN RABINOWITZ, Commission Chair

RAY PERRY, Secretary

APPROVED BY AGENCY: July 10, 2023

FILED WITH LRC: July 10, 2023 at 4 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 Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511. 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: Jennifer Wolsing, General Counsel, Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859) 246-2039, email jennifer.wolsing@ky.gov.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jennifer Wolsing

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes controls for sports wagering on Licensed Premises.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide specific rules and controls for sports wagering on Licensed Premises, including the floor plan, security, surveillance, sports wagering windows, sports wagering kiosks, sports wagers and vouchers, drop and count, and incident reporting.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.260 requires the commission to "promulgate administrative regulations to establish standards for the conduct of sports wagering." KRS 230.361 states the "racing commission shall promulgate administrative regulations to establish a fully functioning sports wagering system...." KRS 230.805 permits sports wagering at a licensed facility for sports wagering on Licensed Premises. This regulation establishes controls for sports wagering on Licensed Premises.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will assist in the effective administration of the statutes by establishing clear and specific controls related to sports wagering on Licensed Premises. This protects the wagering public and the citizens of the Commonwealth and assists Licensees in properly conducting sports wagering on Licensed Premises.

(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 regulation.

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation affects the licensed tracks that apply for and receive a license to conduct sports wagering in the Commonwealth. There are currently nine (9) licensed tracks operating in the Commonwealth. Each track is allowed to contract with up to three (3) service providers. Therefore, up to 27 service providers may be affected this regulation. An unknown number of sports wagering license holders and sports wagering patrons also will be affected 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: Licensees and sports wagering license holders must observe the regulatory requirements when offering sports wagering on Licensed Premises.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Compliance costs are uncertain. Licensees likely will incur costs to administer sports wagering on Licensed Premises in accordance with the regulations.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Licensees and license holders will have clear controls for sports wagering on Licensed Premises. Sports wagering patrons will benefit from properly operated sports wagering on Licensed Premises.

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

(a) Initially: It is estimated that the commission will spend approximately \$2.4 million to implement sports wagering in Kentucky in the first year.

(b) On a continuing basis: It is further estimated that the commission will spend approximately \$1.2 million annually to continue regulating sports wagering in Kentucky on a yearly basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The funding to implement and enforce sports wagering in Kentucky will come from the sports wagering administrative fund, as established in KRS 230.817.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied, because this amended regulation will apply similarly to all similarly situated entities in an equal manner.

#### FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Horse Racing Commission 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 230.260(16), KRS 230.361, KRS 230.805

(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 during the first year.

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

(c) How much will it cost to administer this program for the first year? It is estimated that the commission will spend approximately \$2.4 million in the first year to implement sports wagering in Kentucky.

(d) How much will it cost to administer this program for subsequent years? It is further estimated that the commission will spend approximately \$1.2 million annually to continue regulating sports wagering in Kentucky in subsequent years.

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

Revenues (+/-): Neutral.

Expenditures (+/-): See answers to (c) and (d) above.

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 expected to generate 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 is not expected to generate cost savings for subsequent years.

(c) How much will it cost the regulated entities for the first year? Compliance costs are uncertain. Licensees likely will incur costs to administer sports wagering on Licensed Premises in accordance with the regulations.

(d) How much will it cost the regulated entities for subsequent years? Compliance costs are uncertain. Licensees likely will incur costs to administer sports wagering on Licensed Premises in accordance with the regulations.

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

Cost Savings (+/-): None.

Expenditures (+/-): Compliance costs are uncertain. Licensees likely will incur costs to administer sports wagering on Licensed Premises in accordance with the regulations.

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 regulation is not anticipated to have a major economic impact on Kentucky for the reasons stated above.

# STATEMENT OF EMERGENCY

809 KAR 10:006E

This emergency regulatory amendment is promulgated to prevent a loss of state funds that are required to be deposited with the State Treasury pursuant to KRS 230.817, and to meet an imminent deadline for the promulgation of an administrative regulation that is established by state statute. More specifically, this administrative regulation is filed on an emergency basis to ensure: (1) that funds are timely remitted to the State Treasury in accordance with the General Assembly's statutory mandate set out in KRS 230.817; and (2) that a fully functioning sports wagering system is established within six (6) months of the effective date of House Bill 551 (2023 Regular Session), pursuant to the timeline established in KRS 230.361. The Kentucky Horse Racing Commission therefore seeks to implement sports wagering on an emergency basis, in order to comply with the above-referenced statutory requirements. This emergency regulation will be replaced by an ordinary administrative regulation at this time. The ordinary administrative regulation is identical to this emergency administrative regulation.

ANDY BESHEAR, Governor

RAY PERRY, Secretary

## PUBLIC PROTECTION CABINET Kentucky Horse Racing Commission (New Emergency Administrative Regulation)

### 809 KAR 10:006E. Audit and internal control standards.

EFFECTIVE: July 10, 2023

RELATES TO: KRS Chapter 230

STATUTORY AUTHORITY: KRS 230.260(16), 230.811(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.260(16)(a) requires the racing commission to promulgate regulations to establish standards related to sports wagering, including standards for "maintaining and auditing books and financial records, securely maintaining records of bets and wagers, integrity requirements for sports wagering and related data surveillance and monitoring systems, and other reasonable technical criteria related to conducting sports wagering." KRS 230.811(2) requires tracks and service providers to "comply with the standards established by the racing commission. . . to ensure the integrity of the system of sports wagering." This administrative regulation establishes internal control standards, including administration and accounting controls, and specifies certain duties to permit access to the racing commission of information and records, record retention, and reporting requirements.

Section 1. Internal Controls. Before beginning operations, a licensee shall submit its administrative and accounting controls, in detail, in a system of internal controls for racing commission review and approval. The racing commission or its designee may perform any inspection necessary in order to determine conformance with the approved internal controls.

(1) Amendments to any portion of the internal controls shall be submitted to the racing commission for approval. If, within thirty (30) calendar days the racing commission has not approved, denied, or otherwise provided written notice, a licensee may implement the amended internal controls as submitted with the racing commission retaining its authority to require further amendment, approval, or denial.

(a) The racing commission may approve, deny, or require a revision to the amendment to the internal controls. If the licensee is

notified of a required revision, the licensee shall address the revision within fifteen (15) calendar days, unless otherwise required by the commission.

(b) If the racing commission requests additional information, clarification, or revision of an amendment to the internal controls and the licensee fails to satisfy the request within thirty (30) calendar days after the racing commission submits the request, the racing commission shall consider the amendment denied and it cannot be implemented or, if previously implemented, the licensee shall cease implementation of that amendment within fifteen (15) calendar days. If the licensee subsequently wants to pursue the amendment, it shall resubmit the request along with the additional information previously requested by the racing commission.

(2) In an emergency, the licensee may temporarily amend their internal controls. The racing commission or its designee shall be notified immediately that an emergency exists before the licensee temporarily amends its internal controls due to an emergency. The licensee shall submit the temporary emergency amendment of the internal controls to the racing commission or its designee within twenty-four (24) hours of the amendment. The submission shall include the detailed emergency procedures that will be implemented and the time period the emergency procedures will be temporarily in place. Any concerns the racing commission has with the submission shall be addressed with the licensee promptly.

(3) The internal controls shall include a detailed narrative description of the administrative and accounting procedures designed to satisfy the requirements of KAR Title 809, including the following:

(a) Reliable accounting controls, including the standardization of forms and definition of terms to be used in the sports wagering operations;

(b) Reporting controls which shall include policies and procedures for the timely reporting of standard financial and statistical information in accordance with this regulation;

(c) Access controls which include, as their primary objective, the safeguarding of company assets;

(d) Tables of organization, which shall provide for:

1. A system of personnel and chain of command which permits management and supervisory personnel to be held accountable for actions or omissions within their areas of responsibility;

2. The segregation of functions that are incompatible with separation of duties, so that no employee is in a position both to commit an error or to perpetrate a fraud and to conceal the error or fraud in the normal course of their duties;

3. Supervisory positions which permit the authorization or supervision of necessary transactions at all relevant times; and

4. Areas of responsibility which are not so extensive as to be impractical for one (1) person to monitor.

(e) A jobs compendium detailing job descriptions, chains of command, and lines of authority for all personnel engaged in the operation of sports wagering. The licensee shall maintain and update the jobs compendium on a regular basis, but at least annually;

(f) An infrastructure and information security program; and

(g) All wagering procedures and practices specified within the GLI-33 Standards.

(4) To the extent a service provider is involved in or provides any of the internal controls required in this Chapter, the licensee's internal controls shall document the roles and responsibilities of the service provider and shall include procedures to evaluate the adequacy of and monitor compliance with the service provider's internal controls.

(5) The licensee shall stamp or otherwise mark each page of the internal controls submitted to the racing commission with the word "CONFIDENTIAL" if the licensee does not believe the material submitted should be subject to public disclosure.

(6) If a licensee intends to utilize any new technology not identified in its initial proposal, it shall submit the changes to its internal controls to incorporate the use of any such new technology to the racing commission for approval.

(7) If the racing commission determines that the internal controls of the licensee do not comply with the requirements of KAR Title 809, the racing commission shall notify the licensee in writing. Within

fifteen (15) calendar days after receiving the notification, the licensee shall amend its internal controls accordingly and shall submit, for racing commission approval, a copy of the written internal controls, as amended, and a description of any other remedial measure taken.

**Section 2. Information Security Responsibilities.** The internal controls shall ensure that an information security program is effectively implemented, and information security function responsibilities are effectively allocated.

(1) The licensee shall implement, maintain, and comply with a comprehensive information security program, the purpose of which shall be to take reasonable steps to protect the confidentiality, integrity, and availability of personally identifiable information of individuals who place a sports wager with the licensee.

(2) The licensee's information security program shall contain administrative, technical, and physical safeguards appropriate to the size, complexity, nature, and scope of the operations, and the sensitivity of the personally identifiable information owned, licensed, maintained, handled, or otherwise in the possession of the licensee.

(3) A licensee's information security forum, data privacy committee, or other similar organizational structure comprised of senior managers shall be formally established to monitor and review the information security program to ensure its continuing suitability, adequacy, and effectiveness, maintain formal minutes of meetings, and convene at least every six months.

(4) A licensee's information security department shall exist that is responsible for developing a security strategy in accordance with the overall operation. The information security department will subsequently work with the other departments to implement the associated action plans. It shall be involved in reviewing all tasks and processes that are necessary from the security perspective for the licensee, including the protection of information and data, communications, physical, virtual, personnel, and overall business operational security.

(5) The licensee's information security department shall report to no lower than executive level management and shall be independent of the IT department with regard to the management of security risk.

(6) The licensee's information security department shall have the competencies and be sufficiently empowered and shall have access to all necessary resources to enable the adequate assessment, management, and reduction of risk.

(7) The licensee's chief security officer or equivalent head of the information security department shall be a full member of the information security forum and be responsible for recommending information security policies and changes.

**Section 3. Accounting Records.** licensees shall maintain complete, accurate, and legible records of all financial transactions for five (5) years, including transactions pertaining to revenues, expenses, assets, liabilities, and equity in conformance with generally accepted accounting principles. The licensee's financial transaction reports shall be in compliance with GLI-33 Standards, unless otherwise permitted by the commission.

(1) The accounting records shall be maintained according to GLI-33 Standards, unless otherwise permitted by the commission. The detailed subsidiary records shall include:

(a) Detailed general ledger accounts identifying all revenue, expenses, assets, liabilities, and equity;

(b) A record of all investments, advances, loans, and accounts receivable balances due the establishment;

(c) A record of all loans and other accounts payable;

(d) A record of all accounts receivable written off as uncollectible;

(e) Journal entries prepared;

(f) Tax work papers used in preparation of any state or federal tax return if applicable;

(g) Records supporting the accumulation of the costs for complimentary services and items. A complimentary service or item provided to individuals in the normal course of a sports wagering business shall be recorded in an amount based upon the full retail price normally charged for the service or item or as is otherwise

consistent with generally accepted accounting principles; and

(h) Records required by the internal controls.

(2) The licensee shall maintain all records supporting the adjusted gross revenue for five (5) years.

(3) If a licensee fails to maintain the records used by it to calculate the adjusted gross revenue, the racing commission may compute and determine the amount upon the basis of an audit conducted by the racing commission using available information.

**Section 4. Financial Audits.** Upon application, and annually thereafter, each licensee shall submit to the racing commission, within ninety (90) calendar days of the licensee's fiscal year end, its financial audit for that fiscal year.

(1) The licensee shall operate in conformity with financial audit conditions established in the license conditions issued by the racing commission pursuant to KRS 230.290(3).

(2) Upon request by the commission, the licensee shall submit pro forma statements that present projected or estimated financial performance, assets, and liabilities. These pro forma statements shall include:

(a) Pro forma balance sheet: A projected or estimated balance sheet outlining the entity's assets, liabilities, and equity at a specific point in time;

(b) Pro forma income statement: A projected or estimated income statement presenting the entity's anticipated revenues, expenses, and net income for a specific period;

(c) Pro forma cash flow statement: A projected or estimated cash flow statement demonstrating the expected cash inflows and outflows of the entity over a specific period;

(d) Pro forma statement of retained earnings: A projected or estimated statement reflecting changes in the entity's retained earnings over a specific period, considering projected net income, dividends, and other adjustments; and

(e) Notes for financial statements: Explanatory notes providing additional information and disclosures related to the pro forma statements, including significant assumptions, methodologies used, and any other relevant details.

(3) If audited financial statements are not available, the licensee shall provide audited financial statements of its parent company and the licensee's unaudited financial statements, which document the licensee's financial performance, assets, and liabilities, including:

(a) A balance sheet;

(b) An income statement;

(c) A cash flow statement;

(d) A statement of retained earnings; and

(e) Notes for financial statements.

(4) The pro forma statements shall be clearly labeled as unaudited and based on management's estimates and assumptions. These statements may serve as temporary financial documentation until audited financial statements become available.

(5) The financial audit shall be performed in accordance with generally accepted accounting principles by an independent certified public accountant currently authorized to practice in Kentucky, and shall contain the opinion of the independent certified public accountant as to its fair preparation and presentation in accordance with generally accepted accounting principles.

(6) The racing commission shall determine the number of copies of audits or reports required under this procedure. The audits or reports shall be received by the racing commission or postmarked no later than the required filing date.

(7) The reporting year-end of the licensee is December 31 of each year, unless otherwise approved by the racing commission.

**Section 5. Retention, Storage, and Destruction of Records.** The internal controls shall include a records retention schedule, and provisions related to the storage and destruction of records that incorporates the following provisions, without limitation:

(1) Each licensee shall maintain, in a place secure from theft, loss, or destruction, adequate records of its business and accounting operations.

(2) A licensee shall make the records available to the racing commission, upon request, within a time provided for by the racing commission. A licensee shall retain the records for not less than five

(5) years.

(3) A licensee shall keep and maintain, in a manner and form approved by the racing commission, accurate, complete, and legible records of any books, records, or documents pertaining to, prepared in, or generated by, the licensee.

(4) A licensee shall organize and index all required records in a manner that enables the racing commission to locate, inspect, review, and analyze the records with reasonable ease and efficiency.

(5) A licensee shall notify the racing commission in writing at least sixty (60) calendar days prior to the scheduled destruction of any record required to be retained in accordance with this section, if within the five (5) year record retention requirement. Such notice shall list each type of record scheduled for destruction, including a description sufficient to identify the records included; the retention period; and the date of destruction. If documents are to be destroyed in the normal course of business in accordance with document retention policies previously set forth in the internal controls approved by the racing commission, no notice to the racing commission shall be required.

(6) The racing commission may prohibit the destruction of any record required to be retained in accordance with this section by so notifying the licensee in writing within forty-five (45) calendar days of receipt of the notice of destruction pursuant to subsection 0 or within the specified retention period. Such original record may thereafter be destroyed only upon notice from the racing commission, or by order of the racing commission upon the petition of the licensee, or by the racing commission on its own initiative.

(7) The licensee may use the services of a disposal company for the destruction of any records required to be retained in accordance with this section.

#### Section 6. Reserve Requirement.

(1) The internal controls shall include a plan to maintain and protect sufficient funds to conduct sports wagering at all times through a reserve in the amount necessary to ensure the security of funds held in sports wagering accounts and the ability to cover the outstanding sports wagering liability.

(a) The reserve shall be in the form of cash, cash equivalents, payment processor receivables, payment processor reserves, an irrevocable letter of credit, a bond, or a combination thereof.

(b) The reserve shall be not less than the greater of \$25,000 or the sum of the following amounts:

1. The daily ending cashable balance of all sports wagering accounts;
2. Pending withdrawals;
3. Amounts accepted by the licensee on sports wagers whose outcomes have not been determined; and
4. Amounts owed but unpaid on winning sports wagers.

(c) Amounts available to patrons for wagering that are not redeemable for cash may be excluded from the reserve computation.

(2) A licensee shall have access to all sports wagering account and transaction data to ensure the amount of its reserve is sufficient. Unless otherwise directed by the racing commission, a licensee shall file a monthly attestation with the racing commission, which states that funds have been safeguarded under this procedure.

(3) The racing commission may audit a licensee's reserve at any time and may direct a licensee to take any action necessary to ensure the requirements of this section are met.

Section 7. Risk Management Framework. A licensee shall implement a risk management framework. This framework may be provided in-house by a unit capable of performing this function with appropriate segregation of functions and reporting duties, or by a third-party entity.

(1) The internal controls shall contain a description of the risk management framework, including:

- (a) Automated and manual risk management procedures;
- (b) Employee management, including access controls and segregation of duties;
- (c) Information regarding identifying and reporting fraud and suspicious conduct;

(d) Controls ensuring regulatory compliance;

(e) Description of Anti-Money Laundering (AML) compliance standards;

(f) Controls for accepting wagers and issuing pay outs in excess of \$10,000;

(g) Controls for accepting multiple wagers from one patron in a 24-hour cycle, including a process to identify patron structuring of wagers to circumvent recording and reporting requirements;

(h) Description of all software applications that comprise the sports wagering system;

(i) Description of all types of sports wagers available to be offered by the licensee;

(j) Description of the procedures to prevent past posting of wagers;

(k) Description of the procedures to prevent individuals from placing wagers as agents or proxies for other individuals; and

(l) Description of all integrated third-party platforms.

(2) A licensee shall file with the racing commission a report of any error that occurs in offering an event or wager or if an unapproved sporting event or type of wager is offered to the public.

#### Section 8. Taxation Requirements.

(1) The internal controls shall ensure compliance with all Internal Revenue Service (IRS) requirements and the licensee shall provide for the withholding or reporting of income tax of patrons as required by applicable state or federal law.

(2) The licensee shall disclose potential tax liabilities to patrons at the time of award of any sports wagering payouts in excess of limits set by the IRS. Such disclosures will include a statement that the obligation to pay applicable taxes on payouts is the responsibility of the patron and that failure to pay applicable tax liabilities may result in civil penalties or criminal liability. Upon written request, the licensee shall provide patrons with summarized tax information on sports wagering activities.

#### Section 9. Reports of Suspicious Transactions.

(1) A transaction requires reporting under the terms of this section if it is conducted or attempted, by, at, or through a licensee, and involves or aggregates to at least \$5,000 in funds or other assets, and the licensee knows, suspects, or has reason to suspect that the transaction or a pattern of transactions of which the transaction is a part:

(a) Involves funds derived from illegal activity or is intended or conducted in order to hide or disguise funds or assets derived from illegal activity (including, without limitation, the ownership, nature, source, location, or control of such funds or assets) as part of a plan to violate or evade any federal law or regulation or to avoid any transaction reporting requirement under federal law or regulation or of the racing commission.

(b) Is designed, whether through structuring or other means, to evade any requirements of these regulations or of any other regulations promulgated under the Bank Secrecy Act;

(c) Has no business or apparent lawful purpose or is not the sort in which the particular patron would normally be expected to engage, and the licensee knows of no reasonable explanation for the transaction after examining the available facts, including the background and possible purpose of the transaction; or

(d) Involves use of the licensee to facilitate criminal activity.

(2) A licensee may also file a report of any suspicious transaction that it believes is relevant to the possible violation of any law or regulation but whose reporting is not required by this section.

(3) The report shall be filed no later than thirty (30) calendar days after the initial detection by the licensee of facts that may constitute a basis for filing such a report. In situations involving violations that require immediate attention, the licensee shall immediately notify the racing commission in addition to timely filing a report.

(4) A licensee shall maintain a copy of any report filed and the original or business record equivalent of any supporting documentation for a period of five (5) years from the date of filing the report. Supporting documentation shall be identified, and maintained by the licensee as such, and shall be deemed to have been filed with the report. A licensee shall make all supporting documentation available to the racing commission and any appropriate law

enforcement agencies upon request.

(5) Unless otherwise required by this Chapter, other law, or court order, licensee and its directors, officers, employees, or agents who file a report pursuant to this regulation shall not notify any person involved in the transaction that the transaction has been reported. Any report filed with the racing commission is confidential and may be disclosed by the racing commission in the necessary administration of their duties and responsibilities under the Act or as otherwise required by law or court order.

Section 10. Anti-Money Laundering (AML) Monitoring. The internal controls shall implement AML procedures and policies that adequately address the risks posed by sports wagering for the potential of money laundering and terrorist financing. The AML procedures and policies shall provide for the following:

- (1) Up to date training of employees in the identification of unusual or suspicious transactions;
- (2) Assigning an individual or individuals to be responsible for all areas of AML by the licensee including reporting unusual or suspicious transactions;
- (3) Use of any automated data processing systems to aid in assuring compliance; and
- (4) Periodic independent tests for compliance with a scope and frequency as required by the racing commission. Logs of all tests shall be maintained for five (5) years.

Section 11. Integrity Monitoring and Suspicious Behavior. A licensee shall implement an integrity monitoring system. This solution may be provided in-house by a unit capable of performing this function with appropriate segregation of functions and reporting duties, or by a third-party entity.

(1) The internal controls shall include provisions for a licensee to report to the racing commission as soon as practicable, but in no event longer than forty-eight (48) hours after discovery:

- (a) Any information regarding irregularities in volume or changes in odds that could signal suspicious activities which were identified;
- (b) Any information relating to criminal or disciplinary proceedings commenced against the licensee in connection with its operations;

(c) Any information relating to the following, which shall also be reported to the relevant sports governing body or equivalent:

1. Abnormal wagering activity or patterns that may indicate a concern with the integrity of a sporting event or events;
2. Any potential breach of the internal rules and codes of conduct pertaining to sports wagering of a relevant sports governing body or equivalent, to the extent the licensee has actual knowledge of the potential breach; and
3. Any other conduct that corrupts a sports wagering outcome of a sporting event or events for purposes of financial gain, including match-fixing; or

(d) Any information relating to suspicious or illegal wagering activities, including the use of funds derived from illegal activity, the placement of wagers to conceal or launder funds derived from illegal activity, the use of agents to place wagers, and the use of false identification in placing wagers.

(2) A licensee shall maintain the confidentiality of information provided by a sports governing body or equivalent for purposes of investigating or preventing the conduct described in subsection 00, unless disclosure is required by the Act, the racing commission, or other law or court order, or unless the sports governing body or equivalent consents to its disclosure in writing.

(3) A licensee receiving a report of suspicious or illegal wagering activity shall be permitted to suspend wagering on sporting events or types of wager related to the report, and may place a hold on suspicious wagers while investigating, but may only cancel or void sports wagers related to the report after receiving written approval from the racing commission or its designee.

(4) Upon request by the racing commission or its designee, a licensee shall provide remote, read-only access and the necessary software and hardware for the racing commission to evaluate or monitor the sports wagering system. If requested, the licensee shall provide the racing commission with remote access or other approved mechanism, which shall provide:

- (a) All reports of abnormal wagering activity;
- (b) Whether the abnormal wagering activity was subsequently determined to be suspicious or illegal wagering activity;
- (c) All reports deemed suspicious or illegal wagering activity at the outset; and
- (d) The actions taken by the licensee according to its integrity monitoring system.

(5) Nothing in this section shall require a licensee to provide any information in violation of federal, state or local law or regulation, including laws and regulations relating to privacy and personally identifiable information.

(6) A licensee shall maintain records of all integrity monitoring services and activities, including all reports and suspicious or illegal wagering activity and any supporting documentation, for a minimum of five (5) years after a sporting event occurs. The licensee shall disclose these records to the racing commission upon request.

(7) The racing commission may require a licensee to provide any hardware or software necessary to the racing commission, or to an independent testing laboratory approved by the racing commission, for evaluation of the licensee's sports wagering offering or to conduct further monitoring of sports wagering data.

#### Section 12. Personally Identifiable Information Security.

(1) Any information obtained in respect to a patron, including confidential information, personally identifiable information and authentication credentials for a sports wagering account, shall be collected in compliance with the licensee's privacy policies set forth in its internal controls. Both personally identifiable information and the sports wagering account funds shall be considered as critical assets for the purposes of risk assessment.

(2) No employee or agent of the licensee shall divulge any confidential information or personally identifiable information related to a patron, the placing of any wager, or any other sensitive information related to the operation of the licensee without the consent of the patron, except as required by this section, the racing commission, and as otherwise required by state or federal law.

(3) The internal controls shall include procedures for the security and sharing of confidential information, personally identifiable information, funds in a sports wagering account, and other sensitive information as required by the racing commission, including:

- (a) The designation and identification of one or more employees having primary responsibility for the design, implementation, and ongoing evaluation of such procedures and practices;
- (b) The procedures to be used to determine the nature and scope of all information collected, the locations in which such information is stored, and the storage devices on which such information may be recorded for purposes of storage or transfer;
- (c) The measures to be utilized to protect information from unauthorized access; and
- (d) The procedures to be used if a breach of data security has occurred, including required notification to the racing commission.

Section 13. Complaints Pertaining to Sports Wagering. The internal controls shall provide procedures for receiving, investigating, responding to, and reporting on complaints by patrons.

(1) When a patron makes a complaint, the licensee shall promptly issue a complaint report, setting out:

- (a) The name of the complainant;
- (b) The nature of the complaint;
- (c) The name of the persons, if any against whom the complaint was made;
- (d) The date of the complaint; and
- (e) The action taken or proposed to be taken, if any, by the licensee.

(2) All complaints received by a licensee from a patron and the licensee's responses to complaints shall be retained for at least five (5) years and made available to the racing commission within ten (10) business days of any request by the racing commission.

(3) A licensee shall investigate and attempt to resolve all complaints with the patron.

Section 14. Prohibition of Credit Extension. The internal controls shall include controls relating to not allowing the acceptance of a



sports wager or deposit of funds into a sports wagering account that is derived from the extension of credit by affiliates or agents of the licensee. For purposes of this section, credit shall not be deemed to have been extended where, although funds have been deposited into a sports wagering account, the licensee is awaiting actual receipt of such funds in the ordinary course of business.

(1) Credit providers such as small amount credit contracts shall not be advertised or marketed to patrons.

(2) A patron shall not be referred to a credit provider to finance their sports wagering activity.

(3) Personally identifiable information related to a patron shall not be provided to any credit provider.

**Section 15. Prohibited Patrons.** The internal controls shall include commercially and technologically reasonable measures to prevent access to sports wagering by any prohibited patrons at a licensed premises and online via website or mobile application.

(1) If a licensee detects, or is notified of, an individual suspected of being a prohibited patron who had engaged or is engaging in prohibited sports wagering, the licensee shall use reasonable measures to verify whether the individual is prohibited or not.

(2) If the licensee is able to establish, by reasonable measures, that the individual is prohibited, the licensee shall cancel a sports wager.

**Section 16. Layoff Wagers.** The internal controls shall include procedures for a licensee to accept layoff wagers placed by other licensees and place layoff wagers with other licensees for the purpose of offsetting sports wagers.

(1) The licensee placing a layoff wager shall inform the licensee accepting the wager that the wager is being placed by a licensee and shall disclose their identity.

(2) A licensee may decline to accept a layoff wager in its sole discretion.

(3) Layoff wagers shall be reported to the racing commission promptly.

**Section 17. Reports of Licensees.** The internal controls shall detail the licensee's ability to prepare reports considered necessary by the racing commission including reports supporting adjusted gross revenue, wagering liability, and payouts. The licensee shall timely file with the commission any additional reports required by the Act or by any regulation prescribed by the racing commission. Any information provided under this section is confidential and proprietary and is exempt from disclosure unless disclosure is required by this Chapter, by other law, or by court order.

**Section 18. Racing Commission Access to Sports Wagering Data.** The internal controls shall detail the controls to assure that all sports wagering data the racing commission requires to be maintained under the Act or KAR Title 809 is appropriately segregated and controlled to prevent unauthorized access.

(1) Licensees shall provide the racing commission with access to all such data, upon request and with reasonable notice.

(2) Licensees shall retain such data for a minimum of five (5) years.

**Section 19. Independent Audit of Internal Controls.** Licensees shall have their internal controls independently audited at least once every two (2) years with the results documented in a written report. This includes internal controls conducted by an affiliate on behalf of the licensee. Reports shall be maintained and available to the racing commission for five (5) years.

(1) Such independent audits may be conducted by the racing commission, or a third-party contractor approved by the racing commission. The racing commission may, in its discretion, approve the licensee to complete an internal audit, if the licensee uses an independent auditing team to serve as a third-party contractor for use in completing this audit.

(2) The racing commission or third-party contractor shall be responsible for auditing the licensee's compliance with the Act and KAR Title 809, the Wagering Procedures and Practices specified within the GLI-33 Standards, and the internal controls.

(3) Documentation shall be prepared to evidence all independent audit work performed as it relates to the requirements of this section, including all instances of noncompliance.

(4) Independent audit reports shall include objectives, procedures and scope, findings and conclusions, and recommendations.

(5) Independent audit findings shall be reported to management. Management shall be required to respond to the independent audit findings and the stated corrective measures to be taken to avoid recurrence of the audit exception. Such management responses shall be included in the final independent audit report.

(6) Follow-up observation and examinations shall be performed to verify that corrective action has been taken regarding all instances of noncompliance cited by the independent audits. The verification shall be performed within six (6) months following the date of notification.

(7) It is acceptable to reuse the results of prior audits conducted within the audit period by the same third-party contractor in another sports wagering jurisdiction. Such reuse shall be noted in the audit report. This reuse option does not include any internal controls unique to the Commonwealth, which will require new audits.

JONATHAN RABINOWITZ, Commission Chair

RAY PERRY, Secretary

APPROVED BY AGENCY: July 10, 2023

FILED WITH LRC: July 10, 2023 at 4 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 Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511. 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:** Jennifer Wolsing, General Counsel, Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859) 246-2039, email jennifer.wolsing@ky.gov.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jennifer Wolsing

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative action establishes auditing and internal control standards for sports wagering operators and service providers.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish standards to ensure that sports wagering operators and service providers have internal protocols in place to ensure the integrity of their sports wagering systems.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.260(16)(a) requires the racing commission to promulgate regulations to establish standards related to sports wagering, including standards for "maintaining and auditing books and financial records, securely maintaining records of bets and wagers, integrity requirements for sports wagering and related data,...surveillance and monitoring systems, and other reasonable technical criteria related to conducting sports wagering." KRS 230.811(2) requires tracks and service providers to "comply with the standards established by the racing commission. ... to ensure the integrity of the system of sports wagering." KRS 230.260(16) requires the commission to "promulgate administrative regulations to establish. ... integrity requirements for sports wagering and related data."

(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 the statutes by establishing

clear, objective auditing and internal control standards for sports wagering systems providers 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: N/A. This is a new regulation.

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation affects the licensed tracks that apply for and receive a license to conduct sports wagering in the Commonwealth. There are currently nine (9) licensed tracks operating in the Commonwealth. Each track is allowed to contract with up to three (3) service providers. Therefore, up to 27 service providers may be affected by this regulation. Independent testing labs that certify these systems will be impacted by this regulation. Additionally, there is an unknown number of patrons who will choose to engage in sports wagering. Sports Governing Bodies also may be affected 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: Operators and service providers offering sports wagering must observe the regulatory requirements for audit and internal control. Sports Governing Bodies will receive information from Licensees based on the licensees' compliance with these standards.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Compliance costs are uncertain, but licensed tracks and service providers offering sports wagering are likely to incur costs to comply with the regulations, including the cost of paying independent labs to certify their systems. Sports Governing Bodies may incur costs to comply with this regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Licensees will benefit from having clear standards for internal control and auditing related to sports wagering. Kentuckians will benefit from the effective administration of sports wagering and the assurance that sports wagering system providers are required to have internal measures to ensure the functionality and integrity of their systems. Sports Governing Bodies will receive knowledge of suspicious wagers and can react to ensure the integrity of their respective sports.

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

(a) Initially: It is estimated that the commission will spend approximately \$2.4 million to implement sports wagering in Kentucky in the first year.

(b) On a continuing basis: It is further estimated that the commission will spend approximately \$1.2 million annually to continue regulating sports wagering in Kentucky on a yearly basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The funding to implement and enforce sports wagering in Kentucky will come from the sports wagering administrative fund, as established in KRS 230.817. The service providers will be required to pay the laboratories to test and certify their systems.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied, because this amended regulation will apply similarly to all similarly situated entities in an equal manner.

#### FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Horse Racing Commission 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 230.260(16), KRS 230.811(2), and KRS 230.260(16) authorize the actions taken by this regulation.

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

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

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

(c) How much will it cost to administer this program for the first year? It is estimated that the commission will spend approximately \$2.4 million in the first year to implement sports wagering in Kentucky.

(d) How much will it cost to administer this program for subsequent years? It is further estimated that the commission will spend approximately \$1.2 million annually to continue regulating sports wagering in Kentucky in subsequent years.

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

Revenues (+/-): Neutral

Expenditures (+/-): Neutral

Other Explanation: N/A

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

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

(c) How much will it cost the regulated entities for the first year? Licensees will likely incur costs to have their systems tested and certified by independent labs.

(d) How much will it cost the regulated entities for subsequent years? Licensees will likely incur costs to have their systems tested and certified by independent labs.

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

Cost Savings (+/-): \$0.00

Expenditures (+/-): Please see the answers to (c) and (d) above.

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 is not anticipated to have a major economic impact on Kentucky for the reasons stated above.

**STATEMENT OF EMERGENCY  
809 KAR 10:007E**

This emergency regulatory amendment is promulgated to prevent a loss of state funds that are required to be deposited with the State Treasury pursuant to KRS 230.817, and to meet an imminent deadline for the promulgation of an administrative regulation that is established by state statute. More specifically, this administrative regulation is filed on an emergency basis to ensure: (1) that funds are timely remitted to the State Treasury in accordance with the General Assembly's statutory mandate set out in KRS 230.817; and (2) that a fully functioning sports wagering system is established within six (6) months of the effective date of House Bill 551 (2023 Regular Session), pursuant to the timeline established in KRS 230.361. The Kentucky Horse Racing Commission therefore seeks to implement sports wagering on an emergency basis, in order to comply with the above-referenced statutory requirements. This emergency regulation will be replaced by an ordinary administrative regulation at this time. The ordinary administrative regulation is not identical to this emergency administrative regulation. The emergency regulation allows sports wagering operators to conduct individualized self-exclusion programs; whereas, the ordinary regulation merges those individual self-exclusion programs into one that is administered by the Kentucky Horse Racing Commission.

ANDY BESHEAR, Governor  
RAY PERRY, Secretary

**PUBLIC PROTECTION CABINET  
Kentucky Horse Racing Commission  
(New Emergency Administrative Regulation)**

**809 KAR 10:007E. Responsible gaming and advertising.**

EFFECTIVE: July 10, 2023

RELATES TO: KRS Chapter 230

STATUTORY AUTHORITY: KRS 230.260(15), (16)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.260(15) requires the commission to "promulgate administrative regulations establishing a self-exclusion list for individuals who self-identify as being problem or compulsive gamblers." KRS 230.260(16) requires the commission to "promulgate administrative regulations to establish standards for the conduct of sports wagering." This administrative regulation establishes a self-exclusion list and responsible gaming programs for sports wagering participants.

**Section 1. Self-Exclusion List.**

(1) Each operator licensee shall develop a commission-approved self-exclusion list for individuals who self-identify as problem or compulsive gamblers.

(2) The commission shall consider at least the following factors in approving a self-exclusion list:

(a) The list shall include the names and other identifying information of the individuals who have self-excluded from sports wagering at a licensed premises and online via a licensee-specific Web site, mobile application, or by phone.

(b) Each licensee shall display a notice to the public of the existence of the self-exclusion list and the method or methods individuals may use to self-identify at the licensed premises, online, or by phone.

(c) The notice shall be displayed at public entrances to the race and sports book location, and on the licensee's Web site or mobile application.

(d) The notice shall include information about the consequences of self-exclusion.

(3) The notice and its placement locations shall be approved by the racing commission. In approving the notice, the commission shall consider the notice's visibility and any other relevant factors.

(4) Each licensee shall collect self-exclusion information from individuals who self-identify as problem or compulsive gamblers.

(5) The self-exclusion information collected shall include the

individual's name, address, date of birth, and other identifying information as prescribed by the racing commission.

(6) The licensee shall provide any newly-collected self-exclusion information to the racing commission on a monthly basis and in a manner approved by the racing commission.

(7) The commission shall compile and maintain a comprehensive list of all voluntarily self-excluded persons.

(8) The comprehensive list shall include the self-exclusion information provided by each licensee.

(9) The comprehensive list shall be provided to all licensees and updated on an as-needed basis, but at least monthly.

(10) Pursuant to KRS 61.878(1)(a) and KRS 230.260, information collected under this Section shall be exempt from disclosure under the Kentucky Open Records Act, KRS 61.870 to 61.884.

(11) Self-exclusion information shall be kept confidential and shall not be disclosed except as necessary to enforce these administrative regulations or as required by law.

(12) Each licensee shall establish its own self-exclusion policy. Each policy shall be approved by the racing commission to ensure the best interests of sports wagering and compliance with KRS 230.260.

(13) The policy may cover how the licensee chooses to exclude individuals on the self-exclusion list. The policy may include identification and verification, forfeiture of prizes by voluntarily excluded persons, security personnel, technology, employee training, contractual obligations, or collaboration with other licensees.

(14) Each licensee shall review its self-exclusion policy at least once every two (2) years and amend it as necessary to ensure compliance with racing commission regulations and its effectiveness in achieving the purpose for which it is established.

**Section 2. Responsible Gaming Program.**

(1) A licensee shall develop and maintain a responsible gaming program that shall be approved by the racing commission pursuant to this section. The responsible gaming program shall require:

(a) Posting in a conspicuous place on the licensee's Web site or mobile application and in every licensed premises a sign that bears a toll-free number for a commission-approved organization that provides assistance to problem or compulsive gamblers;

(b) Providing commission-approved disclosures on the licensee's Web site or mobile application and informational leaflets or other similar materials at the licensed premises containing information on the dangers associated with problem gambling;

(c) Providing patrons expressing concern with a gambling problem with information on commission-approved organizations that provide assistance to problem or compulsive gamblers;

(d) Providing notification that underage gambling is a criminal offense and that anyone who facilitates an underage person to place a sports wager has committed a criminal offense; and

(e) Ensuring that any request by a patron who wishes to self-exclude from sports wagering is honored by the licensee.

(2) In approving the organizations and disclosures listed in the previous subsection, the commission shall consider industry standards for responsible gambling and any other relevant factors.

(3) At least every (5) years, the licensee shall ensure that the licensee's responsible gaming program is independently reviewed by a third party, pursuant to industry standards and performed by a third party approved by the racing commission. The racing commission may require the licensee to pay for the independent review.

**Section 3. Advertising and Marketing.**

(1) A licensee shall not allow, conduct, or participate in any false or misleading advertising or marketing concerning the licensee's sports wagering operations.

(2) A licensee shall only make representations concerning winnings that are accurate, not misleading, and capable of substantiation at the time of the representation. For purposes of this subsection, an advertisement shall be misleading if the advertisement makes representations about average winnings without equally prominently representing the average net winnings

of all patrons.

(3) A licensee shall not advertise or market at elementary, middle, or high school activities. The prohibition in this subsection shall exclude an advertisement distributed via mass media, such as television, radio, print media, or the Internet, if the advertisement is not specifically directed toward (but may be incidentally received by) elementary, middle, or high schools.

JONATHAN RABINOWITZ, Commission Chair

RAY PERRY, Secretary

APPROVED BY AGENCY: July 10, 2023

FILED WITH LRC: July 10, 2023 at 4 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 Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511. 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:** Jennifer Wolsing, General Counsel, Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859) 246-2039, email jennifer.wolsing@ky.gov.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jennifer Wolsing

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes and maintains a voluntary self-exclusion list, requires tracks and/or their service providers to provide a commission-approved responsible gaming program, and precludes false or misleading advertising.

(b) The necessity of this administrative regulation: This regulation is necessary to provide specific rules concerning responsible gaming and advertising.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.260(15) requires the commission to "promulgate administrative regulations establishing a self-exclusion list for individuals who self-identify as being problem or compulsive gamblers." KRS 230.260(16) requires the commission to "promulgate administrative regulations to establish standards for the conduct of sports wagering."

(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 statutes by ensuring that sports wagering providers establish a voluntary self-exclusion list for problem or compulsive gamblers. It also ensures that providers maintain a responsible gaming program. Finally, this regulation ensures that sports wagering providers avoid engaging in false or misleading advertising practices.

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation affects the licensed tracks that apply for and receive a license to conduct sports wagering in

the Commonwealth. There are currently nine (9) licensed tracks operating in the Commonwealth. Each track is allowed to contract with up to three (3) service providers. Therefore, up to 27 service providers may be affected by the definitions in this regulation. Additionally, there are an unknown number of patrons who will be impacted by the voluntary self-exclusion list and responsible gaming program. Finally, there is an unknown number of Kentuckians who will be impacted by the ban on false or misleading sports wagering advertising.

(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 tracks offering sports wagering and service providers must establish a self-exclusion program and a commission-approved responsible gaming program.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Costs are unknown, but should be minimal. Kentucky's licensed tracks already have individualized self-exclusion programs. They will simply report those names to the Commission for inclusion in a confidential state database shared by other tracks, pursuant to KRS 230.260(15). The costs of establishing a responsible gaming program to the commission's specifications will also be minimal, as it will primarily consist of conspicuous postings and disclosures regarding assistance programs for problem or compulsive gamblers.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Tracks will benefit from having clear standards for their voluntary self-exclusion and responsible gaming programs. Patrons will benefit from being able to take advantage of self-exclusion and responsible gaming programs. Kentuckians will benefit from the avoidance of false or misleading advertising.

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

(a) Initially: It is estimated that the commission will spend approximately \$2.4 million to implement sports wagering in Kentucky in the first year.

(b) On a continuing basis: It is further estimated that the commission will spend approximately \$1.2 million annually to continue regulating sports wagering in Kentucky on a yearly basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The funding to implement and enforce sports wagering in Kentucky will come from the sports wagering administrative fund, as established in KRS 230.817. No additional funding is required 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: No increase in fees or funding will be necessary to implement this administrative regulation.

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

(9) TIERING: Is tiering applied? Tiering is not applied, because this amended regulation will apply similarly to all similarly situated entities in an equal manner.

#### FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Horse Racing Commission 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 230.260(15) and (16) require or authorize the actions taken by this regulation.

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

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

(c) How much will it cost to administer this program for the first year? It is estimated that the commission will spend approximately \$2.4 million in the first year to implement sports wagering in Kentucky.

(d) How much will it cost to administer this program for subsequent years? It is further estimated that the commission will spend approximately \$1.2 million annually to continue regulating sports wagering in Kentucky in subsequent years.

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

Revenues (+/-): Neutral.

Expenditures (+/-): Neutral.

Other Explanation: None.

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

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

(c) How much will it cost the regulated entities for the first year? Costs for the first year are unknown, but should be minimal. Kentucky's licensed tracks already have individualized self-exclusion programs. They will simply report those names to the Commission for inclusion in a confidential state database shared by other tracks, pursuant to KRS 230.260(15). The costs of establishing a responsible gaming program to the commission's specifications will also be minimal, as it will primarily consist of conspicuous postings and disclosures regarding assistance programs for problem or compulsive gamblers.

(d) How much will it cost the regulated entities for subsequent years? Costs for subsequent years are unknown, but should be minimal. Kentucky's licensed tracks already have individualized self-exclusion programs. They will simply report those names to the Commission for inclusion in a confidential state database shared by other tracks, pursuant to KRS 230.260(15). The costs of establishing a responsible gaming program to the commission's specifications will also be minimal, as it will primarily consist of conspicuous postings and disclosures regarding assistance programs for problem or compulsive gamblers.

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 (+/-): Minimal, as set forth above in (4)(c) and (d).

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 regulation is not anticipated to have a major economic impact on Kentucky for the reasons stated above.

## STATEMENT OF EMERGENCY 809 KAR 10:008E

This emergency regulatory amendment is promulgated to prevent a loss of state funds that are required to be deposited with the State Treasury pursuant to KRS 230.817, and to meet an imminent deadline for the promulgation of an administrative regulation that is established by state statute. More specifically, this administrative regulation is filed on an emergency basis to ensure: (1) that funds are timely remitted to the State Treasury in accordance with the General Assembly's statutory mandate set out in KRS 230.817; and (2) that a fully functioning sports wagering system is established within six (6) months of the effective date of House Bill 551 (2023 Regular Session), pursuant to the timeline established in KRS 230.361. The Kentucky Horse Racing Commission therefore seeks to implement sports wagering on an emergency basis, in order to comply with the above-referenced statutory requirements. This emergency regulation will be replaced by an ordinary administrative regulation at this time. The ordinary administrative regulation is identical to this emergency administrative regulation.

ANDY BESHEAR, Governor

RAY PERRY, Secretary

## PUBLIC PROTECTION CABINET Kentucky Horse Racing Commission (New Emergency Administrative Regulation)

### 809 KAR 10:008E. Disciplinary actions and hearings.

EFFECTIVE: July 10, 2023

RELATES TO: KRS Chapter 230

STATUTORY AUTHORITY: KRS 230.260(16), 230.361, Chapter 13B

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.260 requires the commission to "promulgate administrative regulations to establish standards for the conduct of sports wagering." KRS 230.361 states the "racing commission shall promulgate administrative regulations to establish a fully functioning sports wagering system...." This administrative regulation establishes procedures and articulate grounds for disciplinary actions, imposing sanctions, investigating suspected violations, providing notice of disciplinary actions, and requesting and conducting an administrative hearing.

#### Section 1. Grounds for Disciplinary Actions.

(1) The racing commission may take disciplinary action against any person holding a license for a violation of any of the provisions of KRS Chapter 230, or any of the regulations promulgated thereunder, by the Licensee or its employees or agents.

(2) Acceptance or renewal of a license by a Licensee constitutes an agreement on the part of the license-holder to be bound by all the racing commission statutes and regulations.

#### Section 2. Violations.

(1) It shall be a violation of this administrative regulation if an applicant or licensee:

(a) Provides the racing commission, any advisory committee, or any racing commission employee with incorrect, false, or misleading information;

(b) Fails to furnish information requested by the racing commission, any advisory committee, or any racing commission employee;

(c) Is charged or convicted of a crime involving moral turpitude, a felony, sports wagering, cruelty, mistreatment, abuse, or neglect of a horse, or if the crime discredits or tends to discredit the Commonwealth of Kentucky, sports wagering, or the gaming industry;

(d) Engages in conduct that is against the best interests of horse racing, pari-mutuel wagering, or sports wagering; or

(e) Violates any provision of KRS Chapter 230, KAR Title 810, or KAR Title 809.

(2) For any violation established in subsection (1) of this section,

the racing commission may:

- (a) Deny a license application;
- (b) Suspend or revoke a license;
- (c) Issue a fine or monetary penalty;
- (d) Issue licensure conditions, such as restitution of money, restitution of property, or making periodic reports to the racing commission or designee as required; or
- (e) Issue a written reprimand or admonishment.

#### Section 3. Disciplinary Process Investigations.

(1) The racing commission shall investigate suspected violations of KRS Chapter 230 and KAR Titles 809 and 810 of the Kentucky Administrative Regulations.

(2) Upon the completion of the investigation, the person or persons completing the investigation shall submit a written report to the commission containing a statement of facts revealed by the investigation.

(3) Based on consideration of the investigative report, the commission shall determine whether there is probable cause to believe that a violation has been committed.

#### Section 4. Notice of Disciplinary Action and Appeals.

(1) Upon determination that probable cause exists, the commission shall issue written notice of disciplinary action. The notice shall establish:

- (a) The statutory or regulatory violation;
- (b) The factual basis on which the disciplinary action is based;
- (c) The penalty imposed; and
- (d) A statement that the notice may be appealed in accordance with KRS Chapter 13B by written notice sent to the racing commission within twenty (20) calendar days.

(2) Notice of a disciplinary action under this section may be appealed to an administrative hearing.

(3) A written request for an administrative hearing shall be filed with the racing commission within twenty (20) calendar days of the date of the notice. The request shall identify the specific issues in dispute and the legal basis on which the racing commission's or designee's decision on each issue is believed to be erroneous.

(4) An administrative hearing under this section shall be conducted in accordance with KRS Chapter 13B.

(5) If the request for an administrative hearing is not timely filed, the penalty laid out in the notice of disciplinary action shall be effective upon the expiration of the time to request an administrative hearing.

(6) Denial of an application for licensure may also be appealed in accordance with KRS Chapter 13B, by submitting a written request for an administrative hearing to the racing commission within twenty (20) calendar days of the date of the notice of denial.

JONATHAN RABINOWITZ, Commission Chair

RAY PERRY, Secretary

APPROVED BY AGENCY: July 10, 2023

FILED WITH LRC: July 10, 2023 at 4 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 Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511. 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:** Jennifer Wolsing, General Counsel, Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859) 246-2039, email jennifer.wolsing@ky.gov.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jennifer Wolsing

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes procedures and articulates grounds for disciplinary actions, imposing sanctions, investigating suspected violations, providing notice of disciplinary actions, and requesting and conducting an administrative hearing.

(b) The necessity of this administrative regulation: This regulation is necessary to provide specific rules related to disciplinary action taken by the commission against a license holder.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.260 requires the commission to "promulgate administrative regulations to establish standards for the conduct of sports wagering." KRS 230.361 states the "racing commission shall promulgate administrative regulations to establish a fully functioning sports wagering system...." This regulation establishes standards related to disciplinary action taken by the commission against a license holder.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will assist in the effective administration of the statutes by establishing clear and specific standards related to disciplinary action against license holders. This protects the wagering public and promotes integrity in sports wagering.

(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 regulation.

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation affects all sports wagering license holders.

(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: License holders must observe and adhere to the regulations related to violations and disciplinary actions.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): License holders may incur costs as part of a disciplinary action.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): License holders will benefit from the protection of the wagering public and the promotion of integrity in sports wagering.

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

(a) Initially: It is estimated that the commission will spend approximately \$2.4 million to implement sports wagering in Kentucky in the first year.

(b) On a continuing basis: It is further estimated that the commission will spend approximately \$1.2 million annually to continue regulating sports wagering in Kentucky on a yearly basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The funding to implement and enforce sports wagering in Kentucky will come from the sports wagering administrative fund, as established in KRS 230.817.

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

administrative regulation.

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

(9) TIERING: Is tiering applied? Tiering is not applied, because this amended regulation will apply similarly to all similarly situated entities in an equal manner.

#### FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Horse Racing Commission 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 230.260(16), KRS 230.361, KRS Chapter 13B

(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 during the first year.

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

(c) How much will it cost to administer this program for the first year? It is estimated that the commission will spend approximately \$2.4 million in the first year to implement sports wagering in Kentucky.

(d) How much will it cost to administer this program for subsequent years? It is further estimated that the commission will spend approximately \$1.2 million annually to continue regulating sports wagering in Kentucky in subsequent years.

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

Revenues (+/-): Neutral.

Expenditures (+/-): See answers to (c) and (d) above.

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 regulation is not expected to generate cost savings for the first year.

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

(c) How much will it cost the regulated entities for the first year? License holders may incur costs related to disciplinary action taken by the commission.

(d) How much will it cost the regulated entities for subsequent years? License holders may incur costs related to disciplinary action taken by the commission.

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

Cost Savings (+/-): \$0.00

Expenditures (+/-): License holders may incur costs related to disciplinary action taken by the commission.

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 regulation is not anticipated to have a major economic impact on Kentucky for the reasons stated above.

#### STATEMENT OF EMERGENCY 810 KAR 3:010E

This emergency regulatory amendment is promulgated to prevent a loss of state funds that are required to be deposited with the State Treasury pursuant to KRS 230.817, and to meet an imminent deadline for the promulgation of an administrative regulation that is established by state statute. More specifically, this administrative regulation is filed on an emergency basis to ensure: (1) that funds are timely remitted to the State Treasury in accordance with the General Assembly's statutory mandate set out in KRS 230.817; and (2) that a fully functioning sports wagering system is established within six (6) months of the effective date of House Bill 551 (2023 Regular Session), pursuant to the timeline established in KRS 230.361. The Kentucky Horse Racing Commission therefore seeks to implement sports wagering on an emergency basis, in order to comply with the above-referenced statutory requirements. This emergency regulation will be replaced by an ordinary administrative regulation at this time. The ordinary administrative regulation is identical to this emergency administrative regulation.

ANDY BESHEAR, Governor  
RAY PERRY, Secretary

#### PUBLIC PROTECTION CABINET Kentucky Horse Racing Commission (Emergency Amendment)

#### 810 KAR 3:010E. Licensing of racing associations.

EFFECTIVE: JULY 10, 2023

RELATES TO: KRS 230.215, 230.260, 230.280, 230.290, 230.300, 230.320, 230.811, 230.817

STATUTORY AUTHORITY: KRS 230.215(2), 230.260(9), 230.280, 230.300(1), (9), 230.811

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) vests the Kentucky Horse Racing Commission with the authority to promulgate regulations prescribing conditions under which all legitimate horse racing and wagering thereon is conducted in the Commonwealth. KRS 230.280 prohibits any person from conducting a horse race meeting for any stake, purse, or reward within the Commonwealth without securing the required license from the commission. KRS 230.260(9) authorizes the commission to prescribe by administrative regulation application forms for licenses. KRS 230.300 authorizes the commission to issue licenses to conduct race meetings. KRS 230.811 requires all applicants for a sports wagering operator's license to apply to the commission. KRS 230.260(16) requires the commission to promulgate administrative regulations to establish standards for the conduct of sports wagering. This administrative regulation establishes licensing application procedures and requirements for conducting horse racing at horse race meetings in the Commonwealth, and also establishes licensing application procedures and requirements for a licensed racing association to obtain a sports wagering operator's license and offer sports wagering in the Commonwealth.

#### Section 1. Definitions.

(1) "Application" means Initial/Renewal Application for License to Conduct Live Horse Racing, Simulcasting, Pari-Mutuel Wagering, and Sports Wagering Form" KHRC 3-010-1, incorporated by reference in Section 2 of this administrative regulation.

(2) "Applicant for operator license" means a person licensed as an association under KRS 230.300 that is eligible for an operator license pursuant to KRS 230.811.

(3) "Operator" means a sports wagering operator license applicant that has been granted a license.

(4) "Operator license" means a license to conduct, manage, or

offer to conduct sports wagering within the Commonwealth of Kentucky, pursuant to KRS 230.811.

(5) "Occupational licensee" means a person holding a license authorized by KRS 230.210 and 809 KAR 1:003.

(6) "Principal" is defined by KRS 230.210(14).

(7) [(2)] "Publicly traded corporation" means a corporation that:

(a) Has voting securities registered under Section 12 of the Securities Exchange Act of 1934 (1934 Act), 15 U.S.C. 78a et seq.;

(b) Issues securities subject to Section 15(d) of the 1934 Act;

(c) Has voting securities exempted from the registration requirements due to Section 3 of the Securities Act of 1933, 48 U.S.C. 77a et seq.; or

(d) Is required to file under the 1934 Act.

(8) "Service provider" is defined by KRS 230.210.

(9) "Sports wagering" is defined as established in KRS 230.210.

(10) "Substantial owner" is any person who owns five (5) percent or more of the business.

## Section 2. Racing License Applications.

(1) New racing license applications. A person or legal entity desiring to conduct thoroughbred racing in the Commonwealth shall apply to the commission for an association license pursuant to KRS 230.300(1).

(2) Renewal racing applications. Racing association licenses shall be renewed annually in accordance with KRS 230.300(1).

(3) An initial or renewal license application to conduct a horse racing meeting shall be submitted on the form "Initial/Renewal Application for License to Conduct Live Horse Racing, Simulcasting, and Pari-mutuel Wagering," KHRC 3-010-1.

(4) An applicant that is unable to provide information required on the application shall fully explain and document to the satisfaction of the commission its inability to provide the information, and shall provide the information promptly upon being able to do so.

## Section 3. Racing License and Investigation Fees.

(1) Racing license[License] fee.

(a) An initial applicant for an initial license shall submit with the application a non-refundable initial license fee of \$5,000.

(b) A renewal applicant shall not be charged a fee to renew a racing association license, unless an investigation fee is authorized by subsection (2) of this section.

(2) Racing license investigation[Investigation] fees.

(a) Initial applicants shall submit with the application an investigation fee of \$10,000.

(b)

1. The commission may require a renewal applicant or an applicant proposing a substantial change in ownership to pay an investigation fee of \$10,000 if:

a. The applicant or one (1) of its principals has not previously been subject to an investigation;

b. More than five (5) years has passed since the last investigation of the applicant or one (1) of its principals was conducted; or

c. The commission finds other good cause for an investigation.

2. If an investigation fee is requested, the applicant shall submit a cashier's check or certified check payable to the commission within ten (10) days of receipt of the request.

(c) The investigation fee shall pay all costs incurred by the commission in reviewing the application.

(d) Any portion of the investigation fee not required to complete the investigation shall be refunded to the applicant within twenty (20) days of the withdrawal, rejection, or approval of the license application or proposed change of ownership.

(e) If additional costs are incurred in the conduct of the investigation, the applicant shall submit a cashier's check payable to the commission in the amount reasonably requested by the commission within ten (10) days of receipt of the request. Failure to submit this payment shall result in suspension of processing the license application or proposed change of ownership and may result in denial of the license or proposed change of ownership.

## Section 4. Racing Licensing Criteria.

(1) The commission shall issue a racing license if it determines

that:

(a) The applicant meets all requirements of KRS Chapter 230 and KAR Title 810;

(b) The applicant is qualified and financially capable of operating a race track;

(c) The applicant will conduct racing in accordance with KRS Chapter 230 and KAR Title 810;

(d) The applicant will conduct racing in accordance with the highest standards and the greatest level of integrity; and

(e) The issuance of a license will ensure the protection of the public interest.

(2) In reviewing an application, the commission may consider any information, data, reports, findings, or other factors available which it deems relevant to its determination of whether the applicant is qualified to hold a license, including:

(a) The integrity of the applicant and its principals, including:

1. Whether the applicant or its principals is unsuitable pursuant to KRS 230.280(2)(f);

2. Whether the applicant or its principals has been a party to litigation over business practices, disciplinary actions over a business license, or refusal to renew a license;

3. Whether the applicant or its principals has been a party to proceedings in which unfair labor practices, discrimination, or violation of government regulations pertaining to racing or gaming laws was an issue, or bankruptcy proceedings;

4. Whether the applicant or its principals has failed to satisfy judgments, orders, or decrees; and

5. Whether the applicant or its principals has been delinquent in filing tax reports or remitting taxes;

(b) The quality of physical facilities and equipment, including any improvements and equipment proposed or existing in the applicant's facility;

(c) If a new applicant, the schedule for completion of a racing facility and the feasibility of meeting the schedule;

(d) The types and variety of pari-mutuel horse racing which the applicant proposes to offer;

(e) The financial ability of the applicant to develop, own, and operate a pari-mutuel facility successfully;

(f) If a new applicant, the status of governmental actions required to approve or facilitate the applicant's facility;

(g) The management ability of the applicant and its principals;

(h) Compliance of the applicant with applicable statutes, charters, ordinances, or regulations;

(i) The efforts of the applicant to promote, develop, and improve the horse racing industry in Kentucky;

(j) The impact of the facility upon the Commonwealth of Kentucky in the following areas:

1. Employment created, purchases of goods and services, public and private investment, and taxes generated;

2. Ecological and environmental impact;

3. Social impact; and

4. Cost of public improvements;

(k) The extent of public support or opposition to horse racing and pari-mutuel wagering at the location where the license is sought; and

(l) The effects of the location of the track, including the following:

1. Number, nature, and relative location of other licensees; and

2. Minimum and optimum number of racing days sought by the applicant.

Section 5. Racing Date Assignments. In assigning racing meetings and race dates to applicants, the commission shall consider factors relating to the economic and practical feasibility of conducting racing meetings at association race tracks, including:

(1) The types and dates of racing meetings held elsewhere, both within and outside of the Commonwealth;

(2) The effects that various types of pari-mutuel racing have upon one another;

(3) The quality of horse racing provided at other racetracks;

(4) Dates traditionally awarded racetracks in the past;

(5) The past performance of the licensee;

(6) Whether the licensee has complied with KRS Chapter 230 and KAR Title 810;

(7) Whether the assignment of racing dates will maximize



revenues to the state;

(8) Whether the assignment of racing dates will adversely affect the public health, welfare, and safety;

(9) The projected stability of the racing dates to be awarded; and

(10) The stability of the racing circuit within and outside the Commonwealth.

Section 6. Racing License Applicant Presentation.

(1) An applicant that has submitted a completed license application and all accompanying fees may request to make a presentation of its application at a meeting of the commission prior to the ruling on the application.

(2) The presentation shall be limited to information contained in the application and any supplemental information relevant to the applicant's suitability. The admission of supplemental information shall be subject to the discretion of the commission.

Section 7. Additional Information. At any time prior to issuing a license, the commission may request additional information if the information would assist the commission in deciding whether to issue a license, including:

(1) Copies of any documents used by the applicant in preparing the application; and

(2) Contracts between the applicant and third parties related to operations.

Section 8. Change in Ownership.

(1) A change in ownership shall be reported to the commission on the Kentucky Horse Racing Commission Racing Association Change of Control Form, KHRC 3-010-2.

(2) Notice of a nominal change in ownership shall be filed with the commission within fifteen (15) days of the execution of the documents upon which the proposed nominal change is based.

(3) Notice of a change of ownership shall not be required for:

(a) A nominal change in ownership if the licensee is a publicly traded corporation;

(b) The transfer of an ownership interest in an association, direct or indirect, whether substantial or nominal, if by a publicly traded corporation and the beneficial ownership is acquired by a person who will hold the voting securities of the publicly traded corporation for investment purposes only; or

(c) A debt transaction of a publicly traded corporation, unless the transaction results in the pledge or encumbrance of the assets or any portion thereof of the association.

(4) Notice of a substantial change in ownership shall be filed with the commission prior to the execution of the documents upon which the proposed substantial change is based and shall constitute a request for approval of the change.

(a) Absent prior written approval from the commission, a substantial change in ownership shall result in termination of the license.

(b) Any attempt to effect substantial change in ownership not in writing shall be considered void by the commission.

Section 9. Material Modification of Proposed or Existing Facility.

A new applicant or association with an existing facility shall not materially alter the grounds or facilities after a license has been issued for that facility without prior written approval of the commission or, if designated by the commission, the executive director of the commission.

Section 10. Racing Licensee Late Fee.

(1) A licensee that fails to conduct racing after the commencement date specified in the license may be subject to a late fee not to exceed \$15,000 per day.

(2) The amount of the late fee shall be based on the economic impact caused by the licensee's failure to perform.

(3) The late fee shall not be imposed for a particular day if the licensee can prove to the satisfaction of the commission that the cause of delay was:

(a) Beyond the control and without the fault or negligence of the licensee, its contractors, and subcontractors; or

(b) The default of a contractor or subcontractor, if:

1. Arising from causes beyond the control of the licensee, its contractors, and subcontractors; and

2. The supplies or services to be furnished by the contractor or subcontractor were not obtainable from other sources in sufficient time for the licensee to meet the completion date.

Section 11. Sports Wagering Operator License Applications; Deadlines; Provision for 2023.

(1) No racing associations shall offer sports wagering without a valid license issued by the commission.

(2) Initial applications. An applicant for an operator license in the Commonwealth shall apply to the commission for an operator license pursuant to KRS 230.811.

(3) Renewal applications. An operator license shall be renewed annually in accordance with KRS 230.811.

(4) Except as otherwise provided in Section 14 of this administrative regulation, an initial or renewal application for an Operator License shall be submitted on the form Initial/Renewal Application for License to Conduct Live Horse Racing, Simulcasting, Pari-Mutuel Wagering, and Sports Wagering Form" KHRC 3-010-1, 06/2023.

(5) Initial applications completed for sports wagering conducted in 2023 shall be effective through December 31, 2023.

(6) For sports wagering conducted in 2024 and thereafter, an application shall be filed with the commission prior to September 1 of the preceding calendar year.

(7) For sports wagering conducted in 2023, operators that offer sports wagering in a licensed facility for sports wagering shall offer in-person sports wagering at their licensed facility for sports wagering starting on or after September 7, 2023. Operators shall not offer sports wagering via a Web site or mobile application before September 28, 2023.

Section 12. Operator License Fees.

(1) An applicant for an operator license shall submit the initial fee of \$500,000 with its initial application for a license. The initial fee shall be non-refundable.

(2) An operator shall submit the renewal fee of \$50,000 with a renewal application for their license. The renewal fee shall be non-refundable.

(3) Pursuant to KRS 230.811, the fees in this section shall be deposited into the fund established by KRS 230.817.

Section 13. Operator Licensing Criteria.

(1) The commission shall issue an operator license if it determines that the applicant for an operator's participation as a sports wagering operator is in the best interests of sports wagering in Kentucky.

(2) In reviewing an application, the commission may consider any information, data, reports, findings, or other factors available that it deems relevant to its determination of whether the applicant for an operator license is qualified to be an operator. The commission shall consider, at a minimum, whether:

(a) The applicant for an operator license has completed and filed an Initial/Renewal Application for License to Conduct Live Horse Racing, Simulcasting, Pari-Mutuel Wagering, and Sports Wagering Form, KHRC 3-010-1;

(b) The applicant for an operator license meets all applicable requirements of KRS Chapter 230, KAR Title 810, and KAR Title 809;

(c) The applicant for an operator license is qualified and financially capable of conducting sports wagering;

(d) The applicant for an operator license will conduct sports wagering in accordance with KRS Chapter 230, KAR Title 810; and KAR Title 809;

(e) The applicant for an operator license will conduct sports wagering in a controlled environment that protects patrons from cheating and fraud; and

(f) The issuance of an operator license will ensure the protection of the public interest. The commission may authorize a temporary sports wagering operator license while determining suitability for the annual operator license. The commission shall consider at least the following factors in determining whether to issue a temporary

operator license:

(g) The information submitted by the applicant is sufficient to determine the applicant's suitability;

(h) The applicant for an operator's history of offering pari-mutuel wagering in the Commonwealth; and

(i) The history, if any, of the applicant for an operator license or its parent company of offering sports wagering or other gaming in other jurisdictions.

Section 14. Operator Application Procedures.

(1) An applicant for an operator license shall submit a fully executed original application.

(2) An application is deemed filed when the commission has received the completed application forms, including the information and documentation required by the application, unless a waiver is granted pursuant to subsection (10) of this section.

(3) The completed applications shall be filed as follows:

(a) Applicants for an operator license shall submit six (6) copies or electronically in a method approved by the commission.

(b) Applicants for an operator license shall submit the application to the commission's office in Lexington, Kentucky.

(c) Applicants for an operator license shall submit the application prior to expiration of the deadlines established in Section 11 of this administrative regulation.

(4) An applicant for an operator license is under a continuing duty to disclose any changes in the information submitted to the commission.

(5) Any operator that enters into a contract with a new service provider to provide services in Kentucky shall provide notice to the commission and a copy of such contract within fourteen (14) calendar days. If an operator has entered into a contract with a service provider to provide services in Kentucky prior to the effective date of this regulation, the operator shall attach the contract to its application for an operator's license. The operator shall provide notice to the commission within fourteen (14) calendar days of any subsequent amendments, modifications, or revisions made to the contract.

(6) Any operator that enters into a contract with a new information services provider to provide services in Kentucky shall provide notice to the commission within fourteen (14) calendar days of entry into the contract and, as requested by the commission, a copy of such contract. If an operator has entered into a contract with an information services provider to provide services in Kentucky prior to the effective date of this administrative regulation, the operator shall attach the contract to its application for an operator's license. The operator shall provide notice to the commission within fourteen (14) calendar days of any subsequent amendments, modifications, or revisions made to the contract.

(7) If an occupational licensee ceases to offer goods and services to an operator licensee, then the operator licensee shall notify the commission.

(8) An application shall include at least the following information:

(a) The name, address, and business structure of the applicant for an operator license;

(b) A key employee license application for a substantial owner or key person;

(c) A description of all sports wagering services, equipment, devices, and supplies used by the applicant for an operator;

(d) Contracts with service providers or occupational licensees, which are related to the sports wagering;

(e) Disclosure of any criminal, civil, or administrative action brought against the applicant for an operator license;

(f) Description of all other licenses held by the applicant for an operator license;

(g) Internal controls related to the conduct of sports wagering;

(h) The applicant for an operator's license shall submit audited financial statements for each of the three (3) fiscal years immediately preceding the application.

(i) If the applicant for an operator's license has no audited financial statements, the applicant shall provide audited financial statements of its parent company and the applicant's unaudited financial statements, which document the applicant's financial performance, assets, and liabilities, including:

1. A balance sheet;

2. An income statement;

3. A cash flow statement;

4. A statement of retained earnings; and

5. Notes for financial statements.

(j) Organizational and ownership charts of the applicant for an operator license; and

(k) Information regarding all testing, certifications, or approvals on any component used by the applicant for an operator license to provide sports wagering services.

(9) For applicants for an operator license in 2024 and subsequent years, internal controls shall be produced to the commission simultaneously with licensure applications. For 2023 applicants for an operator license, internal controls shall be produced to the commission thirty (30) days before the applicant for an operator license intends to begin accepting sports wagers. No sports wagers shall be offered by an applicant for an operator license until the commission has approved its internal controls or otherwise issued a temporary license pursuant to Section 13 of this administrative regulation.

(10) Submission of the application fee and pages 23 through 31 of Form KHRC 3-010-1 on or before August 1, 2023, constitutes an application to provide sports wagering in 2023. Starting in 2023, submission of the application fee and the entire Form KHRC 3-010-1 on or before September 1 constitutes an application to provide live horse racing, simulcasting, pari-mutuel wagering, and sports wagering in the subsequent year.

(11) The commission may grant an applicant for an operator license a waiver to submit all or part of the required information if it deems that the applicant for an operator license has already submitted the information as a part of the application required under this administrative regulation. An applicant for an operator license shall request this waiver in advance of submitting an application under this chapter and provide written justification for each waiver sought. This justification shall be drafted to the commission's satisfaction.

Section 15. Operator License Requirements.

(1) A license issued under this chapter shall include, at a minimum:

(a) The applicant for an operator's license name and business address;

(b) License number assigned by the commission;

(c) Signature of the executive director, the chairman of the commission, or their designee;

(d) Date the license was issued;

(e) The date that the license will expire; and

(f) A reference to the conditions placed on the license.

(2) The operator license shall remain the property of the commission at all times and the commission may:

(a) Take licensure action as set forth in 810 KAR 10:008;

(b) Issue conditions thereon.

Section 16. Applicant for an Operator License Presentation.

(1) An applicant for an operator license that has submitted a completed license application and all accompanying fees may request to make a presentation of its application at a meeting of the commission prior to the ruling on the application.

(2) The presentation shall be limited to information contained in the application and any supplemental information relevant to the applicant for an operator's suitability. The admission of supplemental information shall be subject to the discretion of the commission, in the best interests of sports wagering in the Commonwealth.

Section 17. Joint Ventures. Two (2) or more associations licensed under KRS 230.805 may conduct sports wagering together as part of a joint venture or pursuant to an agreement between them. Such joint venture agreements or contracts shall be submitted to the commission within five (5) days of the effective date.

Section 18.[Section 14.] Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Initial/Renewal Application for License to Conduct Live Horse Racing, Simulcasting, [and—]Pari-Mutuel Wagering, and Sports Wagering Form", KHRC 3-010-1, 06/2023[11/2018]; and

(b) "Kentucky Horse Racing Commission Racing Association Change of Control Form", KHRC 3-010-2, 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 may also be obtained at the commission's Web site at <http://khrc.ky.gov>.

JONATHAN RABINOWITZ, Commission Chair  
RAY PERRY, Secretary

APPROVED BY AGENCY: July 10, 2023

FILED WITH LRC: July 10, 2023 at 4 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 Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511. 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: Jennifer Wolsing, General Counsel, Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859) 246-2039, email [jennifer.wolsing@ky.gov](mailto:jennifer.wolsing@ky.gov).

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jennifer Wolsing

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes the procedures and requirements for applying for a license to conduct racing in the Commonwealth of Kentucky. This regulation also establishes the procedures and requirements for a track to apply for a license to conduct sports wagering in Kentucky.

(b) The necessity of this administrative regulation: This regulation is necessary to establish clear requirements and guidelines concerning the process by which applications for a license to conduct racing and a license to conduct sports wagering in Kentucky are reviewed and approved.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.300 requires any person desiring to conduct horse racing at a horse race meeting within the Commonwealth of Kentucky to apply for a license to do so. This regulation sets forth the procedures and requirements for applying for a license. Additionally, KRS 230.811 states that only licensed racing associations shall conduct sports wagering.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation enables the commission to issue licenses to conduct a horse racing meeting pursuant to KRS 230.300 and sports wagering pursuant to KRS 230.811 in a consistent and systematic way.

(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 procedures and requirements for licensed racing associations to apply for a license to conduct sports wagering.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to allow licensed racing associations to conduct sports wagering.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to KRS 230.811, because it

provides clear requirements and guidelines concerning the process by which applications for a license to conduct sports wagering are reviewed and approved.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in effectively administering KRS 230.811, because it enables the commission to issue sports wagering licenses in a consistent and systematic way.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation affects applicants for a license to conduct horse racing in the Commonwealth. This regulation also affects licensed tracks that apply for a license to conduct sports wagering in the Commonwealth. There are currently nine (9) licensed tracks operating in the Commonwealth.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Applicants for a racing license under this administrative regulation will be required to file initial and renewal applications and corresponding fees to obtain and maintain a license to conduct horse racing in the Commonwealth. Additionally, licensed racing associations applying for a license to conduct sports wagering under this regulation will also be required to file initial and renewal applications and corresponding fees to obtain and maintain a license to conduct sports wagering in the Commonwealth.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Applicants for a new horse racing license are assessed a fee of \$5,000. Initial applicants are assessed a \$10,000 investigation fee, the unused portion of which is returned to the applicant. The investigation fee may also be charged to renewal applicants or where a licensee proposed undergoing a change of ownership. Applicants for a new sports wagering license are assessed a fee of \$500,000. Applicants seeking to renew a sports wagering license are assessed a fee of \$50,000.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance with the racing application requirements, racing associations will be allowed to conduct legal race meetings in the Commonwealth of Kentucky. As a result of compliance with the sports wagering application requirements, licensed racing associations will be allowed to conduct legal sports wagering in the Commonwealth of Kentucky.

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

(a) Initially: It is estimated that the commission will spend approximately \$2.4 million to implement sports wagering in Kentucky in the first year.

(b) On a continuing basis: It is further estimated that the commission will spend approximately \$1.2 million annually to continue regulating sports wagering in Kentucky on a yearly basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The funding to implement and enforce sports wagering in Kentucky will come from the sports wagering administrative fund, as established in KRS 230.817. No additional funding is required for the implementation and enforcement of the race track licensure regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No additional funding will be necessary for the implementation and enforcement of the race track licensure portion of this regulation. However, the sports wagering licensure portion of this regulation establishes licensure fees for initial and renewal applicants for sports wagering licenses.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This regulation establishes that license and investigation fees are applicable to initial race track licensure applicants and that investigation fees may be charged for a track licensee to renew a license or when a substantial change in ownership is to occur. This regulation also establishes license fees for initial and renewal applicants for sports wagering licenses.

(9) TIERING: Is tiering applied? Tiering was not applied, because this amended regulation will apply to all similarly-situated entities in an equal manner.

#### FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Horse Racing Commission, racing association applicants, and licensed racing associations applying for sports wagering licenses 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 230.210, 230.215, 230.240, 230.260, 230.280, 230.290, 230.300, 230.310, 230.320, 230.370, 230.811, and 230.817.

(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 licensure of racing associations will not generate additional revenue for state or local government for the first year. It is estimated that the licensure of sports wagering facilities will generate approximately \$5 million for the Sports Wagering Administration Fund for the first year. It is anticipated that sports wagers will generate additional tax revenue 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? The licensure of racing associations will not generate additional revenue for state or local government for subsequent years. It is estimated that the licensure of sports wagering facilities will generate approximately \$500,000 in renewal fees per year for the Sports Wagering Administration Fund for subsequent years. As above, it is anticipated that sports wagers will generate additional tax revenue during subsequent years.

(c) How much will it cost to administer this program for the first year? It is estimated that the commission will spend approximately \$2.4 million in the first year to implement sports wagering in Kentucky.

(d) How much will it cost to administer this program for subsequent years? It is further estimated that the commission will spend approximately \$1.2 million annually to continue regulating sports wagering in Kentucky 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 (+/-): Any revenue increase will be dependent on the number of initial license applicants and renewal applicants. It is estimated that revenues will be increased by approximately \$5 million during the first year and \$500,000 during subsequent years. Revenues will also be increased by sports wagering taxes. The exact amount cannot be determined at this date, as it will depend on the number and type of wagers and the location of those wagers (i.e., online or in a retail location).

Expenditures (+/-): Any revenue increase will be dependent on the number of initial license applicants and renewal applicants. It is estimated that expenditures will increase by \$2.4 million during the first year and \$1.2 million during subsequent years.

Other Explanation: N/A

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? This administrative regulation is not expected to generate cost savings for the 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 be expected to generate cost savings for the regulated entities during subsequent years.

(c) How much will it cost the regulated entities for the first year? Racing associations seeking an initial license to conduct horse race meetings will pay an initial license fee of \$5,000 and an investigation fee of \$10,000. Licensed associations seeking an initial license to conduct sports wagering will pay an initial fee of \$500,000.

(d) How much will it cost the regulated entities for subsequent years? Racing associations seeking to renew a license to conduct horse race meetings may pay an investigation fee of \$10,000 under certain limited conditions. Licensed associations seeking to renew a license to conduct sports wagering will pay a renewal fee of \$50,000.

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

Cost Savings (+/-): \$0.00

Expenditures (+/-): Please see the answers to (c) and (d) above.

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 will have a major economic impact. It is estimated that racing associations seeking an initial license to conduct horse race meetings will pay an initial license fee of \$5,000 and an investigation fee of \$10,000. Licensed associations seeking a license to conduct sports wagering will pay an initial fee of \$500,000 and/or a renewal fee of \$50,000. It is estimated that the commission will spend approximately \$2.4 million to implement sports wagering in Kentucky in the first year. It is further estimated that the commission will spend approximately \$1.2 million annually to continue regulating sports wagering in Kentucky in subsequent years. It is estimated that revenues will be increased by approximately \$5 million during the first year and \$500,000 during subsequent years. This estimate does not include tax revenue obtained from sports wagers, which cannot be estimated at this time.

AMENDED IN-PROCESS EMERGENCY ADMINISTRATIVE REGULATIONS

NOTE: Pursuant to KRS 13A.190, emergency regulations expire after 270 days (or 270 days plus the number of days an accompanying ordinary is extended) or upon replacement by an ordinary regulation, whichever occurs first. This index reflects the KRS Chapter 13A-established expiration dates. Other statutes or legislation may affect a regulation's actual end date.

**JUSTICE AND PUBLIC SAFETY CABINET**  
**Department of Juvenile Justice**  
**(Emergency Amended After Comments)**

**505 KAR 1:200E. Cell entry teams, emergency response teams, and emergency response training.**

**EFFECTIVE:** July 14, 2023

**Prior Versions-**

**New Emergency Administrative Regulation: 49 Ky.R.**

2208

RELATES TO: KRS 15A.065, 15A.0652, 15A.160, 15A.305, 200.080-200.120, Chapters 600-645

STATUTORY AUTHORITY: KRS 15A.065(1), 15A.0652, 15A.160, 15A.305, 605.150, 635.095, 640.120, 645.250

NECESSITY, FUNCTION, AND CONFORMITY: 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. KRS 15A.305(8)(b) requires the department to conduct monthly documented trainings related to emergency response. KRS 15A.305(8)(d) requires the department to establish emergency response teams at juvenile detention centers and youth development centers and further requires the emergency response teams to conduct monthly drills. KRS 15A.305(8)(e) requires memoranda of understanding with local law enforcement for emergency response and the inclusion of local law enforcement in emergency response training. This administrative regulation authorizes the creation of cell entry teams and requires emergency response teams and training.

Section 1. Definitions. (1) "Cell entry team" means a team of staff that are deployed to remove a juvenile from a cell or other confined area.

(2) "Emergency Response Team" or "ERT" means a team of staff trained and equipped to respond to emergencies within facilities operated by the department, including:

- (a) Natural disaster;
- (b) Riot, fire, or any other occurrence that create a risk to the safety or security of the facility, juveniles, staff, or volunteers;
- (c) The escape of a juvenile from a facility operated by the department; or
- (d) Other similarly emergent events.

Section 2. Cell Entry Team. (1) The department may establish and train cell entry teams.

(2) The department shall use reasonable force necessary to gain the compliance of a juvenile during a cell entry or other action by a cell entry team.

(3) A juvenile shall comply with the orders of a cell entry team.

**(4) Training shall include how to interact with juveniles with mental or physical disabilities.**

Section 3. Emergency Response Team. (1) The department shall establish and train emergency response teams for detention centers and youth development centers. **The training shall include how to interact with juveniles with mental or physical disabilities.**

(2) If a use of force is necessary during any emergency to which the ERT responds, the ERT shall use only reasonable force to resolve the emergency.

(3) The ERT shall conduct monthly drills for emergency response. The monthly drills may include:

- (a) Riot;
- (b) Fire;
- (c) Tornado;

- (d) Mass evacuation;
- (e) Facility infrastructure failure;
- (f) Search; or
- (g) Other topics related to proper response to unexpected or emergent circumstances.

Section 4. Emergency Response Training and Coordination. (1) DJJ shall contact local law enforcement to:

- (a) Obtain memoranda of understanding with local law enforcement for emergency response; and
- (b) Include them in emergency response training involving DJJ facilities.

(2) A juvenile detention center or a youth development center shall conduct monthly training for staff concerning emergency response. The monthly training may include:

- (a) Riot;
- (b) Fire;
- (c) Tornado;
- (d) Mass evacuation;
- (e) Facility infrastructure failure;
- (f) Search; or
- (g) Other topics related to proper response to unexpected or emergent circumstances.

VICKI REED, Commissioner

APPROVED BY AGENCY: July 12, 2023

FILED WITH LRC: July 14, 2023 at 9:30 a.m.

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 authorizes the creation of cell entry teams and requires emergency response teams.

(b) The necessity of this administrative regulation: This administrative regulation is needed to comply with requirements in KRS 15A.305(8).

(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 complies with the requirement in KRS 15A.305(8)(d) for emergency response teams in juvenile detention centers and youth development centers.

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

(a) How the amendment will change this existing administrative regulation: Not applicable

(b) The necessity of the amendment to this administrative regulation: Not applicable

(c) How the amendment conforms to the content of the authorizing statutes: Not applicable

(d) How the amendment will assist in the effective administration of the statutes: Not applicable

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects approximately 518 DJJ

employees, 300 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 must establish the teams, train the teams, and establish monthly drills for the emergency response team. Staff will have to follow the requirements in the administrative regulation. Juveniles and their families will be made aware of the establishment of the cell entry teams and ERTs and their activities.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): An exact cost is unknown, but devices including conductive energy devices and chemical agents, shields, riot control suits and helmets, camera equipped vehicle partitions, and other items will be acquired to assist with control at some DJJ facilities at an approximate cost of \$1,478,969.82. Training costs will also be incurred for each staff member who is authorized to use tasers or pepper spray. These costs are for the numerous administrative regulations being filed.

(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 is unknown, but devices including conductive energy devices and chemical agents, shields, riot control suits and helmets, camera equipped vehicle partitions, and other items will be acquired to assist with control at some DJJ facilities at an approximate cost of \$1,478,969.82. Training costs will also be incurred for each staff member who is authorized to use conductive energy devices and chemical agents. These costs are for the numerous administrative regulations being filed.

(b) On a continuing basis: An exact cost is unknown, but devices including chemical agents will be reacquired as they are used or expire. Training costs will continue to be incurred for new staff authorized to use conductive energy devices and chemical agents. The conductive energy devices, cars with camera equipped security partitions, and other equipment will need to be replaced on an intermittent basis.

(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 anticipated as estimated above.

(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 is unknown, but devices including conductive energy devices and chemical agents, shields, riot control suits and helmets, camera equipped vehicle partitions, and other items will be acquired to assist with control at some DJJ facilities at an approximate cost of \$1,478,969.82. Training costs will also be incurred for each staff member who is authorized to use conductive energy devices and chemical agents. These costs are for the numerous administrative regulations being filed.

(d) How much will it cost to administer this program for subsequent years? An exact cost is unknown, but devices like chemical agents will be reacquired as they are used or expire. Training costs will continue to be incurred for new staff authorized to use conductive energy devices and chemical agents. The conductive energy devices, cars with camera equipped security partitions, and other equipment will need to be replaced on an intermittent basis.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? This administrative regulation 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 is unknown, but devices including conductive energy devices and chemical agents, shields, riot control suits and helmets, camera equipped vehicle partitions, and other items will be acquired to assist with control at some DJJ facilities at an approximate cost of \$1,478,969.82. Training costs will also be incurred for each staff member who is authorized to use conductive energy devices and chemical agents. These costs are for the numerous administrative regulations being filed.

(d) How much will it cost the regulated entities for subsequent years? An exact cost is unknown, but devices like chemical agents will be reacquired as they are used or expire. Training costs will continue to be incurred for new staff authorized to use conductive energy devices and chemical agents. The conductive energy devices, cars with camera equipped security partitions, and other equipment will need to be replaced on an intermittent basis.

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 anticipated.



**CABINET FOR HEALTH AND FAMILY SERVICES**  
**Department for Community Based Services**  
**Division of Protection and Permanency**  
**(Emergency Amended After Comments)**

**922 KAR 1:360E. Private child care placement, levels of care, and payment.**

**EFFECTIVE:** July 13, 2023

**Prior version –**

**Emergency Amendment: 48 Ky.R. 2248**

RELATES TO: KRS 199.011, 199.640-199.680, 199.801, 600.020(25), [605.090(1)(b), (d), 610.110, 142 U.S.C. 622, 672, 675  
 STATUTORY AUTHORITY: KRS 194A.050(1), 199.641(4), 605.090(1)(d), 605.150(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 programs and fulfill the responsibilities vested in the cabinet. KRS 199.641(4) and 605.090(1)(d) authorize the cabinet to establish by administrative regulation the rate setting methodology and the rate of payment for child-caring facilities and child-placing agencies, consistent with the level and quality of service provided. KRS 605.090(1)(d) authorizes the cabinet to promulgate administrative regulations establishing conditions under which the cabinet may place a child committed to the Department of Juvenile Justice or the cabinet, in a child-caring facility or a child-placing agency operated by a local governmental unit or private organization willing to receive the child, upon the conditions established by the cabinet. KRS 605.150(1) authorizes the cabinet to promulgate administrative regulations to implement the provisions of KRS Chapter 605. This administrative regulation establishes: (a) levels of care based upon the needs of a child for whom the cabinet has legal responsibility; (b) a payment rate for each level and placement setting; (c) gatekeeper responsibilities; (d) provider requirements; (e) procedures for classification at the appropriate level of care and placement setting; and (f) procedures for determination of components of the model program cost analysis.

**Section 1. Definitions.**

- (1) "Cabinet" is defined by KRS 199.011(3).
- (2) "Child-caring facility" or "facility" is defined by KRS 199.011(5).
- (3) "Child-placing agency" or "agency" is defined by KRS 199.011(6).
- (4) "Department" is defined by KRS 199.011(7) and 199.641(1)(b).
- (5) "Emergency shelter" is defined by KRS 600.020(25).
- (6) "Gatekeeper" means the department or agent responsible for:
  - (a) Making a clinical determination of the level of care necessary to meet a child's treatment and service needs; and
  - (b) Other administrative duties in the areas of:
    1. Assessment;
    2. Placement;
    3. Performance measurement; and
    4. Consultation regarding children and their needs.
- (7) "Index factor" means a specific number derived from time-study data, used to determine payment for each level of care.
- (8) "Initial level of care" means a level of care:
  - (a) Assigned by the gatekeeper to a child at the point of entry into the level of care system; and
  - (b) That is time-limited and effective for the first six (6) months of a child's placement.
- (9) "Level of care" means the standard representing the treatment and service needs of a child placed by the cabinet in out-of-home care.
- (10) "Level of care packet" means an assessment conducted by designated cabinet staff and a collection of forms required for submission to the gatekeeper for the purpose of determining the appropriate level of care and placement setting in accordance with Section 2(2) of this administrative regulation.
- (11) "Medically complex" means a child who is determined to

have a medical condition as defined by 922 KAR 1:495 and further described in 922 KAR 1:350, Section 4.

(12) "Model program cost analysis" is defined by KRS 199.641(1)(c).

(13) "Placement coordinator" means an individual whose responsibilities are established in KRS 199.801.

(14) "Reassigned level of care" means a level of care that is:

(a) Determined by the gatekeeper after a child's level of care expires; and

(b) Authorized for a specific period of time.

(15) "Time study" is defined by KRS 199.641(1)(d).

(16) "Utilization review" means a gatekeeper's examination, during a child's placement in a child-caring facility or child-placing agency, of the child's case record and existing documentation for the purpose of:

(a) Identifying the child's current level of functioning, treatment, service, and supervision needs; and

(b) Assigning the appropriate level of care.

**Section 2. Referral Process for Level of Care System Placement.**

(1) A level of care packet shall be completed by a cabinet staff person and submitted to the gatekeeper for a child at least forty-eight (48) months of age or a child who is medically complex regardless of age at the time:

(a) The child is referred for placement with a child-caring facility or child-placing agency;

(b) A child currently placed in a child-caring facility or a child-placing agency reaches forty-eight (48) months of age or is found to be medically complex; or

(c) A child's level of care expires and assignment of a new level is necessary.

(2) A level of care packet shall include the following child-specific information:

(a) Identifying data;

(b) Individual strengths and limitations;

(c) Daily living skills;

(d) Physical health needs including:

1. Any significant medical history;

2. Current diagnoses, assessments, and treatment; and

3. Documentation indicating the child's medically complex status if the child is medically complex;

(e) Behavioral health needs including:

1. Screening tools utilized based upon the child's age; and

2. Current diagnoses, assessments, and treatment recommendations;

(f) Medications;

(g) History of substance abuse, high risk, or other significant behavior including:

1. Sexual acting out; and

2. Legal history, status, or other court involvement;

(h) Out-of-home care placement information including:

1. Reason for entering out-of-home care;

2. History of abuse, neglect, or dependency;

3. Current custody status;

4. Current and previous placements; and

5. Permanency goal;

(i) Social supports;

(j) Educational functioning, grade level, and any special educational need; and

(k) Religious background and practices.

(3)(a) If a child needs placement within a child-caring facility or a child-placing agency, a cabinet staff person shall submit a copy of the completed level of care packet, including level assignment, to the placement coordinator.

(b) The placement coordinator shall forward the level of care packet to potential child-caring facilities or child-placing agencies.

(4) If a child-caring facility or child-placing agency accepts a child for out-of-home placement and the cabinet approves the placement in accordance with KRS 199.801 and 922 KAR 1:370, a cabinet staff person shall:

(a) Complete the ~~[DPP-114T, Transitional Child-Caring and Child-Placing Level of Care Schedule, through January 31, 2023, or~~

the ]DPP-114, Child Caring and Child Placing Level of Care Schedule[, effective February 1, 2023,] with the level of care payment rate for placement type:

1. As assigned by the gatekeeper within the previous six (6) months; or
2. If there is an emergency placement, within two (2) business days of the placement or receipt of the assigned level of care;
  - (b) Arrange transportation for the child to the placement; and
  - (c) Notify the placement coordinator of the selected placement.
- (5) If a child-caring facility or child-placing agency accepts an emergency placement requested by the cabinet outside of the gatekeeper's regular working hours, a cabinet staff person shall:
  - (a) Submit a level of care packet to the gatekeeper for a child who does not have a current level of care assignment; and
  - (b) Inform the placement coordinator of the location and date of placement.
- (6) The placement coordinator shall notify a child-caring facility or child-placing agency that was not chosen for placement upon provision of notification in accordance with subsection (4)(c) of this section.

#### Section 3. Gatekeeper Responsibilities. The gatekeeper shall:

- (1) Evaluate a child referred by the cabinet or currently placed in a child-caring facility or child-placing agency for the purpose of establishing an initial or reassigned level of care. The child shall be:
  - (a) Four (4) years of age or older; or
  - (b) Determined to be medically complex by designated cabinet staff;
- (2) Within three (3) working days of receipt of the level of care packet:
  - (a) Determine the appropriate level of care according to an assessment of the child's treatment, supervision, and service needs consistent with one (1) of the three (3) levels of care; and
  - (b) Return the completed CRP-6, Children's Review Program Notice of Level of Care Payment Authorization Assignment, to the department and the child-caring facility or the child-placing agency;
- (3) Assess a child placed in a child-caring facility in accordance with 42 U.S.C. 675a(c) within the first thirty (30) days of placement;
- (4) Conduct a utilization review for a child:
  - (a) Six (6) months from the initial placement or reassignment and placement in a child-caring facility and child-placing agency; and
  - (b) 1. Every three (3) months thereafter if the child is in a child-caring facility; or
  2. Every six (6) months thereafter if the child is in a foster care placement or therapeutic foster care;
- (5) Reassign a child's level of care after the previous level has expired;
- (6) Monitor each child-caring facility and child-placing agency;
- (7) Maintain a confidential information system for each child served that shall include:
  - (a) Placement history;
  - (b) Level of care assignments;
  - (c) Length of treatment; and
  - (d) Discharge outcomes; and
- (8) For a utilization review, return the completed CRP-2, Children's Review Program Notice of Level of Care Payment Authorization, to the child-caring facility or child-placing agency and the cabinet after a level is conducted or reassigned.

#### Section 4. Levels of Care. A level of care shall be assigned in accordance with this section.

- (1) A Level I child shall be a child who requires a routine home environment that:
  - (a) Provides for the basic needs of the child;
  - (b) Provides guidance and nurturing;
  - (c) Provides supervision to meet the needs of the child;
  - (d) Provides educational support;
  - (e) Provides access to routine medical care; and
  - (f) Ensures the emotional and physical well-being of the child.
- (2) A Level II child shall be a child who:
  - (a) Requires a routine home environment that meets the requirements of subsection (1) of this section;
  - (b) Has identified treatment needs based on available

behavioral health screening and assessment information or] current treatment recommendations[, **or has been determined to be medically complex**];

- (c) Has a history of complex trauma related to maltreatment;
- (d) Requires supervision in a structured supportive setting with:
  1. Counseling available from professional staff;
  2. Educational support; and
  3. Services designed to improve physical and behavioral health and wellbeing;
- (e) May occasionally require intense levels of intervention to maintain the least restrictive environment; and
- (f) Requires a program flexible enough to allow increased:
  1. Independence if the child is capable; or
  2. Structure during temporary periods of regression.
- (3) A Level III child shall be a child who:
  - (a) Has significant treatment needs as indicated by:
    1. Available behavioral health screening and assessment information or current treatment recommendations that require specialized or frequent treatment services;
    2. A determination by designated cabinet staff that the child has a high degree of medical complexity that requires specialized medical care;
    3. The presence of both significant behavioral health needs requiring treatment and a determination of medical complexity by designated cabinet staff; or
    4. A severe impairment or disability that requires a caregiver to attend to all care needs of the child; and
  - (b) Requires a highly structured supportive setting:
    1. With frequent therapy or therapeutic services provided by a qualified mental health professional or other treatment professional allowed pursuant to 922 KAR 1:300 within a treatment program designed to improve social, emotional, and educational adaptive behavior;
    2. That includes twenty-four (24) hour supervision; or
    3. That provides safe and effective care for a severe, chronic medical condition, behavioral health issue, or other highly specialized needs.

#### Section 5. Payment Methodology and Rates.

##### (1) Payment Methodology.

- (a) The cabinet shall base a per diem rate for the care of a child placed by the cabinet in a private child-caring facility, upon the "model program cost analysis" defined by KRS 199.641(1)(c).
- (b) Each private child-caring facility and child-placing agency shall report to the cabinet annually, on the DPP-888, Instructions for Completing the Annual Cost Report and Time Study for Child Caring and Child Placing Programs and Facilities.
- (2) The cabinet shall establish an index factor for payment on behalf of a child for whom a level of care has been determined.
  - (a) The factor shall be determined:
    1. Based on the amount of treatment provided at each level of care; and
    2. By determining the median of:
      - a. Number of daily treatment hours, derived from time study data, provided to children served by private child-caring facilities and child-placing agencies; and
      - b. Level of care of children served by private child-caring facilities and child-placing agencies that contract with the cabinet.
  - (b) 1. For children whose level is determined, the median level of care shall be represented by an index factor of one (1).
  2. For children whose level is not determined, the median level of care shall be represented by an index factor that is proportionate to the amount of treatment provided to the children in the median level pursuant to subparagraph 1 of this paragraph.
  - (3) A statewide median cost, including board, care, and treatment components, for each level of care shall be calculated by using a utilization factor of ninety (90) percent for residential treatment and seventy-five (75) percent for a group home.
  - (4) The payment rate for each level of care shall be calculated by multiplying the median cost by the index factor specific to that level of care. The rate for each level of care shall be adjusted by the Consumer Price Index during each intervening period between the fiscal year used for the cost analysis and calculation of the rate.



(5) Statewide median cost shall be calculated:

(a) Using a utilization factor of eighty (80) percent:

1. For an emergency shelter with a treatment license:

- a. Board;
- b. Care; and
- c. Treatment components; or

2. For an emergency shelter without a treatment license:

- a. Board; and
- b. Care components; and

(b) Adjusting for each level of care by the Consumer Price Index during each intervening period between the fiscal year used for the cost analysis and calculation of the rate.

(6)(a) To the extent funds are available, an incentive payment for a private child-caring facility that participates in a per diem rate contract with the cabinet shall be determined by evaluating the performance of the child-caring facility, in accordance with KRS 199.641(2)(a). Measurable performance outcomes shall include:

- 1. Child safety while in the care of a private child-caring facility or child-placing agency;
- 2. Child safety after reunification with the child's family;
- 3. Adequate educational support;
- 4. Reduced time spent in out-of-home care without an increase in the rate of out-of-home care reentry;
- 5. Increased placement stability during the service period;
- 6. Increased achievement of permanency goals; and
- 7. Increased stability in less restrictive or permanent placement following planned discharge.

(b) The cabinet's contract with a private child-caring facility shall specify the:

- 1. Indicators used to measure the performance outcomes established in paragraph (a) of this subsection; and
- 2. Target percentages used as performance goals.

(c) Each child in the custody of the cabinet who is placed in a private child-caring facility during the contract period shall be included in the percentage of children for whom the cabinet expects achievement of an outcome.

(d) At the time the contract period expires, each private child-caring facility shall be ranked based on the percentage of children for whom the facility achieved an outcome. To the extent funds are available, a payment incentive shall be distributed to a private child-caring facility that performed in the top one-third (1/3) of the facilities.

(e) The amount of a payment incentive shall be determined according to the funding appropriated for this purpose in the biennial budget.

(7) In addition to services provided on a per diem rate, the cabinet shall solicit proposals from private child-caring facilities or child-placing agencies to provide alternative services to children and their families. To the extent funds are available, the alternative services:

(a) Shall be geared toward improved performance outcomes; and

(b) May include case management responsibilities shared between the cabinet and the child-caring facility or child-placing agency.

(8) Payment to child-caring facilities or child-placing agencies that provide alternative services according to subsection (7) of this section shall be based upon expectations agreed upon between the cabinet and the child-caring facility or child-placing agency such as:

- (a) Reduced length of stay in out-of-home placement;
- (b) Increased safety from child abuse or neglect;
- (c) Increased number of children moving into and remaining in permanent placement;
- (d) Increased number of children and their families cared for in close proximity to their home communities;
- (e) Increased number of children reunified with their families;
- (f) Increased accountability for success in after care; or
- (g) Decreased reentry into state custody.

#### Section 6. Residential Care.

(1) A child-caring facility that cares for children in the custody of the cabinet shall be licensed pursuant to 922 KAR 1:305 and shall meet the standards for child-caring facilities established in 922 KAR 1:300.

(2) The facility shall comply with 922 KAR 1:300, Section 8, Residential Treatment Program, if providing treatment-oriented services.

(3) Only a child assigned as Level III shall be placed in residential care.

(4) The daily rate for residential care to a child-caring facility shall be:

(a) \$193.50 per child for a child-caring facility determined by designated cabinet staff to not meet the requirements of a specified setting for placement in accordance with 42 U.S.C. 672(k)(2); and

(b) ~~\$336.00~~ ~~[\$298.50]~~ per child for a child-caring facility determined by designated cabinet staff to meet the requirements of a specified setting for placement in accordance with 42 U.S.C. 672(k)(2).

#### Section 7. Emergency Shelter Care.

(1) An emergency shelter child-caring facility shall meet the requirements of 922 KAR 1:380. The rate for emergency shelter care shall be:

(a) ~~\$220.59~~ ~~[\$193.50]~~ per child per day for a child-caring facility with a treatment license; or

(b) ~~\$165.44~~ ~~[\$145.12]~~ per child per day for a child-caring facility without a treatment license.

(2) If a child with an assigned level of care enters an emergency shelter child-caring facility with a treatment license, the emergency shelter child-caring facility shall adhere to the child's individual treatment plan.

#### Section 8. Foster Care and Therapeutic Foster Care for a Child-Placing Agency.

(1) ~~[The basic daily rate for foster care shall be \$51.33] [\$44.82].~~

~~(2) The~~ ~~[If assessed on or after July 1, 2022, upon the next utilization review, the]~~ daily rate for foster care shall be ~~\$51.33~~ ~~[\$44.82]~~ per child for:

(a) A child under the age of four (4) who has not been assigned a level; and

(b) A child over the age of four (4) with a level I assigned level of care.

~~(2)(3) The~~ ~~[If assessed prior to July 1, 2022, the daily rates for therapeutic or treatment foster care shall be as follows:~~

~~(a) Levels I and II, if the child is stepped down from Level III or higher \$76.10 per child;~~

~~(b) Level III - \$83.16 per child;~~

~~(c) Level IV - \$101.23 per child; and~~

~~(d) Level V - \$139.96 per child.~~

~~(4) If assessed on or after July 1, 2022, upon the next utilization review, the]~~ daily rates for therapeutic or treatment foster care shall be:

~~(a) Level II - \$99.50~~ ~~[\$83.16]~~ per child; and

~~(b) Level III - \$139.96 per child.~~

Section 9. Pregnant and Parenting Teen Programs. A child-caring facility with a pregnant and parenting teen program shall receive:

(1) A rate consistent with the assigned level of care for the adolescent parent; and

(2) Inclusive of child care cost, the amount established in Section 8(1) of this administrative regulation for the committed child of an adolescent parent who is committed to the cabinet.

#### Section 10. Independent Living Programs.

(1) An independent living program shall be licensed pursuant to 922 KAR 1:305 and shall meet the standards for independent living programs established in 922 KAR 1:310 and 922 KAR 1:340.

(2) The daily rate for an independent living program shall be:

(a) ~~\$99.50~~ ~~[\$83.16]~~ per child for Level I or Level II; and

(b) \$139.96 per child for Level III.

(3) A Level III child in an independent living setting shall require increased structure, supervision, case management, and treatment services.

Section 11. Programs with Decoupled Rates. [(4)] A child-caring facility or child-placing agency providing highly specialized behavioral health services may be paid for board and treatment services separately through agreement with the:

(1)[(a)] Department for the cost of room, board, and watchful oversight; and

(2)[(b)] Department for Medicaid Services or its designee for behavioral health treatment services.

#### Section 12. Provider Requirements.

(1) A child-caring facility or child-placing agency shall:

(a) Inform the department of the levels of care the facility or agency has the ability to serve;

(b) Demonstrate its ability to provide services, either directly or by contract, appropriate to the assigned level for each child, including:

1. Room, board, and other activity contributing to housing, food, clothing, school supplies, or personal incidentals;

2. Clinical services including:

a. The evaluation and treatment of behavioral health needs; and

b. Identification and alleviation of related trauma symptoms, disability, or distress experienced by a child who follows a specific individual treatment plan targeted to identify a problem; and

3. Support services that:

a. Identify necessary resources and coordinate services provided by a range of agencies or professionals;

b. Allow a child to cope with the trauma, disability, or distress;

c. Provide access to improving the educational or vocational status of the child; and

d. Provide essential elements of daily living;

(c) Submit the following reports in time for the reports to be received by the gatekeeper within thirty (30) days prior to the utilization review due date:

1. To the gatekeeper, a Child and Adolescent Needs and Strengths assessment report completed within the past six (6) months or another supplemental tool approved by the gatekeeper; and

2. To the gatekeeper and designated cabinet staff, a copy of the CRP-7, Children's Review Program Application for Level of Care Payment (ALP):

a. On a quarterly basis, for a private child care residential placement; or

b. On a semiannual basis for a foster care placement;

(d) Provide outcomes data and information as requested by the gatekeeper; and

(e) Obtain accreditation within two (2) years of initial licensure or within two (2) years of acquiring an agreement with the cabinet, whichever is later, from a nationally-recognized accreditation organization, such as:

1. The Council on Accreditation; or

2. The Joint Commission.

(2) Emergency shelters without a treatment license shall be exempt from the accreditation requirements specified in subsection (1)(e) of this section.

#### Section 13. Utilization Review and Authorization of Payment.

(1) The child-caring facility or child-placing agency shall submit to the gatekeeper the reports established in Section 12(1)(c) of this administrative regulation for the utilization review in time for the reports to be received by the gatekeeper within thirty (30) days prior to the utilization review due date.

(2) If the child-caring facility or child-placing agency fails to submit the reports as established in Section 12(1)(c) of this administrative regulation in time for the reports to be received by the gatekeeper within thirty (30) days prior to the utilization review due date, the cabinet shall:

(a) Suspend payments until the necessary information has been submitted to the gatekeeper;

(b) If a child's level is reduced after untimely reports are received by the gatekeeper, make an adjustment for overpayment retroactive to the first utilization review due date that was missed; or

(c) If a child's level is increased as a result of delinquent reports, apply a higher rate beginning the day after the untimely reports are

received by the gatekeeper.

(3) If the child-caring facility makes timely submission of the reports, and if the:

(a) Level of care remains unchanged, payments shall continue unchanged;

(b) Level of care is reduced, and the:

1. Child remains in the same placement, the lower level of care shall be effective on the 31st day following the utilization review due date; or

2. Child is placed in another child-caring facility or child-placing agency after the utilization review due date, the rate for the lower level shall be effective on the day the child is placed; or

(c) Level of care is increased, the rate for the higher level of care shall be effective the day after the utilization review due date.

(4) If the child-caring facility, child-placing agency, or cabinet staff disagrees with the level of care assigned by the gatekeeper, the child-caring facility, child-placing agency, or cabinet staff may request a redetermination as established in Section 14 of this administrative regulation.

#### Section 14. Redetermination.

(1) If the child-caring facility, child-placing agency, or cabinet staff disagrees with the level of care assigned by the gatekeeper, the child-caring facility, child-placing agency, or cabinet staff may request a redetermination of the assigned level by providing to the gatekeeper:

(a) New information that supports the request for a new level; and

(b) Completion of the "request for redetermination" section of one (1) of the following forms:

1. CRP-2, Children's Review Program Notice of Level of Care Payment Authorization, for a utilization review;

2. CRP-4, Children's Review Program Notice of Level of Care Redetermination;

3. CRP-5, Children's Review Program DCBS Foster Care Utilization Review Notice of Level Assignment, for a utilization review; or

4. CRP-6, Children's Review Program Notice of Level of Care Payment Authorization Assignment, for a reassignment.

(2) If the request for a redetermination is received by the gatekeeper within thirty (30) days after the most recent utilization review due date or admission, and if the gatekeeper assigns a higher level with a CRP-4, Children's Review Program Notice of Level of Care Redetermination, the increased payment shall be retroactive to the most recent of the following:

(a) The date of the most recent utilization review due date if the complete utilization review materials were received on or before the utilization review due date; or

(b) The date of admission.

(3) If the request for redetermination is received by the gatekeeper more than thirty (30) days after the most recent utilization review due date or admission, and if a:

(a) Higher level is assigned by the gatekeeper with a CRP-4, the increased payment shall be effective the day after the request is received by the gatekeeper; or

(b) Lower level is assigned by the gatekeeper with a CRP-4, the lower payment shall be effective thirty (30) days after the request is received by the gatekeeper.

(4) If the child-caring facility, child-placing agency, or cabinet staff does not agree with the redetermination as provided by the CRP-4, an appeal may be requested in accordance with Section 16 or 17 of this administrative regulation.

#### Section 15. Reassignment.

(1) If the level of care expires and the child is moved to a different child-caring facility or child-placing agency placement, a reassigned level of care shall be obtained by the:

(a) Department completing a level of care packet for a level assignment; or

(b) New child-caring facility or child-placing agency submitting the following within thirty (30) days of the placement:

1. A cover letter requesting a reassignment;

2. The most recent Child and Adolescent Needs and Strengths

assessment report or a comparable assessment of the child; and

3. Documentation to support the level of care assignment, such as the level of care packet or discharge summary.

(2) The reassigned level of care rate shall be effective on the date of admission to the new placement.

(3) If the child-caring facility or child-placing agency disagrees with the level of care assigned by the gatekeeper, the child-caring facility or child-placing agency may request a redetermination as established in Section 14 of this administrative regulation.

#### Section 16. Informal Dispute Resolution.

(1) A contract agent dissatisfied by a decision of the cabinet or a gatekeeper may seek informal resolution by filing a request with the secretary of the cabinet, or designee, within ten (10) days following notice of the decision.

(2) Upon receipt of a request for informal resolution, the cabinet shall:

(a) Review the request; and

(b) Render a written decision on the issue raised within thirty (30) calendar days unless an extension is granted by the secretary or designee:

1. Due to extenuating circumstances that prolong the review; and

2. With notice provided to the contract agent.

(3) If the dispute relates to a decrease or denial of payment, the contract agent may request an administrative hearing in accordance with Section ~~17[(47)]~~ of this administrative regulation.

Section 17. Administrative Hearing Process. A child-caring facility or child-placing agency may request an administrative hearing in accordance with 922 KAR 1:320.

#### Section 18. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "CRP-2, Children's Review Program Notice of Level of Care Payment Authorization", 01/22;

(b) "CRP-4, Children's Review Program Notice of Level of Care Redetermination", 01/22;

(c) "CRP-5, Children's Review Program DCBS Foster Care Utilization Review Notice of Level Assignment", 01/22;

(d) "CRP-6, Children's Review Program Notice of Level of Care Payment Authorization Assignment", 01/22;

(e) "CRP-7, Children's Review Program Application for Level of Care Payment (ALP)", 07/22;

(f) [~~"DPP-114T, Transitional Child-Caring and Child-Placing Level of Care Schedule", 07/22;~~

(g)] "DPP-114, Child Caring and Child Placing Level of Care Schedule", ~~07/23[05/23][02/23]~~; and

(g)[(h)] "DPP-888, Instructions for Completing the Annual Cost Report and Time Study for Child Caring and Child Placing Programs and Facilities", ~~07/23[07/22]~~.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Community Based Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m. This material may also be viewed on the department's Web site at <https://chfs.ky.gov/agencies/dcbs/Pages/default.aspx>.

LESA DENNIS, Acting Commissioner

ERIC FRIEDLANDER, Secretary

APPROVED BY AGENCY: July 5, 2023

FILED WITH LRC: July 13, 2023 at 11:45 a.m.

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

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Laura Begin

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes levels of care based upon the needs of a child

for whom the Cabinet for Health and Family Services has legal responsibility, a payment rate for each level, gatekeeper responsibilities, provider requirements, procedures for classification at the appropriate level of care, and procedures for determination of components of the model program costs analysis.

(b) The necessity of this administrative regulation: KRS 194A.050(1) requires the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate and fulfill the responsibilities vested in the cabinet. KRS 199.641(4) and 605.090(1)(d) authorize the cabinet to establish by administrative regulation the rate setting methodology and the rate of payment for child-caring facilities and child-placing agencies, consistent with the level and quality of service provided. KRS 605.090(1)(d) authorizes the cabinet to promulgate administrative regulations establishing conditions under which the cabinet may place a child committed to the Department of Juvenile Justice or the cabinet in a child-caring facility or a child-placing agency operated by a local governmental unit or private organization willing to receive the child, upon the conditions established by the cabinet. KRS 605.150(1) authorizes the cabinet to promulgate administrative regulations to implement the provisions of KRS Chapter 605.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing the levels of care and associated payments for a child's placement at a child-caring facility or child-placing agency consistent with the level and quality of care and service provided.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists with the effective administration of the statutes through its incorporation of the methodology regarding the placement of a child in the custody of the cabinet with a child-caring facility or child-placing agency, procedures concerning the model program cost analysis, provider and gatekeeper requirements, levels of care, and payment rate for each level of care.

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

(a) How the amendment will change this existing administrative regulation: This amendment increases the per diem rates for specific levels of care provided for children with the highest needs in the custody of the state. The annual audited cost report and time study and preliminary data from the most recent rate study have been evaluated and the Department for Community Based Services (DCBS) has determined that a mid-cycle inflation adjustment is necessary to adequately reimburse child-placing and child-caring providers. Because documentation and analysis show that this rate increase is justified and needed, federal funding will be utilized in implementing this amendment. Documentation that the department received from the Children's Alliance requests that, "this rate increase be implemented as soon as possible as private child-caring and child-placing agencies are struggling to cover their rapidly rising costs given the swift and unprecedented inflation rates, respond to the workforce crisis that has ensued since the pandemic and meet the increased need for behavioral health services. Providers need financial relief as soon as possible...". Material incorporated by reference is also being amended to reflect this rate increase. This administrative regulation and material incorporated by reference are being further amended in response to comments received to delete duplicative or unnecessary information and make corrections.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to increase the reimbursement rate for the care of children placed in child-caring and child-placing facilities. Facilities have struggled to maintain staff at safe staff-to-child ratios, which has caused facilities to not be able to accept the placement of children in the state's custody with high medical or behavioral health needs. DCBS needs to ensure that these facilities remain open and able to accept and care for children. Audits and studies have shown that the current rates are not adequate; therefore, this increase will be paid with federal funds. The Children's Alliance has stressed the urgent need to increase rates so that agencies can continue to provide needed services to the most vulnerable citizens. The rate increase is anticipated to assist with provider capacity, thereby better assuring placement options and quality care for children

in state custody. The health and welfare of these children are jeopardized without the payment rate increase, in addition to threats to federal child welfare funding due to an inadequate service array for children requiring out-of-home care.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 199.641(2) states, "...when the department chooses to contract with a child-caring facility or child-placing agency for services to a child in the custody of or committed to the department, the department shall make payments to that facility based on the rate setting methodology developed from the model program cost analysis." This amendment ensures that payments to facilities are consistent with cost analyses, audits, and studies, and that private facilities have adequate funds to provide safe staff-to-child ratios and can continue to accept the placement of children requiring higher levels of care.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statutes by increasing some payment rates so that they are more consistent with actual provider costs, thereby better facilitating placement options and preserving the health and welfare of children in the custody of the cabinet.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: As of April 2023, there were 5,057 unique children placed in a private facility or agency setting according to their needed level of care established in this administrative regulation. There were 49 child-caring agencies and 122 child-placing agencies licensed to operate in Kentucky.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The children affected by this administrative regulation will have no new action required. Federal law has increased the standards that must be met for some of the entities providing care pursuant to this administrative regulation; therefore, they will be receiving increased per diems for providing care and meeting these new standards. It is the intent of the department that these increases will also help maintain staff and private foster homes so that the placement of children with higher therapeutic or medical needs will be accepted.

(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 to affected entities, only to the department.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Affected entities will receive a per diem rate increase through this amendment. This rate increase is designed to offset the cost of meeting higher standards and to address the staffing crisis experienced by many facilities. Children in the state's custody will benefit from having more placement options and providers that can provide the level of care they need.

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

(a) Initially: The per diem increases are within existing appropriations.

(b) On a continuing basis: The per diem increases are within appropriations; however, the administrative body will continually monitor its costs to make any adjustments necessary to maintain a comprehensive service array within available funding.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of funding for these programs include federal Title IV-E (of the Social Security Act) foster care maintenance, general funds, and agency and restricted funds derived from the Temporary Assistance for Needy Family (TANF) block grant and Medicaid.

(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 administrative regulation.

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

any fees.

(9) TIERING: Is tiering applied? This administrative regulation does include tiering as different per diem rates and standards are associated with specific levels of care provided to children in the state's custody.

#### FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 42 U.S.C. 622, 672, 675

(2) State compliance standards. KRS 194A.050(1), 199.641(4), 605.090(1)(d), 605.150(1)

(3) Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 622, 672, 675

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation does not impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate. The increase in per diem rates are necessary in order to meet the higher standards required by the Family First Prevention Services Act and to address the staffing crisis experienced by facilities in providing care to children with high needs.

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation does not impose a stricter standard, or additional or different responsibilities or 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 Cabinet for Health and Family Services, specifically the Department for Community Based Services (DCBS), is 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), 199.641(4), 605.090(1)(d), 605.150(1), 42 U.S.C. 622, 672

(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 new revenues.

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

(c) How much will it cost to administer this program for the first year? The administrative body has conducted extensive analysis of audits and studies to ensure the per diem increases are sustainable within appropriations.

(d) How much will it cost to administer this program for subsequent years? The administrative body projects the per diem increases are within appropriations; however, the administrative body will continually monitor its costs to make any adjustments necessary to maintain a comprehensive service array within available funding.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? No cost savings are anticipated.

(b) How much cost savings will this administrative regulation

generate for the regulated entities for subsequent years? No cost savings are anticipated.

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

There are no costs to regulated entities.

(d) How much will it cost the regulated entities for subsequent years? There are no costs to 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 will not have a negative major economic impact; rather, it provides higher payment rates to affected entities.

**VOLUME 50, NUMBER 2– AUGUST 1, 2023**

**ADMINISTRATIVE REGULATIONS AS AMENDED BY PROMULGATING AGENCY  
AND REVIEWING SUBCOMMITTEE**

**ARRS = Administrative Regulation Review Subcommittee  
IJC = Interim Joint Committee**

**NONE**  
**July's meeting deferred/ cancelled.**

ADMINISTRATIVE REGULATIONS AMENDED AFTER PUBLIC HEARING  
OR RECEIPT OF WRITTEN COMMENTS

CABINET FOR HEALTH AND FAMILY SERVICES  
Office of Inspector General  
Division of Certificate of Need  
(Amended After Comments)

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

RELATES TO: KRS 216B.010-216B.130, **216B.178**

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

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

Section 1. The State Health Plan shall be used to:

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

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

Section 2. Incorporation by Reference.

(1) The "2023[2022] Update to the State Health Plan", **July[March] 2023[July 2022]**, is incorporated by reference.

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

ADAM MATHER, Inspector General

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: July 11, 2023

FILED WITH LRC: July 13, 2023 at 11:45 a.m.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kara Daniel; Stephanie Brammer-Barnes

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation incorporates by reference the current State Health Plan as defined by KRS 216B.015(28) and as required by KRS 216B.040(2)(a).

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

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

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

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

(a) How the amendment will change this existing administrative regulation: In response to suggestions and comments submitted to the

cabinet by interested groups, the amendment to this administrative regulation makes the following changes to the State Health Plan (SHP):

1. Updates the title and edition date of the SHP on page i of the Plan;

2. Updates the Table of Contents on page ii to show deletions and revised page numbers;

3. Updates the title of the SHP on page iii of the Plan under the heading "Purpose";

4. Adds new language to the review criteria on pages 23 and 24 to allow acute care hospitals to convert existing acute care beds to psychiatric beds for adult patients under the following conditions:

a. The occupancy of acute care beds in the applicant's facility is less than seventy (70) percent according to the most recent edition of the Kentucky Annual Hospital Utilization and Services Report;

i. All of the proposed psychiatric beds are being converted from licensed acute care beds; and

ii. No more than twenty-five (25) acute care beds will be converted to psychiatric beds;

b. All of the psychiatric beds will be implemented on-site at the applicant's existing licensed facility; and

c. All of the psychiatric beds shall be dedicated exclusively to the treatment of adult patients, aged eighteen (18) to sixty-four (64);

5. Deletes outdated language on page 24 referring to tuberculosis beds. That is no longer a bed category in Kentucky

6. Adds language on page 33 to allow a long-term care pediatric facility to add fifty (50) or fewer beds if:

a. It is certified under Title XVIII and XIX of the Social Security Act;

b. It provides high and low intensity nursing facility services to children, including resident admitted to the facility prior to age twenty-one (21) and remain in the facility after reaching age twenty-one (21);

7. Amends language on page 35 to allow an acute care hospital, a critical access hospital, or a nursing facility to establish or expand a home health service to provide services exclusively to their patients who require home health services at the time of discharge;

8. Deletes the criteria on page 47 for megavoltage radiation, thereby making it subject to nonsubstantive review;

9. Deletes the criteria on page 52 for magnetic resonance imaging, thereby making it subject to nonsubstantive review; and

10. Amends the criteria on page 55 for ophthalmological ambulatory surgical centers to:

a. Allow joint ownership by ophthalmologists with optometrists;

b. Decrease the time required that the group has been practicing from 10 years to 5 years;

c. Delete the requirement for a \$300,000 investment in laser technology; and

d. Allow the facility to be located in any county in which one of the owners is located. These changes align with the proposed amendment of 900 KAR 6:075, Section 2(3)(h) – (l), filed concurrently with this administrative regulation to grant nonsubstantive review status to certificate of need applications for:

1. Applications by licensed hospitals to convert existing acute care beds to psychiatric beds for adult patients if certain criteria are met;

2. Applications by a licensed hospital to provide megavoltage radiation therapy;

3. Applications to provide positron emission tomography services;

4. Applications to provide magnetic resonance imaging services; and

5. Applications by a licensed acute care hospital, critical access hospital, or nursing facility proposing to establish or expand a home health service to serve patients discharged from its facility.

(b) The necessity of the amendment to this administrative regulation: This amendment is needed to expand health services throughout the state, including rural areas, to enhance immediate access to resources.

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

(d) How the amendment will assist in the effective administration of the statutes: This amendment assists in the effective administration

of the statutes by establishing the review criteria for certificate of need determinations.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects entities that submit certificate of need applications and affected persons as defined by KRS 216B.015(3). A total of 81 applications were submitted to the cabinet in calendar year 2022; 70 certificate of need applications were submitted in calendar year 2021; and 60 certificate of need applications were submitted in calendar year 2020.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Entities that submit a certificate of need application are subject to the criteria set forth in the State Health Plan.

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

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

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

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

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

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

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

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

(9) TIERING: Is tiering applied? Yes, tiering is used as there are different certificate of need review criteria for each licensure category addressed in the State Health Plan.

#### FISCAL NOTE

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

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

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

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

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

(c) How much will it cost to administer this program for the first

year? This amendment imposes no additional costs on the administrative body.

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

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

Revenues (+/-): See response above.

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

Other Explanation:

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? This 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 new administrative regulation 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 Certificate of Need (Amended After Comments)

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

RELATES TO: KRS 216B.010, 216B.015, 216B.040, 216B.062, 216B.090, 216B.095, 216B.115, 216B.455, 216B.990

STATUTORY AUTHORITY: KRS 216B.040(2)(a)1., 216B.095

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

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

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

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

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



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

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

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

## Section 2. Nonsubstantive Review.

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

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

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

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

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

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

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

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

1. The termination or voluntary closure of the hospital:

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

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

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

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

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

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

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

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

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

(d) The proposal involves an application to establish an industrial ambulance service;

(e) Prior to July 1, 2026, the proposal involves an application by:

1. An ambulance service that is owned by a city or county government seeking to provide ambulance transport services pursuant to KRS 216B.020(9)(a)1. or 2.; or

2. A licensed hospital seeking to provide transport from a location that is not a health care facility pursuant to KRS 216B.020(9)(a)3. and (b);

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

1. The existing hospital and new facility shall be under common

ownership and located in the same county;

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

3.a. If the existing hospital is a state university teaching hospital, the existing hospital exceeded, by at least one (1), the minimum number of quality measures required to receive supplemental university directed payments from Kentucky Medicaid for the state fiscal year preceding the date the application was filed; or

b. If the existing hospital is not a state university teaching hospital, the existing hospital's overall rating by the Centers for Medicare and Medicaid Services Hospital Compare was three (3) stars or higher on the most recent annual update to the overall star ratings preceding the date the application was filed; [or]

(g) 1. The proposal involves an application from a Program of All-Inclusive Care for the Elderly (PACE) program that:

a. Has met the requirements of the State Readiness Review (SRR) according to a report submitted by the Department for Medicaid Services (DMS) to the Centers for Medicare and Medicaid Services (CMS);

b. Seeks to provide, directly to its members, a health service that is not exempt from certificate of need (CON) under KRS 216B.020(1); and

c. Ensures that all services authorized under the PACE agreement are provided exclusively to its members who reside within the service area. The service area shall be:

(i) Located within the Commonwealth of Kentucky; and

(ii) Approved by both CMS and DMS.

2. Only an approved PACE program operating within the applicant's service area shall qualify as an affected person for the purpose of opposing a PACE program application.

3. A PACE program shall not be required to obtain certificate of need (CON) approval if the program:

a. Provides direct patient health services that are exempt from CON under KRS 216B.020(1) and provides other services subject to CON approval through contracts with licensed providers; or

b. Has already obtained CON approval within the approved PACE service area to provide a health service that is not exempt from CON;

(h) The proposal involves an application to establish an inpatient psychiatric unit in an existing licensed acute care hospital under the following conditions:

1. The hospital is located in a county that has no existing, freestanding psychiatric hospital;

2. The occupancy of acute care beds in the applicant's facility is less than seventy (70) percent according to the most recent edition of the Kentucky Annual Hospital Utilization and Services Report;

3.a. All of the proposed psychiatric beds are being converted from licensed acute care beds; and

b. No more than twenty (20) percent of the facility's [twenty-five (25)] acute care beds up to a maximum of twenty-five (25) beds will be converted to psychiatric beds;

4. All of the psychiatric beds will be implemented on-site at the applicant's existing licensed facility; and

5. All of the psychiatric beds shall be dedicated exclusively to the treatment of adult patients, aged eighteen (18) to sixty-four (64);

(i) [The proposal involves an application to provide megavoltage radiation therapy by an applicant that is majority owned by a Kentucky-licensed acute care hospital accredited by the American College of Surgeons Commission on Cancer;

(j) The proposal involves an application to provide positron emission tomography services;

(k) The proposal involves an application to provide magnetic resonance imaging services by an applicant that will be accredited by the American College of Radiology within twelve (12) months of licensure; or

(l) The proposal involves an application by a Kentucky-licensed acute care hospital, critical access hospital, or nursing facility proposing to establish or expand a home health service to serve exclusively patients who require home health services at the time of discharge [discharged] from its facility.

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

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

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

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

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

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

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

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

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

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

(10) Unless a hearing is requested pursuant to 900 KAR 6:090, the Office of Inspector General shall approve each application for a certificate of need that has been granted nonsubstantive review status if the exception established in subsection (11)(a) of this section does not apply.

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

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

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

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

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

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

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

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

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

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

### Section 3. Exemption from Certificate of Need.

(1) A city or county government-owned ambulance service that meets the criteria established by KRS 216B.020(8) shall not be required to obtain a certificate of need to provide emergency ambulance transport services.

(2) A hospital-owned ambulance service shall not be required to obtain a certificate of need to provide non-emergency or emergency transport that originates from its hospital pursuant to KRS 216B.020(7).

(3)(a) If a hospital-owned ambulance service has certificate of need approval prior to the most recent effective date of this administrative regulation to provide transport services from another health facility to its hospital, the service shall not be required to obtain authorization in accordance with paragraph (b) of this subsection.

(b) A hospital-owned ambulance service that is exempt from certificate of need under KRS 216B.020(7) may provide transport services from another health facility to its hospital if authorized as set out in KRS 311A.025(4).

(c)1. As used in paragraph (b) of this subsection, a hospital is authorized to provide inter-facility transport of a patient if:

a. The hospital contacts by phone at least one (1) ground ambulance provider with jurisdiction in the territory in which the other health facility is located, using contact information from the most recent edition of the agency directory maintained by the Kentucky Board of Emergency Medical Services at the following link (<https://kbems.kctcs.edu/legal/EMS%20Directory.aspx>); and

b. The ground ambulance provider:

(i) Declines the hospital's request for patient transport; or

(ii) Is not able to initiate the patient's transport within four (4) hours of receiving the hospital's request.

2. For purposes of this paragraph, a provider initiates transport when it arrives at the hospital to transport the patient.

3. The hospital shall document the ambulance service contacted and the reason for authorization to provide transport from another health facility to its hospital.

(4)(a) In accordance with KRS 216B.020(12)(a), the provisions of this section and Section 2(3)(e) of this administrative regulation shall expire on July 1, 2026.

(b) In accordance with KRS 216B.020(12)(b), a certificate of need exemption granted to an ambulance service under this section of this administrative regulation shall remain in effect on and after July 1, 2026.

ADAM MATHER, Inspector General

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: July 12, 2023

FILED WITH LRC: July 13, 2023 at 11:45 a.m.

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

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kara Daniel; Stephanie Brammer-Barnes; Krista Quarles

(1) Provide a brief summary of:

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

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

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by adding types of certificate of need applications that qualify for nonsubstantive review status, setting

forth the procedure for granting nonsubstantive review status, and setting forth the procedure for affected parties to request a hearing to dispute the review status or application.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by adding types of certificate of need applications that qualify for nonsubstantive review status, setting forth the procedure for granting nonsubstantive review status, and setting forth the procedure for affected parties to request a hearing to dispute the review status or application.

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

(a) How the amendment will change this existing administrative regulation: The originally proposed amendment added the following types of certificate of need applications to those that are granted nonsubstantive review status:

1. Applications by licensed hospitals to convert existing acute care beds to psychiatric beds for adult patients if certain criteria are met;
2. Applications by a licensed hospital to provide megavoltage radiation therapy;
3. Applications to provide positron emission tomography services;
4. Applications to provide magnetic resonance imaging services;

and

5. Applications by a licensed acute care hospital, critical access hospital, or nursing facility proposing to establish or expand a home health service to serve patients discharged from its facility.

In response to comments received during the public comment period, the amended after comments regulation:

1. Amends the language of Section 2(3)(h) to change the maximum number of beds that may be converted from 25 beds to 20% of the facility's acute care beds, up to a maximum of 25 beds;
2. Deletes the proposal to grant nonsubstantive review to applications to provide magnetic resonance imaging services;
3. Deletes the proposal to grant nonsubstantive review to applications to provide positron emission tomography services;
4. Deletes the proposal to grant nonsubstantive review to applications to provide megavoltage radiation services; and
5. Cleans up the language of Section 2(3)(k) to match the language used in the State Health Plan.

(b) The necessity of the amendment to this administrative regulation: This amendment is being proposed pursuant to KRS 216B.095(3)(f), which permits the cabinet to grant nonsubstantive review status to a certificate of need application in accordance with circumstances prescribed by the cabinet via administrative regulation. These changes were requested by providers to allow them to add needed health care services more quickly and efficiently in response to their patient's changing needs. This amendment is needed to expand access to health services throughout the state, including in rural areas, to enhance immediate access to resources.

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects entities that submit certificate of need applications subject to the nonsubstantive review process. The number of entities that submit certificate of need applications subject to nonsubstantive review varies.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This amendment will permit nonsubstantive

review of certificate of need applications for the applicants and healthcare services added in Section 2(3)(h) – (k) of this administrative regulation.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The proposed amendment will help improve access to health care services by making it easier to obtain a certificate of need to provide these services. This will increase access to services that are closer to home for many patients, particularly in rural areas of the state.

(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 used as certificate of need applications are reviewed under a formal review process (900 KAR 6:070) or nonsubstantive review process (this administrative regulation). The list of applications granted nonsubstantive review is being amended to add four (4) new categories.

## FISCAL NOTE

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

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

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

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

PROPOSED AMENDMENTS

Public comment periods for ordinary, non-emergency regulations are at least two months long. For other regulations with open comment periods, please also see last month's [Administrative Register of Kentucky](#).

**GENERAL GOVERNMENT CABINET  
Kentucky Registry of Election Finance  
(Amendment)**

**32 KAR 2:020. General provisions.**

RELATES TO: KRS 121.120, 121.140

STATUTORY AUTHORITY: KRS 121.120(1)(g)

NECESSITY, FUNCTION, AND CONFORMITY: The Registry of Election Finance is charged with the responsibility of enforcing campaign finance laws contained in KRS Chapter 121. [Chapters 121 and 121A.] This administrative regulation establishes [The function of this administrative regulation is to establish] procedures for processing possible violations of campaign finance law [statutes and administrative regulations promulgated by the Registry of Election Finance.] and establishes general provisions that [The purpose of this administrative regulation is to establish general provisions which] shall apply throughout this chapter governing practice and procedure.

**Section 1. Definitions.**

(1) "Campaign finance law" means statutes in KRS Chapter 121 and administrative regulations in KAR Title 32. ["Chairman" means the Chairman of the Registry of Election Finance.]

(2) "Complainant" means any person who files a complaint with the Registry of Election Finance alleging a violation of campaign finance law. [laws or administrative regulations.]

(3) "Complaint" means an allegation filed with the Registry of Election Finance charging that a violation of campaign finance law [statutes or administrative regulations] has occurred or is about to occur.

(4) "Conciliation agreement" means an agreement offered by the Registry of Election Finance to an alleged violator of campaign finance law [laws or administrative regulations] as provided in KRS 121.140.

(5) "Hearing officer" means the retired or former justice or judge selected by the process described in KRS 121.140(4). ["General counsel" means the general counsel of the Registry of Election Finance.]

(6) "Registry" means the Registry of Election Finance.

(7) "Respondent" means any person against whom a complaint has been filed with the Registry of Election Finance or against whom action is taken by the registry based upon information ascertained through its normal enforcement activity.

[(8) "Three (3) judge panel" means a panel of three (3) active or retired justices or judges of the Court of Justice appointed by the Chief Justice of the Kentucky Supreme Court to conduct a hearing as provided in KRS 121.140.]

**Section 2. Computation of Time.**

(1) General provision. In computing any period of time prescribed or allowed by this administrative regulation, the provisions of KRS 446.030 shall govern, except as provided in subsection (2) of this section.

(2) Special provision for service by mail. When the registry or a [any] person serves a document by mail, the prescribed period for the registry or any person to take the next subsequent action that is permitted or required shall include [has the right or is required to do some act within a prescribed period of time after the service of any document by or upon the registry or a person, and the document is served by mail,] three (3) additional days. [days shall be added to the prescribed period.]

**Section 3. [Initiation of] Enforcement Matters.**

(1) Enforcement matters may be initiated by a written complaint or on the basis of information ascertained by the registry in the normal course of the performance of its [conducting its enforcement]

duties.

(2)

[Section 4. Ex Parte Communications. (1)] In order to avoid the possibility of prejudice, real or apparent, in derogation of the public interest in enforcement actions pending before the registry, [except to the extent required during an investigation or conciliation negotiations,] interested persons outside the agency shall not make or cause to be made to any registry board member [or employee] any [ex parte] communication relative to the factual or legal merits of an enforcement action, nor shall a registry board member [or employee] make or entertain any communications relating to registry enforcement actions [ex parte communications].

(2) This prohibition against ex parte communications shall apply from the time a complaint is filed with the registry or from the time that the registry determines on the basis of information ascertained in the normal course of its duties that it has reason to believe that a violation has occurred or may occur, and shall remain in effect until the registry has concluded all action with respect to the enforcement matter in question.

(3) This section shall not be construed to prohibit contact between a respondent or respondent's attorney and a registry employee in the performance of the registry's [his] duties. Statements made by a registry employee during these communications shall not bind or estop the registry in any way.

**Section 4. [Section 5.] Representation by Counsel; Notification.**

[(4)] If a respondent wishes to be represented by counsel with regard to any matter pending before the registry, the respondent's counsel shall file an Entry of Appearance identifying [respondent shall so advise the registry by sending a letter of representation signed by the respondent, which shall contain] the name, address, email address, and telephone number of the counsel and a statement signed by the respondent, identifying the subject of the representation, and authorizing the counsel to receive all notifications and other communications from the registry on the respondent's behalf. [behalf of the respondent.]

(2) Upon receipt of a letter of representation, the registry shall have no contact with respondent except through the designated counsel unless requested in writing by respondent.]

JOHN. R. STEFFEN, Executive Director

APPROVED BY AGENCY: July 6, 2023

FILED WITH LRC: July 10, 2023 at 8:30 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 25, 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 September 30, 2023, at 11:59PM. 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, General Counsel

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides general provisions for actions involving the Registry and the public, particularly in regard to enforcement actions. The administrative regulation provides definitions and sets rules related to time computation, communications between the registry and those involved in enforcement actions, and the entry of counsel.

(b) The necessity of this administrative regulation: This administrative regulation is necessary because, while KRS 121.140 contemplates a complaint process for campaign finance violations and KRS 121.120(4)(m) contemplates the registry initiating these actions in the course of its normal duties, neither statute describes the procedures for doing so with any detail.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 121.120(1)(g) grants the registry the authority to "promulgate administrative regulations necessary to carry out the provisions of this chapter[.]"

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It sets procedures for the regular handling of enforcement actions.

(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 recognizes that the "three-judge panel" originally described in KRS 121.140 was amended to be one former or retired justice or judge. Thus, the regulation no longer reflects the statute and this amendment will make it conform. It also removes definitions that are not needed or are obvious in context, cleans up some unnecessarily convoluted language, makes slight changes to the entry of appearance to make that process reflect that the respondents' counsel (and not the respondents themselves) enter the document, and removes much of the language relating to "ex parte communications" to reflect that there are many reasons that the respondent might need to get in touch with the registry during the pendency of an enforcement action, thus should not be barred from direct contact with registry staff about matters not related to that action. It keeps in place, however, the idea that those against which an enforcement action is pending should not contact members of the registry's board, nor should board members contact them.

(b) The necessity of the amendment to this administrative regulation: The main necessity for the amendment is because of statutory changes that make the current regulation an incorrect statement of the law. Much of the other language is clean-up language or reflects a description of the current procedure.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment reflects a change to a single judge used as a hearing officer instead of a three-judge panel in KRS 121.140. It also adds concrete procedures or calculations in matters for which the statute is silent.

(d) How the amendment will assist in the effective administration of the statutes: This amendment answers questions of how to file an entry of appearance, how to calculate time for actions the registry or those involved in enforcement actions before the registry take, and who the respondent can contact at the registry during the pendency of the action.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Anyone regulated by the registry is 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: Regulated entities will use these rules for computing time, entering appearance of counsel,

(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 allow for the orderly

processing and resolution of actions pending before the registry.

(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 does not apply tiering because these general provisions apply equally to anyone who has an action pending before the registry. The statutes do not allow for a separate process for "small" respondents, because the process afforded to all the respondents is 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 121.120 and KRS 121.140

(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 2:030. Complaints; internally-generated matters.**

RELATES TO: KRS 121.140

STATUTORY AUTHORITY: KRS 121.120(1)(g)

NECESSITY, FUNCTION, AND CONFORMITY: The purpose of this administrative regulation is to establish the procedure to be followed by the Registry of Election Finance in processing complaints of alleged violations of campaign finance ~~law~~ ~~law or administrative regulations promulgated by the registry.~~ This administrative regulation also repeals 32 KAR 2:040, Processing complaints; hearings because the provisions of that administrative regulation do not comply with the registry's current statutory authority.]

**Section 1. Filing Requirements for Complaints.**

(1) A person who believes that a violation of campaign finance law ~~[any campaign finance statute or administrative regulation]~~ may have occurred or is about to occur may file a complaint in writing with the general counsel, Registry of Election Finance, 140 Walnut Street, Frankfort, Kentucky 40601.

(2) A complaint alleging a violation shall be filed within a year from the time the violation has occurred ~~[time prescribed by KRS 500.050.]~~ If the alleged practice is of a continuing nature, the date of the occurrence of the practice shall be deemed to be any date subsequent to the commencement of the practice until ~~[up to and including]~~ the date on which the practice has ceased, or the date on which the complaint is filed. The registry may refer a complaint to the Office of the Attorney General for potential criminal prosecution at any time.

(3) A complaint filed with the general counsel shall comply with the following requirements:

(a) The complaint shall provide the full name and address of the complainant.

(b) The contents of the complaint shall be sworn to and signed in the presence of a notary public and shall be duly notarized.

(c) The complaint shall state that statements contained within it are based upon the complainant's personal knowledge and are ~~[Statements contained in the complaint shall be]~~ made under penalty of perjury. ~~[The complaint shall differentiate between statements based upon personal knowledge and statements based upon information and belief.]~~

(d) The complaint shall clearly identify as a respondent each person or entity who is alleged to have committed a violation or is about to commit a violation.

~~[(e) Statements which are not based upon personal knowledge shall be accompanied by an identification of the source of information which gives rise to the complainant's belief in the truth of the statements contained in the complaint.]~~

~~[(f)]~~ The complaint shall contain a clear and concise recitation of the facts which support the allegation of a violation of ~~[a]~~ campaign finance law ~~[statute or administrative regulation.]~~

~~[(f)]~~ ~~[(g)]~~ The complaint shall be accompanied by documentation supporting the allegations if the documentation is known by and available to the complainant.

**Section 2. Initial Complaint Processing; Notification.**

(1) Upon receipt of a complaint, the general counsel shall review the complaint for substantial compliance with the technical requirements of Section 1 of this administrative regulation. If the complaint complies with those requirements, the general counsel shall, within five (5) days after receipt of the complaint, notify each respondent that the complaint has been filed, advise them of registry procedures, and enclose a copy of the complaint and supporting documentation.

(2) If a complaint fails to comply with the requirements of Section 1 of this administrative regulation, the general counsel shall notify the complainant and person or entity identified as respondents, within the five (5) day period specified in subsection (1) of this section, that no action shall be taken on the basis of that complaint. A copy of the complaint shall be enclosed with the notification to each respondent. The notification shall include an explanation of the reasons the complaint fails to comply.

~~Section 3. Responses.~~ ~~[Opportunity to Demonstrate that no Action Should be Taken on Complaint-Generated Matters.]~~

(1) Within fifteen (15) days of receiving a copy of the complaint, a respondent or respondent's counsel may file:

(a) A written response to the complaint, signed by the respondent or the respondent's counsel; and

(b) An entry of appearance as described in 32 KAR 2:020(4)(1), if the respondent has retained counsel.

(2) The registry shall take no action nor make any finding against a respondent other than action dismissing the complaint unless it has considered the response or unless no response has been served upon the registry within the fifteen (15) day period prescribed in subsection (1) of this section.

~~[(1) A respondent shall be afforded an opportunity to demonstrate that no action should be taken on the basis of a complaint by submitting, within fifteen (15) days from receipt of a copy of the complaint, a letter or memorandum setting forth reasons why the registry should take no action.~~

~~(2) The registry shall not take any action, or make any finding against a respondent other than action dismissing the complaint, unless it has considered the respondent's letter or memorandum or unless no response has been served upon the registry within the fifteen (15) day period prescribed in subsection (1) of this section.]~~

**Section 4. Reason to Believe Finding.**

(1) Following either the expiration of the fifteen (15) day period prescribed by Section 3 of this administrative regulation, or receipt of a response from the respondent, whichever occurs first, the general counsel shall determine whether there is reason to believe that a respondent may have violated or is about to violate a campaign statute or administrative regulation.

(2) If the general counsel determines that there is reason to believe that a violation may have occurred or is about to occur, an investigation shall commence as provided in Section 2 of 32 KAR 2:040.

(3) If the general counsel determines that there is no reason to believe that a violation may have occurred or is about to occur, he or she shall recommend to the registry that the complaint be dismissed. The registry shall determine whether to accept or reject the general counsel's recommendation.

**Section 5. Referrals.**

(1) On the basis of information ascertained by the registry in the normal course of performing its enforcement duties, or on the basis of referral from an agency of the United States or of any state, the general counsel may find reason to believe that a person or entity may have committed or is about to commit a violation of campaign finance law ~~[statutes or administrative regulations;]~~ and an investigation shall commence as provided in Section 2 of 32 KAR 2:040.

(2) If the general counsel finds reason to believe that a violation may have occurred or is about to occur, the notification to the

respondent required by Section 2 of this administrative regulation shall include a copy of a staff report setting forth the legal basis for and the alleged facts which support the general counsel's finding.

(3) No later than four (4) days preceding each primary and general election, the registry shall publish the names of all candidates appearing on the ballot who have failed to timely file any report required by KRS 121.180(3)(a) for any reporting period since the date of the last election.

Section 6. Reopening of Proceedings. After a hearing and the issuance of a final order as provided in KRS 121.140[~~Acts 1992, Chapter 288, Section 46,~~] the registry may, upon its own motion or upon application of any party or intervening party, for good cause shown, or whenever justice so requires, reopen any closed proceeding upon notice to all parties and intervenors, and may take the action it deems necessary.

Section 7. Certification. The chairman or the executive director may certify all documents or records which are a part of the files of the registry.

JOHN. R. STEFFEN, Executive Director

APPROVED BY AGENCY: July 6, 2023

FILED WITH LRC: July 10, 2023 at 8:30 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 25, 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 September 30, 2023, at 11:59PM. 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, General Counsel

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets the process for filing a complaint with the Registry and for how the registry handles complaints received.

(b) The necessity of this administrative regulation: This administrative regulation is necessary because, while KRS 121.140 contemplates a complaints process, the statute describes no procedures for doing the filing and processing of complaints with any detail.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 121.120(1)(g) grants the registry the authority to "promulgate administrative regulations necessary to carry out the provisions of this chapter"

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It sets procedures for the regular handling of complaints, including providing deadlines for filing and responding to complaints.

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

(a) How the amendment will change this existing administrative regulation: This amendment updates the definitional section, removing those not needed and adding a definition that allows the removal of redundant language, amends the statute of limitations section to describe the SOL without reference to an unrelated section of the

penal code, simplifies the section concerning the filing of responses, removes gender-specific language, and increases the readability of the administrative regulation where possible.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary in part to help simplify the statute of limitations language which pointed to a statute outside campaign finance law that was hard to apply to the complaint process.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 121.140 provides a complaint process in broad strokes, but does not provide any specific guidance. This amendment continues to provide that specificity.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will provide further guidance on how the registry processes and investigates complaints received.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Anyone who wishes to file a complaint or is a respondent to a complaint received by the registry is 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: Regulated entities will use this regulation file and respond to complaints.

(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 with the administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Compliance will allow for the orderly processing and response to complaints before the registry.

(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 continuing 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 does not apply tiering because the underlying statutes envision one complaint process that applies in the same way to all complainants and respondents.

#### 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 121.120 and KRS 121.140

(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 2:040. Investigatory procedures.[Preconciliation procedures.]**

RELATES TO: KRS [421.420,]121.140

STATUTORY AUTHORITY: KRS 121.120(1)(g)

NECESSITY, FUNCTION, AND CONFORMITY: The purpose of this administrative regulation is to establish a procedure for [processing complaints or internally generated matters prior to the conciliation process established by Acts 1992, Chapter 288, Section 46 enacted by the General Assembly. The bill became effective July 14, 1992, and it is necessary to promulgate this administrative regulation to enable the registry to comply with the new provision.]investigations into complaints or internally generated matters and is necessary to ensure a consistent procedure.

[Section 1. Reason to Believe Finding.]

[(1) If the general counsel, either after reviewing a complaint and a respondent's letter or memorandum requesting that the registry take no action on the complaint as provided in Section 3 of 32 KAR 2:030, or after reviewing an internally generated matter as described in Section 5 of 32 KAR 2:030, determines there is reason to believe

~~that a respondent may have violated or is about to violate a campaign finance statute or administrative regulation, he shall notify the respondent and complainant of his finding by letter, setting forth the sections of the statute or administrative regulation alleged to have been violated and the factual basis supporting the finding.]~~

~~[(2) If the general counsel finds no reason to believe that a violation occurred or otherwise terminates its proceedings, the general counsel shall so advise both the complainant and respondent by letter.]~~

Section 1.[Section 2.] Investigations.

(1) An investigation shall be conducted in any case in which the general counsel finds reason to believe that a violation of a campaign finance statute or administrative regulation may have occurred or is about to occur, or at the direction of the registry if the general counsel's recommendation of dismissal is rejected.

(2) In its investigation, the registry may utilize the provisions of Sections 3 to 7 of this administrative regulation. The investigation may include field investigations, audits, and other methods of information gathering.

Section 2.[Section 3.] Written Question Under Oath. The registry may authorize its chairman or general counsel to issue an order requiring any person to submit sworn written answers to written questions and may specify a date by which the answers shall be submitted.

Section 3.[Section 4.] Subpoenas; Depositions.

(1) The registry may authorize its chairman or general counsel to issue subpoenas requiring the attendance and testimony of any person by deposition or at a hearing. Further the registry may issue subpoenas duces tecum for the production of documentary or other tangible evidence in connection with an investigation, deposition, or a hearing.

(2) If oral testimony is ordered to be taken by deposition or documents are ordered to be produced, the subpoena shall so state and shall advise the deponent or person subpoenaed that all testimony will be given under oath. A deposition may be taken before any person having the power to administer oaths.

(3) The Kentucky Rules of Civil Procedure, Rule 30.05, shall govern the opportunity to review and sign depositions taken pursuant to this section.

Section 4.[Section 5.] Service of Subpoenas, Orders, and Notifications.

(1) Service of a subpoena, order, or notification upon a person named therein shall be made by delivering a copy to that person in the manner prescribed by this section.~~[In the case of subpoenas, fees for one (1) day's attendance and mileage shall be tendered as specified in Section 6 of this administrative regulation.]~~

(2) When service is to be made upon a person who has advised the registry of representation by an attorney, the service shall be made upon the attorney by any of the methods specified in subsection (3) of this section and a copy shall be sent to the individual.

(3)

(a) Delivery of subpoenas, orders, and notifications to a natural person may be made by:

1. Handing a copy to the person;

2. Leaving a copy at the person's[his] dwelling place or usual place of abode with a person of suitable age and discretion residing therein;

3. Mailing a copy by registered or certified mail to the person's[his] last known address; or

4. Any other method whereby actual notice is given.

(b) When the person to be served is not a natural person, delivery of subpoenas, orders, and notifications may be made by:

1. Mailing a copy by registered or certified mail to the person at its place of business;

2. Handing a copy to a registered agent for service, or to any officer, director, or agent in charge of any office of the person;

3. Mailing a copy by registered or certified mail to the representative at the representative's[his] last known address; or

4. Any other method by which actual notice is given.

~~[Section 6. Witness Fees and Mileage. Witnesses subpoenaed to appear for depositions shall be paid the same fees and mileage as witnesses in the courts of the Commonwealth of Kentucky. These fees may be tendered at the time the witness appears for the deposition or within a reasonable time thereafter.]~~

~~Section 5. [Section 7.] Motions to Quash or Modify a Subpoena.~~

(1) A person to whom a subpoena is directed may, prior to the time specified therein for compliance, but no later than five (5) days after the date of receipt of the subpoena, move the registry to quash or modify the subpoena, accompanying the motion with a brief statement of the reasons therefore. Motions to quash shall be filed with the general counsel, Registry of Election Finance, 140 Walnut Street, Frankfort, Kentucky 40601. ~~Three (3) copies shall be submitted.]~~

(2) The registry may deny the motion, quash the subpoena, or modify the subpoena.

(3) The person subpoenaed and the general counsel may agree to change the date, time, or place of a deposition or the conditions for the production of documents without affecting the force and effect of the subpoena, but any modifications shall be confirmed in writing.

~~Section 6. [Section 8.] Briefing Procedures.~~

(1)

(a) Upon completion of the investigation, the general counsel shall make a report of the findings of the registry.

(b) If the registry determines that the information obtained in the course of the investigation is insufficient to support a finding of probable cause or to provide a basis for dismissal of the action, it may direct the general counsel to prepare a brief setting forth his position on the alleged factual and legal issues of the case.

(c) The registry may also request the respondent to appear to present additional information, or the respondent may request [that he] be allowed to present additional evidence.

(d) The decision as to whether the respondent may present additional evidence shall be within the discretion of the registry.

(2) The general counsel shall provide a copy of the [his] brief to the respondent who may, within fifteen (15) days of receipt of the general counsel's brief, file a brief with the registry setting forth the respondent's [his] position on the factual and legal issues of the case. ~~[Ten (10) copies of the brief shall be filed with the executive director and three (3) copies shall be filed with the general counsel.]~~

~~Section 7. [Section 9.] Probable Cause Finding; Notification.~~

(1) If the registry determines that there is probable cause to believe that a respondent may have or is about to violate [a] campaign finance law, ~~[statute or administrative regulation,]~~ the general counsel shall notify the respondent and complainant by letter.

(2) If the registry finds no probable cause or otherwise orders a termination of its proceedings, the general counsel shall notify respondent and complainant by letter.

~~Section 8. [Section 10.] Noncompliance with Reporting Requirements; Probable Cause Determination.~~

(1) If any person subject to the provisions of KRS 121.180 fails to comply with any reporting requirement contained in that section, the failure to file a report due in a timely manner shall constitute prima facie evidence that probable cause exists to believe that a violation has occurred and the general counsel and executive director may immediately enter into conciliation negotiations with the respondent. The notice required by KRS 121.140(2) shall be issued when the registry's staff concludes that there has been a failure to file any report required under the campaign finance laws.

(2) If any a candidate or slate of candidates does not revoke a request for exemption in a timely manner as described in KRS 121.180(1)(b), making the candidate or slate of candidates subject to the \$500 penalty imposed in KRS 121.180(1)(k), the filing of an amended Statement of Spending Intent untimely or the reporting of the receipt of contributions or the expenditures of funds in excess of \$3,000 once the time to amend the Statement of Spending Intent has passed, shall constitute prima facie evidence that probable

cause exists to believe that a violation has occurred and the general counsel and executive director may immediately enter into conciliation negotiations with the candidate or slate of candidates. The notice required by KRS 121.140(2) shall be issued when the registry's staff concludes that there has been a failure to timely amend a Statement of Spending Intent.

~~(3)[(2)]~~ A conciliation agreement pertaining to a violation of KRS 121.180 shall not be binding upon either party until it is signed by the respondent, the general counsel, and the executive director, and approved by the registry.

JOHN. R. STEFFEN, Executive Director

APPROVED BY AGENCY: July 6, 2023

FILED WITH LRC: July 10, 2023 at 8:30 a.m.

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:** A public hearing on this administrative regulation shall be held on September 25, 2023, at 10:00 a.m., 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 September 30, 2023, at 11:59 p.m. 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 sets the process for the Registry's investigatory process once an enforcement matter begins by complaint or through an internal referral.

(b) The necessity of this administrative regulation: This administrative regulation is necessary because, while KRS 121.140 contemplates a complaints process and addresses some of the investigatory powers the registry processes in processing complaints, the statute describes no procedures for doing with any detail.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 121.120(1)(g) grants the registry the authority to "promulgate administrative regulations necessary to carry out the provisions of this chapter[.]"

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It sets procedures for the regular investigation of complaints.

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

(a) How the amendment will change this existing administrative regulation: This amendment removes a portion of duplicated regulation that is covered by the previous administrative regulation (where the subject matter fits better). It also removes the requirement that the state pay witness fees and the requirement that the respondent send multiple copies of the documents to the Registry, which it no longer needs. Finally, it adds a second violation related to late filing that can go to conciliation immediately, like other forms of late filing.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to remove impediments to the complaint investigation process, such as witness fees to which the agency should not be subject and costs associated with copies of documents which the Registry now receives no benefit from the public incurring. It also removes what had been redundant language

between 32 KAR 2:030 and 32 KAR 2:040 and treats similar violations in a similar manner.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 121.140 provides broad overview of the complaint process, including a process of the registry's investigatory powers, however does not provide any specific guidance. This regulation will provide that specificity.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will provide further guidance on how the registry investigates complaints received and will streamline several steps in the process that no longer reflected agency needs or had been changed by amendment.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Anyone who wishes to file a complaint or is a respondent to a complaint received by the registry is affected, as well as anyone who might be a witness the board meeting or hearing related to an enforcement matter.

(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 no longer be required to file multiple copies of the same document and will enter into conciliation immediately if a Statement of Spending Intent is amended late, as opposed to having the matter heard at a meeting before the Board.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Entities will incur no costs in complying, with the exception that the state will no longer pay witness expenses.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Compliance will make the process less burdensome for the entities because they no longer have to file multiple copies of documents (that the Registry no longer uses but are still in the regulatory language) and they will no longer be required to participate in a board hearing before going to conciliation for a violation that is similar to the less burdensome delinquency process.

(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 does not apply tiering because the underlying statute sets out one complaint and investigation procedure in KRS 121.140 that is applicable in the same manner to all respondents, complainants, witnesses, etc.

#### 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 121.120 and KRS 121.140

(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 2:050. Conciliation.

RELATES TO: KRS [121.430(1),]121.140

STATUTORY AUTHORITY: KRS 121.120(1)(g)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 121.120(1)(g) authorizes the Registry of Election Finance to promulgate administrative regulations necessary to carry out the provisions of KRS Chapter 121. This administrative regulation establishes conciliation procedures.

#### Section 1. Negotiations.

(1) Upon a registry finding of probable cause, the general counsel and executive director shall attempt to correct or prevent the

violation by informal methods of conference, conciliation, and persuasion~~[conference conciliation and persuasion,]~~ and shall attempt to reach a tentative conciliation agreement with the respondent.

(2) During conciliation negotiations, the general counsel and executive director shall consider as a mitigating factor the attendance by a candidate or treasurer at one (1) or more training sessions sponsored by the registry, directly preceding the election during which the violation occurred. Based upon this and any other mitigating factors, the general counsel and executive director may reduce a fine, if proposed by the registry.

(3) A conciliation agreement shall not be binding upon either party until it is signed by the respondent, the general counsel, and the executive director and approved by the registry.

(4) If the probable cause to believe finding is made within forty-five (45) days preceding an election, the conciliation attempt shall continue for at least fifteen (15) days from the date of the finding. In all other cases, conciliation attempts by the registry shall continue for at least thirty (30) ~~[days, not to exceed ninety (90)-]days.~~

(5) If a conciliation agreement is reached between the registry and the respondent, the general counsel shall send a copy of the signed agreement to both complainant and respondent.

**[Section 2. Public Disclosure of Registry Action.**

~~(1) If the registry makes a finding of no reason to believe or no probable cause or otherwise terminates its proceedings, it shall make public its determination and the basis for the determination no later than thirty (30) days from the date on which the required notifications are sent to complainant and respondent.~~

~~(2) If a conciliation agreement is finalized, the registry shall make the agreement public.~~

~~(3) Except as provided in subsections (1) and (2) of this section, a complaint filed with the registry, any notification sent by the registry, any investigation conducted by the registry, or any findings made by the registry shall not be made public by the registry without the written consent of the respondent until a written response has been received or the expiration of the fifteen (15) day response period required by Section 3 of 32 KAR 2:030. Upon receipt of a response or the expiration of the fifteen (15) day period, the complaint, response, and materials related thereto, exclusive of materials exempted by KRS 61.878(1), shall be open for public inspection.~~

~~(4) Except as provided in subsections (1) and (2) of this section, an action by the registry or by any person, and information derived in connection with conciliation efforts shall not be made public by the registry until a final action with regard to a conciliation attempt is taken.]~~

JOHN. R. STEFFEN, Executive Director

APPROVED BY AGENCY: July 6, 2023

FILED WITH LRC: July 10, 2023 at 8:30 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 25, 2023, at 10:00 a.m., 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 September 30, 2023, at 11:59 p.m. 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, General Counsel

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes conciliation procedures.

(b) The necessity of this administrative regulation: This administrative regulation is necessary because, while KRS 121.140 contemplates a conciliation process and an appeals process for violators, the statute describes no procedures for doing so with any detail.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 121.120(1)(g) grants the registry the authority to "promulgate administrative regulations necessary to carry out the provisions of this chapter[.]"

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It sets procedures for the regular conciliation 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 removes an arbitrary deadline for conciliation discussions and removes a section relating to when records are public in favor of putting that language in a new, expanded regulation relating to open records. It is worth noting that one provision of the deleted language does not even concern records related to conciliation, which is the subject of the regulation, but with when complaints and responses are considered public. Finally, it fixes punctuation errors in the original language.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to remove irrelevant information from the regulation and to move the remaining language to a new administrative regulation that would be a better fit.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 121.120(1)(g) authorizes the Registry of Election Finance to promulgate administrative regulations necessary to carry out the provisions of KRS Chapter 121. This amendment removes an unnecessary impediment to continued conciliation negotiations and allows for restructuring of the current administrative regulations by keeping the body of the regulations consistent with the title.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will allow for a more flexible conciliation process and make the administrative regulation structure make more internal sense.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Anyone who is party to a conciliation negotiation with the registry is 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: Regulated entities will use this regulation to navigate the conciliation process with the registry.

(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 with the regulation, although they may incur penalties as a result of a conciliation, as permitted by KRS 121.140.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Compliance will allow for the orderly closing of enforcement matters before the registry.

(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 does not apply tiering as the negotiations and considers made within them are fact-specific to the respondent.

#### 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 121.120 and KRS 121.140

(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. Note, however, that the conciliation process does provide a small amount of revenue to the general fund through penalties. This amount has averaged about \$15,000 a 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, subject to the note about penalties above.

(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 2:060. Advisory opinions.

RELATES TO: KRS 121.135

STATUTORY AUTHORITY: KRS 121.120(1)(g)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 121.135 requires the Registry of Election Finance to issue advisory opinions concerning the application of campaign finance laws or administrative regulations promulgated by the registry pursuant to statutory authority. These provisions became effective July 14, 1992, and this administrative regulation is necessary to implement the process through which advisory opinions may be requested and issued.

#### Section 1. Requests for Advisory Opinions.

(1) A person may request in writing an advisory opinion concerning the application of campaign finance statutes or administrative regulations with regard to a particular transaction. An authorized agent of the person requesting an advisory opinion may submit the advisory opinion request, but the agent shall disclose the identity of the[his] principal.

(2) The written advisory opinion request shall describe a specific transaction or activity that the requesting person plans to ~~undertake; [undertake or]~~ is presently undertaking; or[undertaking and] intends to undertake in the future. Requests presenting a general question of interpretation, ~~[or—]~~posing a hypothetical situation, or regarding the activities of third parties[parties,] shall not be considered.

(3) Advisory opinion requests shall include a complete description of all facts relevant to the specific transaction or activity with respect to which the request is made.

(4) The office of general counsel shall review all requests for advisory opinions submitted to the registry. If the office of general counsel determines that a request is incomplete or otherwise fails to meet the criteria established in this section, it shall, within ten (10) calendar days of receipt of the request, notify the requesting person[person,] of any deficiencies in the request.

(5) Advisory opinion requests shall be submitted by mail to the Office of the General Counsel, Registry of Election Finance, 140 Walnut Street, Frankfort, Kentucky 40601; or by email to KREFRequests@ky.gov.[Kentucky 40601.]

(6) Upon receipt by the registry, each request which qualifies as an advisory opinion request (AOR) under this section shall be assigned an AOR number for reference purposes.

Section 2. Public Availability of Requests. (1) The registry shall make public on its Web site at www.kref.ky.gov any advisory [Advisory] opinion requests that[which] qualify under Section 1 of this administrative regulation [shall be made public at the registry] promptly upon receipt. A register shall be maintained by the registry containing a list of requests for advisory opinions and shall be updated on a regular basis.~~[The register, copies of all requests for advisory opinions, supplemental materials, and copies of all opinions issued shall be available for public inspection at the Registry of Election Finance, 140 Walnut Street, Frankfort, Kentucky 40601, Monday through Friday, between the hours of 8 a.m. and 4:30 p.m. local time.]~~

#### Section 3. Written Comments on Request.

(1) Any interested person may submit comments concerning requests for advisory opinions made public to[by] the registry. All comments shall be in writing and shall refer to the AOR number of

the request.

(2) Written comments shall be submitted not later than ten (10) calendar days following the date the request is made public by the registry. If the tenth day falls on a Saturday, Sunday, or legal holiday, the ten (10) day period shall expire at the close of the following business day.~~[day next following.]~~

(3) ~~The registry may grant additional time to submit written comments at the Office of General Counsel's discretion or if a member of the public wishing to submit comments requests it. [Additional time for submission of written comments may be granted upon written request for an extension by the person who wishes to submit comments or may be granted in the discretion of the Office of General Counsel without a request.]~~

(4) Written comments and requests for additional time to comment shall be sent to the Office of General Counsel, Registry of Election Finance, 140 Walnut Street, Frankfort, Kentucky, 40601; or by email to KREFRequests@ky.gov.

(5) Before issuing an advisory opinion, the registry shall accept and consider all written comments submitted within the ten (10) day comment period or any extension of the normal comment period.

~~[Section 4. Issuance of Advisory Opinions. Advisory opinions shall be issued by the registry as provided in KRS 121.135(2).]~~

~~Section 5. Reliance on Advisory Opinions. An advisory opinion issued by the registry may be relied upon only as provided in KRS 121.135(4).~~

~~Section 6. Advisory Opinion Subscription Service Available. Copies of all advisory opinions issued by the Registry of Election Finance shall be made available to interested parties through a per-page charge of ten (10) cents per page plus postage. Persons wishing to obtain a copy of an advisory opinion may contact the Registry of Election Finance, 140 Walnut Street, Frankfort, Kentucky 40601, (502) 564-2226.]~~

JOHN. R. STEFFEN, Executive Director

APPROVED BY AGENCY: July 6, 2023

FILED WITH LRC: July 10, 2023 at 8:30 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 25, 2023, at 10:00 a.m., 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 September 30, 2023, at 11:59 p.m. 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, General Counsel

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets the process for requesting advisory opinions, which the registry is required to answer by KRS 121.135.

(b) The necessity of this administrative regulation: This administrative regulation is necessary because, while KRS 121.135 contemplates an advisory opinion request process, the statute describes no procedures for doing with any detail.

(c) How this administrative regulation conforms to the content of

the authorizing statutes: KRS 121.120(1)(g) grants the registry the authority to "promulgate administrative regulations necessary to carry out the provisions of this chapter[.]"

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It sets procedures for the regular handling of advisory opinion requests.

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

(a) How the amendment will change this existing administrative regulation: This amendment allows for the making of advisory opinion requests and public comments by email, in addition to the US mail option that was already in the statute. It also recognizes that the requests and comments are being made available through the registry's Web site and there is no longer a need for a copying procedure. In the rare instance that someone would rather have paper copies of the material, charges and the like are already covered by the registry's open records process. It also replaces gender-specific language with gender neutral language and cleans up some convoluted language and grammatical errors.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to recognize that registry has changed how it posts and provides copies of advisory opinions, requests, and comments, making them more efficient, and at times cheaper, to the public to engage in the process.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 121.135 provides no requirements for the advisory opinion process, save that they be in writing, they are available to the public for comment, and that the registry make the response within 20 or 30 days depending on the date of the next election.

(d) How the amendment will assist in the effective administration of the statutes: This amendment allows the requestors and commenters to communicate with the registry by email, if preferred and points to the location of the requests and related documents on the Registry's Web site, which is not mentioned in the current version of 32 KAR 2:060.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Anyone who wishes to request an advisory opinion or comment on one is 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: Regulated entities will use this regulation to deliver their requests and comments to the registry and to view copies of those already filed.

(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 unless they request hard copies of the documents and then will be subject to the normal costs for open records requests.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Compliance will allow for the orderly processing and response to advisory opinion requests before the registry.

(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 does not apply tiering because it would aid neither the agency nor the regulated population to set up separate processes based on the size of the requestor or the number of requests made. KRS 121.135 envisions a standard advisory opinion request process that would not depend on the entity of the requestor.

#### 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 121.120 and KRS 121.135

(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 Personnel Board (Amendment)

#### 101 KAR 1:365. Appeal and hearing procedures.

RELATES TO: KRS Chapter 13B, 18A.075, 18A.0751, 18A.095, 344.030

STATUTORY AUTHORITY: KRS 13B.170, 18A.075, 18A.0751

NECESSITY, FUNCTION, AND CONFORMITY: KRS 13B.170 authorizes an agency to promulgate administrative regulations to carry out the provisions of KRS Chapter 13B and enact administrative hearing procedures. KRS 18A.075 provides that[requires] the Personnel Board shall[te] promulgate comprehensive administrative regulations consistent with the provisions of KRS 18A.005 to[through] 18A.200. KRS 18A.0751 provides that[requires] the Personnel Board shall[te] promulgate comprehensive administrative regulations providing for the procedures to be utilized by the board in the conduct of hearings. This administrative regulation establishes Personnel Board hearing procedures.

#### Section 1. Definitions.

(1) "Because of sex" or "on the basis of sex" is defined by KRS 344.030(8).

(2) "Qualified individual with a disability" is defined by KRS 344.030(1).

(3) "Reasonable accommodation" is defined by KRS 344.030(6).

(4) "Religion" is defined by KRS 344.030(7).

(5) "Undue hardship" is defined by KRS 344.030(9).

Section 2. An appeal of an action alleged to be based on discrimination shall be governed by the terms defined in Section 1 of this administrative regulation.

#### Section 3. Filing.

(1) An appeal or a document relating to an appeal shall be filed with the Personnel Board through the office of the executive director within the time period established in KRS 18A.095.

(2)

(a) An appeal, motion, request, objection, exception, response, witness list, or other document may be filed by a party with the board by means of facsimile transmission or other electronic means including email.

(b) If a party transmits a document to the board by facsimile transmission or other electronic means, the party shall attempt to transmit the document to all parties by the same method.

(3) To be timely filed, a document transmitted by facsimile or other electronic means shall be received by the board within the statutory or regulatory times established for filing and be received by the board no later than midnight on the last day for filing.

(4) The submission of an original copy of a facsimile transmission or email shall not be required, unless requested.

(5) A state employee shall not use state time, equipment, materials, or personnel in pursuing an appeal without the advance written permission of an appointing authority in their employing agency.

(6) An appeal shall be heard in Franklin County, Kentucky.

#### Section 4. Designation of Hearing Officer.

(1) Unless otherwise directed by the board, the executive director shall assign a hearing officer or officers to an appeal.

(2) If more than one (1) hearing officer is assigned, one (1) shall be designated as chief hearing officer.

(3) If an appeal will be heard by the full board, the board shall designate a chief hearing officer.

#### Section 5. Continuances.

(1) A continuance of a scheduled hearing may be granted by a hearing officer for good cause.

(2) The hearing officer has[shall have] the discretion to require that a request for continuance shall:

(a) Be written;

(b) State the reason for the request;

- (c) Include proposed dates for rescheduling the hearing; and
- (d) Be filed with the board.
- (3) The hearing officer ~~has~~shall have the discretion to require that any objection to a request for continuance shall:
  - (a) Be written;
  - (b) State the reason for the objection to the request for continuance; and
  - (c) Be filed with the board.
- (4)
  - (a) At the direction of the hearing officer, the executive director may execute and transmit to all parties an interim order either granting or denying the request for continuance.
  - (b) If the request for continuance is granted, the interim order shall state the date on which the hearing has been rescheduled or that the hearing has been continued generally.

#### Section 6. Prehearing Procedures.

- (1) A motion, request, or filing shall be in writing, filed with the board through the office of the executive director, and served on all parties.
- (2) Unless an interim order provides for review by the board prior to the conclusion of a hearing, which shall only be granted at the sole discretion of the hearing officer, the board shall review an interim order when it considers the recommended order, record, and exceptions.
- (3) If an employee retains counsel subsequent to filing an appeal, that attorney may be required to file a written entry of appearance.
- (4) An employee shall notify all parties and the board in writing of a change of address.
- (5)
  - (a) A Kentucky Personnel Board subpoena form shall be available in the office of the executive director and shall be issued by the executive director.
  - (b) Preparation and service of the subpoena and compliance with the subpoena shall be the responsibility of the party requesting the subpoena.
- (6) A deposition may be taken in an extraordinary circumstance and upon authorization by the hearing officer. A request to take a deposition shall be filed at least fifteen (15) calendar days prior to the scheduled hearing. An objection to the request shall be filed prior to the scheduled hearing.
- (7) At the discretion of the hearing officer, two (2) or more appeals that involve the same or similar facts may be consolidated. Upon motion of a party, or upon the hearing officer's own motion, the hearing officer may join other parties as necessary to appropriately consider the matter.
- (8) An agreed settlement shall be submitted in writing for review by the Personnel Cabinet Secretary and final action by the board.

#### Section 7. Conduct of Hearing.

- (1) Unless the appeal is heard by the full board, the hearing officer assigned shall hear the appeal.
- (2) A party shall provide at least four (4) copies of an exhibit that is to be introduced as evidence. The parties may exchange documents through appropriate electronic means, including email. The hearing officer shall have the discretion to appropriately fashion the evidentiary record at all times.

#### Section 8. Board Review and Action.

- (1) A response to a written exception to a recommended order may be filed by a party within fifteen (15) calendar days after the date the written exception is filed with the board. A response shall be:
  - (a) In writing; and
  - (b) Served on all parties.
- (2) At the request of a party or on its own motion, the board may permit oral arguments before the full board. A request for oral argument shall be:
  - (a) In writing; and
  - (b) Filed with the board within fifteen (15) days of issuance of a recommended order.
- (3) A final order shall be prepared, executed, and entered at the direction of the board by the secretary to the board.

#### Section 9. Incorporation by Reference.

- (1) The following forms are incorporated by reference:
  - (a) "Kentucky Personnel Board Appeal Form (6-29-2023)[(4-2018)]"; and
  - (b) "Kentucky Personnel Board Subpoena Form (2-90.)"
- (2) These forms may be inspected, copied, or obtained at the office of the Personnel Board, 1025 Capital Center Drive, Suite 105, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. and the Web site of the Personnel Board, [personnelboard.ky.gov](http://personnelboard.ky.gov).

MARK A. SIPEK, Executive Director

APPROVED BY AGENCY: July 11, 2023

FILED WITH LRC: July 11, 2023 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 21, 2023, at 9:30 a.m. Eastern Time at 1025 Capital Center Drive, Suite 105, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through September 30, 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: Stafford Easterling General Counsel, Personnel Board, 1025 Capital Center Drive, Suite 105, Frankfort, Kentucky 40601, phone (502) 564-7830, fax (502) 695-5799, email [stafford.easterling@ky.gov](mailto:stafford.easterling@ky.gov).

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stafford Easterling

- (1) Provide a brief summary of:
  - (a) What this administrative regulation does: This administrative regulation governs the Personnel Board's appeal and hearing procedures.
  - (b) The necessity of this administrative regulation: This regulation is necessary in order to provide more granular detail as to the Personnel Board's procedures and guidelines as to how the Board will process appeals and conduct hearings.
  - (c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 18A.075, 18A.0751, and KRS 13B.170 mandate that the Board promulgate administrative regulations that detail the procedures and guidelines that must be used by the Board when conducting hearings and processing appeals.
  - (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will continue to enable the Board to ensure the effective administration of the merit system in addition to assisting the Board in meeting its statutory requirements to establish appeal and hearing procedures.
- (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 language of the administrative regulation itself will not change. This amendment merely effectuates alterations to the Personnel Board Appeal form already incorporated by reference.
  - (b) The necessity of the amendment to this administrative regulation: The Personnel Board's Appeal Form, which is incorporated by reference, need to be modernized.
  - (c) How the amendment conforms to the content of the authorizing statutes: KRS 18A.075, 18A.0751, and KRS 13B.170 mandate that the Board promulgate regulations that detail the procedures and guidelines that must be used by the Board when conducting hearings and processing appeals. The updating of the form does not change the content of this regulation and the amendment of the form attached by reference conforms with the Board's mandate to effectively administer state government's merit system, as provided by KRS Chapter 18A.



(d) How the amendment will assist in the effective administration of the statutes; Updating the Personnel Board's Appeal form will allow the Board to capture more information about the nature of an appeal before an initial pre-hearing conference, which is a more efficient use of the Board's extremely limited resources, in addition to making it easier for those utilizing the Board's Appeal form to submit information relevant to their appeals, which should permit all participants in Board appeals to more effectively resolve appeal through a more transparent streamlined process.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation affects all state government agencies and all individuals with rights secured by KRS Chapter 18A, including, primarily, current state employees.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No entity identified in the Board's response will be required to undertake any significant new actions in order to comply with the amendment. Such entities will merely be required to handle and distribute the new amended Personnel Board Appeal form in the exact same manner that they handled and distributed the Board's old, unamended Appeal form.

(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 additional cost to the entities to comply with this regulation. The only foreseeable cost would be incurred in printing the new form to replace the old form to the extent that distribution of the form is not done electronically.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): In addition to the universal benefits conveyed by adopting more modern procedures and ensuring more uniformity in the appeal process and hearing procedures, by amending the Board's Appeal form to capture more information relevant to each appeal, all participants in Board appeals should benefit through a more transparent streamlined process.

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

(a) Initially: Minimal printing costs up front to replace the old Board Appeal form with the new form.

(b) On a continuing basis: After the initial expense, there will be no ongoing cost to implement this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Given the minimal costs involved, there is no need for a source of funding to implement and enforce this regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There will not be an increase in fees and there is no necessity to secure a source of funding in order to implement this amendment.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This regulation, as amended, is not anticipated to generate any fees nor will any entity endure increased fees, directly or indirectly.

(9) TIERING: Is tiering applied? No. This regulation, as amended assures hearings are held equally and appeals processed uniformly.

#### FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This regulation affects all state government agencies and all individuals with rights secured by KRS Chapter 18A, including, primarily, current state employees.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 18A.075, KRS 18A.0751, 18A.005 to 18A.200, and KRS 13B.170.

(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. No effect on expenditures and revenues to any 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? 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 minimal costs incurred to distribute new Board Appeal forms are so insignificant that the Board cannot provide detailed estimated costs to administer the amendments to this regulation, especially if participating state agencies chose to distribute the amended Personnel Board forms electronically.

(d) How much will it cost to administer this program for subsequent years? Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation. There are no estimated costs for subsequent years to administer the amendments to this regulation.

Revenues (+/-): Zero

Expenditures (+/-): Zero

Other Explanation: There should be no increase or decrease in the cost to administer this administrative 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? Zero

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

(c) How much will it cost the regulated entities for the first year? Minimal.

(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 (+/-): Zero

Expenditures (+/-): Zero

Other Explanation: There should be no increase or decrease in the cost for the regulated entities caused by this administrative regulation.

(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 Veterinary Examiners (Amendment)

**201 KAR 16:550. Authorization for animal control agencies to apply for a restricted controlled substances certificate from DEA.**

RELATES TO: KRS 217.177(1), (4), Chapter 258, Chapter 301, 321.207, 321.351

STATUTORY AUTHORITY: KRS 321.207(1) – (3),(5)-(8), 321.235(1)(a), (b), (2)(b)3[(1)-(2), 321.235(3), 321.240(5)]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 321.207(1) permits the Kentucky Board of Veterinary Examiners to authorize an animal control agency to apply for a registration certificate by the United States Drug Enforcement Administration (DEA) to euthanize animals. KRS 321.207(2) requires the applicant agency to comply with administrative regulations that establish

standards for the proper storage and handling of the drugs the board has authorized for use, and other provisions that may be necessary to ensure that the drugs are used safely and solely for the purpose of euthanizing animals. KRS 321.235(1)(a), (b), and (2)(b)3 ~~KRS 321.235(3) and 321.240(5))~~ authorize the board to promulgate administrative regulations to implement KRS Chapter 321. This administrative regulation establishes the application, renewal, and reinstatement requirements for certification of an animal shelter as an animal control agency, and the requirements for board inspections at certified animal control agencies.

#### Section 1. Definitions.

(1) "Animal Control Agency" means an animal shelter fulfilling the duties required pursuant to KRS Chapter 258, and the animal shelter is either owned, contracted with, or in service on behalf of a county or municipality.

(2)(a) "Animal shelter" means a public agency or private humane society, society for the prevention of cruelty to animals, animal protection shelter or control agency, or other facility that provides shelter and care for homeless, stray, unwanted, or injured animals.

(b) An "animal shelter" shall not include:

1. Shelter or care of wildlife; or

2. Premises of a Kentucky Department of Fish and Wildlife Resources credentialed;

a. Certified wildlife rehabilitator (301 KAR 2:075);

b. Commercial nuisance wildlife control operator (301 KAR 3:120);

c. Captive wildlife holder (301 KAR 2:081);

d. Wildlife transporter (301 KAR 2:082).

(3)(2) "Certified Animal Control Agency" means an animal shelter that is certified under the provisions of KRS Chapter 321 and 201 KAR Chapter 16.

(4)(3) "Designated On-site Manager" means a person who registers with the board to assume responsibility for the ordering, management, use, and disposal of controlled substances at a board-certified animal control agency.

#### Section 2. Application and Renewal Requirements.

(1) The applicant animal shelter shall apply to the board for authorization to operate as a certified animal control agency and to apply to the federal Drug Enforcement Administration (DEA) for a Controlled Substance Registration as established by KRS 321.207.

(2) A complete application to the board shall include the following ~~components~~:

(a) A completed Application for Certification as an Animal Control Agency form or online equivalent form, including all required attachments;

(b) Identification of the agency designated on-site manager;

(c) A complete and current list of all individuals performing euthanasia or related activities at the animal shelter, whether or not each individual holds a credential from the board; ~~and~~

(d) An animal control agency verification letter signed by the governing body within the county or municipality, including a statement about the animal shelter's role as an animal control agency or contractor pursuant to KRS 258.195;

(e) A list of all Kentucky counties which are provided service by the animal shelter; and

(f) Payment of the fee in accordance with 201 KAR 16:514.

(3) Prior to the board's issuance of the animal control agency certificate, the applicant shall undergo an inspection of the facility by the board, its inspector, or other designee of the board in accordance with Section 5 of this administrative regulation.

(4) Following board application approval, the applicant shall apply to DEA for registration as a practitioner and designate "animal shelter" on the appropriate DEA application form.

(5) A certified animal control agency shall submit to inspection by a board representative at any time, with or without advanced notice.

(6) A certified animal control agency shall identify a designated on-site manager in accordance with 201 KAR 16:552.

(a) The agency shall notify the board in writing within ten (10) days of any change in the designated on-site manager of the certified animal control agency ~~animal shelter~~ by submitting a

completed Request for a New Designated On-site Manager form or online equivalent form, including all required attachments.

(b) The designated on-site manager shall be responsible for complying with all state and federal laws related to the ordering, purchase, storage, tracking, management, and disposal of the drugs obtained under the DEA controlled substances registration.

(7) Background checks. The board may:

(a) Conduct ~~conduct~~ a national or jurisdictional level background check on each designated on-site manager. The check shall be processed by a board approved background check provider, and may include a copy of the designated on-site manager's fingerprints captured at a board approved location; ~~and~~

(b) Accept ~~The board may accept~~ the results of a state-wide ~~an~~ employment background check ~~from the county office~~ in lieu of a state or federal background check if the background check results are not more than six (6) months old from the date of application; ~~and~~

(c) Reject ~~The board may reject~~ background checks that do not have an official seal or watermark, or that are more than ninety (90) days old; ~~and~~

(d) Impose ~~The board may impose~~ additional administrative or safety requirements as a condition of certification for the animal control agency or deny certification following the board's review of findings from a background check.

#### Section 3. Renewal Requirements for a Certified Animal Control Agency.

(1) A board-certified animal control agency shall renew the board certification annually in accordance with 201 KAR 16:572.

(2) Failure to renew the certificate for an animal control agency shall result in the following actions by the board:

(a) The animal control agency certificate shall be moved to expired status;

(b) Each "active" status certified animal euthanasia specialist under the employment of the expired certified animal control agency shall be moved to "inactive" status;

(c) The DEA shall be notified of the lapse in certification; and

(d) The board shall conduct a closeout inspection within six (6) months of the date of expiration of the certificate to ensure that the controlled substances and other drugs on-site are properly disposed of. An animal shelter with an expired certificate shall continue to maintain the drugs in accordance with 201 KAR 16:552, and the Kentucky Veterinary Medicine Practice Act (KRS Chapter 321), and 201 KAR Chapter 16, until the drugs are transferred in accordance with state and federal laws, or disposed of in accordance with 201 KAR 16:552, Section 7.

#### Section 4. Reinstatement Requirements for Certified Animal Control Agencies.

(1) An animal control agency with an expired certificate shall have five (5) years to reinstate their certificate by submitting a completed Reinstatement Application for Animal Control Agencies form or online equivalent form, including all required attachments and payment of the reinstatement application fee pursuant to 201 KAR 16:514.

(2) The animal control agency shall undergo inspection by an authorized representative of the board in accordance with Section 5(3) of this administrative regulation prior to the reinstatement of a certificate.

(3) After five (5) years of the date of the expiration of the certificate, the agency shall not [be able to] reinstate the certificate and the animal control agency shall be required to apply for a new certificate in accordance with 201 KAR Chapter 16 ~~this administrative regulation and 201 KAR 16:572~~.

#### Section 5. Inspection Requirements.

(1) A certified animal control agency shall be subject to inspection by the board, its investigator, or a board representative.

(2) An inspection may occur at any time, with or without advance notice. The designated on-site manager shall make themselves available to provide access and information during the inspection.

(3) An inspection shall be required:

(a) Prior to the approval of a new Application for Certification as an Animal Control Agency;

(b) Prior to the approval of a Reinstatement Application for Animal Control Agencies, if the last inspection was completed more than twelve (12) months prior to the date of the application;

(c) Periodically on a schedule set by the board, not more routinely than every ten (10) months, and at least once every two (2) years;

(d) As needed due to staff turnover at the animal control agency;

(e) Under suspicion of probable cause for violation of KRS Chapter 321 or 201 KAR Chapter 16; and

(f) Following the expiration, termination, suspension, or surrender of the certificate in accordance with Section 3(2)(d) of this administrative regulation.

#### Section 6. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Application for Certification as an Animal Control Agency", 7/2023[12/2022];

(b) "Reinstatement Application for Animal Control Agencies", 7/2023[12/2022]; and

(c) "Request for a New Designated On-site Manager", 7/2023[12/2022].

(2) This material may be inspected, copied, or obtained, subjected to applicable copyright law, at the Kentucky Board of Veterinary Examiners, 107 Corporate Drive, Frankfort, Kentucky 40601, Monday through Friday, 8:30 a.m. to 4:30 p.m. This material may also be obtained at [www.kybve.com](http://www.kybve.com).

MICHELLE M. SHANE, Executive Director

APPROVED BY AGENCY: July 12, 2023

FILED WITH LRC: July 12, 2023 at 1:00 p.m.

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:** A public hearing on this administrative regulation shall be held on September 25, 2023 at 1:00 p.m., at the Kentucky Department of Agriculture, Office of the State Veterinarian, 109 Corporate Drive, 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 prior to the end of the hearing. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through September 30, 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:** Michelle Shane, Executive Director, Kentucky Board of Veterinary Examiners, 107 Corporate Drive, Second Floor, Frankfort, Kentucky 40601, phone (502) 782-0273, fax (502) 695-5887, email [michelle.shane@ky.gov](mailto:michelle.shane@ky.gov).

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michelle Shane

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the application and renewal requirements for certification as an animal control agency, and the requirements for board inspections at certified animal control agencies.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the application requirements for certification as an animal control agency, as mandated by KRS 321.207.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 321.207 specifically requires the board to promulgate administrative regulations related to the application requirements for certification as an animal control agency.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in effective administration by clearly detailing board expectations for applications and renewals of board-issued certificates for animal control agencies, and requirements related inspections of board-certified animal control 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: Updating statutory references to conform with the new Kentucky Veterinary Medicine Practice Act, KRS Chapter 312; adding clarifying definitions, clarifying that eligible animal shelters should have a mission to support the county or municipality with their in animal control needs, and clarifying that animal shelters eligible for a KBVE certificate do not include the handling, management, and transport of wildlife, because wildlife management falls under the scope of the Kentucky Department of Fish and Wildlife Resources.

(b) The necessity of the amendment to this administrative regulation: Changes are necessary to conform with the new Kentucky Veterinary Medicine Practice Act, KRS Chapter 312. The Kentucky Board of Veterinary Examiners has determined this amendment is necessary to prevent application for wildlife shelter certification to the board, because wildlife control and management is beyond the board's scope of authority.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 321.207 specifically requires the board to promulgate administrative regulations related to board-certified animal control agencies, including who is eligible to apply and the application requirements.

(d) How the amendment will assist in the effective administration of the statutes: This amendment shall ensure transparency about who is eligible to apply.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 50 board-certified animal control agencies and 232 animal euthanasia specialists, and future applicants.

(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 not be any impact to currently regulated entities. This amendment shall ensure that those who are not qualified to apply do not pay a fee and then have their application denied by the board.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This amendment will save potential applicants money by clarifying who is eligible for KBVE certification as an animal control agency.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Administrative ease of clear communications of the approved requirements.

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

(a) Initially: No costs are anticipated.

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

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This administrative regulation does not establish fees. Funding for the KBVE comes from licensure and certification 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: There is no anticipation of an increase in fees or needed funding to implement this administrative regulation, as the KBVE is already running an administrative program to process applications and an inspection program to ensure compliance.

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

(9) TIERING: Is tiering applied? No. All regulated entities have 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 Board of Veterinary Examiners and KBVE-certified county animal shelters.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 321.207, KRS 321.235

(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 from this filing.

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

(c) How much will it cost to administer this program for the first year? This is not a new program.

(d) How much will it cost to administer this program for subsequent years? Staff time is required for record keeping. Costs will be very 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 (+/-): None or negligible.

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? There will be no cost savings; this amendment simply codifies the requirements, making them easily accessible for regulated entities.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? There will be no cost savings.

(c) How much will it cost the regulated entities for the first year? There will be no additional costs involved.

(d) How much will it cost the regulated entities for subsequent years? There will be no additional costs involved.

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 or negligible.

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 amendment shall not have a "major economic impact", as defined in KRS 13A.010(13).. KRS 321.207 requires animal shelters seeking a DEA Controlled Substances Registration to become certified by KBVE prior to application with the federal agency.

#### BOARDS AND COMMISSIONS Board of Veterinary Examiners (Amendment)

**201 KAR 16:552. Responsibilities for certified animal control agencies; limitations on drugs.**

RELATES TO: KRS 321.181, 321.207, 321.235[321.235(7)], 321.351

STATUTORY AUTHORITY: KRS 321.207(1) – (3),(5)-(8), 321.235(1)(a), (b), (2)(b)3,[(1), (2), 321.235(3), 321.240(5)]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 321.207(1) permits the Kentucky Board of Veterinary Examiners to authorize an animal control agency to apply for a registration

certificate by the United States Drug Enforcement Administration (DEA) to order, purchase, manage, and store controlled substances which are authorized by the board for use in animal sedation and euthanasia. KRS 321.207(2) requires the applicant agency to comply with administrative regulations that establish standards for the proper storage and handling of the drugs the board has authorized for use, and other provisions that may be necessary to ensure that the drugs are used safely and solely for the purpose of euthanizing animals. KRS 321.235(1)(a), (b), (2)(b)3, authorizes[KRS 321.235(3) and 321.240(5) authorize] the board to promulgate administrative regulations to implement KRS Chapter 321. This administrative regulation establishes the duties for the animal control agency designated on-site manager, standards for proper drug storage, and drugs that may be used by certified animal control agencies and the certified animal euthanasia specialists they employ.

#### Section 1. Responsibilities of a Certified Animal Control Agency.

(1) A certified animal control agency and staff shall comply with all requirements of KRS Chapter 321 and 201 KAR Chapter 16.

(2) A certified animal control agency shall identify an agency designated on-site manager and ensure the person complies with the requirements in Section 2 of this administrative regulation.

(3) Any change to the designated on-site manager shall be reported in writing to the board within ten (10) business days by submitting a completed Request for a New Designated On-site Manager form or online equivalent form, including all required attachments.

(4) A certified animal control agency shall ensure that the United States Drug Enforcement Administration (DEA) Controlled Substances Registration is kept in active status if there are controlled substances in the possession of the animal control agency.

(5) A certified animal control agency shall submit to inspection by a board representative at any time, with or without advanced notice in accordance with 201 KAR 16:550, Section 5.

#### Section 2. Responsibilities of a Designated On-site Manager.

(1) The designated on-site manager shall be responsible for reviewing educational materials provided by the board and submitting a responsive answer sheet for review by the board. A board inspector or representative shall periodically review educational materials with the designated on-site manager.

(2) The designated on-site manager shall:

(a) Ensure proper controls are in place in accordance with all state and federal laws for all controlled substances and other drugs at the animal control agency;

(b) Ensure drugs for euthanasia and drugs used for sedation prior to euthanasia shall be limited to the substances identified in Section 3 of this administrative regulation;

(c) Ensure all employees authorized to conduct animal euthanasia at the certified animal control agency are trained and certified in accordance with the requirements of 201 KAR 16:560 and 16:562, unless the employee is a board-licensed veterinarian or board-licensed veterinary technician;

(d) Ensure all animal euthanasia specialists who conduct euthanasia at the certified animal control agency maintain an active certificate with the board;

(e) Notify the board in writing within ten (10) business days following the termination of a certified animal euthanasia specialist so the certificate of the animal euthanasia specialist may be taken out of "active" status;

(f) Shall develop and maintain standard operating procedures in writing for carcass disposal in accordance with all state and local laws and ordinances; and

(g) Shall be responsive and cooperative to the board's request for access and information to the certified animal control agency.

(3) The designated on-site manager shall ensure that the animal euthanasia process shall be conducted within the restrictions set forth in this subsection.

(a) Euthanasia shall only be conducted upon animals owned by the certified animal control agency, except in cases of emergency care as defined by KRS 321.181(33)[KRS 321.181(10)].

1. Transfer of ownership or a temporary contract shall not be used for the purpose of circumventing this subsection; and

2. Wildlife shall be redirected to one (1) of the following:

a. A [a] board-licensed veterinarian; [;]

b. A Certified Wildlife Rehabilitator authorized to operate pursuant to 301 KAR 2:075; [; or]

c. A Commercial [to a] Nuisance Wildlife Control Operator authorized to operate pursuant to 301 KAR 3:120;

d. A Captive Wildlife Holder authorized to operate pursuant to 301 KAR 2:081; or

e. A Wildlife Transporter authorized to operate pursuant to 301 KAR 2:082.

(b) Euthanasia shall only be conducted upon the premises of the certified animal control agency, except in cases of emergency care as defined by KRS 321.181(33) [KRS 321.181(10)]; and

(c) All euthanized animals shall be disposed of in accordance with the certified animal control agency's standard operating procedures for carcass disposal.

### Section 3. Approved Drugs for Animal Euthanasia and Anesthesia or Sedation of Animals Prior to Euthanasia.

(1) A certified animal control agency shall be restricted to the purchase of only the following board-approved specific drugs for the purpose of animal euthanasia. [The drugs approved by the board for euthanasia are:]

- (a) Sodium pentobarbital; and
- (b) Sodium pentobarbital with lidocaine.

(2) A certified animal control agency shall be restricted to the purchase of only the following board-approved specific drugs, or any combination thereof, for the purpose of animal anesthesia or sedation prior to euthanasia. [The drugs approved by the board for animal anesthesia or sedation prior to euthanasia are, or any combination thereof:]

- (a) Acepromazine;
- (b) Dexmedetomidine;
- (c) Ketamine [- (30-day supply or less)]; and
- (d) Xylazine.

(3) Scheduled drugs (controlled substances) shall be limited to a thirty (30) day supply.

(4) DEA's Schedule II order forms (titled "DEA-222") shall be used for each purchase or transfer of board approved controlled substances.

(5) [(4)] Expired drugs.

(a) Expired drugs shall not be used.

(b) Expired drugs shall be properly disposed of in accordance with Section 7 of this administrative regulation.

### Section 4. Storage.

(1) Board approved euthanasia and sedation drugs shall be stored at the DEA address of record for the certified animal control agency in a securely locked cabinet within:

(a) A [a] locked storage room;

(b) Other locked [or other] enclosure; and [at the DEA address of record for the certified animal control agency.];

(c) The cabinet shall be bolted securely to the floor or wall.

(2) DEA Controlled Substance Schedule II order forms shall be maintained at the DEA address of record for the certified animal control agency [stored] in a securely locked cabinet that is: [;]

(a) Separate [separate] from the storage location of the drugs; [;]

(b) Within [within] a locked storage room; or

(c) Other locked [other] enclosure [at the DEA address of record for the certified animal control agency].

### Section 5. Disposal of Needles and Medical Waste.

(1) All needles in an animal control agency shall:

- (a) Not be accessible to the public;
- (b) After one (1) use, be rendered incapable of re-use [use]; and
- (c) Be disposed of in an approved biohazard or sharps container.

(2) All syringes used in the process of euthanasia shall be disposed of in an approved biohazard or sharps container.

### Section 6. Records.

(1) A certified animal control agency shall maintain records of purchases, administration of board approved euthanasia drugs and sedation drugs, transfer, and destruction of drugs for a minimum of two (2) years.

(2) Records of administration shall include, at a minimum, the following [information]:

- (a) The date of use;
- (b) Identification of the animal;
- (c) The amount of the drug used;
- (d) Any amount wasted;
- (e) The signature of the person administering the drug;
- (f) The signature of the designated on-site manager certifying the accuracy of the administration of board approved euthanasia drugs and sedation drugs not less than once per month; and

(g) The signature of the designated on-site manager certifying to the accuracy of the records not less than once per month, as well as on the annual inventory.

(3) Records of purchase and destruction of board approved euthanasia drugs and sedation drugs shall be maintained in a separate file from the records of administration of those substances.

(4) The records of purchase, destruction, and administration may be audited by representatives of the DEA or authorized designees of the board to determine adequacy, accuracy, and validity of the recordkeeping. The board may impose restrictions and administrative penalties on certificate holders or designated on-site managers as a result of substandard controls or records of the drugs.

(5) The records of purchase, administration, transfer, and destruction of euthanasia and sedation drugs, shall be maintained at the DEA address of record for the certified animal control agency.

Section 7. Destruction or Disposal of Drugs. Drugs at an animal control agency that require disposal shall be disposed of in accordance with one (1) of the methods set forth in this section. A written receipt with appropriate signatures shall be obtained for the methods in subsections (1) through (3) of this section, and a record of the action taken shall be made for the method in subsection (4) of this section. The record shall be maintained with the drug logs at the animal control agency.

(1) Transfer non-expired, non-controlled drugs to a licensed veterinarian.

(2) Transfer non-expired, controlled drugs to a DEA registered, board-licensed veterinarian using DEA Form 222. Copies of the DEA Form 222 shall be distributed per federal law.

(3) Surrender expired or non-expired drugs to local law enforcement for destruction.

(4) Inject expired or non-expired drugs into and incinerate an animal carcass in accordance with state and local rules on incineration. Written documentation shall describe the amounts disposed of, type of carcass, date of injection and incineration, witnesses, and any other pertinent details.

Section 8. Disciplinary Action. An animal control agency, designated on-site manager, and [credentialed] animal euthanasia specialists shall be subject to disciplinary action pursuant to KRS 321.235 and 321.351 for a violation of state or federal statutes or administrative regulations.

### Section 9. Incorporation by Reference.

(1) "Request for a New Designated On-site Manager", 07/2023 [42/2022], is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subjected to applicable copyright law, at the Kentucky Board of Veterinary Examiners, 107 Corporate Drive, Frankfort, Kentucky 40601, Monday through Friday, 8:30 a.m. to 4:30 p.m. This material may also be obtained at [www.kybve.com](http://www.kybve.com).

MICHELLE SHANE, Executive Director

For STEVEN J. WILLIS, Board Chair

APPROVED BY AGENCY: July 12, 2023

FILED WITH LRC: July 12, 2023 at 1:00 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September

25, 2023 at 1:00 p.m., at the Kentucky Department of Agriculture, Office of the State Veterinarian, 109 Corporate Drive, 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 prior to the end of the hearing. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through September 30, 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:** Michelle Shane, Executive Director, Kentucky Board of Veterinary Examiners, 107 Corporate Drive, Second Floor, Frankfort, Kentucky 40601, phone (502) 782-0273, fax (502) 695-5887, email michelle.shane@ky.gov.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michelle Shane

(1) Provide a brief summary of:

(a) What this administrative regulation does:

This administrative regulation establishes, for Board-certified animal control agencies, the standards for proper drug storage, limitations on the drugs that may be used by the agencies and the certified animal euthanasia specialists they employ, limitations on the animals on which the drugs may be used so that the specialists do not practice veterinary medicine outside the scope allowable by the General Assembly. In addition, this regulation outlines the responsibilities of the agency's Designated On-site Manager, who is in charge of controlled substances, including drug storage requirements, record keeping requirements, and limitations on options for the methods used for the destruction of drugs and sharps.

(b) The necessity of this administrative regulation: As mandated by the General Assembly in KRS 321.207, this administrative regulation is necessary to establish the drugs that may be used by certified animal control agencies and the certified animal euthanasia specialists they employ, and standards for proper drug storage and handling.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 321.207 specifically requires the board to promulgate administrative regulations for board-certified animal control agencies limiting the type of drugs allowable for use by certified animal control agencies and the certified animal euthanasia specialists they employ, and establishing standards for proper drug storage and handling.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in effective administration by clearly detailing limitations on the operations of certified animal control agencies so that they do not exceed their operating scope as authorized by the General Assembly.

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

(a) How the amendment will change this existing administrative regulation: Updating statutory references to conform with the new Kentucky Veterinary Medicine Practice Act, KRS Chapter 312; adding additional options for the redirection of wildlife; adding limitations on the office stock for all controlled substances; and formatting the requirements so they are easier for constituents to understand.

(b) The necessity of the amendment to this administrative regulation: Changes are necessary to conform with the new Kentucky Veterinary Medicine Practice Act, KRS Chapter 312. The Kentucky Board of Veterinary Examiners has determined this amendment is necessary to place strict limits on the supply of controlled substances in a certified animal control agency, and provide additional options to redirect wildlife.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 321.207 specifically requires the board to promulgate administrative regulations related to board-certified animal control agencies, including requirements for storage and limitations on drugs.

(d) How the amendment will assist in the effective administration of the statutes: This amendment shall ensure transparency about the requirements for allowable drugs, as well as their storage, maintenance, and use.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 50 board-certified animal control agencies and 232 animal euthanasia specialists, and future applicants.

(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 board-certified animal control agencies shall be required to ensure adequate locked and secure storage for the management of controlled substances onsite, and limit their supply of controlled drugs to those listed by board 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): Board-certified animal control agencies should already be properly ordering, storing, and managing controlled drugs as a part of requirements established by the Drug Enforcement Administration (DEA), so there should not be any additional costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): By complying with this administrative regulation, entities should reduce break-ins and thefts of controlled substances, as well as be able to more easily comply with DEA Requirements related to drug record keeping. Animal Control Agencies should also reduce their liability to the public by limiting their scope of practice for board-certified euthanasia specialists, ensuring sharps are properly disposed of, and ensuring proper carcass disposal in compliance with local laws.

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

(a) Initially: No costs are anticipated.

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

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This administrative regulation does not establish fees. Funding for the KBVE comes from licensure and certification 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: There is no anticipation of an increase in fees or needed funding to implement this administrative regulation, as the KBVE is already running an administrative program to process applications and an inspection program to ensure compliance.

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

(9) TIERING: Is tiering applied? No. All regulated entities have 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 Board of Veterinary Examiners and board-certified animal control agencies.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 321.207(1) – (3),(5)-(8), 321.235(1)(a), (b), (2)(b)3.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue will be generated from this filing. An animal control agency may need to expend monies to ensure adequate storage for controlled substances management.

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

(c) How much will it cost to administer this program for the first year? This is not a new program. Staff time will be required for record keeping.

(d) How much will it cost to administer this program for subsequent years? Staff time will be required for record keeping. Costs will be very 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 (+/-): None or negligible.

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? There will be no cost savings; this administrative regulation simply codifies the requirements of drug management and establishes limitations on drug administration, making them easily accessible for regulated entities.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? There will be no cost savings.

(c) How much will it cost the regulated entities for the first year? An animal control agency may need to expend monies to ensure adequate storage for controlled substances management. There will be no additional costs involved.

(d) How much will it cost the regulated entities for subsequent years? There will be no additional costs involved.

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 or negligible.

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 amendment shall not have a "major economic impact", as defined in KRS 13A.010(13).

## BOARDS AND COMMISSIONS

### Board of Veterinary Examiners

#### (Amendment)

#### 201 KAR 16:560.Certification as an animal euthanasia specialist.

RELATES TO: KRS 257.160, 321.207, ~~[321.235(7), 321.351, Chapter 335B]~~

STATUTORY AUTHORITY: KRS 321.207~~(4)-(7), 321.235(1)(a), (b), (2)(b)3(3), 321.235(3), 321.240(5)]~~

NECESSITY, FUNCTION, AND CONFORMITY: KRS 321.207(3) requires the Kentucky Board of Veterinary Examiners to issue a certificate to a person who meets the qualifications of an animal euthanasia specialist and is approved by the board for a certificate. ~~KRS 321.235(1)(a), (b), and (2)(b)3, [KRS 321.235(3) and 321.240(5)]~~ authorize the board to promulgate administrative regulations to implement KRS Chapter 321. This administrative regulation establishes the qualifications for certification as an animal euthanasia specialist, renewal, and reinstatement requirements, and the required course contents for the euthanasia by injection training each applicant is required to receive.

Section 1. To be eligible for certification as a board-certified

animal euthanasia specialist an applicant shall:

(1) Be at least twenty-one (21) years of age;

(2) Be of good moral character;

(3) Not have been convicted of, or entered an "Alford" plea or plea of nolo contendere to, irrespective of an order granting probation or suspending imposition of any sentence imposed following the conviction or entry of the plea, one (1) or more or the following in the last ten (10) years, subject to the provisions of KRS Chapter 335B:

(a) A felony;

(b) An act involving moral turpitude or gross immorality; or

(c) A violation of any law, rule, or administrative regulation of this state, any other state, or the United States government that involves the use or trafficking of illegal substances;

(4) Have a high school diploma or general equivalency degree (GED);

(5) Pay the initial certification fee as specified in 201 KAR 16:514;

(6) Be employed by a board-certified animal control agency; and

(7) Have successfully completed a board approved sixteen (16) hour euthanasia by injection (EBI) course as established in Section 2 of this administrative regulation within twelve (12) months prior to application.

#### Section 2. Euthanasia by Injection (EBI) Training Course Curriculum.

(1) The curriculum for the sixteen (16) hour EBI course shall provide information on the following subjects:

(a) Pharmacology, proper administration, and storage of euthanasia solutions that shall consist of a minimum of eight (8) hours;

(b) Federal and state laws regulating the storage and accountability for euthanasia solutions and drugs used to assist in euthanasia;

(c) Euthanasia specialist stress management and compassion fatigue;

(d) Proper animal handling with emphasis on easing the trauma and stress to the animal; and

(e) Disposal of euthanized animals.

(2) An EBI training course shall be reviewed and approved by the board prior to presentation. A provider of an EBI training shall submit the following information to the board for consideration of approval:

(a) A published course or similar description;

(b) Names and qualifications of current instructors;

(c) A copy of the program agenda indicating hours of education, refreshment, and lunch breaks;

(d) A copy of the full program curriculum;

(e) A copy of an official certificate of completion from the sponsoring agency; and

(f) Upon completion of the instruction of a sixteen (16)-hour euthanasia course, a complete attendee list to the board, including the following:

1. The dates and locations of the course;

2. Each attendee's full name and address; and

3. Notation by an individual's name if the course was not completed, or more than fifteen (15) consecutive minutes of any portion of the course was missed.

#### Section 3. An application to the board for certification as an animal euthanasia specialist shall include the following[~~components~~]:

(1) A completed application on an Application for Certification as an Animal Euthanasia Specialist form or online equivalent form, including all required attachments;

(2) An official copy of final transcripts or a copy of the applicant's diploma from high school, or GED certificate, or other highest level of education attained;

(3) A copy of a certificate of completion from a board approved sixteen (16)-hour euthanasia by injection training course; and

(4) Payment for the application fee pursuant to 201 KAR 16:514.

#### Section 4. Renewal Requirements for a Certified Animal Control

Agency.

(1) A board-certified animal control agency shall renew the board certification annually in accordance with 201 KAR 16:572.

(2) Failure to renew the certificate for an animal control agency shall result in expiration of the certificate.

Section 5. An individual with an expired animal euthanasia specialist certificate may reinstate their certificate if not more than five (5) years have elapsed since the last date of certificate expiration. Reinstatement applications seeking board approval for certification as an animal euthanasia specialist shall include the following[components]:

(1) A completed application on a Reinstatement Application for Animal Euthanasia Specialists form or online equivalent form, including all required attachments; and

(2) Payment for the application fee pursuant to 201 KAR 16:514.

Section 6.~~[Section 5.]~~ An application to the board for approval for a change in certification~~[licensure]~~ status shall be made in accordance with 201 KAR 16:580.

Section 7.~~[Section 6.]~~ Background checks. The board may:

(1) Conduct~~[conduct]~~ a national or jurisdictional level background check on each applicant for certification. The check shall be processed by a board approved background check provider, and may include a copy of the applicant's fingerprints captured at a board approved location[.];

(2) Accept~~[The board may accept]~~ the results of a state-wide~~[an]~~ employment background check ~~[from the county office]~~ in lieu of a state or federal background check if the background check results are not more than six (6) months old from the date of application[.];

(3) Reject~~[The board may reject]~~ background checks that do not have an official seal or watermark, or that are more than ninety (90) days old; and[.];

(4) Impose~~[The board may impose]~~ additional administrative or safety requirements as a condition of certification or deny certification following the board's review of findings from a background check.

Section 8.~~[Section 7.]~~ Employment and Termination.

(1) A person may function as a certified animal euthanasia specialist only while the person remains employed by a board-certified animal control agency in the Commonwealth of Kentucky.

(2) Upon termination of employment with a certified animal control agency~~[or upon expiration of the certified animal control agency's certificate]~~, a certified animal euthanasia specialist's certificate status shall automatically be moved by the board from an active to inactive status. The inactive certified individual shall not perform animal euthanasia until the person has obtained employment with a certified animal control agency with a certificate in active status, and applied to the board and been approved to move the animal euthanasia specialist certificate back into active status in accordance with 201 KAR 16:580.

Section 9.~~[Section 8.]~~ Disciplinary Action. A certified animal euthanasia specialist shall be subject to disciplinary action pursuant to KRS 321.235 and 321.351 for a violation of state or federal statutes or administrative regulations.

Section 10.~~[Section 9.]~~ Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Application for Certification as an Animal Euthanasia Specialist", 07/2023[3/2023]; and

(b) "Reinstatement Application for Animal Euthanasia Specialists", 07/2023[4/2022].

(2) This material may be inspected, copied, or obtained, subjected to applicable copyright law, at the Kentucky Board of Veterinary Examiners, 107 Corporate Drive, Frankfort, Kentucky 40601, Monday through Friday, 8:30 a.m. to 4:30 p.m. This material may also be obtained at [www.kybve.com](http://www.kybve.com).

MICHELLE M. SHANE, Executive Director  
For STEVEN J. WILLS, DVM, Board Chair

APPROVED BY AGENCY: July 12, 2023

FILED WITH LRC: July 12, 2023 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 25, 2023 at 1:00 p.m., at the Kentucky Department of Agriculture, Office of the State Veterinarian, 109 Corporate Drive, 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 prior to the end of the hearing. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through September 30, 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: Michelle Shane, Executive Director, Kentucky Board of Veterinary Examiners, 107 Corporate Drive, Second Floor, Frankfort, Kentucky 40601, phone (502) 782-0273, fax (502) 695-5887, email [michelle.shane@ky.gov](mailto:michelle.shane@ky.gov).

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michelle Shane

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the application, renewal, and reinstatement requirements for certification as an animal euthanasia specialist, as well as details on the required training needed to qualify for certification, and background check requirements.

(b) The necessity of this administrative regulation: As mandated by KRS 321.207, this administrative regulation is necessary to establish the application, renewal, reinstatement, and training requirements for certification as an animal euthanasia specialist.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 321.207 specifically requires the board to promulgate administrative regulations related to the application and training requirements for board-certification as an animal euthanasia specialist.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in effective administration by clearly detailing requirements for application, renewal, and reinstatement of the board-issued animal euthanasia specialist certificate, as well as the training course required for eligibility of certification.

(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: Clarifies renewal requirements, and adds detail about requirements for the EBI course. Reorganizes section on background checks.

(b) The necessity of the amendment to this administrative regulation: The Kentucky Board of Veterinary Examiners has determined this amendment is necessary in response to issues discovered at certified animal control agencies during periodic shelter inspections. Issues include high staff turnover, and sometimes expired staff certificates.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 321.207 specifically requires the board to promulgate administrative regulations related to board-certified animal control agencies and the animal euthanasia specialists they employ. This amendment clarifies renewal requirements and details on the EBI training requirements, as well as organizes the section on background checks.

(d) How the amendment will assist in the effective administration of the statutes: This amendment shall ensure transparent standards to ensure compliance related to certification requirements.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 50 board-certified animal control agencies and 232 animal euthanasia specialists, and future applicants.



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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: There are no additional requirements in this amendment. Applicants for certification as an animal euthanasia specialist shall be required to submit application materials as outlined in this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is a minimal application fee for processing, as established in 201 KAR 16:514.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Administrative ease of clear communications of the approved requirements.

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

(a) Initially: No costs are anticipated.

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

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This administrative regulation does not establish fees. Funding for the KBVE comes from licensure and certification 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: There is no anticipation of an increase in fees or needed funding to implement this administrative regulation, as the KBVE is already running an administrative program to process applications.

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

(9) TIERING: Is tiering applied? No. All regulated entities have 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 Board of Veterinary Examiners and KBVE-certified county animal shelters.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 321.207(4)-(7), 321.235(1)(a), (b), (2)(b)3.

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

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

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

(c) How much will it cost to administer this program for the first year? This is not a new program. Staff time will be required for record keeping.

(d) How much will it cost to administer this program for subsequent years? Staff time will be required for record keeping. Costs will be very 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 (+/-): None or negligible.

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? There will be no cost savings; this amendment simply codifies the requirements, making them easily accessible for regulated entities.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? There will be no cost savings.

(c) How much will it cost the regulated entities for the first year? There will be no additional costs involved.

(d) How much will it cost the regulated entities for subsequent years? There will be no additional costs involved.

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 or negligible.

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 amendment shall not have a "major economic impact", as defined in KRS 13A.010(13).

#### BOARDS AND COMMISSIONS

##### Board of Nursing (Amendment)

#### 201 KAR 20:620. Licensing requirements for licensed certified professional midwives.

RELATES TO: KRS 194.540, 314.400 – 314.414, 620.020

STATUTORY AUTHORITY: KRS 314.131(1), 314.404

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.131(1) authorizes the Board of Nursing to promulgate administrative regulations as may be necessary to enable it to carry into effect the provisions of KRS Chapter 314. KRS 314.404(2) requires the board to promulgate an administrative regulation to establish licensing requirements for licensed certified professional midwives. KRS 314.404(5) requires the board to promulgate an administrative regulation to establish fees. This administrative regulation establishes the fees and requirements for initial licensure, renewal, and reinstatement for licensed certified professional midwives.

Section 1. Fees. (1) The fee for initial licensure shall be ~~[\$1,000]~~\$500.

(2) The fee for licensure renewal shall be ~~[\$1,000]~~\$500.

(3) The fee for licensure reinstatement shall be ~~[\$1,000]~~\$500.

(4) Unless otherwise specified in this section, fees enumerated in 201 KAR 20:240 shall apply.

Section 2. Initial Licensure. An applicant for initial licensure as a licensed certified professional midwife (LCPM) shall complete the Certified Professional Midwife Application for Licensure and pay the fee for initial licensure as established in Section 1 of this administrative regulation.

Section 3. Educational Requirements. (1) An applicant for initial licensure as an LCPM shall provide evidence that the program from which they graduated is accredited by the Midwifery Education Accreditation Council (MEAC).

(2) An applicant shall also provide a copy of his or her official transcript.

(3)(a) If the applicant was certified by the North American Registry of Midwives (NARM) before January 1, 2020 through an educational pathway not accredited by MEAC, the applicant shall provide evidence of having earned the Midwifery Bridge Certificate issued by NARM. This shall be in lieu of an official transcript.

(b) If the applicant is licensed in another state that does not require an accredited education, the applicant shall provide

## VOLUME 50, NUMBER 2– AUGUST 1, 2023

evidence of having earned the Midwifery Bridge Certificate issued by NARM and proof of licensure in the other state.

(4) An applicant shall provide evidence of current American Heart Association Basic Life Support (BLS) for health care providers and Neonatal Resuscitation Program (NRP) certifications.

(5) An applicant shall complete a pediatric abusive head trauma course described in KRS 620.020(8) and a domestic violence course described in KRS 194A.540 and provide evidence to the board at the time of application.

**Section 4. Competency Validation.** An applicant shall provide evidence of having passed the North American Registry of Midwives (NARM) Examination and been granted certification by NARM.

**Section 5. Criminal Record Check.** (1) Within six (6) months of the date of the application, an applicant shall request a criminal record check by the Department of Kentucky State Police (KSP) and the Federal Bureau of Investigation (FBI) using the FBI Applicant Fingerprint Card and including any required fee to the KSP and the FBI.

(2) An applicant shall provide a certified or attested copy of the court record of any misdemeanor or felony conviction and a letter of explanation that addresses each conviction at the time of application.

**Section 6. Action in Another Jurisdiction.** An applicant shall provide a certified copy of any disciplinary action taken on any professional or business license in another jurisdiction and a letter of explanation at the time of application.

**Section 7. License.** (1) An applicant who meets the requirements of KRS 314.404 and Sections 1 through 6 of this administrative regulation shall be issued a license to practice as an LCPM.

(2) The license shall be issued for one (1) year from the date of initial licensure and may be renewed pursuant to Section 8 of this administrative regulation.

**Section 8. Renewal.** (1) A license to practice as an LCPM may be renewed by completing the Certified Professional Midwife Licensure Renewal Application and paying the fee established in Section 1 of this administrative regulation.

(2) The LCPM shall provide evidence of current certification with NARM at the time of renewal.

(3) The LCPM shall provide evidence of current BLS and NRP certifications at the time of renewal.

(4) Upon approval of the Certified Professional Midwife Renewal Application, the license shall be renewed for one (1) year.

**Section 9. Reinstatement.** (1) If the LCPM license has lapsed, an applicant may file the Certified Professional Midwife Application for Licensure to request reinstatement and pay the fee established in Section 1 of this administrative regulation.

(2) The LCPM shall provide evidence of current certification with NARM at the time of application for reinstatement.

(3) The LCPM shall provide evidence of current BLS and NRP certifications at the time of application for reinstatement.

(4) An applicant for reinstatement shall also meet the requirements of Sections 5 and 6 of this administrative regulation.

**Section 10.** For the purposes of the practice as an LCPM, an LCPM shall use the name under which he or she is licensed with the board of nursing.

**Section 11. Incorporation by Reference.** (1) The following material is incorporated by reference:

(a) "Certified Professional Midwife Application for Licensure", 7/2023[4/2020]; and

(b) "Certified Professional Midwife Licensure Renewal Application", 7/2023[4/2020].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222,

Monday through Friday, 8:00 a.m. to 4:30 p.m.

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

AUDRIA DENKER, President

APPROVED BY AGENCY: June 19, 2023

FILED WITH LRC: June 21, 2023 at 10:00 a.m.

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:** A public hearing on this administrative regulation shall be held on September 25, 2023 at 10:00 a.m. at Kentucky Board of Nursing, 312 Whittington Parkway, Ste 300, Louisville, Kentucky 40222. Individuals interested in being heard at this hearing shall notify this agency in writing by September 18, 2023, 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 September 30, 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:** Jeffrey R. Prather, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 338-2851, email [Jeffrey.Prather@ky.gov](mailto:Jeffrey.Prather@ky.gov). Or submit a comment at: <https://secure.kentucky.gov/formservices/Nursing/PendReg>.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jeffrey Prather

(1) Provide a brief summary of:

(a) What this administrative regulation does: It sets licensing requirements for Licensed Certified Professional Midwives (LCPM) and miscellaneous requirements.

(b) The necessity of this administrative regulation: It is required by statutes.

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

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By setting 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 reduces assessed fees and updates material incorporated by reference.

(b) The necessity of the amendment to this administrative regulation: The changes were deemed necessary to reduce fees and to update applications.

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

(d) How the amendment will assist in the effective administration of the statutes: By adopting the changes to the fees and the applications.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: LCPMs, approximately 30.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No action is needed.

(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 reduced cost of \$500 for each licensure fee.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The applicants will be in compliance with the regulation.

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

(a) Initially: No cost.

(b) On a continuing basis: No cost.  
 (6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency funds.

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

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

(9) TIERING: Is tiering applied? The changes will apply equally, there is no tiering.

#### 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? Board of Nursing.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 314.131, 314.410.

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

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

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

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

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

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

Revenues (+/-):

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? No cost.

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

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.

#### BOARDS AND COMMISSIONS

##### Board of Physical Therapy (Amendment)

#### 201 KAR 22:170. Physical Therapy Compact Commission.

RELATES TO: KRS 327.300(12)

STATUTORY AUTHORITY: KRS 327.300(12)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 327.300(12) requires the Board of Physical Therapy to review any rule adopted by the Physical Therapy Compact Commission within sixty (60) days of adoption for the purpose of filing the rule as an emergency administrative regulation pursuant to KRS Chapter 13A.190 and for filing the rule as an accompanying ordinary administrative regulation, following the requirements of KRS Chapter 13A. This administrative regulation sets forth the Rules adopted by the Physical Therapy Compact Commission.

Section 1. The Kentucky Board of Physical Therapy shall comply with all bylaws, rules, and administrative regulations of the Physical Therapy Compact Commission, which includes the Physical Therapy Compact Commission Rules and Bylaws.

Section 2. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Physical Therapy Compact Commission Rules", June 2023; [~~October 2022~~]; and

(b) "Physical Therapy Compact Commission Bylaws", June 2023[~~October 2024~~].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Board of Physical Therapy, 312 Whittington Parkway, Suite 102, Louisville, Kentucky 40222, Monday through Friday, 8 a.m. to 4:30 p.m. or this material may be obtained on the Kentucky Board of Physical Therapy's Web site at <https://pt.ky.gov>.

(3) This material may also be obtained at:

(a) The Physical Therapy Compact Commission, 124 West Street South, Third Floor, Alexandria, Virginia, 22314; or

(b) <http://www.ptcompact.org>.

STEPHEN CURLEY, Executive Director

APPROVED BY AGENCY: July 13, 2023

FILED WITH LRC: July 14, 2023 at 9:00 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 21, 2023, at 3:00 p.m. (ET). Individuals interested in being heard at this hearing shall notify this agency in writing five workdays prior to the hearing of their intent to attend. All individuals who notify this agency in writing at least five workdays prior to this hearing shall be notified whether the hearing will be held virtually by video teleconference or in person at the Board's office, 312 Whittington Parkway, Suite 102, Louisville, Kentucky 40222. If no notification of intent to attend the hearing is received in writing by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until September 30, 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: Stephen Curley, Executive Director, Board of Physical Therapy, 312 Whittington Parkway, Suite 102, Louisville, Kentucky 40222; phone (502) 429-7140; fax (502) 429-7142, email [stephen.curley@ky.gov](mailto:stephen.curley@ky.gov).

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

## FISCAL NOTE

Contact Person: Stephen Curley

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation incorporates the new rules and bylaws for the Physical Therapy Compact Commission.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to implement provisions of KRS Chapter 327.300(12).

(c) How this administrative regulation conforms to the content of the authorizing statutes: It promulgates the rules and bylaws established by the Physical Therapy Compact Commission as administrative regulations pursuant to KRS 327.300(12).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It complies with the requirement that any rule or bylaw adopted by the Physical Therapy Compact Commission receive appropriate oversight.

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

(a) How the amendment will change this existing administrative regulation: The Physical Therapy Compact Rules and Bylaws documents that are incorporated by reference will be updated.

(b) The necessity of the amendment to this administrative regulation: The amendment to the Physical Therapy Compact Rules and Bylaws is necessary to comport with the requirements of KRS 327.300(12).

(c) How the amendment conforms to the content of the authorizing statutes: The amendment to the Physical Therapy Compact Rules and Bylaws is necessary to comport with the requirements of KRS 327.300(12).

(d) How the amendment will assist in the effective administration of the statutes: The Physical Therapy Compact Rules and Bylaws will be the most up-to-date version.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Compact Privilege applicant and holders totaling around 300 right now.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: None.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Credentialed physical therapists and physical therapist assistants in Kentucky will be able to participate in the Physical Therapy Licensure Compact.

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

(a) Initially: No cost.

(b) On a continuing basis: No cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency Revenue Fund and funds derived from compact privilege applications from other states.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: None.

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

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 327.300(12).

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. None.

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

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

(c) How much will it cost to administer this program for the first year? None.

(d) How much will it cost to administer this program for subsequent years? None.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

(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? None

(d) How much will it cost the regulated entities for subsequent years? None

Note: If specific dollar estimates cannot be determined, provide a brief narrative

to explain the fiscal impact of the administrative regulation.

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)] It will not have any economic impact.

## BOARDS AND COMMISSIONS

### Board of Social Work (Amendment)

#### 201 KAR 23:055. Inactive status of license.

RELATES TO: KRS 335.070(3)

STATUTORY AUTHORITY: KRS 335.070(3), (6)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 335.070(3) authorizes the board to promulgate administrative regulations pursuant to KRS Chapter 13A to carry out the provisions of KRS 335.010 to 335.160 and KRS 335.990. This administrative regulation establishes the requirements relating to inactive licenses, extension of inactive status, return to active status, and reinstatement.

Section 1. Request for Inactive Status.

(1) A licensee may request that ~~their~~~~[his or her]~~ license be placed on inactive licensure status by submitting to the board:

(a) A written request for ~~their~~~~[his or her]~~ license to be placed on inactive status, received by the board no sooner than ninety (90) days before the license expiration date;

(b) Payment of an inactive license status fee of fifty (50) dollars made payable to the Kentucky State Treasurer; and

(c) A copy of certificates of attendance or completion to show proof of continuing education requirements for renewal as established in 201 KAR 23:075.

(2) The licensee shall be relieved of ~~their~~~~[his or her]~~ obligation to pay the license renewal fee established in 201 KAR 23:020 for ~~their~~~~[his or her]~~ license level.

Section 2. Additional Extension of Inactive Status. A licensee whose license is on inactive status may request an additional extension of the inactive license status and shall submit to the board:

(1) A written request to continue the license on inactive status, received by the board no sooner than ninety (90) days before the license expiration date;

(2) Payment of an inactive status fee of fifty (50) dollars made payable to the Kentucky State Treasurer; and

(3) A copy of continuing education certificates of completion or attendance, awarded to the licensee during the period of inactive status, to show proof of continuing education requirements for renewal as established in 201 KAR 23:075.

Section 3. License Expiration. If the licensee does not submit a request for an extension of the inactive status or the licensee fails to renew ~~their~~~~[his or her]~~ license before the license expiration date, the license shall expire.

Section 4. Return to Active License Status. At any time within the three (3) year period of being granted inactive licensure status, a licensee may request ~~their~~~~[his or her]~~ license be returned to active status by submitting to the board:

(1) A written request to the board to return ~~their~~~~[his or her]~~ license to active status;

(2) Payment of the current license renewal fee as set forth in 201 KAR 23:020; and

(3) A copy of continuing education certificates of completion or attendance, awarded to the licensee during the period of inactive status, to show proof of continuing education requirements for renewal as established in 201 KAR 23:075.

Section 5. Renewal of Expired License. Following the expiration of a license under Section 3 of this administrative regulation, a licensee who desires to practice social work in Kentucky shall follow the requirements for reinstatement established in 201 KAR 23:051[050].

WHITNEY CASSITY-CAWOOD, LCSW, PhD., Board Chair

APPROVED BY AGENCY: June 22, 2023

FILED WITH LRC: June 28, 2023 at 3:00 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 22, 2023, at 10:00 a.m. ET at the Justice and Public Safety Building, Third Floor Board Room, 125 Holmes Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through September 30, 2023. Send written notice of intent to be heard or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Marc Kelly, Executive Director, Kentucky Board of Social Work, 125 Holmes Street, Suite 310, Frankfort,

Kentucky 40601, phone (502) 564-2350 or (502) 782-2856, or email marc.kelly@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Marc Kelly

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation is being promulgated pursuant to KRS 13A.180 and KRS 13A.190(1)(a)(1) to meet an imminent threat to public health, safety, or welfare. This regulation is necessary to provide directions for social workers to practice telehealth and allow social work licensees in the Commonwealth of Kentucky to improve access to services and meet the needs of citizens. The need for care continues to increase while the availability of practitioners to provide that care lags behind. Specifically, this regulation allows individuals that meet the appropriate requirements to practice telehealth responsibly and respectfully of federal and state laws.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to address the necessity of allowing social work licensees to have an inactive license and reinstate it. A period of inactive license allows social workers

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 335.070(3)(6) authorizes the board to promulgate administrative regulations to carry out the provisions of KRS 335.10 to 335.160 and KRS 335.990.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist the board in lawfully addressing the ability of social workers to continue to practice social work and protect the public under licensure pursuant to KRS 335.080, 335.090 or 335.100.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of the following: This regulation provides directions to social workers to have an inactive licenses and reinstate their licenses.

(a) How the amendment will change this existing administrative regulation: This amendment updates the cross-reference to 2021 KAR 23:051, which replaced 201 KAR 23:050.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary as it allows for inactive and reinstatement of licenses for social work practice in Kentucky.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the requirements of KRS 335.070(3) to promulgate regulations.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist the Kentucky Board of Social Work in administering KRS 335.010 to 160 for social work practice.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect approximately 7,000 licensed social workers, licensed clinical social workers, and certified social workers in Kentucky, public schools, hospitals, community mental health centers, public and private agencies.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Individuals meeting the appropriate educational and license requirements will be able to renew to reinstate their license to practice.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The board does not anticipate that there will be a cost increase to any of the entities and will waive any fees incurred.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The board believes that the entities will benefit from the ability to provide services to clients more efficiently and quickly without any disruptions.

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

(a) Initially: The board estimates that it will incur no additional costs to implement this administrative regulation.

(b) On a continuing basis: The board estimates that it will incur no additional costs 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: The board's operations are wholly self-funded by fees paid by licensees, applicants, and continuing education providers and sponsors.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No, this amendment does not.

(9) TIERING: Is tiering applied? No, tiering was not applied. This administrative regulation is applied uniformly to each social worker practicing social work.

#### 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 Social Work and entities that employ licensed social workers to provide social work services will be impacted by this administrative regulation. These entities include public school districts, hospitals, community mental health centers, and other public agencies and private businesses.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation KRS 39A.180, 13A.190, 335.070(3) and (7) and 335.158(2).

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. None.

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

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

(c) How much will it cost to administer this program for the first year? None.

(d) How much will it cost to administer this program for subsequent years? None.

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

Revenues (+/-): \$0.00

Expenditures (+/-): \$0.00

Other Explanation: This administrative regulation requires fees paid by the licensee and no cost to the Commonwealth of Kentucky.

(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. None

(a) How much cost savings will this administrative regulation generate for the regulated entities for the subsequent years? 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? None.

(d) How much will it cost the regulated entities for subsequent years? None.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation. There is no change in fees.

Cost Savings (+/-): \$0.00

Expenditures (+/-): \$0.00

Other Explanation: No income or expenditure is anticipated.

(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 has no major economic impact.

#### KENTUCKY BOARD OF EMERGENCY MEDICAL SERVICES (Amendment)

##### 202 KAR 7:550. Required equipment and vehicle standards.

RELATES TO: KRS 13B, 311A.030, 311A.180, 311A.190, 29 C.F.R. 1910.135

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 emergency medical services 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 the required equipment to operate an ambulance service.

##### Section 1. Ground Ambulance Specifications.

(1) Ground ambulances utilized by Class I, II, III, and IV agencies shall:

(a) Have the name of the provider permanently affixed by paint, decal, or wrap on both sides of the exterior surface of the vehicle.

1. The name shall be the incorporated name or the name under which the provider does business and as it appears on the provider's license.

2. This requirement shall not preclude a provider from adding additional names from another entity on the vehicle due to a joint venture, if the name as licensed by the board is larger, and visible and legible by the public.

3. A vehicle operated by an agency shall not be marked with the words "advanced life support", "paramedic," or similar words that convey essentially the same meaning on the vehicle's exterior surface visible to the public unless the:

a. Vehicle is always staffed at an Advanced Life Support level; or

b. Agency was licensed by the board prior to January 1, 2018.

(b) Be maintained in good operating condition and in full repair without obvious apparent problems relating to tires, exhaust, body integrity, warning devices, or mechanical reliability, which would be recognized by the average lay person who is not an automotive mechanic.

(c) Be designed to provide for the medical care or transportation of patients.

(d) Stow all equipment weighing three (3) pounds or more in an enclosure, bracket, mount, or other appropriate securing device.

(e) Have tires that meet the manufacturer's standards for the gross vehicle weight of the vehicle.

1. A tire shall not display exposed tire cord or have tread depth less than 2/32 on back tires and 4/32 on front tires if measured in any two (2) adjacent grooves at three (3) locations spaced equally around the tire.

2. Retread tires shall not be used on ground vehicles.

3. Internal patches may be utilized for tire repairs if necessary.

4. More than two (2) patches shall not be used on any one (1) defective tire.

5. Plugs shall not be used for the repair of defective ambulance tires.

(2) All Class I, II, III, and IV ground ambulances shall meet or exceed the minimum physical characteristics established in paragraphs (a) through (d)[(e)] of this subsection.

~~[(a) A ground ambulance licensed in Kentucky shall be affixed with an official Kentucky Board of Emergency Medical Services decal that states, at a minimum, the month and year of inspection.]~~

~~[(a)]~~[(b)] An ambulance manufactured prior to January 1, 2019

shall meet or exceed the standards established in the U.S. General Services Administration Federal Specification for the Star-of-Life Ambulance (GSA KKK-A-1822) in effect on the original date of manufacture.

(b)(1)(e) The agency shall require, for a unit in which the chassis of an ambulance is later replaced, the conversion company to supply a letter to verify that no modification exists that was contained in GSA KKK-A-1822 on the original date of module manufacture.

(c)(1)(d) A new production ground ambulance that is ordered after January 1, 2019 shall comply fully with the ambulance design criteria contained in the Commission on Accreditation of Ambulance Services Ground Vehicle Standard for Ambulances (GVS), 7/2022[7/2016]. A decal or letter of verification from the manufacturer certifying that the vehicle meets the GVS standard, if ordered after January 1, 2019, shall be made available upon inspection.

(d)(1)(e) The agency shall require for any GVS certified vehicle, in which the chassis of an ambulance is later replaced, the conversion company shall supply a letter to verify that no modification exists that was contained in the GVS standard on the original date of module manufacture.

(3) In addition to the GSA KKK-A-1822 or the GVS standards, additional requirements shall be met as established in paragraphs (a) through (d) of this subsection.

(a) The air-conditioning system shall minimally deliver a temperature of sixty-five (65) degrees Fahrenheit or less from the vent or vents in the driver and patient compartments in warm weather conditions as determined by a standard automotive testing thermometer.

(b) The heating system shall minimally deliver a temperature of eighty-five (85) degrees Fahrenheit or more from the vent or vents in the driver and patient compartments in cool weather conditions as determined by a standard automotive testing thermometer.

(c) There shall be no more patients, personnel, and other persons than can be safely secured by means of permanently installed safety belts in the vehicle while the vehicle is in motion.

(d) The patient care area lighting shall be fully functional.

(4) A preventive maintenance program shall be maintained for each vehicle and its equipment to keep them in optimum working order to protect the health and safety of the patient and ambulance personnel.

(5) Documentation shall be maintained by the agency to support evidence of periodic inspections as recommended by the manufacturer, including calibrations required for maintenance and operation of the vehicle and its equipment.

(6) Each vehicle and its equipment shall be checked after each use to ensure that it is in a clean and sanitary condition, unless precluded by emergency conditions.

(7) (a) Except as established in paragraph (b) of this subsection, all linen used for patient care including sheets, blankets, pillowcases, pillows, towels, and washcloths shall be stowed in a separate cabinet and secured from body fluids.

(b) One (1) pillow, one (1) pillow-case, one (1) fitted sheet, two (2) flat sheets, one (1) towel, and two (2) blankets may be utilized on the stretcher that is in-service and shall not require stowing.

## Section 2. Class I, II, and IV Basic Life Support Ambulance Equipment and Supplies.

(1) Each BLS agency shall maintain evidence in the form of a letter that adult and pediatric medical protocols have been reviewed and approved by the board pursuant to KRS 311A.180. A hard copy or electronic equivalent of approved protocols shall be accessible to each provider throughout each call.

(2) Each Class I, II, and IV BLS agency shall carry and maintain, in full operational order, the following minimum basic life support equipment and supplies:

(a) Suction, ventilation, and blood pressure equipment, which shall include:

1. Two (2) sources of suction apparatus, one (1) of which shall be mechanically operated;
2. Rigid catheters;
3. Flexible catheters in adult, pediatric, and infant sizes;
4. Bulb syringe for infant and neonate suction;

5. Disposable adult and pediatric bag-valve-mask with a pediatric pop-off valve with oxygen reservoir, oxygen tubing, and adult, pediatric, infant, and neonate masks;

6. Nasopharyngeal airways (16F-34F; adult and child sizes) with water-soluble lubricant;

7. Oropharyngeal airways (sizes 0-5; adult, child, and infant sizes);

8. Blind-Insertion Airway Device (BIAD) (adult and pediatric); and

9. Manual pediatric and adult regular and large sphygmomanometer cuffs with stethoscope.

(b) Oxygen equipment, including:

1. A fixed oxygen system for each ambulance;

2. Two (2) portable, adequately filled, secured oxygen tanks that are minimally size D;

3. Pressure gauge and flow rate regulator for fixed and portable units with a range of zero to fifteen (15) liters per minute; and

4. Transparent non-rebreather oxygen masks and nasal cannulas for adults and pediatrics.

(c) Bandages, bandaging supplies and tape, including:

[1.- Commercially packaged or sterile burn sheets;]

1.[2.-] Triangular bandages;

2.[3.-] Dressings of the following types:

a. Sterile dressings, including gauze sponges of suitable size; and

b. Abdominal dressings;

3.[4.-] Gauze rolls, various sizes;

4.[5.-] Occlusive dressing, or equivalent;

5.[6.-] Adhesive tape of various sizes (include one (1) inch and two (2) inch);

6.[7.-] A minimum of four (4) arterial[Arterial] tourniquets; and

7.[8.-] Shears for bandages.

(d) Miscellaneous supplies, including:

1. Hand held flashlight capable of providing adequate lighting to assess a scene or a patient away from the vehicle;

2. Penlight;

3. A copy or electronic equivalent of the most recent version of the[2016] U.S. Department of Transportation, Emergency Response Guidebook;

4. A minimum of ten (10) triage tags consistent with a commercial system of triage[START System of Triage];

5. Obstetrical supplies that shall include at a minimum:

a. Sterile scalpels or scissors;

b. Sterile gloves;

c. Bulb suction;

d. Two (2) umbilical clamps; and

e. Thermal absorbent blanket and head cover, aluminum foil roll, or appropriate heat-reflective material, e.g., enough to cover newborn infant;

6. Sterile irrigation fluids;

7. Glucometer or blood glucose measuring device with reagent strips and lancets for obtaining a blood glucose sample;

8. Oral glucose;

9. Cold packs;

10. Heat packs;

11. An AED with a minimum of two (2) complete sets of pads suitable for adult and pediatric populations for all non-ALS vehicles;

12. Pulse oximeter with pediatric and adult probes;

13. A [length-based resuscitation tape or a]-reference material or guide that provides appropriate guidance for pediatric drug dosing and equipment sizing based on age, length or weight;

a. The reference material or guide shall be assigned to the ambulance; and

b. The reference material or guide may be in an electronic or physical format.

(e) Splints, including:

1. Lower extremity mechanical traction splint in adult and pediatric sizes; and

2. Upper and lower extremity rigid splint devices for adult and pediatric patients;

(f) Immobilization devices, including:

1.- Short extrication and immobilization device;]

1.[2.-] One (1) adult[Adult] and one (1) pediatric impervious long

spine ~~board~~[boards], ~~scoop stretcher~~, or other full body ~~device that provides spinal protection~~[immobilization devices] with a minimum of three (3) appropriate restraint cross-straps;

2.[3.] Cervical collars in the following sizes:

a.(i) Cervical collars for pediatric patients ages two (2) years or older; and

(ii) Cervical collars for adults in small, medium, large, and other available sizes; or

b. Pediatric and adult adjustable cervical collars; and

3.[4.] Towel rolls or other commercially available cervical immobilization devices for adults and pediatrics;

(g) Two (2) currently certified five (5) pound size or larger, secured, ABC multipurpose fire extinguishers, approved by Underwriters Laboratory, Coast Guard, or Factory Mutual. One (1) shall be accessible to the driver and the other to the attendant or attendants in the patient compartment in the ambulance;

(h) Multi-position stretcher with wheels and a minimum of three (3) cross-straps in addition to one (1) set of shoulder straps for securing the patient to the stretcher and a fixed mechanism to secure the stretcher while in transit;

(i) Until January 1, 2025, a[A] pediatric transport device with a minimum weight range of ten (10) to forty (40) pounds;[and]

(j) On and after January 1, 2025, a pediatric transport device with a minimum weight range of five (5) to ninety-nine (99) pounds; and

(k)[(f)] A stair chair for the movement of patients in a seated position.

(3) Personal protective equipment shall be available to each staff member responding on the vehicle, including:

(a) One (1) clean scrub gown (or substitute, such as disposable coveralls);

(b) Simple disposable face mask;

(c) Clear protective goggles or safety glasses;

(d) Disposable gloves;

(e) One (1) particulate filter mask rated at N95 or better without an exhaust port for patient use;

(f) One (1) particulate filter mask rated at N95 or better with or without an exhaust port for protection of crew members; and

(g) A means of cleansing the hands, such as disposable ~~towellettes~~[towellettes] or other solutions.

(4) Cleaning materials shall be available including:

(a) Hospital grade disinfectants;

(b) Trash bags for disposal of nonbiohazard waste materials;

(c) Biohazard bags for the disposal of biohazard waste; and

(d) Puncture resistant containers for disposal of sharp objects that are secured to the vehicle.

(5) Patient comfort items shall be available including:

(a) Two (2) clean blankets, sheets, pillows, and pillowcases;

(b) A disposable urinal;

(c) A disposable bed pan; and

(d) An emesis container or similar substitute.

(6) All items with an expiration date shall not be expired.

Section 3. Class I ALS, Class III ACC, Class III PSC, and Class IV Advanced Life Support Ambulance Equipment and Supplies.

(1) Each ALS agency shall maintain evidence in the form of a letter that adult and pediatric medical protocols have been reviewed and approved by the board pursuant to KRS 311A.180. A hard copy or electronic equivalent of approved protocols shall be accessible to each provider throughout each call.

(2) In addition to the BLS equipment required in Section 2 of this administrative regulation, each Class I ALS, Class III ACC, Class III PSC, and Class IV ALS vehicle shall maintain, in fully operational order, supplies and equipment required by the agency's protocols, including a minimum of:

(a) Endotracheal intubation equipment consisting of:

1. Laryngoscope handle with extra batteries, bulbs, or blades if applicable;

2. At least four (4) laryngoscope[laryngoscope] blades to allow intubation of patients in accordance with agency protocols, including a minimum of:[in the following sizes:]

a. 0-4, straight Miller; ~~or~~[and]

b. 2-4, curved Macintosh;

3. Endotracheal tubes in the following sizes:

a. 2.5, 3.0, 3.5, 4.0, 4.5, 5.0, and 5.5 cuffed or uncuffed; ~~or~~

b. If intubation is not included in the agency's protocols for pediatric patients, supraglottic airways in all available sizes per the manufacturer of the specific device chosen; and

c.[b.] 6.0, 6.5, 7.0, 7.5 and 8.0 cuffed;

4. Stylettes in adult and pediatric sizes;

5. 10-mL syringes;

6. Magill forceps in adult and pediatric sizes;

7. Water-soluble lubricant for lubrication of endotracheal and nasotracheal tubes;

8. End-Tidal CO<sub>2</sub> detection capability (adult and pediatric);

9. One-half (1/2) inch wide twill tape or equivalent for securing endotracheal tubes;

10. Equipment necessary to perform emergency percutaneous cricothyrotomy;[and]

11. Disposable nebulizer; and

12. Continuous waveform capnography;

(b) A portable, battery-operated monitor defibrillator that:

1. Has a tape write-out or recorder, hands-free defibrillator pads, electrocardiogram monitoring leads, and electrodes for adults and pediatrics;

2. Is capable of delivering direct current energy over a variable range, which is suitable for pediatric and adult usage;

3. Has synchronized counter-shock capability for cardioversion;

4. Has a transcutaneous cardiac pacemaker, including adult and pediatric pads and cables; and

5. Has 12-Lead ECG capability if the vehicle is staffed to provide ALS services;

(c) Vascular Access supplies consisting of:

1. Isotonic crystalloid solutions;

2. Antiseptic solution (alcohol wipes and providone-iodine wipes);

3. Intravenous catheters, 14G-24G;

4. Long-large bore needles or angiocatheters (at least 3.25 inches in length for needle chest decompression in large patients);

5. Intraosseous needles or intraosseous devices appropriate for children and adults; and

6. Latex-free tourniquet;

(d) Needles of various sizes, including suitable sizes for intramuscular injections;

(e) Intravenous macrodrip and microdrip administrations sets; and

(f) Intravenous arm boards, adult and pediatric, or appropriate substitute.

(3) An ALS agency shall stock and maintain drugs and medications as required by the master drug list contained in protocols established in accordance with this section.

(4) Controlled drugs shall be stored in a locked storage box in a locked compartment on the vehicle that is immediately accessible to personnel.

(5) This administrative regulation shall not prevent an agency from maintaining other supplies or equipment that are required to carry out its protocols as approved by the board in accordance with KRS 311A.180.

(6) All items with expiration dates shall not be expired.

Section 4. Class III Adult Critical Care (ACC) Transport Equipment.

(1) Each Class III ACC agency shall maintain evidence in the form of a letter that medical protocols have been reviewed and approved by the board in accordance with KRS 311A.180. A hard copy or electronic equivalent of approved protocols shall be accessible to each provider throughout each call.

(2) In addition to the BLS equipment required in Section 2 of this administrative regulation and the ALS equipment required in Section 3 of this administrative regulation, Class III Adult Critical Care agencies shall carry on each vehicle and maintain in fully operational order all supplies and equipment required by the agency's protocols, including at a minimum:

(a) A portable transport ventilator, the capabilities of which shall include:

1. Controlling rate;



2. Volume;
3. FiO2 up to 100 percent;
4. I:E ratio;
5. PEEP;
6. Volume control;
7. Pressure control;
8. SIMV mode;
9. NPPV mode; and
10. Low- and high-pressure warning alarms;
- (b) Two (2) portable transport ventilator circuits appropriately sized for the patient being transported;
- (c) Continuous Positive Airway Pressure (CPAP) ventilation portable equipment;
- (d) Electronic waveform capnography, intubated patient, capable of waveform display;
- (e) Difficult airway equipment in the form of a bougie gum elastic ET introducer;
- (f) Sterile cricothyrotomy set, surgical or needle;
- (g) Invasive pressure monitoring capability electronic waveform available on two (2) channels;
- (h) An infusion pump or pumps capable of infusing three (3) separate medications simultaneously;
- (i) Six (6) IV infusion pump tubing sets;
- (j) Two (2) blood infusion sets; and
- (k) A device to monitor core body temperature through rectal or esophageal probe.

Section 5. Class III Pediatric Specialty Care (IIIPSC) Transport Equipment.

- (1) Each Class III Pediatric Specialty Care agency shall maintain evidence in the form of a letter that all medical protocols have been reviewed and approved by the board in accordance with KRS 311A.180. A hard copy or electronic equivalent of approved protocols shall be accessible to each provider throughout each call.
- (2) In addition to the BLS equipment required in Section 2 of this administrative regulation, the ALS equipment required in Section 3 of this administrative regulation, and the Critical Care equipment listed in Section 4 of this administrative regulation, each Class III Pediatric Specialty Care agency shall carry on each vehicle and maintain in fully operational order supplies and equipment required by the agency's protocols, including:
  - (a) Two (2) 250 ml bags of normal saline or lactated ringers;
  - (b) Twelve (12) syringes assorted from 1cc to 2cc;
  - (c) Four (4) three-way stopcocks;
  - (d) A needle cricothyrotomy kit for children from the ages of twenty-nine (29) days until twenty-one (21) years of age; and
  - (e) A blind-insertion airway device (BIAD) in appropriate sizes for children from the ages of twenty-nine (29) days until twenty-one (21) years of age.

Section 6. Class III Neonatal Specialty Care (III NSC) Transport Equipment.

- (1) Each Class III Neonatal Specialty Care agency shall maintain evidence in the form of a letter that all medical protocols have been reviewed and approved by the board in accordance with KRS 311A.180. A hard copy or electronic equivalent of approved protocols shall be accessible to each provider throughout each call.
- (2) In addition to compliance with Section 1 of this administrative regulation, each Class III Neonatal Specialty Care agency shall carry on each vehicle and maintain in fully operational order all supplies and equipment required by the agency's protocols, including:
  - (a) Direct two-way communications with the designated neonatologist, attending physician, or receiving NICU;
  - (b) A standby or backup power source other than the one (1) contained in the isolette;
  - (c) A source of electrical power sufficient to operate the isolette and ancillary electrically powered equipment;
  - (d) A transport incubator with portable power supply, portable oxygen tanks, or liquid oxygen, and a source of compressed air, including appropriate valves, meters, and fittings. The transport incubator shall be secured in the vehicle using a manufacturer-approved vehicle-mounting device;
  - (e) One (1) portable heart rate monitor with visual or audible

- display and alarm system per patient;
- (f) One (1) portable blood pressure monitor with an assortment of cuff sizes suitable for infants;
- (g) Three (3) battery powered mechanical IV pumps capable of delivering as low as 1cc increments for IV fluids;
- (h) A battery or self-powered oxygen sensor and transcutaneous oxygen monitor or oxygen saturation monitor;
- (i) Oxygen delivery devices and tubing capable of administering high concentrations of oxygen;
- (j) A temperature-monitoring device;
- (k) A portable ventilator appropriate for neonatal patients;
- (l) An anesthesia or self-inflating bag with an oxygen reservoir of less than 750 ml, a manometer pressure gauge, and premature newborn and infant size clear masks;
- (m) A laryngoscope handle;
- (n) Laryngoscope Blades in Miller sizes 00, 0, 1, 2, 3;
- (o) Two (2) bulbs;
- (p) Two (2) batteries;
- (q) Endotracheal tubes in various sizes;
- (r) Two (2) stylets;
- (s) Two (2) meconium aspirators;
- (t) Oral airways in various sizes;
- (u) Suction equipment with low suction capabilities of less than eighty (80) mmHg;
- (v) Two (2) suction catheters in sizes 5.0, 6, 6.5, 8, and 10 each;
- (w) Syringes sizes 1 cc through 60 cc in various sizes;
- (x) Two (2) medication access devices;
- (y) 23-27 gauge vascular access devices in various sizes;
- (z) Sterile gloves in various sizes and sufficient quantity for all crewmembers;
- (aa) Medications as required by the master drug list contained in protocols established in accordance with this section;
- (bb) IV extension tubing in sufficient length to administer IV fluids or medications;
- (cc) IV securing devices in various sizes;
- (dd) Two (2) IV filters;
- (ee) Two (2) umbilical catheters, sizes 3.5 and 5;
- (ff) Ten (10) antiseptic solution wipes;
- (gg) One (1) blood glucose-monitoring device;
- (hh) Five (5) lancets for obtaining a blood glucose sample;
- (ii) One (1) neonatal stethoscope;
- (jj) One (1) flashlight;
- (kk) Gauze pads;
- (ll) One (1) No. 5 and one (1) No. 8 French feeding tube;
- (mm) One (1) high intensity light capable of transillumination;
- (nn) A biomedical waste plastic bag or impervious container;
- (oo) Puncture resistant containers for disposal of sharp objects that shall be secured to the vehicle;
- (pp) Gloves made of nitrile or other suitable materials in sufficient quantity for all crewmembers;
- (qq) Respiratory face masks in sufficient quantity for all crew members;
- (rr) Special procedure trays or instruments capable of performing umbilical catheterization, venous cutdown, and thoracostomy in accordance with established protocol;
- (ss) One (1) bulb syringe;
- (tt) One (1) cord clamp;
- (uu) One (1) age appropriate chest tube evacuation device; and
- (vv) Needle aspiration device or chest tubes in appropriate sizes for a neonate patient.

Section 7. Class VI and Class VIII BLS Agency Equipment.

- (1) Each Class VI and VIII BLS agency shall maintain evidence in the form of a letter that all medical protocols have been reviewed and approved by the board in accordance with KRS 311A.180. A hard copy or electronic equivalent of approved protocols shall be accessible to each provider throughout each call.
- (2) Each Class VI and VIII BLS agency shall be exempt from the ground ambulance requirements established in Sections 1 through 6 of this administrative regulation.
- (3) Each Class VI and VIII BLS agency shall provide ready access to and maintain in fully operational order all supplies and equipment required by the agency's protocols.

(4) (a) Each Class VIII BLS agency shall have ready access to and maintain in operational order, two (2) complete sets of equipment required by the agency's protocols and this administrative regulation.

(b) Each Class VI BLS agencies shall be required to maintain one (1) complete set of equipment.

(5) Each basic life support non-transport vehicle shall wrap, properly store, and handle all single-service implements to be inserted into the patient's nose or mouth.

(6) Each Class VI and VIII BLS agency shall properly store and keep multiuse items clean and sterile if indicated.

(7) Each Class VI and VIII BLS agency shall carry the following assembled and readily accessible equipment:

(a) Respiratory and resuscitation equipment, including:

1. Portable suction apparatus, capable of a minimum vacuum of 300 millimeters mercury, equipped with two (2) each of the following:

- a. Wide-bore tubing;
- b. Rigid catheters;
- c. Soft pharyngeal suction tips in child size; and
- d. Soft pharyngeal suction tips in adult size;

2. One (1) hand-operated bag-mask ventilation unit equipped with clear facemasks and oxygen reservoirs with oxygen tubing in each of the following sizes:

- a. Adult;
- b. Child;
- c. Infant; and
- d. Neonatal mask only;

3. Two (2) oropharyngeal airways in each of the following sizes:

- a. Adult;
- b. Child; and
- c. Infant;

4. One (1) pocket mask with a one (1) way valve;

4.[5.] Blind-Insertion Airway Devices (BIAD) in adult and pediatric sizes; and

5.[6.] Portable oxygen equipment of at least 300 liters capacity and D size cylinder with a regulator capable of delivering 25LPM;

(b) Oxygen delivery devices, including:

1. Two (2) non-rebreathing oxygen masks in both adult and pediatric sizes;

2. Two (2) nasal cannula in both adult and pediatric sizes;

3. Two (2) nasopharyngeal airways with water-soluble lubricant in each of the following sizes:

- a. Adult;
- b. Child; and
- c. Infant;

(c) Wound care supplies, including:

1. Two (2) airtight dressings for open chest wounds;

2. Assorted bandaging supplies for the care of soft tissue injuries; and

3. Sterile water for irrigation;

(d) An AED with a minimum of two (2) complete sets of pads for all non-ALS providers and vehicles;

(e) Patient stabilization equipment, including:

1. Two (2) upper and two (2) lower extremity-splinting devices; and

2. Two (2) cervical collars in each of the following sizes or adjustable equivalents:

- a. Pediatric;
- b. Small;
- c. Medium;
- d. Large; and
- e. No-Neck;

(f) Personal protection and body substance isolation equipment, including at least one (1) of each of the following for each EMS provider:

1. Gown;
2. Face mask and shield;
3. Gloves;
4. Biohazard bag;
5. Puncture resistant container for the disposal of sharp objects;

and

6. Antimicrobial hand cleaner; and

(g) Miscellaneous items, including:

1. Obstetrical supplies, including:

- a. Sterile scalpels or scissors;
- b. Sterile gloves;
- c. Bulb suction; and
- d. Two (2) umbilical clamps;

2. One (1) blood pressure sphygmomanometer in each of the following cuff sizes:

- a. Large adult;
- b. Adult; and
- c. Pediatric;

3. One (1) stethoscope in each of the following sizes:

- a. Adult; and
- b. Pediatric; and

4. A glucometer or blood glucose-measuring device with reagent strips and lancets for obtaining a blood glucose sample.

#### Section 8. Class VI and VIII ALS Agency Equipment.

(1) Each Class VI and VIII ALS agency shall maintain evidence in the form of a letter that medical protocols have been reviewed and approved by the board in accordance with KRS 311A.180. A hard copy or electronic equivalent of approved protocols shall be accessible to each provider throughout each call.

(2) Each Class VI and VIII ALS agency shall be exempt from the ambulance requirements established in Sections 1 through 6 of this administrative regulation.

(3) (a) Each Class VIII ALS agency shall have ready access to and maintain in operational order, two (2) complete sets of equipment required by the agency's protocols and this administrative regulation.

(b) Each Class VI ALS agency shall be required to maintain one (1) complete set of equipment.

(4) In addition to the BLS equipment required in Section 7 of this administrative regulation, each Class VI and VIII ALS agency shall provide ready access to and maintain in fully operational order, supplies and equipment required by the agency's protocols, including a minimum of:

(a) Endotracheal intubation equipment consisting of:

1. Laryngoscope handle;

2. Various laryngoscope blades in adult, pediatric, and infant sizes;

3. Extra batteries and bulbs for handles or blades;

4. A minimum of seven (7) different sizes of endotracheal tubes for oral and nasal placement in adult, pediatric, and infant sizes;

5. Equipment necessary to perform emergency cricothyrotomy;

6. An end tidal carbon dioxide detection device;

7. Stylettes in adult and pediatric sizes;

8. Magill forceps in adult and pediatric sizes;

9. One-half (1/2) inch wide twill tape or equivalent for securing endotracheal tubes; and

10. Water-soluble lubricant for lubrication of endotracheal and nasotracheal tubes;

(b) A portable monitor defibrillator that:

1. Is capable of displaying a visual display of cardiac electrical activity;

2. Is capable of providing a hard copy of cardiac electrical activity measure;

3. Is capable of delivering direct current energy over a variable range, which is suitable for pediatric and adult usage;

4. Is capable of providing external cardiac pacing;

5. Has adult and pediatric external pads, capable of utilization for immediate monitoring of heart activity and delivery of counter shock in both the adult and pediatric patient;

6. Is capable of being operated from internal rechargeable batteries;

7. Has synchronized counter shock capability for cardioversion; and

8. Has a patient monitoring cable with electrode pads or equivalent for use with the patient monitoring cable;

(c) Sterile, disposable needles, in types and sizes sufficient for personnel to administer medications and perform procedures allowed by the agency's patient treatment protocols;

(d) Disposable syringes in types and sizes sufficient for personnel to administer medications and perform procedures

allowed by the agency's patient treatment protocols;

(e) Restriction band appropriate for use with venipuncture procedure;

(f) Disposable, individually packaged antiseptic wipes;

(g) Intravenous fluids as required by the agency's protocol, with macrodrip and microdrip fluid sets, and accessory items including over the needle catheter devices in sizes fourteen (14) to twenty-four (24) gauge;

(h) Intraosseous needles or intraosseous devices appropriate for children and adults; and

(i) Pediatric drug dosage tape or equivalent that provides easy reference for pediatric and infant treatment and drug dosages.

(5) All items with expiration dates shall not be expired.

(6) An ALS agency shall stock and maintain drugs and medications as required by the master drug list contained in protocols established in accordance with this section.

(7) Controlled drugs shall be stored in a locked storage box in a locked compartment that is immediately accessible to personnel.

(8) This administrative regulation shall not prevent an agency from maintaining other supplies or equipment that are required to carry out its protocols as approved by the board in accordance with KRS 311A.180.

#### Section 9. Safety Equipment.

(1) Each ground agency licensed to respond to emergency pre-hospital responses shall provide and maintain in full operational order the following minimum light access and extrication equipment on the ambulance for each staff member:

(a) Eye protection goggles or safety glasses;

(b) Heavy work gloves;

(c) Hard hats that meet ANSI standards, as stated in 29 C.F.R. 1910.135;

(d) Reflective safety wear for each crew member that meet current ANSI standard ANSI 107-2010 or ANSI 207-2011; and

(e) Three (3) reflective triangles or strobes, or equivalent warning devices.

(2) A ground ambulance agency subject to emergency pre-hospital response not equipped to provide extrication and rescue services shall execute an agreement with an agency capable of providing extrication and rescue services to the primary geographic service area.

(3) Each Class II, III ACC, III PSC, III NSC, and VIII agency shall be exempt from the requirements of this section unless emergency pre-hospital response is included in the agency's scope of care.

#### Section 10. Equipment or Medication Waiver.

(1) The board for good cause shall grant a waiver of any section of this administrative regulation upon request. An applicant for waiver shall submit an:

(a) "EMS Equipment or Staff Waiver Request"; and

(b) A nonrefundable application fee of \$500 per waiver request.

(2) The application request shall include:

(a) Evidence of prior good faith efforts to comply with each section for which a waiver is requested;

(b) A written explanation of the agency's inability to comply with each section for which a waiver is requested, including any financial or other significant hardship resulting from the agency's efforts to comply;

(c) A written plan for providing adequate care to patients;

(d) The length of time the waiver is requested; and

(e) A plan for compliance with each section of this administrative regulation for which a waiver has been requested.

(3) Requests for waivers shall be submitted to the executive director of the board.

(4) The administrator and medical director of the agency requesting a waiver shall appear before the board's executive committee and the full board at a regularly scheduled meeting to present evidence of hardship that compliance with this administrative regulation will cause.

(5) Waivers shall not be issued for minimum staffing requirements.

(6) Any waiver issued by the board shall expire on December 31 of the year of issue.

(7) Within twenty (20) days of the board's decision, the executive director shall notify the applicant of the decision in writing.

(8) A waiver approved by the board upon a finding of good cause shall be considered a fulfillment of the licensing requirements established in the waiver through December 31 of the year of issue.

(9) The board shall deny the waiver request if, after reviewing the application, it is determined that if the waiver is granted the:

(a) Agency is no longer able to meet the needs of the agency's patients or geographic service area; or

(b) Health or safety of the agency's patients or geographic service area may be jeopardized.

(10) An applicant whose request for waiver is denied may file a written request for a hearing before the board within thirty (30) days of the written notice of denial.

(11) A hearing shall be conducted in accordance with KRS Chapter 13B.

Section 11. Public Notice of Negative Action. The board office shall cause to be published, on the KBEMS Web site or similar publication of the board, or otherwise disseminate, the name of any licensed agency that is fined, placed on probationary status, placed on restricted status, suspended, or had a license revoked.

#### Section 12. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "EMS Equipment or Staff Waiver Request", (12/2017), <http://kemsis.ky.gov/>;

(b) "U.S. Department of Transportation, Emergency Response Guidebook", (2020), [www.phmsa.dot.gov/sites/phmsa.dot.gov/files/2021-01/ERG2020-WEB.pdf\[\(2016\)\]](http://www.phmsa.dot.gov/sites/phmsa.dot.gov/files/2021-01/ERG2020-WEB.pdf[(2016)]);

(c) "Commission on Accreditation of Ambulance Services Ground Vehicle Standard for Ambulances (GVS)", (7/2022), [www.groundvehiclestandard.org/wp-content/uploads/2022/06/CAAS\\_GVS\\_V3\\_Final\\_07\\_01\\_2022\\_2.pdf\[\(7/2016\)\]](http://www.groundvehiclestandard.org/wp-content/uploads/2022/06/CAAS_GVS_V3_Final_07_01_2022_2.pdf[(7/2016)]); and

(d) "U.S. General Services Administration Federal Specification for the Star-of-Life Ambulance (GSA KKK-A-1822F)", (8/2007), [www.ehsf.org/sites/default/files/2017-07/Federal%20Specification%20for%20the%20Star-of-Life%20Ambulance.pdf](http://www.ehsf.org/sites/default/files/2017-07/Federal%20Specification%20for%20the%20Star-of-Life%20Ambulance.pdf).

(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[418 James Court, Suite 50, Lexington, Kentucky 40505], Monday through Friday, 8 a.m. to 4:30 p.m.

JOHN R. HOLDER, Chair

APPROVED BY AGENCY: June 8, 2023

FILED WITH LRC: July 13, 2023 at 10:00 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 27, 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 September 30, 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, fax (859) 225-1493, email [administrativeregulations@wgmfirm.com](mailto: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: KRS 311A.020 requires the board to exercise all administrative functions in the regulation of the emergency medical services 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 establishes the required supplies and equipment to operate an ambulance service or medical first response agency.

(b) The necessity of this administrative regulation: KRS 311A.020 requires the board to exercise all administrative functions in the regulation of the emergency medical services 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 the required supplies and equipment to operate an ambulance service or medical first response agency.

(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 the required supplies and equipment to operate an ambulance service.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 311A.020 requires the board to exercise all administrative functions in the regulation of the emergency medical services 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 the foregoing statutes by establishing the required supplies and equipment to operate an ambulance service or medical first response agency.

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

(a) How the amendment will change this existing administrative regulation: This amendment modifies the supplies and equipment required to operate an ambulance service. This amendment brings ambulance supplies and equipment requirements into conformity with current EMS practices and standards and removes unnecessary or outdated supplies and equipment.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to bring ambulance supplies and equipment requirements into conformity with current EMS practices and standards.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 311A.020, KRS 311A.030 by establishing the required supplies and equipment to operate an ambulance service or medical first response agency.

(d) How the amendment will assist in the effective administration of the statutes: KRS 311A.020 requires the board to exercise all administrative functions in the regulation of the emergency medical services 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 will assist in the effective administration of the foregoing statutes by establishing the required supplies and equipment to operate an ambulance service or medical first response agency.

(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 Board, local governments, and all ambulance providers, medical first response agencies, EMS personnel, and EMS patients.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The Board shall implement and enforce the supplies and equipment requirements established by this amendment. Ambulance providers and medical first response agencies shall satisfy the supplies and equipment requirements established by this amendment, which will require agencies affected by this amendment to purchase additional supplies and equipment not currently required. Ambulance provider and medical first response personnel are expected to be aware of all supplies and equipment on their ambulance and proficient in the use of such supplies and equipment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Compliance with this amendment will cost ambulance providers and medical first response agencies affected by the changes in this amendment approximately \$1,800 per ambulance. This value represents the estimated costs of additional supplies and equipment required by this amendment (\$2,020) minus the estimated costs of supplies and equipment that will no longer be required under this amendment (\$220). Costs will vary for each ambulance depending on the equipment and supplies currently carried. For example, some ambulances affected by this amendment already carry a capnography monitor, which costs approximately \$1,095. The \$1,800 in estimated additional costs per ambulance does not include replacement costs of supplies and equipment, which will vary for each ambulance. The Board and EMS personnel will not incur any additional costs in complying with this amendment. This amendment also will not result in any additional costs to EMS patients.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): All affected entities will benefit from ambulances being equipped with supplies and equipment that conforms with current EMS practices and standards. The modified supplies and equipment requirements will assist agencies in providing quality and effective emergency medical care.

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

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

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

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: 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 regulation does not establish any fees.

(9) TIERING: Is tiering applied? Tiering is not applied to this administrative regulation because this amendment applies equally to all ambulance providers 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? This administrative regulation will affect the Board, ambulance providers, medical first response agencies, and local governments.

(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 to exercise all

administrative functions in the regulation of the emergency medical services 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. These statutes authorize the Board to establish the required supplies and equipment to operate an ambulance service or medical first response agency.

(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? This administrative regulation will not require the Board to incur any additional administrative costs.

(d) How much will it cost to administer this program for subsequent years? This administrative regulation will not require the Board to incur any additional administrative 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 affect the Board's 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 net 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 net cost savings.

(c) How much will it cost the regulated entities for the first year? Compliance with this amendment during the first year after it becomes effective will cost ambulance providers and medical first response agencies affected by the changes in this amendment approximately \$1,000 per ambulance. This value represents the estimated costs of additional supplies and equipment required by this amendment during the first year after it becomes effective (\$1,220) minus the estimated costs of supplies and equipment that will no longer be required under this amendment (approximately \$220). Costs will vary for each ambulance depending on the equipment and supplies currently carried. For example, some ambulances affected by this amendment already carry a capnography monitor, which costs approximately \$1,095.

(d) How much will it cost the regulated entities for subsequent years? Beginning January 1, 2025, ambulances affected by this amendment will be required to carry a pediatric transport device with a minimum weight range of five (5) to ninety-nine (99) pounds. Accordingly, for the second year of compliance with this amendment, agencies that do not currently carry on their ambulances pediatric transport devices with a minimum weight range of five (5) to ninety-nine (99) pounds, will be required to purchase them. This will cost affected agencies approximately \$800 or less per ambulance. Additionally, ambulance providers and medical first response agencies will be required to maintain the supplies and equipment required by this amendment. However, such costs will vary in subsequent years depending on a variety of factors, such as the number of patients each ambulance transports each year, the amount of supplies used, and the condition of equipment.

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 net cost savings.

Expenditures (+/-): This administrative regulation will require an expenditure of approximately \$1,800 per ambulance operated by an ambulance provider or medical first response agency affected by the changes in this amendment. However, actual costs will vary by agency. Some agencies may already carry some or all of the additional equipment required by this amendment on their ambulances. Moreover, the price of required equipment will vary by manufacturer.

Other Explanation: Ambulance providers and medical first response agencies affected by the changes in this amendment will be required to maintain supplies and equipment, which will require additional expenditures as supplies are used and equipment fails or become inoperable. The exact dollar amount of such expenditures will vary for each ambulance.

(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 have a major economic impact. Approximately 1,119 ambulances will be affected by this amendment. Multiplying the number of affected ambulances by the approximate additional costs per ambulance (\$1,800) results in approximately \$2,014,200 in aggregate costs to regulated entities.

## **TOURISM, ARTS AND HERITAGE CABINET Department of Fish and Wildlife Resources (Amendment)**

### **301 KAR 1:115. Propagation of aquatic organisms.**

RELATES TO: KRS 150.290, 150.485

STATUTORY AUTHORITY: KRS 150.025, 150.180(2), 150.280, 150.450, 50 C.F.R. 17.11

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025 authorizes the department to promulgate administrative regulations regarding the buying, selling, and transporting of fish and wildlife, restrict the places where taking is permitted, and to make administrative regulations apply to a limited area or to the entire state. KRS 150.180(2) authorizes the department to promulgate administrative regulations regarding the buying, selling, and transporting of mussels and fishes by licensed fish propagation permit holders. KRS 150.280 requires the department to promulgate administrative regulations governing the propagation or holding of protected wildlife. KRS 150.450 requires the department to promulgate reasonable administrative regulations governing the taking of minnows and crayfish from the waters of the Commonwealth. 50 C.F.R. 17.11 establishes federally threatened and endangered fish species. This administrative regulation establishes the requirements for obtaining a propagation permit for aquatic organisms and establishes the requirements for propagation permit holders.

#### **Section 1. [Definitions.**

(1) "Aquatic organisms" means fishes, frogs, crayfish, and other aquatic vertebrates and invertebrates.

(2) "Live bait fishes" means:

(a) Rough fishes, except Asian 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.

(3) "Permit" means a fisheries commercial propagation permit.

(4) "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.

**Section 2-] Permit Requirements and Application Procedures.**

(1) Before acquiring or propagating aquatic organisms, an individual, corporation, or other business entity[a person] shall obtain a permit from the department by:

(a) Completing an application provided by the department; and

(b) Paying the permit fee as established in 301 KAR 5:022[3-022].

(2) The department shall issue a free permit to elementary, middle, and secondary schools and similar educational institutions if the propagated organisms are to be used for educational purposes.

**Section 2.[Section 3-] Acquisition of Brood Stock from Public Waters.**

(1) A permit holder may obtain from public waters a maximum of 1,500 live bait fishes or crayfish per surface acre of water used for propagation of a particular species.

(2) Each permit holder shall obtain brood stock from public waters no more than one (1) time for both live bait fishes and crayfish.

(3) A conservation officer shall supervise the acquisition of brood stock from public waters.

(4) A permit holder shall use gear as established in 301 KAR 1:130 to acquire aquatic organisms from public waters.

(5) A permit holder may sell propagated aquatic organisms.

**Section 3.[Section 4-] An individual, corporation, or other business entity[A person]** may request a permit for paddlefish to be stocked and reared in a water supply lake for aquaculture purposes as established in 301 KAR 1:110 by completing a permit application and submitting it to the department.

(1) A municipality may allow a permitted second party to rear paddlefish in a water supply lake.

(2) If a municipality or other public water supply entity allows a second party to rear paddlefish, a contractual agreement between the two (2) granting permission to use the lake for rearing paddlefish shall be required for the extent of the rearing period. A copy of the contractual agreement shall be submitted to the department before a permit is issued.

(3) Water supply lakes that are currently open to sport fishing shall be required to remain open to sport fishing throughout the length of the rearing of paddlefish.

(4) Paddlefish shall be the only species permitted to be stocked by the permit holder in a water supply lake.

(5) The number of paddlefish stocking events for each rearing period shall be limited to one (1) for each approved water supply lake. Any additional stocking events shall require prior approval by the commissioner.

(6) The permit applicant shall list the name of each water supply lake on the permit application.

(7) A permit shall be obtained for every year of the paddlefish rearing period.

(8) The department shall not:

(a) Enforce the protection of the stocked paddlefish; or

(b) Establish paddlefish sport fish administrative regulations in any of the water supply lakes.

(9) Paddlefish that escape in the stream, either above or below the lake, shall not be considered property of the permit holder.

(10) The department shall not be responsible for any corrective actions associated with fish populations in the water supply lakes used for aquaculture purposes.

(11) If a municipality rears paddlefish without a contractual agreement with a second party, it shall provide the department with a name of a person responsible for the rearing of the paddlefish in the water supply lake.

(12) A permit holder may use gill nets to take paddlefish only from the water supply lakes listed on the permit. A permit holder or a designated representative in possession of a valid copy of the permit shall be on site each time gill nets are used in the water supply lakes.

(a) The department shall be notified at least three (3) days in advance of any paddlefish harvest from a water supply lake, including the random sampling of the stocked paddlefish that require

the use of gill nets.

(b) Gill nets shall only be used in a water supply lake from November 1 through March 31.

(c) Gill nets shall not have a bar mesh size smaller than five (5) inches.

(d) A permit holder shall attach a metal tag provided by the department to each gill net used.

(e) Paddlefish shall be the only species of fish harvested, and any other species of fish captured shall be immediately released without undue injury.

**Section 4.[Section 5-] Inspection of Facilities and Revocation or Denial of Permits.**

(1) A permit holder shall allow a conservation officer to inspect his or her facilities.

(2) The department shall:

(a) Revoke the permit of an individual, corporation, or other business entity[a person] who violates a statute or administrative regulation pertaining to propagation of aquatic organisms;

(b) Deny a permit:

1. For an individual, corporation, or other business entity[a person] who has violated any department statute or administrative regulation within the last year; or[and]

2. For propagation of aquatic organisms that are determined to be potentially damaging to Kentucky's native ecosystems; and

(c) Not renew the permit for a period of up to two (2) years of an individual, corporation, or other business entity[a person] that has been found guilty of violating a statute or administrative regulation pertaining to propagation of aquatic organisms.

(3) Fees paid for revoked permits shall not be refunded.

(4) An individual, corporation, or other business entity whose permit has been denied, revoked, or to whom a non-renewal period has been applied may request an administrative hearing pursuant to KRS Chapter 13B.

(5) A request for a hearing shall be in writing and postmarked or delivered in person to the department no later than thirty (30) days after notification of the denial or revocation.

(6) Upon receipt of the request for a hearing, the department shall proceed according to the provisions of KRS Chapter 13B.

(7) The hearing officer's recommended order shall be considered by the commissioner and the commissioner shall issue a final order pursuant to KRS Chapter 13B.

**Section 5.[Section 6-] Incorporation by Reference.**

(1) "Fisheries Commercial Propagation Permit Application", 2006 edition, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Fisheries, 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: July 13, 2023

FILED WITH LRC: July 14, 2023 at 11:00 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 29, 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 September 30, 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 the requirements for obtaining a permit to propagate aquatic organisms and the associated requirements for all permit holders.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish minimum standards for fisheries propagation permit holders and to help conserve native aquatic resources.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.025 authorizes the department to promulgate administrative regulations regarding the buying, selling, and transporting of fish and wildlife, restrict the places where taking is permitted, and to make administrative regulations apply to a limited area or to the entire state. KRS 150.180(2) authorizes the department to promulgate administrative regulations regarding the buying, selling, and transporting of mussels and fishes by licensed fish propagation permit holders. KRS 150.280 requires the department to promulgate administrative regulations governing the propagation or holding of protected wildlife. KRS 150.450 requires the department to promulgate reasonable administrative regulations governing the taking of minnows and crayfish from the waters of the Commonwealth. 50 C.F.R. 17.11 establishes federally threatened and endangered fish species.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will carry out the purposes of the statutes by providing individuals, corporations, or other business entities the ability to propagate and hold native aquatic species.

(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 further clarifies in administrative regulation that the department may deny a propagation permit for propagation of aquatic organisms that are determined to be potentially damaging to Kentucky's native ecosystems. It also cleans up language pertaining to the KRS 13B hearing process.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to prevent the spread of non-native or invasive aquatic organisms in Kentucky and provide a better explanation of the KRS 13B hearing process.

(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 individuals applying for a propagation permit to propagate aquatic organisms that are determined to be potentially damaging to Kentucky's native ecosystems will be affected 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: Those regulated entities in question (3) will not be allowed to propagate aquatic organisms potentially damaging to Kentucky's aquatic ecosystems.

(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 those entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Compliance will help prevent the unwanted spread of non-native aquatic organisms in 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 a fee or funding to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees, nor does it indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering was not applied because all individuals wishing to propagate aquatic organisms that are determined to be potentially damaging to Kentucky's native ecosystems will be 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 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 authorizes the department to promulgate administrative regulations regarding the buying, selling, and transporting of fish and wildlife, restrict the places where taking is permitted, and to make administrative regulations apply to a limited area or to the entire state. KRS 150.180(2) authorizes the department to promulgate administrative regulations regarding the buying, selling, and transporting of mussels and fishes by licensed fish propagation permit holders. KRS 150.280 requires the department to promulgate administrative regulations governing the propagation or holding of protected wildlife. KRS 150.450 requires the department to promulgate reasonable administrative regulations governing the taking of minnows and crayfish from the waters of the Commonwealth. 50 C.F.R. 17.11 establishes federally threatened and endangered fish species.

(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? Approximately \$1,600 will be generated from propagation permits 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? Approximately \$1,600 will be generated from propagation permits in subsequent years.

(c) How much will it cost to administer this program for the first year? It will cost approximately \$500 to administer this program in the first year.

(d) How much will it cost to administer this program for subsequent years? It will cost approximately \$500 to administer this program in subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? There will be no 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 1:125. Transportation of fish.**

RELATES TO: KRS 150.010, 150.170, 150.235, 150.485

STATUTORY AUTHORITY: KRS 150.025(1)(c), 150.180(6), 150.280(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1)(c) authorizes the Department of Fish and Wildlife Resources to promulgate administrative regulations to regulate the buying, selling, or transporting of game and fish. KRS 150.180(6) requires any person importing or transporting live fish into or within the state to first procure a fish transportation permit. KRS 150.280(2) authorizes the department, by administrative regulation, to identify species of wildlife potentially damaging to native ecosystems and to prohibit the transporting or holding of that wildlife. This administrative regulation provides for control of the transportation of fish, fish eggs, live bait, and other aquatic organisms into, through, and within the state to protect the resident fish population.

**Section 1. [Definitions.**

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

—(2) "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.

—(3) "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.

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

—(5) "Roe-bearing fish" means paddlefish, shovelnose sturgeon, and bowfin, regardless of the sex of the fish or the presence or absence of roe.

—(6) "VHS" means Viral Hemorrhagic Septicemia, a disease of fish.

—(7) "VHS positive state" means any state in the United States, or any Canadian province, listed on the APHIS Web site [www.aphis.usda.gov](http://www.aphis.usda.gov) as being positive for Viral Hemorrhagic Septicemia (VHS).

—(8) "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](http://www.aphis.usda.gov).

—Section 2.] A Fish Transportation Permit shall not be required:

(1) By an individual to transport aquarium species;

(2) By permitted Kentucky fish propagators as established in 301 KAR 1:115, except if transporting fish into Kentucky from outside of Kentucky;

(3) By individuals with a sport or commercial fishing license to transport legally caught bait or fish;

(4) By individuals transporting fish purchased from a licensed live bait dealer or permitted commercial fish propagator for stocking in private waters;

(5) By agents of the department while performing their normal duties; or

(6) To transport live fish or other aquatic organisms that were purchased for consumption from a licensed retailer.

**Section 2.[Section 3.] Live Fish, Live Bait, or Other Aquatic Organisms.**

(1) All individuals, corporations, or other business entities that transport any live fish, live bait as defined in 301 KAR 1:001[4:132], Section 1, or other live aquatic organism, except those individuals listed in Section 1[2] of this administrative regulation, into, within, or through Kentucky shall have in possession a:

(a) Fish Transportation Permit, to be renewed annually by calendar year, issued in the name of the individual, corporation, or other business entity transacting the business; and

(b) Bill of lading showing the origin and destination of the organisms being transported.

(2) An individual shall also possess a Live Fish and Bait Dealers License, as established in 301 KAR 1:132, if the organisms will be sold to another individual, corporation, or other business entity in Kentucky or transported from Kentucky to be sold outside of Kentucky.

(3) All organisms in transport shall be disease free and any prohibited species listed in 301 KAR 1:122 shall not be present.

(4) If any VHS-regulated fish species from a VHS positive state are transported and unloaded in Kentucky, in addition to the requirements established in subsections (1), (2), and (3) of this section, the following requirements shall apply:

(a) If the origin of the VHS-regulated fish species is from a certified VHS free facility, the individual shall possess a copy of the documentation showing that the facility is VHS free.

(b) If the origin of the VHS-regulated fish species is from a non-certified VHS free facility:

1. The VHS-regulated fish species shall only be unloaded at a state inspected fish-processing plant or research and diagnostic laboratory;

2. The individual shall possess a copy of the APHIS VS 1-27 permit for Movement of Restricted Animals issued by an APHIS Veterinary Services office or by a state, tribal, or federal accredited veterinarian; and

3. Water from the fish transportation tank shall only be discharged into a municipal sewage system that includes wastewater[waste—water] disinfection or into a non-discharging[nondischarging] settling pond devoid of fish.

(5) If the origin of the VHS-regulated fish species is from a VHS positive state and are only being transported through Kentucky then only the requirements established in subsections (1) and (3) of this section and Section 3[4] of this administrative regulation shall apply.

(6) VHS-regulated fish species being transported from a known VHS positive state into, within, or through Kentucky that do not meet all requirements established in Sections 2[3] and 3[4] of this administrative regulation shall be confiscated for disposal purposes.

**Section 3.[Section 4.] Fish Transportation Permit Application.**

(1) If an individual, corporation, or other business entity wants to transport fish, live bait, or other aquatic organisms into, within, or through Kentucky they shall submit a completed Application for Fish Transportation Permit to the department, along with permit fees as established in 301 KAR 5:022[3:022].

(2) If an individual, corporation, or other business entity wants to transport VHS-regulated fish species into or through Kentucky from a VHS positive state, in addition to the requirements established in subsection (1) of this section they shall also submit a:

(a) Copy of the documentation showing that the facility that the VHS-regulated fish species are coming from is certified as being



VHS free; or

(b) Copy of the APHIS VS 1-27 permit if the facility is not certified as being VHS free.

(3) An individual, corporation, or other business entity shall not transport fish, live bait, or other aquatic organisms into, within, or through Kentucky without an approved Fish Transportation Permit in possession.

(4) If an individual, corporation, or other business entity desires to transport VHS-regulated fish species from a facility in a VHS positive state that is currently not listed on their Fish Transportation Permit, the permittee shall:

(a) Notify the department; and

(b) If approved by the commissioner based on risk of contagion to fish of the Commonwealth be sent an updated Fish Transportation Permit listing the approved facility.

Section 4.[Section 5.] Transportation of Roe-Bearing Fish and Roe.

(1) All individuals, with the exception of permitted roe-bearing fish harvesters as established in 301 KAR 1:155, who transport roe-bearing fish or unprocessed roe as established in 301 KAR 1:155 into, within, or through Kentucky, shall have in possession a Fish Transportation Permit issued in the name of the individual with the associated roe-bearing fish harvester's name and commercial fishing license and roe-bearing harvester's permit numbers listed.

(2) All individuals who transport unprocessed roe from a fish processing facility to a permitted roe-bearing fish dealer shall also have in possession a bill of lading as established in 301 KAR 1:155, Section 8(4)(c)[4(4)(d)3].

Section 5.[Section 6.] All officers and agents of the department have the authority to demand of the transporter, at any time, that prohibited species listed in 301 KAR 1:122 shall not be present and proof that the transporter possesses all appropriate permits and documentation.

Section 6.[Section 7.] Fish Transportation Permit Denial, Revocation, and Nonrenewal.

(1) The department shall deny a Fish Transportation Permit for transportation of aquatic organisms determined potentially damaging to Kentucky's native ecosystems.

(2) The department shall revoke and not renew the Fish Transportation Permit of an individual, corporation, or other business entity for a period of two (2) years if they:

(a) Falsify the documentation needed to transport fish, eggs, live bait, or any other aquatic organism into, within, or through Kentucky;

(b) Falsify information on the Application for Fish Transportation Permit; or

(c) Are convicted of any federal or state violation involving the transportation of fish, eggs, live bait, or any other aquatic organism.

(3)[(2)] An individual, corporation, or other business entity whose Fish Transportation Permit has been denied or revoked may request an administrative hearing pursuant to KRS Chapter 13B.

(4)[(3)] A request for a hearing shall be in writing and postmarked or delivered in person to the department no later than thirty (30) days after notification of the denial or revocation.

(5)[(4)] Upon receipt of the request for a hearing, the department shall proceed according to the provisions of KRS Chapter 13B.

(6)[(5)] The hearing officer's recommended order shall be considered by the commissioner and the commissioner shall issue a final order pursuant to KRS Chapter 13B.

Section 7.[Section 8.] Incorporated by Reference.

(1) "Application for Fish Transportation Permit", 2023[2008] is incorporated by reference.

(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: July 13, 2023

FILED WITH LRC: July 14, 2023 at 11:00 a.m.

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:** A public hearing on this administrative regulation shall be held on September 29, 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 September 30, 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](mailto:fwpubliccomments@ky.gov).

**REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT**

Contact Person: Jenny Gilbert

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation controls the transportation of fish, fish eggs, live bait and other aquatic organisms into, through, and within the state.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to protect the resident fish populations of Kentucky by preventing the unwanted spread of invasive aquatic organisms or diseases.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.025(1)(c) authorizes the Department of Fish and Wildlife Resources to promulgate administrative regulations to regulate the buying, selling, or transporting of game and fish. KRS 150.180(6) requires any person importing or transporting live fish into or within the state to first procure a fish transportation permit. KRS 150.280(2) authorizes the department, by administrative regulation, to identify species of wildlife potentially damaging to native ecosystems and to prohibit the transporting or holding of these wildlife.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation fulfills the purpose of KRS 150.025(1)(c) by regulating the transportation of fish and other aquatic organisms that are transported into, through, and within Kentucky. It fulfills the purpose of KRS 150.180(6) by prohibiting fish that either may become a menace to the state or are carrying a disease. It also fulfills the purpose of KRS 150.280(2), by allowing the department to deny a transportation permit for transportation of aquatic organisms that are determined to be potentially damaging to Kentucky's 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 further clarifies in administrative regulation that the department may deny a transportation permit for transportation of aquatic organisms that are determined to be potentially damaging to Kentucky's native ecosystems. A non-substantive change was also made to the material incorporated by reference.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to prevent the spread of non-native or invasive aquatic organisms in Kentucky.

(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 individuals applying for a transportation permit to transport aquatic organisms that are determined to be potentially damaging to Kentucky's native ecosystems will be affected 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: Those regulated entities in question (3) will not be allowed to transport aquatic organisms potentially damaging to Kentucky's aquatic ecosystems

(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 those entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Compliance will help prevent the unwanted spread of non-native aquatic organisms in 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 a fee or funding to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees, nor does it indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering was not applied because all individuals wishing to transport aquatic organisms that are determined to be potentially damaging to Kentucky's native ecosystems will be 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 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 of Fish and Wildlife Resources to promulgate administrative regulations to regulate the buying, selling, or transporting of game and fish. KRS 150.180(6) requires any person importing or transporting live fish into or within the state to first procure a fish transportation permit. KRS 150.280(2) authorizes the department, by administrative regulation, to identify species of wildlife potentially damaging to native ecosystems and to prohibit the transporting or holding of that wildlife.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? Approximately \$1,700 will be generated from transportation permits 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? Approximately \$1,700 will be generated from transportation permits in subsequent years.

(c) How much will it cost to administer this program for the first year? It will cost approximately \$1,000 to administer this program in the first year.

(d) How much will it cost to administer this program for subsequent years? It will cost approximately \$1,000 to administer this program in subsequent years.

Note: If specific dollar estimates cannot be determined, provide a

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? There will be no 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 2:172. Deer hunting seasons, zones, and requirements.

RELATES TO: KRS 150.010, 150.177, 150.180, 150.411(3), 150.990, 237.110

STATUTORY AUTHORITY: KRS 150.025(1), 150.170, 150.175, 150.390(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish open seasons for the taking of wildlife, to regulate bag limits and methods of take, and to make these requirements apply to a limited area. KRS 150.170 authorizes exemptions for certain people from hunting license and permit requirements. KRS 150.175 authorizes the kinds of licenses and permits to be issued by the department. KRS 150.390(1) prohibits the taking of deer in any manner contrary to any provisions of KRS Chapter 150 or KAR Title 301. This administrative regulation establishes deer hunting seasons and zones, bag limits, legal methods of taking, and checking and recording requirements for deer hunting.

#### Section 1. Definitions.

(1) "Additional deer permit" means a permit that allows the holder to take up to two (2) additional deer beyond those allowed by the statewide deer permit in the following combinations:

(a) One (1) antlered deer and one (1) antlerless deer; or

(b) Two (2) antlerless deer.

(2) "Adult" means a person who is at least eighteen (18) years of age.

(3) "Air gun" means a pneumatic gun fired by a charge of compressed air.

(4) "Antlered deer" means a male or female deer, excluding

male fawns, with a visible antler protruding above the hairline.

(5) "Antlerless deer" means a male or female deer with no visible antler protruding above the hairline.

(6) "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.

(7) "Arrow" means the projectile fired from a bow or crossbow.

(8) "Centerfire" means a type of gun that detonates a cartridge by the firing pin striking a primer in the middle of the end of the cartridge casing.

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

(10) "Chronic Wasting Disease" or "CWD" means a transmissible spongiform encephalopathy found in cervids.

(11) "CWD Surveillance Zone" means an area designated as being subject to special deer hunting regulations due to a CWD positive cervid detection.

(12) "Deer" means a member of the species *Odocoileus virginianus*.

(13) "Firearm" means a breech or muzzle-loading rifle, shotgun, or handgun.

(14) "License year" means the period from March 1 through the last day of February.

(15) "Modern gun" means an air gun, rifle, handgun, or shotgun that is loaded from the rear of the barrel.

(16) "Muzzle-loading gun" means a rifle, shotgun, or handgun that is loaded from the discharging end of the barrel or discharging end of the cylinder.

(17) "Novice deer hunter" means a person who has not harvested more than two (2) deer in Kentucky in the last ten (10) years.

(18) "Shed" means an antler that has naturally been cast off the skull as a part of the annual growth and replacement process.

(19) "Special deer hunt" means a one (1) or two (2) day deer hunt sponsored and overseen by the department on private land that:

(a) Allows a novice deer hunter to use a modern gun outside of modern gun deer season; and

(b) Shall be made available only to a:

1. Kentucky resident;

2. Person enrolled as a resident or non-resident student in a public or non-public postsecondary institution located in Kentucky; or

3. Member of the United States military or his or her spouse or children stationed at a military base in Kentucky.

(20) "Statewide deer hunting requirements" means the season dates, zone descriptions, bag limits, and other requirements for deer hunting established in this administrative regulation.

(21) "Statewide deer permit" means a permit, which, in conjunction with appropriate licenses, seasons, and methods, allows the holder to take:

(a) One (1) antlered deer and no more than three (3) antlerless deer; or

(b) No more than four (4) antlerless deer.

(22) "Youth" means a person under the age of sixteen (16) by the date of the hunt.

(23) "Youth deer permit" means a permit, which in conjunction with appropriate licenses, seasons, and methods, allows the holder to take:

(a) One (1) antlered deer and no more than three (3) antlerless deer; or

(b) No more than four (4) antlerless deer.

(24) "Zone" means an area consisting of counties designated by the department within which deer hunting season dates and limits are set for the management and conservation of deer in Kentucky.

## Section 2. License and Deer Permit Requirements.

(1) Unless license exempt, as established in KRS 150.170, a person shall carry a valid:

(a) Kentucky hunting license while hunting; and

(b) Deer permit while hunting.

(2) Unless license exempt, as established in KRS 150.170, a

youth shall carry a valid:

(a) Kentucky youth hunting license while hunting; and

(b) Youth deer permit while hunting.

## Section 3. Hunter Restrictions.

(1) A deer hunter shall not:

(a) Take a deer except during daylight hours;

(b) Use dogs, except leashed tracking dogs, to recover a wounded deer;

(c) Take a deer that is swimming;

(d) From a vehicle, boat, or on horseback, take a deer, except that a hunter with a disabled hunting exemption permit issued by the department may use a stationary vehicle as a hunting platform; and

(e) Possess or use a decoy or call powered by electricity from any source.

(2) A person shall only use the equipment established in paragraphs (a) through (e) of this subsection to take a deer:

(a) A crossbow or archery equipment loaded with a broadhead of seven-eighths (7/8) inch or wider upon expansion;

(b) A firearm:

1. With an action that fires a single round of ammunition upon each manipulation of the trigger; and

2. Loaded with centerfire, single projectile ammunition designed to expand upon impact;

(c) A muzzle-loading gun;

(d) A shotgun loaded with a shell containing single projectile ammunition designed to expand upon impact; or

(e) An air gun:

1. Of .35 caliber or larger;

2. Charged by an external tank; and

3. Loaded with single projectile ammunition designed to expand upon impact.

(3) A person shall only use a weapon that complies with the appropriate season established in Section 5 of this administrative regulation to take a deer.

(4) A crossbow shall contain a working safety device.

(5) A person shall not use a magazine capable of holding more than ten (10) rounds to take a deer.

## Section 4. Hunter Orange Clothing Requirements.

(1) During the modern gun deer season, muzzle-loader season, and any youth gun season, a person hunting any species during daylight hours and any person accompanying a hunter, shall display solid, unbroken hunter orange visible from all sides on the head, back, and chest except while hunting waterfowl or mourning dove.

(2) During an elk firearm season, as established in 301 KAR 2:132, a person hunting any species and any person accompanying a hunter within the elk restoration zone, shall display solid, unbroken hunter orange visible from all sides on the head, back, and chest, except while hunting waterfowl or mourning dove.

(3) The hunter orange portions of a garment worn to fulfill the requirements of this section:

(a) May display a small section of another color; and

(b) Shall not have mesh weave openings exceeding one-fourth (1/4) inch by any measurement.

(4) A camouflage-pattern hunter orange garment worn without additional solid hunter orange on the head, back, and chest shall not meet the requirements of this section.

## Section 5. Statewide Season Dates.

(1) A deer hunter may use archery equipment to hunt deer statewide from the first Saturday in September through the third Monday in January.

(2) A deer hunter may take deer with a modern gun statewide beginning the second Saturday in November for sixteen (16) consecutive days.

(3) A deer hunter may use a muzzle-loading gun to hunt deer statewide:

(a) For two (2) consecutive days beginning the third Saturday in October;

(b) For nine (9) consecutive days beginning the second Saturday in December; and

(c) During any season in which a modern gun may be used to

take deer.

(4) A deer hunter may use a crossbow to hunt deer statewide from the third Saturday in September through the third Monday in January.

(5) A youth or a legal resident hunter sixty-five (65) years or older may hunt with a crossbow from the first Saturday in September through the third Monday in January.

(6) There shall be a youth-only modern gun season for two (2) consecutive days beginning on the second Saturday in October, in which a youth deer hunter shall comply with this administrative regulation and all other statewide deer hunting requirements.

(7) There shall be a free youth-only modern gun season[weekend] for two (2) consecutive days beginning on the Saturday after Christmas during which a youth:

(a) Shall not be required to have a hunting license or deer permit; and

(b) Shall comply with this administrative regulation and all other statewide deer hunting requirements.

#### Section 6. Zones.

(1) Zone 1 shall consist of Anderson, Ballard, Boone, Bracken, Bullitt, Caldwell, Calloway, Campbell, Carlisle, Carroll, Christian, Crittenden, Franklin, Fulton, Gallatin, Grant, Graves, Green, Hardin, Harrison, Hart, Henderson, Henry, Hickman, Hopkins, Jefferson, Kenton, Larue, Livingston, Lyon, Marshall, Mason, McClean, McCracken, Mercer, Muhlenberg, Nelson, Oldham, Owen, Pendleton, Robertson, Scott, Shelby, Spencer, Todd, Trigg, Trimble, Union, Washington, Webster, and Woodford Counties.

(2) Zone 2 shall consist of Adair, Allen, Barren, Bath, Bourbon, Boyd, Boyle, Breckinridge, Butler, Carter, Casey, Clark, Daviess, Edmonson, Fayette, Fleming, Grayson, Greenup, Hancock, Jessamine, Lawrence, Lewis, Lincoln, Logan, Madison, Marion, Meade, Metcalf, Monroe, Montgomery, Nicholas, Ohio, Simpson, Taylor, and Warren Counties.

(3) Zone 3 shall consist of Cumberland, Elliott, Estill, Garrard, Johnson, Laurel, Morgan, Powell, Pulaski, Rowan, [~~Simpson~~] Wayne, and Wolfe Counties.

(4) Zone 4 shall consist of Bell, Breathitt, Clay, Clinton, Floyd, Harlan, Jackson, Knott, Knox, Lee, Leslie, Letcher, Magoffin, Martin, McCreary, Menifee, Owsley, Perry, Pike, Rockcastle, Russell, and Whitley Counties.

#### Section 7. Season and Zone Limits.

(1) A person shall not take more deer than each zone allows, as established in this section.

(2) A person shall not take more than one (1) antlered deer per license year, regardless of permit type used or zone hunted, except as established in 301 KAR 2:111, 2:178, or 3:100.

(3) A person may take an unlimited number of antlerless deer in Zone 1 if the person has purchased the appropriate additional deer permits.

(4) A person may take up to a total of four (4) deer in Zone 2.

(5) In Zone 3, a person may take up to a total of four (4) deer, except that a firearm or air gun shall not be used to take a total of more than one (1) antlerless deer.

(6) In Zone 4, a person may take one antlerless deer, but only during:

(a) Archery season, except that a person shall not take an antlerless deer during modern gun season, the October muzzleloader season, or the first six (6) days of the December muzzleloader season;

(b) Crossbow season, except that a person shall not take an antlerless deer during modern gun season, the October muzzleloader season, or the first six (6) days of the December muzzleloader season;

(c) Any youth weekend; or

(d) The last three (3) days of the December muzzleloader season.

#### Section 8. Supervision of Youth Gun Deer Hunters.

(1) An adult shall:

(a) Accompany a person under sixteen (16) years old; and

(b) Remain in a position to take immediate control of the youth's

gun.

(2) An adult accompanying a youth hunter shall not be required to possess a hunting license or deer permit if the adult is not hunting.

#### Section 9. Harvest Recording.

(1) Immediately after taking a deer, and prior to moving the carcass, a person shall record, in writing:

(a) The species taken;

(b) The date taken;

(c) The county where taken; and

(d) The sex of the deer taken on one (1) of the following:

1. The hunter's log section on the reverse side of a license or permit;

2. The hunter's log produced in a hunting guide;

3. A hunter's log printed from the Internet;

4. A hunter's log available from any KDSS agent; or

5. An index or similar card.

(2) The person shall retain and possess the completed hunter's log while the person is in the field during the current hunting season.

#### Section 10. Checking a Deer.

(1) A person shall check a harvested deer before 11:59 p.m. on the day the deer is recovered by:

(a) Calling (800) 245-4263 and providing the requested information; or

(b) Completing the online check-in process at fw.ky.gov.

(2) A person who has checked in a deer shall record the confirmation number on a hunter's log.

(3) If a hunter removes the hide or head of a harvested deer before the deer is checked in, then the hunter shall retain the deer parts established in paragraphs (a) and (b) of this subsection:

(a) For antlered deer, the:

1. Head with antlers; or

2. Testicles, scrotum, or penis attached to the carcass; or

(b) For antlerless deer, the:

1. Head; or

2. Udder or vulva attached to the carcass.

(4) If a hunter transfers possession of a harvested deer, or if the harvested deer is out of the hunter's possession, the hunter shall attach to the carcass a hand-made tag that contains the following information:

(a) The confirmation number;

(b) The hunter's name; and

(c) The hunter's telephone number.

(5) A person shall not provide false information while:

(a) Completing the hunter's log;

(b) Checking a deer; or

(c) Creating a carcass tag.

#### Section 11. Transporting and Processing Deer.

(1) A person shall:

(a) Not transport an unchecked deer out of Kentucky;

(b) Have proof that a deer or parts of deer brought into Kentucky were legally taken; or

(c) Not sell deer hides except to a licensed:

1. Fur buyer;

2. Fur processor; or

3. Taxidermist.

(2) A taxidermist or an individual who commercially butchers deer shall not accept a deer carcass or any part of a deer without a valid disposal permit issued by the department pursuant to KRS 150.411(3) or a proper carcass tag as established in Section 10 of this administrative regulation.

(3) An individual who commercially butchers deer shall keep accurate records of the hunter's name, address, confirmation number, and date received for each deer in possession and retain the records for a period of one (1) year.

#### Section 12. Special Deer Hunt Program.

(1) A special deer hunt shall:

(a) Consist of a minimum of ten (10) novice deer hunters selected on a first-come, first-served basis;

(b) Take place on private land with the permission of the

landowner;

(c) Only be overseen and sponsored by department employees; and

(d) Take place during the archery deer season.

(2) A special deer hunt participant shall possess a valid hunting license and deer permit, except if the participant is license-exempt, as established in KRS 150.170.

#### Section 13. Antlers.

(1) A person shall not use a device that is designed to entangle or trap the antlers of a deer.

(2) A shed of a deer shall be legal to possess.

#### Section 14. CWD Surveillance Zone Requirements.

(1) A CWD Surveillance Zone shall be limited to an area surrounding the location(s) of CWD positive cervid detections as biologically and logistically necessary to monitor and combat the spread of CWD. The areas designated as part of the CWD Surveillance Zone shall be published on the department's Web site at fw.ky.gov.

(2) In any area identified as a CWD Surveillance Zone, the following requirements shall be effective:

(a) In addition to items in Sections 10 and 11 above a hunter harvesting deer in a CWD Surveillance Zone shall:

1. Transport the entire carcass or the entire head; and

2. Telecheck confirmation number to a KDFWR authorized check station in the CWD Surveillance Zone during the identified time periods as advertised by the department at <https://fw.ky.gov>.

(b) A hunter harvesting deer in a CWD Surveillance Zone shall not:

1. Transport a full carcass or any part thereof outside of the CWD Surveillance Zone, except deboned meat, clean skull plates, antlers, antlers attached to a clean skull plate, clean skulls, clean teeth, finished taxidermy work, and hides of legally harvested cervids; or

2. Bait or feed any wildlife inside the CWD Surveillance Zone, except for:

a. Normal agricultural practices, including food plots;

b. Hanging bird feeders within the curtilage of the home; and

c. Furbearer trapping attractants, except grain salt or mineral.

RICH STORM, Commissioner

APPROVED BY AGENCY: July 13, 2023

FILED WITH LRC: July 14, 2023 at 11:00 a.m.

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:** A public hearing on this administrative regulation shall be held on September 29, 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 September 30, 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](mailto:fwpubliccomments@ky.gov).

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jenny Gilbert

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the manner in which white-tailed deer may be harvested in Kentucky.

(b) The necessity of this administrative regulation: Deer are a public resource entrusted to the state for management. As such, there must be regulations in place to control the method and manner in

which deer may be taken.

(c) How this administrative regulation conforms to the content of the authorizing statutes: Conforms to KRS 150.025(1), 150.170, 150.175, 150.390(1) as these statutes allow the department to establish bag limits, season structure, etc. for the taking of wild deer.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation establishes the manner in which deer may be taken in Kentucky and therefore assists in the effective administration of the abovementioned statutes.

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

(a) How the amendment will change this existing administrative regulation: Changes the deer hunting zone designation of Simpson County from a Zone 3 to a Zone 2.

(b) The necessity of the amendment to this administrative regulation: The change in zone designation for Simpson County will allow the KDFWR to more effectively manage the deer population via a liberalization of the bag limit. Current population estimates show an increasing deer population in this area which warrants additional take.

(c) How the amendment conforms to the content of the authorizing statutes: Conforms to KRS 150.025(1), 150.170, 150.175, 150.390(1) as these statutes allow the department to establish bag limits, season structure, etc. for the taking of wild deer.

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

The change in Zone designation will allow the KDFWR to more effectively manage the deer population within Simpson County.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Simpson County hunters benefit from a liberalization of bag limits and methods for additional taking of wild deer. May also benefit non-hunting members of the county (i.e., farmers, motorists, insurance agencies, etc.) via decreasing deer populations (e.g., less depredation of agricultural crops, less risk of deer-vehicle collisions, etc.).

(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 are required.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no cost associated with this change.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Additional hunting opportunities and a reduction in deer density.

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

(a) Initially: No initial cost

(b) On a continuing basis: No continuing cost

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Fish and Game 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 additional fees or funding will be required

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

No additional fees associated with the amendment to this regulation

(9) TIERING: Is tiering applied? Tiering is not applied; all Simpson County hunters have an equal opportunity under this amendment.

#### FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? No perceived impacts to the abovementioned groups.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative

regulation. KRS 150.025(1), 150.170, 150.175, 150.390(1)

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? It is likely that there will be no increase in revenue to the abovementioned groups as a result of the implementation of this amendment

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

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

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

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? No cost savings

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

(d) How much will it cost the regulated entities for subsequent years? No 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)]. There will be no major economic impact as a result of this amendment to the regulation

#### FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate.

(2) State compliance standards.

(3) Minimum or uniform standards contained in the federal mandate.

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

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Local deer densities have increased within Simpson County which necessitates its switch to a more liberal bag limit.

#### JUSTICE AND PUBLIC SAFETY CABINET Kentucky Law Enforcement Council (Amendment)

#### 503 KAR 1:140. Peace officer, telecommunicator, and court security officer professional standards.

RELATES TO: KRS Chapter 13B, 15.330(1)(f), 15.330(1)(h), 15.380, 15.382, 15.384(1), 15.392, 15.394(1), 15.396(1), 15.3971, 15.400(1), 15.408, 15.440, 15.540, 15.565, 15.580

STATUTORY AUTHORITY: KRS 15.330(1)(f), 15.330(1)(h), 15.382, 15.408, 15.440, 15.590

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15.330(1)(f) and (h) and 15.590 authorize the Kentucky Law Enforcement Council to promulgate reasonable administrative regulations to accomplish the purposes of KRS 15.310 to 15.404 and to approve law enforcement officers, telecommunicators, and other persons having met requirements under KRS 15.310 to 15.510, 15.530 to 15.590, and 15.990 to 15.592. KRS 15.440 authorizes the council to promulgate administrative regulations for approval of basic training credit for out-of-state basic training and work experience. This administrative regulation establishes the guidelines and procedures necessary to implement and administer peace officer, telecommunicator, and court security officer certification.

Section 1. Approval of Agency's Validated Job Task Analysis and Associated Agency Testing.

(1) Application. If an agency desires to use its own job task analysis and any associated agency testing, the agency shall submit to the KLEC office completed KLEC Forms J and Q along with a copy of the proposed job task analysis. The agency shall supply:

(a) The name of the entity that completed the analysis;

(b) The date on which the analysis was completed;

(c) A curricula vitae, resume, or company profile of the entity that completed the analysis; and

(d) A listing of all job task analyses previously completed by the person or entity, including the dates of the analyses.

(2) Criteria for assessment. The submitted job task analysis shall be assessed based upon the following criteria:

(a) Credentials and history of the entity conducting the analysis.

1. Education, with a preference given to degrees in law enforcement, statistics, or a related area.

2. Work experience, with a preference given to emphasis in law enforcement, statistics, or a related area.

3. Number and quality of job task analyses completed.

(b) Methodological approach.

1. Reasonable, standardized format of the study and the report.

2. Relative reliability and validity of the study's sampling techniques and practice.

3. Other considerations that reflect sound practice of the scientific method.

4. Specificity of the analysis. The job task analysis shall establish minimum entry qualifications, specific training requirements, and description of duties of officers.

(3) Initial review.

(a) Within five (5) business days of receipt of the application, the KLEC office shall notify the agency that:

1. The application has been received and is complete; or

2. The application is incomplete. The notice that an application is incomplete shall identify the specific information to be supplemented to process the application. The agency shall submit the necessary information within ten (10) business days of the agency's receipt of the notice of insufficiency. If the agency fails to submit the supplementary information within the specified time period, the application shall be considered abandoned and the agency shall resubmit an application for consideration of its job task analysis and associated agency testing.

(b) The KLEC office recommendation. Within thirty (30) days of receipt of the completed application, the KLEC office shall forward the application to KLEC along with a recommendation to approve or reject the job task analysis and associated agency tests and the specific reasons supporting a recommendation to reject.

(c) KLEC review. The KLEC Professional Standards Committee shall review the application and recommendation of the KLEC office and forward its recommendation to KLEC for final review. Within sixty (60) days of their receipt of the application, KLEC shall issue written notice to the agency indicating whether the application has been approved or found to be insufficient or erroneous.

(d) If an application is found to be insufficient or erroneous, the KLEC shall notify the agency of:

1. The reasons for the finding; and
2. The requirement that the council file a declaratory action in accordance with KRS 15.394(1).

#### Section 2. Agency Testing Procedures.

(1) Each agency participating in certification shall submit a completed KLEC Form Q or KLEC Form tele-Q to the KLEC office prior to any applicant testing. The KLEC office shall be notified of any changes in the Form Q or KLEC Form tele-Q within ten (10) days.

(2) Initial review. Within fifteen (15) business days of receipt of KLEC Form Q, the KLEC office shall notify the agency that the form:

- (a) Has been received and is complete; or
- (b) Is incomplete. The notice that an application is incomplete shall identify the specific information to be supplemented to process the form. The agency shall submit the necessary information within ten (10) business days of the agency's receipt of the notice of insufficiency. Applicants shall not be tested or certified by KLEC until the form is complete.

(3) The KLEC office review of requests for agency testing. Within thirty (30) days of receipt of the completed form, the KLEC office shall review requests for agency testing from those agencies without a validated job task analysis to determine if the proposed tests are consistent with the minimum standards for KLEC testing as established in Section 4 of this administrative regulation. The KLEC office shall notify the agency if the proposed testing is acceptable. If the KLEC office determines that the minimum standards are not met, it shall forward the form to KLEC along with the specific reasons supporting a recommendation to reject the agency testing.

(4) KLEC Review. The KLEC Professional Standards Committee shall review the form and the recommendation of the KLEC office and forward its recommendation to KLEC for final review. Within sixty (60) days of receipt of the form, KLEC shall issue written notice to the agency indicating whether the request for agency testing has been approved or rejected and the specific reasons supporting the rejection.

(5)

(a) An agency may appeal a decision made by KLEC to reject an agency test by filing a written notice of appeal:

1. With the Secretary of the Justice and Public Safety Cabinet; and
  2. Within thirty (30) days of receipt of the notice of rejection.
- (b) The notice of appeal shall be submitted:
1. In writing; and
  2. With a copy of the notice of rejection of agency testing attached.

(c) A copy of the notice of appeal shall also be mailed to the KLEC office by certified mail.

(d) The Secretary of the Justice and Public Safety Cabinet shall schedule a hearing within thirty (30) days of receipt of the notice of appeal.

(e) The administrative hearing shall be conducted in accordance with KRS Chapter 13B.

#### Section 3. Certification of peace officers, telecommunicators, and court security officers.

(1) Officers exempted from certification requirements pursuant to KRS 15.380(5) who are requesting certification shall submit KLEC Form E to the KLEC office.

(2) State peace officers employed pursuant to KRS Chapter 18A who have had certification requirements adopted pursuant to KRS 15.380(2) shall submit KLEC Form E to the KLEC office.

(3) An agency may request that peace officers identified in KRS 15.380(4), who have completed law enforcement basic training, and part-time telecommunicators, who have completed the

Telecommunications Academy, participate in certification by submitting KLEC Form E to the KLEC office.

(4) Peace officers, telecommunicators, and court security officers entitled to certified status pursuant to the grandfather provision of KRS 15.400(1), 15.3971, 15.560, or 15.565 shall submit KLEC Form C.

Section 4. Suitability Minimum Requirements: The minimum requirements and procedures established for KLEC testing by this section shall be followed.

(1) The background investigation as specified in KRS 15.382(12) and 15.3971(1)(k) shall consist of the following minimum requirements, using the KLEC Form H-1 Background Investigation and personal history questionnaire.

- (a) Biographical history;
- (b) Family history;
- (c) Education;
- (d) Employment history;
- (e) Interview with the applicant's references;
- (f) Criminal history including domestic violence protective orders; and
- (g) Credit history.

(2) Fingerprinting. An applicant shall be fingerprinted and a criminal background check shall be conducted as specified in KRS 15.382(5), 15.3971(1)(e), and 15.540(1)(c) through the procedure established by this subsection.

(a) The applicant shall be fingerprinted by the Kentucky State Police, who shall input the fingerprints into the AFIS System and complete a state records check. The fingerprints shall also be sent to the FBI for a records check.

(b) The KSP shall forward the results of state and FBI records check to the employing agency.

(c) Final certification shall not be issued until results consistent with certification requirements and acceptable to the agency are received from the FBI.

(d) The agency may employ the peace officer, telecommunicator, or court security officer contingent upon the pending FBI results.

(3) Psychological screening, as specified in KRS 15.382(15), 15.3971(1)(m), and 15.540(1)(d), shall consist of the minimum requirements established by this subsection.

(a) Screening shall measure a broad spectrum of abilities which are relevant to job related duties, including:

1. Cognitive abilities;
2. Personality characteristics; and
3. Related constructs, including:
  - a. Integrity; and
  - b. Conscientiousness.

(b) Screening shall contain a minimum of two (2) independent and objectively scored psychometric measures which shall be constructed and validated in accordance with the Standards for Educational and Psychological Testing, American Educational Research Association, American Psychological Association, National Council on Measurement in Education, Joint Committee on Standards for Educational and Psychological Testing, 2014.

(c)

1. Assessment results and predictions shall include a recommendation and summary statement regarding the applicant's overall suitability for employment as a peace officer, telecommunicator, or court security officer;

2. The summary statement shall classify applicants as:

- a. Essentially suitable;
- b. May be unsuitable; or
- c. Borderline suitability; and

3. If an applicant is classified as borderline suitability or may be unsuitable, the report shall contain specific concerns and negative indicators for investigation and reconciliation by the employing agency.

(d) Screening shall be administered in accordance with the Standards for Educational and Psychological Testing, American Educational Research Association, American Psychological Association, National Council on Measurement in Education, Joint Committee on Standards for Educational and Psychological Testing,

2014.

(4) Physical ability testing as specified in KRS 15.382(16) shall consist of the minimum requirements established by this subsection.

(a) Precertification status.

1. To obtain precertification status under KRS 15.386(1), the applicant shall successfully complete each of the events in the following order as instructed and evaluated by KLEC personnel who shall administer the test in conformity with the KLEC Physical Fitness Testing Protocols:

- a. Bench press;
- b. Sit-ups;
- c. 300 meter run;
- d. Push-ups; and
- e. One and five-tenths (1.5) mile run.

2. An applicant shall pass the physical ability test for precertification status if he or she achieves a cumulative score of fifty (50) points or more, based upon the following scoring of the physical training events listed in subparagraph 1 of this paragraph:

a. Bench press, based upon a percentage of the recruit's body weight:

- (i) 9 points - Recruit shall bench press at least fifty-five and three-tenths (55.3) percent of body weight;
- (ii) 9.5 points - Recruit shall bench press at least fifty-nine and seven-tenths (59.7) percent of body weight;
- (iii) 10 points - Recruit shall bench press at least sixty-four (64) percent of body weight;
- (iv) 10.5 points - Recruit shall bench press at least sixty-eight and five-tenths (68.5) percent of body weight; and
- (v) 11 points - Recruit shall bench press at least seventy-three (73) percent or more of body weight;

b. Sit-ups:

- (i) 9 points - Recruit shall complete at least thirteen (13) repetitions in one (1) minute;
- (ii) 9.5 points - Recruit shall complete at least sixteen (16) repetitions in one (1) minute;
- (iii) 10 points - Recruit shall complete at least eighteen (18) repetitions in one (1) minute; and
- (iv) 11 points - Recruit shall complete nineteen (19) repetitions or more in one (1) minute;

c. 300 meter run:

- (i) 9 points - Recruit shall complete in sixty-eight (68) seconds or less;
- (ii) 9.5 points - Recruit shall complete in sixty-seven (67) seconds or less;
- (iii) 10 points - Recruit shall complete in sixty-five (65) seconds; and
- (iv) 11 points - Recruit shall complete in less than sixty-five (65) seconds;

d. Push-ups:

- (i) 9 points - Recruit shall complete at least fourteen (14) repetitions in two (2) minutes;
- (ii) 9.5 points - Recruit shall complete at least seventeen (17) repetitions in two (2) minutes;
- (iii) 10 points - Recruit shall complete at least twenty (20) repetitions in two (2) minutes;
- (iv) 10.5 points - Recruit shall complete at least twenty-three (23) repetitions in two (2) minutes; and
- (v) 11 points - Recruit shall complete twenty-five (25) repetitions or more in two (2) minutes; and

e. One and five-tenths (1.5) mile run:

- (i) 9 points - Recruit shall complete in 1,076 seconds (17:56) or less;
- (ii) 9.5 points - Recruit shall complete in 1,054 seconds (17:34) or less;
- (iii) 10 points - Recruit shall complete in 1,032 seconds (17:12) or less;
- (iv) 10.5 points - Recruit shall complete in at least 1,004 seconds (16:44) or less; and
- (v) 11 points - Recruit shall complete in 975 seconds (16:15) or less.

3. An applicant shall not be awarded more than eleven (11) points in any one (1) of the five (5) physical ability events.

4. An applicant shall fail the physical ability test for

precertification status if he or she does not achieve:

a. A cumulative score of at least fifty (50) points for all five (5) events; and

b. At least nine (9) points on each physical training event.

5. At the sole discretion of the hiring agency, an applicant who fails to meet the lowest performance level in a test event, thus earning a zero point value for that event, shall be granted a retest opportunity in that event without having to retest in the other events for which a point value was obtained, subject to the conditions established by this subparagraph.

a. A retest shall not be granted unless the maximum value of eleven (11) points would allow the applicant to meet the required cumulative fifty (50) point minimum.

b. A retest shall not occur any sooner than forty-eight (48) hours or any later than sixty (60) days from the date of the initial test attempt.

6. If an applicant obtains a point value for each event, but does not obtain a cumulative score of at least fifty (50) points, the applicant may attempt the test battery again, in its entirety. This shall be considered a second test administration and not a retest.

7. An applicant may participate in the physical ability test for precertification status in its entirety, four (4) times in a one (1) year period, which shall be calculated from the first date of testing.

8. An applicant may participate in one (1) physical ability retest for each physical ability test taken for precertification status.

(b) Certification status.

1. To obtain certification status under KRS 15.386(2), the applicant shall successfully complete each of the following physical ability requirements within ten (10) days of graduation from law enforcement basic training, which shall be administered in the same order and in conformity with the KLEC Physical Fitness Testing Protocols:

a. Bench press. One (1) repetition of maximum (RM) bench press equal to seventy-three (73) percent of the applicant's body weight;

b. Sit-ups. Nineteen (19) sit-ups in one (1) minute;

c. 300 meter run in less than sixty-five (65) seconds;

d. Push-ups. Twenty-five (25) push-ups; and

e. One and five-tenths (1.5) mile run in sixteen (16) minutes, fifteen (15) seconds.

2. If an applicant passes all events when participating in the physical ability test in its entirety, the applicant shall have met the physical ability minimum requirements for certification status.

3. Retest. If an applicant fails to pass all events when participating in the physical ability test for certification status during the training graduation test:

a. The applicant shall not retest in the failed events earlier than forty-eight (48) hours after the date the test is originally administered;

b. All failed events shall be retested on the same date; and

c. If the applicant passes all previously failed events on the date of the retest, the applicant shall have met the physical ability test requirements for certification status.

(5) Medical screening as specified in KRS 15.382(10) shall consist of the minimum requirements established by this subsection.

(a) The applicant shall complete KLEC Form G-2, Medical History Statement, which, along with KLEC Form G-3, Medical Screening Guidelines Implementation Manual, shall be provided to the physician, nurse practitioner, or physician's assistant, duly licensed to practice in the Commonwealth of Kentucky, who shall examine the applicant in conformity with the guidelines.

(b) The agency shall provide the examining physician, nurse practitioner, or physician's assistant with a copy of the KLEC Form T-1a, Physician's Medical Release Form.

(c) The physician, nurse practitioner, or physician's assistant shall complete KLEC Form G-1, Medical Examination Report, and forward it to the employing agency.

(6) Drug screening as specified in KRS 15.382(11), 15.3971(1)(j), and 15.540(1)(f) shall consist of the minimum requirements established by this subsection.

(a) The applicant shall execute KLEC Form K-1 and submit a urine sample that shall be screened and if necessary confirmed using the guidelines as outlined in the Mandatory Guidelines for



## VOLUME 50, NUMBER 2– AUGUST 1, 2023

Federal Workplace Drug Testing Programs, 82 Fed. Reg. 7920-1 (Jan. 23, 2017). The screening and confirmatory cutoff concentrations are as follows:

SCREENING	
Marijuana metabolites	50 ng/mL
Cocaine metabolite (Benzoyllecgonine)	150 ng/mL
Codeine / Morphine	2,000 ng/mL
Hydrocodone / Hydromorphone	300 ng/mL
Oxycodone / Oxymorphone	100 ng/mL
6-Acetylmorphine	10 ng/mL
Phencyclidine (PCP)	25 ng/mL
Amphetamine / Methamphetamine	500 ng/mL
MDMA / MDA	500 ng/mL
CONFIRMATION	
THC/THCA	15 ng/mL
Benzoyllecgonine	100 ng/mL
Codeine	2,000 ng/mL
Morphine	2,000 ng/mL
Hydrocodone	100 ng/mL
Hydromorphone	100 ng/mL
Oxycodone	100 ng/mL
Oxymorphone	100 ng/mL
6-Acetylmorphine	10 ng/mL
Phencyclidine (PCP)	25 ng/mL
Amphetamine	250 ng/mL
Methamphetamine	250 ng/mL
MDMA	250 ng/mL
MDA	250 ng/mL

(b) The integrity of the urine sample shall be documented on KLEC Form K-2, Drug Screening through Urinalysis Chain of Custody.

(7) For the polygraph examination as specified in KRS 15.382(17), 15.3971(1)(n), and 15.540(1)(e), the applicant shall complete KLEC Form I-1, Consent for Pre-employment Polygraph Examination, and KLEC Form I-2, Pre-employment Polygraph Questionnaire, which shall be provided to the polygraph examiner, duly licensed in the commonwealth of Kentucky, who shall perform a polygraph examination of the applicant.

(8) The agency shall ensure that the applicant receives and has read KLEC Form L-1, Code of Ethics and KLEC Form L-2, Canon of Ethics.

(9) High school diploma.

(a) The high school graduate requirement of KRS 15.382(3), 15.3971(1)(c), or 15.540(1)(b) shall be met by:

1. Submission of a copy of a diploma or transcript from a public high school; or
2. Submission of a diploma or transcript from a private high school that:

a. Is certified by or recognized by the Kentucky Department of Education; or

b. Has complied with all provisions of Kentucky law relating to private or other non-public secondary schools as applicable, including days and hours of attendance and course curriculum. The applicant shall also submit a completed Applicant Education Verification form.

(b) A document purporting to be a high school or college diploma and obtained through the internet or by mail order shall not satisfy the requirement of KRS 15.382(3), 15.3971(1)(c), or 15.540(1)(b).

### Section 5. KLEC Administered Testing Procedures.

(1) An applicant shall execute all releases required for KLEC testing, including:

(a) KLEC Form I-1 - Consent for Pre-employment Polygraph Examination;

(b) KLEC Form K-1 - Drug Screening through Urinalysis Applicant Consent Form;

(c) KLEC Form T-1 - Medical Release - Phase I Testing; and

(d) KLEC Form T-2 - Liability Waiver - Phase I Testing.

(2) Testing schedule.

(a) The KLEC office shall publish online or otherwise make available to all law enforcement and telecommunications agencies in the commonwealth a list of sites and dates for KLEC administered

testing.

(b) Testing sites shall be statewide and accommodations shall be made where reasonable to ensure testing sites are accessible based upon need.

(c) Advance notice of the schedule shall be made public prior to the testing.

(d) The KLEC office shall reschedule testing if cancellation is necessary due to inclement weather or other unforeseen circumstances. Emergency testing shall be made available if possible at the Department of Criminal Justice Training as needed.

(3) Registration for KLEC administered testing. The KLEC office shall receive KLEC Form A from the employing agency at least five (5) business days prior to testing.

(a) Applicants shall provide current photographic identification when the testing is administered.

(b) The KLEC office shall receive the completed polygraph questionnaire KLEC Form I-2 when the testing is administered.

### Section 6. Test Reporting by KLEC.

(1) Results of tests provided by or through the KLEC office shall be forwarded to the employing agency head.

(2) The agency shall certify that the applicant has met all suitability requirements by submitting KLEC Form D. The information from the completed form shall be provided to DOJT for Kentucky Law Enforcement Foundation Program Fund and training authorization purposes.

(3) Length of test result validity.

(a) Physical ability for precertification status results shall be considered current and valid one (1) year from the passing date of the test.

(b) Suitability screening results shall be considered current and valid for one (1) year from the date of the screening. If the applicant experiences a significant life change during the one (1) year period, for example, a divorce or the death of a close family member or friend, the applicant shall notify the employing agency who shall schedule a new suitability screening for the applicant.

(c) Polygraph examination results shall be considered current and valid for a period of one (1) year from the date of the examination. If the applicant experiences a significant life change during the one (1) year period, for example, a divorce or the death of a close family member or friend, the applicant shall notify the employing agency who shall schedule a new polygraph examination for the applicant.

(d) Drug screening results shall be considered current and valid only for the agency that requested or performed the test and only during that employment process. An applicant who leaves and reenters the testing process for preselection screening shall submit to another drug screening.

(4) Updating test results. The employing agency shall update test results if necessary by submitting KLEC Form D to the KLEC office.

(5) Agency access to prior test results.

(a) It shall be at the applicant and individual agency's discretion to allow another employing agency access and use of the initial agency's certification testing, which is still current and valid.

(b) If agencies enter into an agreement with the written permission of the applicant, the new employing agency shall receive the medical, suitability, and polygraph results directly from the agency that initially requested testing of the applicant.

(c) Costs incurred for duplicate KLEC test results shall be the responsibility of the agency obtaining the results.

### Section 7. Test Reporting by Agency.

(1) An agency that performs physical ability testing based upon the requirements in Section 4 of this administrative regulation shall report all test results by submitting a POPS Form PT-1, Physical Agility Test Session Report, to the KLEC within ten (10) days of administering the test.

(2) An agency that performs physical ability testing based upon its own validated job task analysis in accordance with KRS 15.382(16), shall report the test results of every applicant tested in writing to the KLEC office within ten (10) days of administering the test.

(3) Physical ability test results shall be reported to the KLEC office regardless of whether the applicant:

- (a) Passes or fails the test; or
- (b) Performs or completes every component of the physical ability test.

Section 8. KLEC Administered Testing Costs.

(1) The employing agency shall reimburse KLEC within sixty (60) days of receipt of the invoice for the cost of KLEC administered testing provided at the agency's request as follows:

- (a) Sixty-five (65) dollars for each psychological screening;
- (b) \$100 for each polygraph examination; and
- (c) Sixteen (16) dollars for each drug screening.

(2) If an agency has scheduled KLEC testing for an applicant who fails to appear or complete the testing, the agency shall be responsible for fifty (50) percent of the cost of the test had it been completed.

(3) Financial hardship.

(a) Application. An employing agency may apply for a waiver of costs for KLEC testing pursuant to KRS 15.384(1) by demonstrating undue financial hardship. The agency shall submit to the KLEC office:

- 1. The actual approved budget of the governmental unit for the current and the preceding year;
- 2. The number of certification applicants for the current and preceding year;
- 3. The actual revenue receipts of the governmental unit for the current and the preceding year; and
- 4. A detailed explanation of why the governmental unit cannot meet the cost of providing the testing, including the reason that adequate funding was not budgeted to cover the cost of testing.

(b) Initial review. Within five (5) business days of receipt of the application, the KLEC office shall mail a notification to the agency that:

- 1. The application has been received and is complete; or
- 2. The application is incomplete and shall identify the specific information to be supplemented to process the application. The KLEC office shall receive the necessary information within ten (10) business days of the agency's receipt of the notice of insufficiency. If the agency fails to submit the supplementary information within the specified time period, the application shall be considered abandoned and the agency shall resubmit an application for financial hardship.

(c) Recommendation. Within thirty (30) days of their receipt of the completed application, the KLEC office shall forward the application to KLEC along with a recommendation to approve or reject the application for financial hardship and the specific reasons supporting a recommendation to reject.

(d) KLEC review.

1. The KLEC Committee on Professional Standards shall review the application and the recommendation of the KLEC office and forward their recommendation to KLEC for final review.

2. Within sixty (60) days of their receipt of the application, KLEC shall issue written notice to the agency indicating whether the application has been approved or rejected and shall provide the specific reasons supporting the rejection.

(e) Appeal.

1. An agency may appeal a decision made by KLEC to reject an agency's application for financial hardship by filing a written notice of appeal to the Secretary of the Justice and Public Safety Cabinet.

2. The notice shall be filed within thirty (30) days of receipt of the notice of rejection.

3. The notice of appeal shall be submitted in writing with a copy of the notice of rejection of financial hardship attached.

4. A copy of the notice of appeal shall be delivered to the KLEC office by certified mail.

5. The Secretary of the Justice and Public Safety Cabinet shall render an opinion within sixty (60) days of receipt of the notice of appeal.

(4) If an agency knowingly employs or appoints a person who fails to meet minimum certification standards pursuant to KRS 15.396(1) the KLEC office shall immediately notify DOCJT.

Section 9. Employment Changes.

(1) Pursuant to KRS 15.392 and 15.580 if a certified peace officer, telecommunicator, or court security officer leaves an agency, the agency shall submit KLEC Form F.

(2) If the peace officer, telecommunicator, or court security officer is reemployed by another agency the employing agency shall submit KLEC Form F within five (5) business days of the employment or appointment. Additionally, the agency shall submit KLEC Form D-1 for returning peace officers or court security officers.

(3) Information from completed KLEC Forms F shall be provided to DOCJT for Kentucky Law Enforcement Foundation Program Fund and training authorization purposes.

Section 10. Out-of-state, Military, and Federal Law Enforcement and Telecommunications Basic Training.

(1) An applicant to a Kentucky law enforcement or telecommunications agency who has graduated from a basic training course or academy in another state may be certified by the KLEC if:

(a) The basic training course or academy was equal to or exceeded the course content and number of hours required for Kentucky peace officers, telecommunicators, or court security officers when the course was completed by the applicant, as determined by the executive director of the Office of Kentucky Law Enforcement Support;

(b) The basic training course or academy is a single, stand-alone course;

(c) The peace officer, telecommunicator, or court security officer has been employed in a full-time capacity in the state of graduation for a period of at least one (1) year before applying with the Kentucky agency; and

(d) The peace officer completes the following courses presented by the Department of Criminal Justice Training within one (1) year of his or her hiring by the Kentucky law enforcement agency. For purposes of meeting the hourly requirement in paragraph (a) of this subsection, the number of hours of these courses shall be added to the number of hours taken in the out-of-state basic training course:

- 1. The twenty-four (24) hour legal update Penal Code course;
- 2. The sixteen (16) hour legal update constitutional procedure course;

3. On-line Federal Emergency Management Agency ICS 100, ICS 200, and IS 700 courses (or current equivalent). A Certificate of Completion or official transcript shall satisfy this requirement; and

4. One (1) of the following forty (40) hour courses which is most appropriate for the officer's duty assignment:

- a. Basic officer skills;
- b. Orientation for new police chiefs; or
- c. Mandatory duties of the sheriff.

(2) An applicant to a Kentucky law enforcement agency who has graduated from a basic training course or academy in another state may be certified by the KLEC if:

(a) The basic training course or academy was at least 300 hours, but less than the number of hours required for Kentucky peace officers;

(b) The peace officer has been employed in a full-time capacity as a peace officer for three (3) or more years with at least one (1) year in the state in which he or she completed his or her basic training course or academy;

(c) The basic training course or academy is a single, stand-alone course; and

(d) The peace officer completes the courses as required in subsection (1)(d) of this section with the number of hours of these courses added to the number of hours taken in the out-of-state basic training course in subsection (2)(a) of this section.

(3) An applicant to a Kentucky law enforcement or telecommunications agency who has graduated from a law enforcement or telecommunications basic training course or academy while serving in the United States military may be certified by the KLEC if:

(a)

1. The basic training course or academy corresponded with or exceeded the course content and number of hours required for Kentucky peace officers, telecommunicators, or court security

officers at the time the course was completed by the applicant, as determined by the Executive Director of the Office of Kentucky Law Enforcement Support; or

2. The basic training course or academy did not correspond with or exceed the course content and number of hours required for Kentucky peace officers, telecommunicators, or court security officers at the time the course was completed by the applicant, a basic training credit of fifty (50) hours for each year of his or her full-time peace officer service together with the basic training course hours shall be granted to allow compliance with the total hours required by KRS 15.440, 503 KAR 1:110, or another administrative regulation modifying the hours; and

(b) The basic training course or academy was a single, stand-alone course.

(4) An applicant to a Kentucky law enforcement agency who has graduated from one (1) of the following Federal law enforcement basic training courses may be certified by the KLEC:

- (a) Federal Bureau of Investigation;
- (b) Bureau of Alcohol, Tobacco, and Firearms;
- (c) Drug Enforcement Administration; or
- (d) United States Secret Service.

(5) The KLEC shall not approve a basic training course or academy that consists of two (2) or more courses added together to meet the minimum number of basic training hours for a Kentucky peace officer, telecommunicator, or court security officer.

(6) An agency may request certification for a peace officer who has completed an out-of-state law enforcement basic training by submitting for the applicant:

- (a) A certificate of completion or other official documentation showing completion of basic training;
- (b) A transcript of classes for basic training with individual class hours specified; and

(c) A letter from an employing agency signed by the chief or a direct supervisor of the applicant certifying, or other official documentation showing, that the applicant was employed in a full-time capacity as a peace officer for:

- 1. At least one (1) year; or
- 2. Three (3) or more years with at least one (1) year in the state in which he or she completed his or her basic training course or academy.

(7) An applicant to a Kentucky law enforcement or telecommunications agency seeking certification under this section shall not be certified unless he or she has worked in a full-time capacity as a peace officer within five (5) years of applying for certification in Kentucky.

#### Section 11. Records.

(1) Records retention. The KLEC office shall retain all certification records in electronic or original medium consistent with the records retention schedule established by the Kentucky Department of Library and Archives, pursuant to 725 KAR 1:030.

(2) Security. The KLEC office and employing agencies shall maintain records in a manner to ensure their security. To properly maintain the confidentiality of certification records as required by KRS 15.400(3) and 15.540(2), a law enforcement or telecommunications agency shall keep all records relating to certification in a file separate from any personnel file maintained by the hiring authority.

(3) For KLEC audit purposes, an agency that has a separate human resources or personnel department may complete and maintain in the agency file a KLEC FORM POPS P, Certification of Peace Officer Professional Standards Testing Procedures, KLEC Form Q-3 – Drug Screening Approval, KLEC Form Q-4 – Polygraph Approval, and KLEC Form Q-5 – Suitability Screener Approval, indicating that the following testing procedures have been completed:

- (a) Polygraph;
- (b) Suitability screening;
- (c) Drug screen; and
- (d) Medical examination or history statement.

(4) Agencies shall retain all documentation pertaining to certification for five (5) years following the cessation of certification of the peace officer, telecommunicator, or court security officer

regardless of where the certified peace officer, telecommunicator, or court security officer is employed in the commonwealth.

(5) An agency that knowingly discloses confidential information in violation of KRS 15.400(3) and 15.540(2) may be denied participation in KLEC polygraph examinations and psychological examinations.

#### Section 12. Applicant Conduct and Behavior.

(1) An applicant who has engaged in behavior constituting dishonesty, cheating, falsification of documents, or any other fraudulent behavior for the purpose of wrongfully receiving certification shall be removed from the testing process and, subject to an administrative hearing in accordance with KRS Chapter 13B, may be barred from further consideration for certification.

(2) Use of alcohol or other intoxicants.

(a) An applicant shall not possess, consume, or be under the influence of alcoholic beverages, controlled substances, or other intoxicating substances not therapeutically prescribed by a physician while participating in the testing process.

(b) An applicant shall advise the KLEC test administrator in writing of the use of a controlled substance or medication whether or not it has been prescribed by a physician.

(c) An applicant shall not participate in physical ability testing if:

- 1. The applicant has taken:
  - a. A controlled substance as prescribed by a physician; or
  - b. Any other medication, whether prescribed or not; and
- 2. The applicant is under the influence of the controlled substance or medication to the extent that the applicant may be impaired or is a danger to self or others.

(3) Termination of a dangerous or disruptive situation. If the conduct or condition of an applicant constitutes an immediate danger or an immediate threat of danger to self or others, or is disruptive of testing, or is an immediate threat to be disruptive of testing, a KLEC staff member may take all reasonable steps necessary to terminate the situation, including removal of the applicant from testing.

(4) The KLEC shall notify the applicant and the employing agency within five (5) days following the removal stating that the applicant has been removed or barred from testing. The notice shall state the supporting reasons and circumstances of the removal and whether the agency may reschedule testing.

#### Section 13. Compliance.

(1) Inspection. Test results, testing procedures, and all other certification documentation shall be retained by the agency and be available for inspection and audit at any time by agents authorized by KLEC.

(2) KLEC may initiate an inspection and audit of an agency's certification documentation randomly to assure routine compliance or to investigate a specific complaint.

(3) KLEC shall have access to the services of the DOCJT Compliance and Audit Section, as coordinated through the DOCJT Commissioner, to audit specific applicants and agencies to ensure compliance with certification requirements.

(4) If during the course of an audit conducted by the DOCJT Compliance and Audit Section a violation of certification is detected, the DOCJT Compliance and Audit Section shall report the possible violation to KLEC.

(5) Denial of participation in Kentucky Law Enforcement Foundation Program Fund (KLEFPF). If KLEC determines that an agency has knowingly employed or appointed a person who fails to meet minimum certification standards, KLEC shall immediately notify the administrator of KLEFPF.

Section 14. Issuance of Certification. All identification cards issued to a peace officer, telecommunicator, or court security officer verifying certification remain the property of KLEC and shall be returned to the KLEC office upon loss of certification.

#### Section 15. Incorporation by Reference.

(1) The following material is incorporated by reference:

- (a) "Standards for Educational and Psychological Testing", American Educational Research Association, American

Psychological Association, National Council on Measurement in Education, Joint Committee on Standards for Educational and Psychological Testing, 2014;

- (b) "KLEC Form A - Testing Registration - Attesting to Minimum Standards", 2023[2021];
  - (c) "KLEC Form C - Grandfather Information", 2021;
  - (d) "KLEC Form D - All Standards Met", 2023[2022];
  - (e) "KLEC Form D-1 – All Standards Met – Inactive to Active Status", October 2022;
  - (f) "KLEC Form E - Request for Certification for Exempt Officers", March 1, 1999;
  - (g) "KLEC Form F - Status Update", 2021;
  - (h) "KLEC Form G-1 - Medical Examination Report", 2021;
  - (i) "KLEC Form G-2 - Medical History Statement", 2021;
  - (j) "KLEC Form G-3 - Medical Screening Guidelines Implementation Manual", 2021;
  - (k) "KLEC Form H-1 - Background Investigation", 2021;
  - (l) "KLEC Form I-1 - Consent for Pre-employment Polygraph Examination", 2021;
  - (m) "KLEC Form I-2 - Pre-employment Polygraph Questionnaire", 2021;
  - (n) "KLEC Form J - JTA Submission", January 19, 1999;
  - (o) "KLEC Form K-1 - Drug Screening Through Urinalysis Applicant Consent Form", 2021;
  - (p) "KLEC Form K-2 - Drug Screening Through Urinalysis Chain of Custody Form", 2021;
  - (q) "KLEC Form L-1 - Code of Ethics", 2021;
  - (r) "KLEC Form L-2 - Canon of Ethics", 2021;
  - (s) "KLEC Form Q - Agency Submission Form", 2021;
  - (t) "KLEC Form Q-3 - Drug Screening Approval", 2021;
  - (u) "KLEC Form Q-4 - Polygraph Approval", 2021;
  - (v) "KLEC Form Q-5 – Suitability Screener Approval", 2021;
  - (w) "KLEC Form tele-Q - Agency Submission Form", 2021;
  - (x) "KLEC Form T-1 - Medical Release - Phase I Testing", 2021;
  - (y) "KLEC Form T-1a - Physician's Medical Release Form", 2021;
  - (z) "KLEC Form T-2 - Liability Waiver - Phase I Testing", 2021;
  - (aa) "POPS Form PT-1 - Physical Agility Test Session Report", 2021;
  - (bb) "POPS Form P - Certification of Peace Officer Professional Standards Testing Procedures", July 2004;
  - (cc) "KLEC Physical Fitness Testing Protocols", 2021; and
  - (dd) "KLEC Education Form - Applicant Education Verification", 2021.
- (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Kentucky Law Enforcement Council, 4449 Kit Carson Drive, Richmond, Kentucky 40475-3102, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available on the council's Web site at <https://klecs.ky.gov/>.

JOHN MOBERLY, Executive Director

APPROVED BY AGENCY: June 26, 2023

FILED WITH LRC: June 27, 2023 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 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 September 30, 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: Jonathan Gifford, Staff Attorney III, Justice and Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-3279, fax (502) 564-6686, email [Justice.RegContact@ky.gov](mailto:Justice.RegContact@ky.gov).

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jonathan Gifford

- (1) Provide a brief summary of:
  - (a) What this administrative regulation does: This regulation establishes approval requirements to show compliance with professional standards to meet certification requirements for law enforcement officers and telecommunications employed by law enforcement agencies, and court security officers.
  - (b) The necessity of this administrative regulation: KRS 15.330 requires the Kentucky Law Enforcement Council (KLEC) to set minimum standards for training for certification and approving law enforcement officers and telecommunications who have met the requirements for certification. This regulation establishes the minimum standards and approval process.
  - (c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 15.330 authorizes the council to promulgate administrative regulations to accomplish the purposes of KRS 15.310 to 15.404. KRS 15.330(1)(h) and KRS 15.590 authorize the council to promulgate administrative regulations to accomplish the purposes of KRS 15.310 to 15.404 and concerning training, in-service training, and telecommunications practices.
  - (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The administrative regulation gives staff and applicants for certification guidance on the requirements to be approved by the council.
  - (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 revises two forms incorporated by reference to comply with a new section of KRS Chapter 15, which requires the Kentucky Law Enforcement Council to admit applicants to its basic training program who are at least twenty years old, and will be twenty-one years old before they are certified as peace officers.
    - (b) The necessity of the amendment to this administrative regulation: The amendment is necessary due to Section 1 of House Bill (HB) 380 enacted during the 2023 Regular Session that creates a new section of KRS Chapter 15.
    - (c) How the amendment conforms to the content of the authorizing statutes: KRS 15.330 authorizes the KLEC to approve law enforcement officers, telecommunications, and court security officers as having met requirements under KRS 15.310 to 15.510 and 15.530 to 15.590. KRS 15.330(1)(h) authorizes the KLEC to promulgate reasonable rules and administrative regulations to accomplish the purposes of KRS 15.310 to 15.404. KRS 15.440 allows the council to promulgate administrative regulations for approval of basic training credit for out of state basic training and work experience. The amendment addresses the newly created KRS 15.408 that changes the minimum age required to attend basic training for law enforcement officers. The council has authority over the forms used in the certification process.
    - (d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the process for individuals becoming certified peace officers.
  - (3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: KLEC, the approximately 400 law enforcement agencies in the Commonwealth, the approximately 10,000 law enforcement and court security personnel who are required to be certified in the Commonwealth, and any individuals seeking certification as law enforcement or court security personnel.
  - (4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
    - (a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The revised forms will need to be used for peace officer and court security officer certification applications.
    - (b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Additional costs are not anticipated from the form changes.
    - (c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The applications will comply with the

new statutory minimum age requirement for basic training for peace officer and court security officer certification.

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

(a) Initially: Additional costs are not anticipated.

(b) On a continuing basis: Additional costs are not anticipated.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This amendment is not anticipated to increase implementation or enforcement costs for the council or for any regulated entity. Generally, the council is funded through appropriations from the Kentucky Law Enforcement Foundation Program Fund (KLEFPF).

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: 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 existing regulation established fees for testing. The amendment does not establish or increase any fees.

(9) TIERING: Is tiering applied? No. Tiering was not applied 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 Kentucky Law Enforcement Council and various law enforcement and telecommunications agencies whose employees must be certified.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 15.330, 15.380, 15.408, 15.440, 15.590.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This amendment does not provide revenue to any government entity, aside from the nominal testing fees already charged under the existing administrative regulation.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This amendment does not provide revenue to any government entity, aside from the nominal testing fees already charged under the existing administrative regulation.

(c) How much will it cost to administer this program for the first year? The amendment is not anticipated to increase costs.

(d) How much will it cost to administer this program for subsequent years? The amendment is not anticipated 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 from the form changes to comply with the statute revisions.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? Cost savings are not anticipated from the form changes to comply with the statute revisions.

(c) How much will it cost the regulated entities for the first year? Additional costs are not anticipated from the form changes to comply

with the statute revisions.

(d) How much will it cost the regulated entities for subsequent years? Additional costs are not anticipated from the form changes to comply with the statute revisions.

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 form changes are made to comply with statute revisions and a major economic impact is not anticipated.

#### PUBLIC PROTECTION CABINET Department of Insurance Health Life and Managed Care (Amendment)

#### 806 KAR 17:290. Independent External Review Program.

RELATES TO: KRS 304.1-050, 304.2-100, 304.2-230, 304.2-310, 304.17A-005, 304.17A-505, 304.17A-600, 304.17A-617, 304.17A-621-304.17A-631, 304.17A-1631, 304.17A-168, 304.17A-535, 304.17A-607

STATUTORY AUTHORITY: KRS 304.2-110(1), 304.17A-629, 304.17A-163

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110(1) authorizes the commissioner to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code as defined in KRS 304.1-010. KRS 304.17A-629 requires the department to promulgate administrative regulations regarding the Independent External Review Program, and KRS 304.17A-1631 requires the commissioner to promulgate administrative regulations regarding step therapy protocols and exceptions. This administrative regulation establishes the insurer requirements, procedures for the certification of independent review entities, and the process for initiating and conducting external review of utilization review decisions and ~~[step therapy exception request or]~~ exception internal appeal denials. This administrative regulation also establishes the disclosure requirements of the external review process to be included in the health benefit plan issued at enrollment of a covered person.

#### Section 1. Definitions.

(1) "Adverse determination" is defined by KRS 304.17A-600(1).

(2) "Assign" or "assignment" means selection of an independent review entity by an insurer, and acceptance of a request to conduct an external review by an independent review entity.

(3) "Authorized person" is defined by KRS 304.17A-600(2).

(4) "Commissioner" is defined by KRS 304.1-050(1).

(5) "Coverage denial" is defined by KRS 304.17A-617(1).

(6) "Covered person" ~~[is defined by]~~ means:

(a) A covered person as defined by KRS 304.17A-600(4); and  
(b) As used in:

1. Sections 2 and 3 of this administrative regulation, insureds subject to a step therapy protocol established by an insurer, health plan, pharmacy benefit manager, or private review agent subject to KRS 304.17A-163; and

2. Section 5(2)(b) of this administrative regulation, insureds seeking an external review under KRS 304.17A-163;

(7) "Department" is defined by KRS 304.1-050(2).

(8) "External review" is defined by KRS 304.17A-600(5).

(9) "Financial hardship" means the:

(a) Gross income of the covered person is below 200 percent of the federal poverty level based upon family size as shown by a

federal income tax return for the previous year; or

(b) Covered person's participation in one (1) of the following programs:

1. National Prescription Drug Patient Assistance;
2. Kentucky Transitional Assistance Program (K-TAP);
3. Kentucky Medical Assistance Program; or
4. Unemployment Insurance.

(10) "Health care provider" or "provider" is defined by KRS 304.17A-005(23).

(11) "Independent review entity" is defined by KRS 304.17A-600(7).

(12) "Insurer" means:

(a) An insurer as[is] defined by KRS 304.17A-600(8); and

(b) Insurers, health plans, pharmacy benefit managers, and private review agents subject to KRS 304.17A-163.

(13) "Reviewer" means an individual selected by the independent review entity to conduct an external review and make a recommended decision to the independent review entity.

(14) "Step therapy exception" is defined by KRS 304.17A-163(1)(f).

(15) "Step therapy protocol" is defined by KRS 304.17A-163(1)(g).

## Section 2. Requirements of an Insurer.

(1) An insurer shall:

(a) Disclose to a covered person in a clear, concise, written format the following information concerning an external review, as applicable:

1. At enrollment, the right to an external review in accordance with KRS 304.17A-505(1)(g) or 304.17A-163;

2. The availability of an external review, including expedited external review, in the insurer's notice of an adverse determination in accordance with KRS 304.17A-623(1) or step therapy exception denial in accordance with KRS 304.17A-163;

3. Instructions for initiating an external review in the internal appeal decision letter upholding an adverse determination or denial of a step therapy exception request, including:

- a. Whether the appeal shall be in writing;
- b. How to request and complete any necessary forms, including a medical records release form or written authorization of representation;
- c. Applicable time frames;
- d. The position and telephone number of a contact person who can provide additional information about an external review; and
- e. Additional documentation that may be necessary to initiate the external review; and

4. The right of a covered person to request an external review within sixty (60) days of receiving notice that, pursuant to KRS 304.17A-617(3)(d), the insurer has elected to afford an opportunity for external review;

(b) Allow a covered person, authorized person, or provider acting on behalf of and with the consent of a covered person, to submit an oral request, followed by a brief written request, for an expedited external review;

(c) Provide the following information relating to an external review in the policy or certificate of coverage issued to a covered person and upon request:

1. The circumstances under which the following types of external review shall be provided:

- a. Nonexpedited external review in accordance with KRS 304.17A-623(3), (4) and (6), and (13); and
- b. Expedited external review in accordance with KRS 304.17A-623(10), (11) and (12);

2. The filing fee for requesting an external review in accordance with KRS 304.17A-623(5);

3. Notice that the cost of an external review by an independent review entity shall be paid by the insurer in accordance with KRS 304.17A-625(5);

4. The procedure for submitting:

- a. An oral request followed up by a brief written request, or a written request for an expedited external review;
- b. A written request for a nonexpedited external review; and
- c. Any specific forms required by the insurer to initiate an

external review, including a written authorization of personal representation or a consent to release medical records form;

5. The time frame for:

a. Submitting a request for external review in accordance with KRS 304.17A-623(4);

b. Rendering a decision by an independent review entity in accordance with KRS 304.17A-623(12) and (13); and

c. Implementation of a decision of the independent review entity in accordance with KRS 304.17A-625(11) through (13);

6. A statement relating to the confidential treatment of medical records and information relating to the external review; and

7. A statement of the availability of a complaint process through the department relating to:

a. A covered person's right to an external review in accordance with KRS 304.17A-623(8); and

b. The action of an independent review entity in accordance with KRS 304.17A-625(16);

(d) If an external review is requested by an authorized person or provider acting on behalf of a covered person, obtain the:

1. Written authorization of representation; and
2. Consent to release medical records to the independent review entity;

(e) Determine if an external review is warranted in accordance with KRS 304.17A-623(3) and (10), and notify the person who requested the external review of its determination within the following time periods:

1. For expedited reviews, within twenty-four (24) hours of receipt of the request, pursuant to KRS 304.17A-623(11); or

2. For nonexpedited reviews, within five (5) business days of receipt of the request;

(f) Upon a determination that an expedited external review is warranted:

1. By telephone, request acceptance of assignment of the external review by an independent review entity, which was selected pursuant to KRS 304.17A-623(7) from a list of certified independent review entities maintained by the department at <http://insurance.ky.gov>; and

2. Notify the independent review entity by telephone that the following documents shall be forwarded to the independent review entity in accordance with KRS 304.17A-623(11):

a. The written consent of the covered person authorizing release of medical records as required by KRS 304.17A-623(4);

b. Information to be considered as required by KRS 304.17A-625(1)(a); and

c. A completed External Review Information Face Sheet, HIPMC-IRE-6;

(g) Upon a determination that a nonexpedited external review is warranted:

1. By telephone, request acceptance of assignment of the external review by an independent review entity which was selected pursuant to KRS 304.17A-623(7) from the list of certified independent review entities as identified in paragraph (f)1 of this subsection; and

2. Within three (3) business days of assignment, deliver to the independent review entity the documentation as identified in paragraph (f)2 of this subsection;

(h) Upon assignment of an external review, complete and send to the department an Assignment of Independent Review Entity Form, HIPMC-IRE-2, within one (1) business day via email to [DOI.UtilizationReview@ky.gov](mailto:DOI.UtilizationReview@ky.gov);

(i) Upon receipt of a decision relating to external review from an independent review entity, implement the decision in accordance with KRS 304.17A-625(11) through (13) and provide the department with a reprocessed explanation of benefits or other payment documentation showing the implementation of the overturned decision;

(j) Upon receipt of an invoice relating to an external review, pay the independent review entity within thirty (30) days;

(k) Maintain a written record of each external review for a period of not less than five (5) years pursuant to 806 KAR 2:070, Section 1; and

(l) Upon written notice of termination of an independent review entity pursuant to Section 3(21)(a) or (c) of this administrative

regulation, reassign an external review in accordance with paragraphs (f) and (g) of this subsection.

(2)(a) If a request for external review is denied by an insurer, written notification shall be provided by the insurer to the person requesting the external review, which shall include:

1. The date the request for external review was received by the insurer;
  2. A statement relating to the nature of the request;
  3. The rationale of the insurer for denying the request;
  4. A statement relating to the availability of review by the department if a dispute arises regarding the right to external review;
  5. The toll-free telephone number of the department; and
  6. The name and telephone number of a contact person who shall provide information relating to the denial of the request.
- (b) If requested by the department, the insurer shall provide:
1. A copy of the written notification described in paragraph (a) of this subsection; and
  2. Information or documentation that the insurer relied upon to deny the request for external review.

Section 3. Requirements of an Independent Review Entity. An independent review entity shall:

- (1) Accept a request for assignment unless:
  - (a) A conflict of interest exists;
  - (b) Confidentiality issues exist; or
  - (c) Due to circumstances beyond the control of the independent review entity, an appropriate reviewer becomes unavailable;
- (2) Upon receipt of a request for assignment from an insurer determine if a condition of subsection (1)(a) through (c) of this section exists;
- (3) Within twenty-four (24) hours of receipt of a request for assignment:
  - (a) Immediately provide verbal notification, followed by written notification to the insurer and department of the rejection of an assignment if a condition of subsection (1)(a) through (c) of this section exists; or
  - (b) Provide written notification to an insurer and the department via DOI.UtilizationReview@ky.gov of the acceptance of an assignment; and
  - (4) Maintain a written record of:
    - (a) Whether the external review relates to an adverse determination or coverage denial, which requires resolution of a medical issue, [a step therapy exception denial,] or a step therapy exception internal appeal denial [which requires resolution of a medical issue];
    - (b) The specific question or issue, as identified by the independent review entity, to be resolved by the external review; and
    - (c) Whether the external review is expedited or nonexpedited;
  - (5) For each external review, obtain and maintain a signed statement of a reviewer that the reviewer has no conflict of interest;
  - (6) Not limit the basis of an external review decision to the standards, criteria, and clinical rationale used by the insurer to make its decision pursuant to KRS 304.17A-625(1), (2), and (7);
  - (7) Have a reviewer with expertise in:
    - (a) Health insurance benefits and contracts, who shall serve as a reviewer with a healthcare professional reviewer, in an external review of a coverage denial which requires the resolution of a medical issue, [step therapy exception request denial,] or step therapy exception internal appeal denial [which requires the resolution of a medical issue] in accordance with KRS 304.17A-617(3)(d); and
    - (b) Health care, who shall:
      1. Conduct an external review of a [step therapy exception request denial,] step therapy exception internal appeal denial, or an adverse determination or a coverage denial which requires resolution of a medical issue in accordance with the requirements of KRS 304.17A-623; and
      2. Meet the following requirements:
        - a. Hold active licensure in a state of the United States;
        - b. Have recent experience or familiarity with current body of knowledge and applicable specialty or subspecialty practice;
        - c. Have at least five (5) years of experience in the specialty or subspecialty of the external review; and

- d. Hold current board certification by:
  - (i) The American Board of Medical Specialties if the reviewer is a medical doctor;
  - (ii) The American Osteopathic Association if the reviewer is a doctor of osteopathic medicine;
  - (iii) The American Board of Podiatric Surgery if the reviewer is a doctor of podiatric medicine; or
  - (iv) Other recognized health professional board pursuant to KRS 304.17A-627;
- (8) Establish criteria in accordance with KRS 304.17A-627 for:
  - (a) Selection of a qualified reviewer, including the initial verification and reverification every three (3) years of credentials of the reviewer;
  - (b) Ensuring that an appropriate:
    1. Reviewer performs the external review; and
    2. Number of reviewers are used for the external review; and
  - (c) Ensuring that at least one (1) reviewer qualified in each medical specialty and subspecialty is available for external review;
  - (d) Provide a listing of the reviewers to the department including each reviewer's name, date of licensure, license number and specialty, including any subspecialty in accordance with KRS 304.17A-627(5) and (6);
  - (9) Have a medical director or clinical director with professional postresidency experience in direct patient care who shall:
    - (a) Hold a current license to practice medicine in a state of the United States;
    - (b) Provide guidance for the medical aspects of the external review process; and
    - (c) Oversee the medical aspects of the:
      1. Quality management program; and
      2. Reviewer credentialing program;
  - (10) Establish and implement criteria for determination of the need for a time extension pursuant to KRS 304.17A-623(12) and (13);
  - (11) Provide written notification of a decision as required by KRS 304.17A-625(6), which shall include the:
    - (a) Title, professional license number, state of licensure and specialty or subspecialty certifications, if any, of the reviewer;
    - (b) Date the decision was rendered; and
    - (c) A statement that:
      1. The decision shall be final and binding on the insurer; and
      2. If dissatisfied with the decision, a comment, question, or complaint may be submitted in writing to the department;
  - (12) Within two (2) business days of rendering a decision, provide written notification of the decision to the:
    - (a) Covered person or authorized person, treating provider, and insurer; and
    - (b) Department via email at DOI.UtilizationReview@ky.gov by:
      1. Copying the department on the written notification to the covered person; and
      2. Completing an External Review Decision Notification Form, HIPMC-IRE-3;
  - (13) Establish written policies and procedures for maintenance and the confidential treatment of external review records in accordance with KRS 304.17A-623(9), 806 KAR 3:210, and 806 KAR 3:230;
  - (14) Maintain a written record of an external review for a minimum of five (5) years in accordance with 806 KAR 2:070, which shall include, as applicable:
    - (a) All documentation relating to the external review pursuant to KRS 304.17A 625(1)(a);
    - (b) The independent review entity's decision regarding each issue identified in the external review request;
    - (c) The name, credentials, and specialty or subspecialty of the reviewer;
    - (d) Medical records and information considered during the review;
    - (e) References to any medical literature, research data, or national clinical criteria upon which the independent review entity's decision was based;
    - (f) A copy of the covered person's health benefit plan;
    - (g) A copy of the adverse determination or coverage denial which requires resolution of a medical issue, [the step therapy

~~exception request denial;~~ or the step therapy exception internal appeal denial [~~which requires resolution of a medical issue~~], and the internal appeal decision; and

(h) A copy of all correspondence and communication between the independent review entity, reviewer, and any other person regarding the external review, including a copy of the final external review decision letter;

(15) Provide toll-free telephone access that:

(a) Operates at a minimum from 9 a.m. until 5 p.m. of each business day in each time zone if the services under review are in dispute; and

(b) Allows for:

1. Receiving after-hours requests for external review; and  
2. Acting upon expedited external review requests in accordance with KRS 304.17A-623(12);

(16) If an external review function, or any portion of this function, is delegated or subcontracted to another person or organization, submit to the department:

(a) Policies and procedures relating to oversight activities to ensure compliance with requirements of an independent review entity as established in KRS 304.17A-623 and 304.17A-625, and this section; and

(b) A copy of the delegation or subcontract agreement;

(17) Establish and maintain a written quality assurance program in accordance KRS 304.17A-627, which shall be made available to the public upon request and shall include a written plan, which addresses:

(a) Scope and objectives;

(b) Program organization;

(c) Monitoring and oversight mechanisms; and

(d) Evaluation and organizational improvement of external review activities, including:

1. Objectives and approaches used in the monitoring and evaluation of external review activities, including the systematic evaluation of complaints for patterns and trends;

2. The implementation of an action plan to improve or correct an identified problem; and

3. The procedures to communicate the results of an action plan to its employees and reviewers, as applicable;

(18) Submit a copy of any change to information provided on the Application for Certification of an Independent Review Entity, HIPMC-IRE-1, in writing to the department for approval. A change shall not become effective until approved by the commissioner;

(19) Submit a new application for certification if requested by the department following notification of a material change in the application information as required by KRS 304.17A-627(2);

(20) Establish a fee structure, to be available upon request, for each type or level of external review, including at a minimum, a fee for:

(a) A completed external review of:

1. A coverage denial, which requires resolution of a medical issue, [~~step therapy exception request denial;~~] or step therapy exception internal appeal denial [~~which requires resolution of a medical issue~~]; and

2. An adverse determination; and

(b) An incomplete external review;

(21) Immediately terminate an external review and provide notice by telephone, followed by a written notification to the department and, if appropriate, the insurer requesting the external review if:

(a) A conflict of interest or confidentiality issue is discovered at any time during the external review process;

(b) A reversal of a coverage denial, [~~step therapy exception request denial;~~] step therapy exception internal appeal denial, or adverse determination is received in writing from the insurer; or

(c) The independent review entity or a reviewer becomes unavailable for reasons beyond the control of the independent review entity, including acts of God, natural disasters, epidemics, strikes or other labor disruptions, war, civil disturbances, riots, or complete or partial disruptions of facilities;

(22) If more than one (1) reviewer is utilized in making a decision:

(a) Render an overall decision based upon the majority decision

of the reviewers; or

(b) If the reviewers are evenly split as to whether the recommended or requested health care service or treatment shall be covered, request an additional reviewer to make a binding majority decision;

(23) Implement a written policy and procedure for each aspect of an external review process, including:

(a) Processing of the request for assignment of an external review from an insurer;

(b) Receipt and maintenance of medical records and information from insurer;

(c) Ensuring access to appropriate qualified reviewers pursuant to subsection (8) of this section;

(d) Ensuring the credentialing, selection, and notification of a reviewer who performs an external review;

(e) Rendering a timely decision and issuing notification of the decision;

(f) Ongoing monitoring and evaluation of the performance of a reviewer;

(g) Monitoring and oversight of a delegated external review function, if any;

(h) Billing and collection of fees for external review, including:

1. Filing fee of the covered person; and

2. Cost of external review for the insurer;

(i) Collecting and reporting data;

(j) Termination of external review; and

(k) Response to a request for information relating to a complaint filed with the department; and

(24)

(a) Conduct annually, a program for training reviewers, which:

1. Provides information relating to the requirements of the Kentucky Independent External Review Program; and

2. Describes the policies and procedures of the independent review entity, as applicable; and

(b) Provide a written record of the training to the department, upon request.

#### Section 4. Application Process for Certification to Perform External Reviews.

(1) To perform an external review, an independent review entity shall be certified in accordance with requirements established in KRS 304.17A-627, and this administrative regulation.

(2) To be certified to perform an external review, an independent review entity shall:

(a) Complete and submit to the department, an Application for Certification of an Independent Review Entity, HIPMC-IRE-1;

(b) Submit a fee with the application for certification as required by Section 5 of this administrative regulation; and

(c) Enclose with the application for certification, written documentation which supports compliance with the requirements of an independent review entity established in KRS 304.17A-627 and Section 3 of this administrative regulation.

(3) In renewing a certification, an independent review entity shall submit an application for certification to the department at least ninety (90) days prior to expiration of the current certification.

#### Section 5. Fees.

(1) Department fees.

(a) An application for certification as an independent review entity shall be submitted with \$500.

(b) Pursuant to KRS 304.17A-627(2), a change in application information after certification shall be submitted with fifty (50) dollars.

(c) Fees submitted to the department shall be made payable to the Kentucky State Treasurer.

(2) Independent review entity fees.

(a) 1. Except for a fee which meets the criteria established in HIPMC-IRE-5, Approval of an External Review Fee in Excess of \$800, the total fee charged for an external review shall not exceed \$800; and

2. The fee proposed by the independent review entity in excess of \$800 shall be submitted to the department for approval prior to billing the insurer with the justification defined in HIPMC-IRE-5, Approval of an External Review Fee in Excess of \$800.



(b) The twenty-five (25) dollar filing fee to be paid by the covered person shall:

1. Be billed by the independent review entity upon assignment; or
2. Be waived if it creates a financial hardship pursuant to KRS 304.17A-623(5).

Section 6. Department Review of Application for Certification or Change in Information Provided on the Application.

(1) Upon review of an application for certification or a change in information provided on the application, the department shall:

- (a) Notify the applicant of any missing or necessary information;
- (b) Identify and request submission of the information identified in paragraph (a) of this subsection within thirty (30) days;
- (c) If requested information is not provided to the department within the time frame established in paragraph (b) of this subsection:
  1. Disapprove the application for certification or the change of information provided on the application; and
  2. Not refund the applicable fee submitted in accordance with Section 5(1) of this administrative regulation; and
- (d) Approve or deny certification or a change to information provided on the application of an independent review entity within ninety (90) days of submission.

(2) An independent review entity certification shall expire on the second anniversary of the certification date unless the certification is renewed by the independent review entity, which submits a new application for certification in accordance with Section 4(2) of this administrative regulation.

Section 7. Denial, Decertification, or Suspension Hearing Procedure. Upon the denial of certification, decertification, or suspension of a certification, the department shall:

- (1) Give written notice of its action; and
- (2) Advise the applicant or certificate holder that a request for a hearing may be filed in accordance with KRS 304.2-310.

Section 8. Independent Review Entity Complaint Process.

(1) A copy of the complaint filed pursuant to KRS 304.17A-625(16) and a letter from the department requesting a written response to the complaint shall be sent to the independent review entity.

(2) Within ten (10) business days of receipt of the letter from the department, the independent review entity shall submit a written response to the department, including the following:

- (a) Information relating to the complaint;
  - (b) If applicable, corrective actions to address the complaint, including time frames for actions; and
  - (c) A mechanism to evaluate the corrective action, if applicable.
- (3) Upon receipt of the written response of the independent review entity, the department shall:

- (a) If applicable, take action pursuant to KRS 304.17A-625(16); and
- (b) Notify the complainant of the department's findings and action taken, if any.

Section 9. Department Investigations. The commissioner may conduct an investigation of an independent review entity pursuant to KRS 304.2-100 and 304.2-230.

Section 10. Reporting Requirements. An independent review entity shall complete and submit to the department by March 31 of each year for the previous calendar year, the Annual Independent Review Entity Report Form, HIPMC-IRE-4.

Section 11. Cessation of Participation. Upon a decision to terminate participation in the independent external review program as established in KRS 304.17A-621, an independent review entity shall:

- (1) Immediately notify the department in writing of its decision to cease accepting new assignments; and
- (2) Except for reasons beyond its control, submit the following to the department for approval at least thirty (30) days prior to termination:

- (a) Written notification of the termination, including:
  1. Date of termination; and
  2. Number of pending external reviews with corresponding assignment dates; and
- (b) A written action plan for terminating participation.

Section 12. Incorporated by Reference.

(1) The following material is incorporated by reference:

- (a) Form HIPMC-IRE-1, "Application for Certification of an Independent Review Entity", 01/2023 edition;
- (b) Form HIPMC-IRE-2, "Assignment of Independent Review Entity Form", 10/2022 edition;
- (c) Form HIPMC-IRE-3, "External Review Decision Notification Form", 09/2020 edition;
- (d) Form HIPMC-IRE-4, "Annual Independent Review Entity Report Form", 10/2022 edition;
- (e) Form HIPMC-IRE-5, "Approval of an External Review Fee in Excess of \$800", 09/2020 edition; and
- (f) Form HIPMC-IRE-6, "External Review Information Face Sheet", 10/2022 edition.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Insurance, The Mayo-Underwood Building, 500 Mero Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available on the department's Web site at <https://insurance.ky.gov/ppc/CHAPTER.aspx>.

SHARON P. CLARK, Commissioner

RAY PERRY, Secretary

APPROVED BY AGENCY: July 13, 2023

FILED WITH LRC: July 13, 2023 at 3:00 p.m.

PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 9:00 a.m. on September 21, 2023, at 500 Mero Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. on September 30, 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 below.

CONTACT PERSON: Abigail Gall, Executive Advisor, 500 Mero Street, Frankfort, Kentucky 40601, phone +1 (502) 564-6026, fax +1 (502) 564-1453, email [abigail.gall@ky.gov](mailto:abigail.gall@ky.gov).

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Abigail Gall

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the insurer requirements and procedures for the certification of independent review entities, and the process for initiating and conducting external review of utilization review decisions and step therapy exception internal appeal denials. This administrative regulation also establishes the disclosure requirements of the external review process to be included in the health benefit plan issued at the enrollment of a covered person.

(b) The necessity of this administrative regulation: The necessity of this administrative regulation is to set forth the processes and procedures required for the certification of independent review entities, as well as the process for initiating and conducting external review of utilization review decisions and step therapy exception internal appeal denials.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 304.17A-629 requires the commissioner to promulgate administrative regulations regarding the independent external review program and to provide forms for external review. KRS

304.17A-1631 requires the commissioner to promulgate administrative regulations regarding step therapy protocols and exceptions.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will comply by setting forth the requirements for independent review entity certification, how to initiate and conduct external reviews based on utilization review decisions, as well as step therapy exception internal appeal denials required by KRS 304.17A-629, KRS 304.17A-163, and KRS 304.17A-1631(1).

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

(a) How the amendment will change this existing administrative regulation: The amendments subject step therapy internal appeal denials to the external review processes of an independent review entity as required by KRS 304.17A-163 (SB 140 2022 Reg. Session).

(b) The necessity of the amendment to this administrative regulation: The amendments to this regulation are necessary to ensure proper enforcement of KRS 304.17A-163 and KRS 304.17A-1631 (SB 140 2022 Reg. Session).

(c) How the amendment conforms to the content of the authorizing statutes: KRS 304.17A-623 requires every insurer to have an external review process and KRS 304.17A-163 requires an insurer, health plan, private review agent, or pharmacy benefit manager to allow insureds the right to an external review based on step therapy internal appeal denials issued.

(d) How the amendment will assist in the effective administration of the statutes: These amendments ensure that those independent review agencies/private review entities can appropriately address step therapy internal appeal denials, that the external review process includes both adverse coverage determinations and step therapy internal appeal denials, and that step therapy exception external reviews are reported on an annual basis.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Department currently has 10 companies that hold certifications to perform Independent External Review cases in Kentucky. 1 company is currently enrolled in the application process.

(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: Independent External Review Entities regulated under this regulation will need to utilize incorporated forms to adhere to the processes set forth in these administrative regulations and the related statutes.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The cost should be minimal considering regulated entities have previously been required to report and should have the appropriate processes in place to comply.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Regulated entities which are in compliance with Acts Chapter 19 (2022 Reg. Session) will not incur penalties for non-compliance with the statutes.

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

(a) Initially: There is no cost associated with this administrative regulation.

(b) On a continuing basis: There is no cost 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 Department's operational budget.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: At this time, the Department does not foresee an increase in fees, but in the future, it may need to request an expansion of funding.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No, this regulation

does not establish any fees directly or indirectly.

(9) TIERING: Is tiering applied? Tiering is not applied because this regulation applies equally to all independent external review entities certified in this state.

## FISCAL NOTE

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 304.2-110(1), 304.17A-629, 304.17A-163, and 304.17A-1631.

(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? Nothing.

(d) How much will it cost to administer this program for subsequent years? None.

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

Revenues (+/-): None expected

Expenditures (+/-): None expected

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? No cost savings are associated with this regulation or amendments for regulated entities.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? No cost savings are associated with this regulation or amendments for regulated entities.

(c) How much will it cost the regulated entities for the first year? There is no cost expected.

(d) How much will it cost the regulated entities for subsequent years? There is no cost expected.

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation: There is no cost associated with this administrative regulation and therefore no fiscal impact for regulated entities. The Department has reached out to the certified IREs in the state to see if they could perform the Step Therapy Exception external reviews and they indicated that they could (and that they currently provide these services for other states).

(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)] At this time, the Department is not aware of a major economic impact.

**PUBLIC PROTECTION CABINET  
Kentucky Horse Racing Commissions  
(Amendment)**

**810 KAR 2:020. Thoroughbred and flat racing officials.**

RELATES TO: KRS 230.215, 230.240, 230.260

STATUTORY AUTHORITY: KRS 230.215(2), 230.260(8)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) and 230.260(8) authorize the Kentucky Horse Racing Commission (the "commission") to promulgate administrative regulations prescribing conditions under which all horse racing is conducted in Kentucky. This administrative regulation establishes the qualifications, duties, powers, and responsibilities of racing officials.

**Section 1. Racing Officials.**

(1) Racing officials at a thoroughbred or other flat race meeting shall include:

- (a) Steward;
- (b) Racing secretary;
- (c) Assistant racing secretary;
- (d) Clerk of scales;
- (e) Paddock judge;
- (f) Starter;
- (g) Placing judge;
- (h) Timer;
- (i) Identifier;
- (j) Veterinarian;
- (k) Assistant starter;
- (l) Jockey room custodian;
- (m) Jockey room employee;
- (n) Valet; and
- (o) Outrider.

(2) Persons appointed by the association to serve as racing officials during a race meeting shall:

- (a) First be approved by the commission;
  - (b) Serve only so long as approved by the commission; and
  - (c) Be under the supervision of the stewards.
- (3) While serving as a racing official, a person shall not:
- (a) Indirectly or directly, own a beneficial interest in:
    1. A horse of the breed in which the person is engaged as a racing official; or
    2. An association under his or her supervision;
  - (b) Cause to be bought or sold, for himself or another, a horse under his or her supervision;
  - (c) Buy or sell, for himself or another, a right to, or contract with, a jockey or apprentice jockey under his or her supervision;
  - (d) Wager on a race under his or her supervision;
  - (e) Write or solicit horse insurance; or
  - (f) Have a monetary interest in a business which seeks the patronage of horsemen or racing associations.

(4) A racing official serving in the capacity of steward, placing judge, clerk of scales, starter, or horse identifier shall take and satisfactorily pass an optical examination within one (1) year prior to the race meeting at which he or she serves. The examination shall show corrected twenty-twenty (20-20) vision and an ability to distinguish colors correctly.

(5) A racing official who desires to leave his or her employment during the race meeting shall notify the stewards; if a vacancy occurs among racing officials other than stewards, the association shall promptly appoint a successor, subject to approval of the commission. If the association does not appoint a successor in time to permit the orderly conduct of racing, then the stewards shall immediately appoint a temporary successor.

(6) A racing official shall not officiate in multiple capacities on any one (1) race. The stewards may, in case of emergency, approve a racing official to serve in more than one (1) capacity until such time as an additional official can be appointed by the association and approved by the commission.

**Section 2. Racing Secretary.** The racing secretary shall be responsible for:

- (1) The programming of races during the race meeting;
- (2) Compiling and publishing condition books;
- (3) Assigning weights for handicap races;
- (4) Receiving entries, subscriptions, declarations, and scratches;
- (5) Safekeeping of registration certificates, virtual or digital certificates, and racing permits for horses, recording information required on the certificates and permits, and returning the certificates and permits to owners at the conclusion of the race meeting;
- (6) Maintaining a record of stakes fees received, arrears, jockeys' fees, purchase money in claiming races, and other monies received incident to the race meeting, and making available payment to those persons entitled thereto within fourteen (14) days after the conclusion of the race meeting;
- (7) Supervision of the horsemen's bookkeeper's handling of the "horseman's account";
- (8) Daily posting of entries for the benefit of the public as soon as possible after entries have been closed and declarations have been made;
- (9) Assigning stall applicants stabling as he or she may deem proper after consultation with the stewards, and maintaining a record of arrival and departure of all horses stabled on association grounds; and
- (10) Publishing the official daily program, and ensuring that it contains accurate information of the following:
  - (a) Sequence of races to be run and post time for the first race;
  - (b) Purse, conditions, and distance for each race, and current track record for the distance;
  - (c) The full name of licensed owners of each horse, indicated as lessee if applicable, and description of racing colors to be carried;
  - (d) The full name of the trainer and the jockey named for each horse together with the weight to be carried;
  - (e) Notices that:
    1. Jockeys will carry approximately three (3) pounds more than the published weight to account for safety helmets and safety vests that are not included in required weighing out procedures; and
    2. Upon approval of the stewards, a jockey may be allowed up to three (3) pounds additional clothing and equipment for inclement weather or track conditions;
  - (f) The saddle cloth number or designation for each horse, and the post position for each horse, if there is a variance with the saddle cloth designation;
  - (g) Identification of each horse by name, color, sex, age, sire, and dam; and
  - (h) Other information as may be requested from time to time by the association or the commission including changes of equipment, use of permitted race day medications, and wagering types available.

**Section 3. Clerk of Scales.** The clerk of scales shall be responsible for:

- (1) The security, regulation, and control of the jockeys' room, its equipment, and the determination of which personnel are permitted access;
- (2) Weighing out a jockey no later than fifteen (15) minutes prior to the race in which the jockey is scheduled to ride and recording all overweights, which shall immediately be posted and announced to the public before each race;
- (3) Weighing in a jockey immediately after the finish of each race in which the jockey rode and promptly notifying the stewards whether a jockey weighed in underweight;
- (4) Safekeeping of all racing colors;
- (5) Reporting all color changes or jockey changes from that listed in the official daily program and causing the changes to be posted and announced to the public before each race;
- (6) Supervision of all valets and the issuance of numbered saddle cloths and equipment for each horse;
- (7) Ensuring accuracy of the scales and periodic tests of them;
- (8) Submitting to the racing secretary at the close of each racing day a statement of weight carried in each race by each jockey, noting overweight, if any; and
- (9) Immediately transmitting all complaints, protests, objections,

## VOLUME 50, NUMBER 2– AUGUST 1, 2023

or disputes submitted to the clerk of scales to the stewards, and if the stewards are unavailable, to the commission.

Section 4. Paddock Judge. The paddock judge shall have general supervision of the paddock and shall be responsible for:

(1) Assembling the horses and jockeys in the paddock no later than fifteen (15) minutes before the scheduled post time for each race;

(2) Maintaining a written record of all equipment for each horse saddled, inspecting all the equipment, and reporting any changes in the equipment to the stewards;

(3) Inspecting the bandages of each horse. The paddock judge may order the bandages removed or replaced;

(4) Paddock schooling of horses approved for schooling by the stewards; and

(5) Ensuring that the saddling of horses is orderly, open to public view and free from interference, and ensuring that horses are mounted at the same time and leave the paddock for the post in proper sequence.

### Section 5. Starter.

(1) The starter shall be responsible for the fair and equal start of horses in a race at the scheduled starting time by means of a starting gate and bell, or other device activated by his or her signal.

(2) So far as practical, the starter shall cause horses to be loaded in order of post position, except the starter may in his or her discretion load an unruly or fractious horse out of order or may start the unruly or fractious horse on the outside of the starting gate and one (1) length behind the starting line. With permission of the stewards, a race may be started without a starting gate. The starter may employ as many assistant starters as needed and shall daily change the gate position of each assistant starter without notice to the assistant starters until the field for the first race comes upon the track.

(3) A horse shall not be permitted to start in a race unless approval is given by the starter. The starter shall maintain a schooling list that shall be posted in the racing secretary's office listing the names of horses ineligible to start due to inadequate training at leaving the gate. Horses shall be schooled under the supervision of the starter or his or her assistants.

(4) The starter shall:

(a) Have constant radio or telephone communication with the stewards from the time the horses leave the paddock until the field is sent away;

(b) Report to the stewards any disobedience of his or her orders or attempts to take unfair advantage at the starting gate and recommend penalties for offenders.

(5) An assistant starter shall not handle a horse until instructed to do so by the starter.

(6) A starter or assistant starter shall not:

(a) Accept a gratuity or payment other than his regular salary, directly or indirectly, for services in starting a race;

(b) Wager on a race; or

(c) Strike a jockey or use abusive language to a jockey.

(7) The starter shall maintain a written record showing the names of starters during the day and the names of the assistant starters who handled each horse. This record shall be made available to the stewards upon request.

### Section 6. Placing Judges.

(1) Three (3) placing judges shall occupy a stand directly above the finish line during the running of each race. The placing judges shall:

(a) Take special note of racing colors and distinguishing equipment carried by each horse;

(b) Determine the order of the horses as they cross the finish line by consideration of the respective noses of the horses; and

(c) Cause the numbers of the first four (4) horses to cross the finish line to be posted on the result board. The numbers of additional horses shall be posted in their correct order of finish if necessitated by an exotic wager.

(2) A photo finish camera approved by the commission shall be used as an aid by the placing judges in determining the order of the horses as they cross the finish line. Placing judges may request a

photo to assist in determining margins of less than a half-length (1/2).

### Section 7. Timer.

(1) The timer shall occupy a stand directly above the finish line during the running of each race to record the official time.

(2) The timer shall:

(a) Record the fractional time of leading horses during each race and the final time of the first horse to cross the finish line; and

(b) Maintain a written record of fractional and final times of each race and have them available for inspection by the stewards or commission on request.

(3) The timer may use an electrical or mechanical timing device approved by the commission as an aid in determining the official time of each race.

(4) Quarter Horses shall be timed from a standing start at the time the starter dispatches the field and the starting gate opens.

### Section 8. Horse Identifier.

(1) The commission may employ a horse identifier who shall be responsible for the proper identification of all horses entered to be raced.

(2) The horse identifier may accompany the commission veterinarian on the prerace examination of all starters.

(3) The horse identifier shall:

(a) Certify that each starter in the paddock matches its registration certificate, virtual or digital certificate, or racing permit by examining the horse's:

1. Sex, age, color, markings, and lip tattoo or microchip; and

2. Photographs as an aid in identification.

(b) Notify the paddock judge and the stewards if he or she has any doubt as to the identity of a horse entered to be raced;

(c) Be responsible for the safekeeping and return to owners at the conclusion of the race, the following:

1. Registration certificates, virtual or digital certificates, or racing permits; and

2. Racing permits for horses; and

(d) Record information from registration certificates, virtual or digital certificates, and racing permits.

JONATHAN RABINOWITZ, Chairman

RAY PERRY, Secretary

APPROVED BY AGENCY: July 12, 2023

FILED WITH LRC: July 12, 2023 at 11:00 a.m.

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:** A public hearing on this administrative regulation shall be held at 9:00 a.m. on September 21, 2023 at 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. on September 30, 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 below.

**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.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jennifer Wolsing

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the category of "racing officials" at horse races in the Commonwealth and sets forth the responsibilities of these

officials.

(b) The necessity of this administrative regulation: This regulation is necessary to precisely define who racing officials are and to set forth their responsibilities in presiding over and assisting with horse races in the Commonwealth.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.215(2) authorizes the Commission to promulgate administrative regulations prescribing conditions under which all horse racing is conducted in the Commonwealth. This administrative regulation sets forth qualifications, duties, and authority of racing officials who assist in the conduct of horse races in the Commonwealth.

(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 ensuring that race officials perform certain duties to promote the efficiency and integrity of horse races 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: Section 7 is amended to specify that Quarter Horses shall be timed from a standing start at the time the starter dispatches the field and the starting gate opens.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to establish the appropriate timing for Quarter Horse racing.

(c) How the amendment conforms to the content of the authorizing statutes: The proposed amendment establishes a condition under which horse racing will be conducted in the Commonwealth. Therefore, this amendment conforms to KRS 230.215(2).

(d) How the amendment will assist in the effective administration of the statutes: The proposed amendment will establish the timing for Quarter Horse racing to ensure that each race is timed appropriately.

(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 Kentucky Horse Racing Commission and those who engage in Quarter Horse racing.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: To comply with the proposed amendment, racing associations conducting Quarter Horse race meets and racing officials must observe the amendment in order to correctly time Quarter Horse races.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance, Quarter Horse races will be timed correctly, benefitting all engaged in horse racing.

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

(a) Initially: There is no initial administrative cost to implement this administrative regulation.

(b) On a continuing basis: There is no continuing cost 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: No funding 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 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 new fees or increase any current fees.

(9) TIERING: Is tiering applied? Tiering is not applied, because

this amended regulation will apply similarly to all similarly situated entities in an equal manner.

## FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Horse Racing Commission 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 230.215 and 230.260 authorize the action taken by this regulation.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

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

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

(c) How much will it cost to administer this program for the first year? It is expected there will be no cost to administer this regulation during the first year.

(d) How much will it cost to administer this program for subsequent years? It is expected there will be no cost to administer this regulation 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 (+/-): Neutral.

Expenditures (+/-): Neutral.

Other Explanation: None.

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

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

(c) How much will it cost the regulated entities for the first year? It is expected there will be no cost for the regulated entities during the first year.

(d) How much will it cost the regulated entities for subsequent years? It is expected there will be no cost for the 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 (+/-): \$0.00.

Expenditures (+/-): \$0.00.

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 is not expected to have a major economic impact, as set forth in the answers to the questions above.

**PUBLIC PROTECTION CABINET  
Kentucky Horse Racing Commission  
(Amendment)**

**810 KAR 2:070. Thoroughbred and other flat racing associations.**

RELATES TO: KRS 230.215(2), 230.260(8)

STATUTORY AUTHORITY: KRS 230.215(2), 230.260(8)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) and 230.260(8) authorize the commission to promulgate administrative regulations establishing conditions governing horse racing. This administrative regulation establishes requirements for thoroughbred and other flat racing associations.

**Section 1. Maintenance of Grounds, Facilities and Uniform Track.**

(1) The grounds and facilities[;] of an association shall be maintained in a manner that provides for the:

(a) Comfort and safety of patrons, employees, and other persons whose business requires their attendance; and

(b) Health and safety of horses that are stabled, exercised, or entered to race at the association.

(2) The grounds and facilities of an association shall be:

(a) Neat and clean;

(b) Painted; and

(c) In good repair.

(3) An association shall have implements adequate to maintain a uniform track, weather conditions permitting.

**Section 2. Results Boards, Totalizators Required.** An association shall provide and maintain mechanically operated totalizators and electronic boards that show odds, results, and other race information in plain view of patrons.

**Section 3. Starting Gate.**

(1) An association shall provide and maintain a working starting gate on every day horses are permitted to exercise on its racing strip.

(2) An association shall have in attendance one (1) or more persons qualified to keep the starting gates in good working order whenever the gates are in use.

(3) An association shall provide for periodic inspections of the starting gates.

**Section 4. Stabling.**

(1) An association barn and stall shall be:

(a) Constructed of fire-resistant material;

(b) Clean, sanitary, and equipped for adequate drainage; and

(c) Maintained in good repair.

(2)

(a) Prior to the opening of a race meeting, the commission shall submit to the racing secretary a list of locations of approved off-track stabling facilities from which horses shall be permitted to race.

(b) The locations shall be considered association grounds.

**Section 5. Stands for Officials.**

(1) An association shall provide and maintain stands commanding an uninterrupted view of the entire racing strip for racing officials.

(2) The stands and their locations shall be approved by the commission.

(3) The floor of patrol judge stands shall be at least six (6) feet higher than the track rail.

**Section 6. Distance Pole Markings.**

(1) A thoroughbred or other flat racing association shall have:

(a) Red and white quarter poles;

(b) Green and white eighth poles; and

(c) Black and white 16th poles.

(2) Permanent markers shall be located at each standard Arabian, quarter horse, paint horse, and appaloosa distance as

applicable. Distance pole markers and permanent markers shall be located where they can be seen clearly from the stewards' stand. Each post shall be identified by color as follows: 220 yds., white; 250 yds., blue; 300 yds., yellow; 330 yds., green; 350 yds., red; 400 yds., black; 440 yds., orange; 550 yds., blue and white stripe; 660 yds., yellow and white stripes; 770 yds., green and white stripes;[and] 870 yds., red and white stripes; and 1,000 yds., red and blue stripes. In addition, for appaloosa races, markers shall be located at six (6) and six and one-half (6 1/2) furlongs to be painted yellow and white and orange and white, respectively.

**Section 7. Lighting.**

(1) An association shall provide and maintain flood lights that provide adequate illumination in the stable area and parking area.

(2) If an association conducts night racing, it shall provide adequate track lighting.

**Section 8. Facilities for Stable Employees.**

(1) An association shall provide and maintain in good repair adequate living quarters and conveniently located sanitary facilities that shall include showers, toilets, and wash basins for stable employees.

(2) Personnel shall not be permitted to sleep in a stall or barn loft.

**Section 9. Facilities for Jockeys.**

(1) An association shall provide and maintain adequate facilities for jockeys scheduled to ride each day.

(2) The facilities shall include accommodations for rest and recreation of jockeys on racing days, showers, toilets, wash basins, mirrors, arrangements for safekeeping of apparel and personal effects, and snack bar.

**Section 10. Facilities for Commission.**

(1) An association shall provide adequate office space for the commission on its grounds.

(2) To assist in the conduct of official business, an association shall provide the following to the commission:

(a) A season box, marked "Kentucky Horse Racing Commission", of six (6) to eight (8) seats; and

(b) A number of parking places sufficient for the commission and commission staff.

(3) An association shall honor for access to preferred parking facilities and other areas on its grounds a commission or Association of Racing Commissioners International ring, lapel button, or automobile emblem.

**Section 11. Sanitary Facilities for Patrons.** An association shall, on every racing day, provide sanitary toilets and wash rooms, and free drinking water adequate for the number of patrons and persons having business at the association that comply with applicable statutes, administrative regulations, codes, or ordinances.

**Section 12. Manure Removal.**

(1) An association shall provide and maintain manure pits of the size and construction adequate to handle refuse from stalls.

(2) The contents of the manure pits shall be removed from the stable area as promptly as is possible.

**Section 13. Photo Finish Cameras.**

(1) An association shall provide and maintain at the finish line two (2) photo finish cameras for photographing the finish of races.

(2) One (1) of the photo finish cameras shall be held in reserve. The photo finish photographer shall promptly furnish to the stewards and placing judges the number of prints of finishes requested.

(3) An association shall maintain a one (1) year file of all photo finishes.

**Section 14. Race Replays.**

(1) During a race meeting, an association shall provide and maintain personnel and equipment necessary to record and produce race replays that clearly record each race from start to finish.

(2) Projection or viewing equipment shall be adequate to permit

simultaneous showing of head-on and side-angle views of the running of each race.

(3)

(a) A race replay shall be:

1. Retained and secured by an association for at least one (1) year; and

2. Made available to the commission and stewards upon demand.

(b) Upon order of the stewards, a visual record of a race that has raised a question, dispute, or controversy shall be filed with the commission.

(4) Race replays shall be made available:

(a) For viewing at the track by licensees who owned, trained, or rode a horse in the race requested to be viewed; and

(b) To members of the press.

#### Section 15. Ambulances.

(1) An association shall provide and maintain at least one (1) human ambulance and one (1) horse-ambulance whenever horses are permitted to exercise or race.

(2) An ambulance shall be:

(a) Equipped;

(b) Manned;

(c) Ready for immediate duty; and

(d) Located at an entrance to the racing strip.

Section 16. (1) Except as provided by subsection (2) of this section, an association shall equip and maintain a first aid facility that is:

(a) Equipped with at least two (2) beds; and

(b) Attended by a licensed physician and registered nurse during race hours.

(2) An association shall not be required to maintain a first aid facility, if the association has an ambulance on standby on its premises during racing hours which:

(a) Can transport an injured individual to a fully-equipped hospital emergency room in five minutes or less; and

(b) Is manned by a certified paramedic and certified emergency medical technician.

(3) A paramedic provided pursuant to subsection (2) of this section shall be equipped with:

(a) Heart monitor and defibrillator;

(b) Cellular phone; and

(c) Airways intubation equipment.

Section 17. Track Kitchen. An association shall provide a track kitchen within the stable area, maintained in a clean and sanitary manner that complies with applicable statutes, administrative regulations, codes, or ordinances, at all times horses are stabled on association grounds.

Section 18. Communication System. An association shall install and maintain in good working service a communication system between the stewards' stand and:

(1) Outriders;

(2) Pari-mutuel department;

(3) Starting gate;

(4) Public address announcer; and

(5) Clerk of the scales.

#### Section 19. Fire Prevention.

(1) An association shall have a fire prevention and suppression program.

(2) The commission shall not approve the commencement of a race meeting unless, within fifteen (15) days before commencement of the race meeting, the state or local fire marshal:

(a) Has inspected the association; and

(b) Certified that the association plant and stable area meets fire safety requirements.

(3) An association shall maintain a firefighting unit of trained personnel that has high-expansion foam fire extinguishers and other equipment required by the local fire inspection authority.

(4) An association shall prohibit:

(a) Smoking in stalls, under shed rows, and in feed rooms;

(b) Open fires and oil or gas lamps in the stable area; and

(c) Locking of stalls occupied by horses.

#### Section 20. Association Security.

(1) An association shall provide and maintain security services, night and day, on and about association grounds.

(2) An association shall furnish to the stewards a report on any disturbances or disorderly conduct committed by a person on association grounds.

(3) An association shall exclude from association grounds a person designated to be denied access by order of the commission or stewards.

(4) An association shall implement security measures to protect a horse on association grounds from being injured by being frightened or tampered with.

(5) An association shall exclude from the paddock area, race strip, and winner's entrance a person who:

(a) Does not have an immediate connection with the horses entered; and

(b) Is not a commission member, racing official, or accredited member of the news media.

#### Section 21. Vendors and Suppliers.

(1) A vendor shall comply with procedures and requirements established by an association.

(2) An association shall not attempt to control or monopolize sales to owners, trainers, or stable employees.

(3) An association shall not grant an exclusive concession to a vendor of feed, racing supplies, or racing services.

(4) A vendor of horse feeds or medications shall file with the commission veterinarian a list of products that he or she proposes to sell, including a new preparation or medication.

(5) An association shall not permit the sale of an alcoholic beverage except beer within the stable area.

#### Section 22. Ejection or Exclusion From Association Grounds.

(1) An association shall for probable cause eject or exclude from association grounds a person:

(a) Believed to be engaged in:

1. A bookmaking activity;

2. Solicitation of bets; or

3. Touting;

(b) Who as a business or for compensation, either directly or indirectly:

1. Accepted anything of value to be wagered, transmitted, or delivered for wager to a pari-mutuel wagering enterprise; or

2. Participated in the transaction; or

(c) Who attempted to use tax exempt admissions credentials not issued to him by the association.

(2) An association shall eject or exclude from its stable area a person who is not:

(a) Licensed to conduct an activity that requires his presence in the stable area;

(b) An accredited member of the news media;

(c) A guest of a licensed owner or trainer accompanied by the owner or trainer; or

(d) Accompanied by, and under the control and supervision of a:

1. Racing official;

2. Association security guard; or

3. Association public relations department representative.

(3)

(a) A report of an ejection or exclusion from association grounds shall be made immediately to the stewards, judges, and commission director of security.

(b) A report shall state the:

1. Name of person ejected or excluded;

2. Reasons for the ejection or exclusion; and

3. Facts relating to the ejection or exclusion.

Section 23. Ownership of Associations. An association shall file with the commission a revised list of persons whose identity is

## VOLUME 50, NUMBER 2– AUGUST 1, 2023

required by 810 KAR 3:010 immediately upon transfer of a beneficial interest or control in the association.

### Section 24. Plan of Association Grounds.

(1) An association shall file with the commission maps and plans of association grounds, showing:

- (a) Structures;
- (b) Piping;
- (c) Fire hydrants;
- (d) Fixed equipment;
- (e) Racing strip, noting elevation as filled, drained, and gapped;

and

- (f) Composition of track base and cushion.

(2) An association shall file revised maps or plans of association grounds upon any material change.

### Section 25. Attendance and Badge List Reports; Tax Exempt Credentials.

(1) An association shall file with the commission a copy of the form required by KRS 137.180 and 138.480, "Race Track Pari-mutuel and Admissions Report," Revenue Form 73A100.

(2) A tax exempt admission credential shall not be transferable.

Section 26. Financial Report. Within sixty (60) days after the close of its fiscal year, an association shall file:

- (1) Three (3) copies of its balance sheet; and
- (2) A comparison to the prior year.

### Section 27. Horseman's Account and Horseman's Bookkeeper.

(1) An association shall maintain a bank account that shall:

- (a) Be separate from its other accounts;
- (b) Be titled "horsemen's account"; and
- (c) Contain sufficient funds to pay money owing to horsemen for:
  - 1. Purses;
  - 2. Stakes;
  - 3. Rewards;
  - 4. Claims; and
  - 5. Deposits.

(2) Withdrawals from the horsemen's account shall be subject to audit by the commission at any time.

(3)

(a) For all races, purse money shall be available to earners after the result of the race in which the money was earned has been declared official and:

1. For race dates where all samples are reported by the commission laboratory as passed at the screening level, within twenty-four (24) hours after receipt of the report by the commission; or

2. For race dates where one (1) or more sample is reported by the commission laboratory as suspicious at the screening level, within twenty-four (24) hours after receipt of the final report by the commission.

(b) If a horse is disqualified and an appeal has been filed, purse money shall be available to other participants entitled to purse money in the amount they would have earned had a horse not been disqualified. The purse money to which the disqualified participant would be entitled shall be held in escrow by the association until final adjudication of a dispute over which persons are entitled to money.

(4)

(a) Except for jockey fees, a deduction from purse money shall not be made, unless the deduction has been requested in writing by the:

- 1. Person to whom purse money is payable; or
- 2. Authorized representative of the person to whom purse money is payable.

(b) Whether or not a deduction request is made, at the close of a race meeting, the horsemen's bookkeeper in charge of the horsemen's account shall mail to an owner a duplicate of each record of a deposit, withdrawal, or transfer of funds that affects his racing account.

(5) The horsemen's bookkeeper in charge of the horsemen's account shall be bonded.

### Section 28. Outriders.

(1) An association shall employ at least two (2) outriders.

(2) An outrider shall:

- (a) Escort starters to the post;
- (b) Assist in the returning of horses to the unsaddling area;
- (c) Only lead a horse that has demonstrated unruliness; and
- (d) Assist in the control of a horse that might cause injury to a jockey or others.

(3) Whenever horses are permitted on the racing strip for exercising or racing, an outrider shall be:

- (a) Present on the racing strip;
- (b) Mounted; and
- (c) Ready to assist in the:
  - 1. Control of an unruly horse; or
  - 2. Recapture of a loose horse.

### Section 29. Safety Equipment.

(1) A person mounted on a horse or stable pony at a location under the jurisdiction of the commission shall wear a properly secured safety helmet at all times. If requested by a commission official, the person shall provide sufficient evidence that his helmet has a tag, stamp, or similar identifying marker indicating that it meets one of the following safety standards:

- (a) ASTM International Standard, ASTM F1163-04a;
- (b) British Standards, BS EN 1384:1997 or PAS 015:1999; or
- (c) Australian/New Zealand Standard, AS/NZS 3838:2006.

(2) A person mounted on a horse or stable pony on a location under the jurisdiction of the commission, assistant starters, and a person handling a horse in a starting gate shall wear a safety vest at all times. If requested by a commission official, the person shall provide sufficient evidence that his safety vest has a tag, stamp, or similar identifying marker indicating that it meets or exceeds one (1) of the following safety standards:

- (a) British Equestrian Trade Association (BETA):2000 Level 1;
- (b) Euro Norm (EN) 13158:2000 Level 1;
- (c) ASTM International Standard, ASTM F2681-08;
- (d) Shoe and Allied Trade Research Association (SATRA) Jockey Vest Document M6 Issue 3; or
- (e) Australian Racing Board (ARB) Standard 1.1998.

### Section 30. Valets.

(1) An association shall employ a number of licensed valets sufficient to attend each rider on a day's racing program.

(2) A valet shall be under the immediate supervision and control of the clerk of scales.

(3) A rider shall not employ a valet or be attended by a person other than the valet assigned to him by the clerk of scales.

(4) A valet shall:

- (a) Be responsible for the care and cleaning up of the apparel and equipment of his assigned rider;
- (b) Ensure his rider has the proper equipment and colors for a race;
- (c) Present the proper equipment and attend the saddling of his rider's mount; and
- (d) Attend the weighing out of his rider.

(5) A valet or other jockey room attendant shall not place a wager, directly or indirectly, on races run while he serves as a valet for himself or another.

(6) An association shall provide uniform attire for all valets that shall be worn whenever they perform their duties within public view.

### Section 31. Minimum Purse and Stakes Values.

(1) An association shall not program or run any race for which the purse is less than \$2,000 in cash, without special permission of the commission.

(2) An association shall not program or run a stakes race for which the added value is less than \$10,000 in cash added by the association to stakes fees paid by owners.

(3) The minimum cash amounts paid by the association shall be exclusive of:

- (a) Nomination;
- (b) Eligibility;
- (c) Entrance;



- (d) Starting fees;
- (e) Cash awards;
- (f) Premiums;
- (g) Prizes; or
- (h) Objects of value.

Section 32. Maximum Number of Races. An association shall not program or run more than nine (9) races on a racing day without permission of the commission.

Section 33. Two (2) Year Old Races.

(1) Beginning on March 1 of each year, an association shall program in the conditions book at least four (4) two (2) year old races each week.

(2) Quarter horse race conditions for two-year-olds shall not be offered in the condition book prior to March 1 of that corresponding year.

Section 34. (1)(a) Exculpatory clauses. Stall applications, entry forms, condition books, and other agreements between persons or entities licensed by the Kentucky Horse Racing Commission regarding the stabling of horses, the racing of horses, the training of horses, or other activities at tracks owned or operated by licensed associations, and conditions of racing established by licensed associations, shall not contain provisions that absolve or hold harmless a licensee from liability, or limit the liability of a licensee, for loss, loss of use, injury, or damage caused or contributed to by the acts or omissions of any licensee, its agents, or employees, except for:

1. Ordinary negligence that causes or contributes to loss, injury, or damage to horses while on the premises of a licensed association; and

2. Ordinary negligence that causes or contributes to personal injury or property damage, including loss, loss of use, injury, or damage to horses arising from the use of grass fields or gallops owned or controlled by the licensed association.

(b) Subject to the exception in paragraph (a) of this subsection, licensees participating in the stabling of horses, the racing of horses, the training of horses, and related activities at tracks owned or operated by licensed associations shall be responsible for their own acts and omissions and those of their agents and employees to the same extent as provided by law. A licensee shall not attempt to limit liability of a person or entity for gross negligence or intentional wrongdoing.

(2) Constructive notice to and consent of licensees. Persons licensed by the Kentucky Horse Racing Commission shall be deemed, as a condition of licensure, to have notice of and to have consented to exculpatory provisions, which comply with the limitations set forth in this administrative regulation, included in agreements between licensees and in conditions of racing established by a licensed association. Exculpatory provisions that exceed the limitations set forth in this administrative regulation shall be void and unenforceable in their entirety.

(3) Model provision. The following provision shall be deemed to comply with the limitations set forth in this administrative regulation: All Kentucky Horse Racing Commission licensees, including but not limited to the host association, owners, trainers, jockeys, and grooms ("licensees"), participating in stabling, racing, training, and related activities at (name of licensed association) recognize that hazards and risks inherent in these activities may cause the injury or death of horses. Therefore, in consideration of participating in stabling, racing, training, and related activities at (name of licensed association), all licensees assume the risks of, and release, hold harmless, and covenant not to sue other participating licensees for:

(a) Ordinary negligence that causes or contributes to loss, loss of use, injury, or damage to horses while on the premises of (name of licensed association); and

(b) Ordinary negligence that causes or contributes to personal injury or property damage, including but not limited to loss, loss of use, injury, or damage to horses arising from the use of grass fields or gallops owned or controlled by (name of licensed association), whether arising from alleged acts or omissions of a licensee, its agents, or employees, the condition of the premises of (name of

licensed association), or any other cause. Except as provided above, all licensees participating in racing, training, and related activities at (name of licensed association) shall be responsible for their own acts and omissions and those of their agents and employees to the same extent as provided by law.

JONATHAN RABINOWITZ, Chairman

RAY PERRY, Secretary

APPROVED BY AGENCY: July 12, 2023

FILED WITH LRC: July 12, 2023 at 11:00 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 9:00 a.m. on September 21, 2023 at 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. on September 30, 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 below.

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.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jennifer Wolsing

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes requirements for the day-to-day operation of licensed thoroughbred and other flat racing associations in Kentucky.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the operational, physical, and equipment requirements for Kentucky thoroughbred and other flat racing racetracks.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.215(2) and 230.260(8) authorize the Commission to promulgate administrative regulations prescribing the conditions under which racing shall be conducted in Kentucky. This administrative regulation establishes the conditions under which thoroughbred and other flat racing racetracks are required to operate during horse race meetings in Kentucky.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation ensures that thoroughbred and other flat racing racetracks are operated during horse race meetings in Kentucky in a manner consistent with the integrity of racing.

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

(a) How the amendment will change this existing administrative regulation: Section 6 is amended to add a distance pole at 1,000 yards with red and blue stripes. Section 33 is amended so that Quarter Horse race conditions for two-year-olds shall not be offered in the condition book prior to March 1 of the corresponding year.

(b) The necessity of the amendment to this administrative regulation: The amendment to Section 6 is necessary to establish a 1,000-yard distance pole. The amendment to Section 33 is necessary to establish appropriate conditions for two-year-olds in Quarter Horse racing.

(c) How the amendment conforms to the content of the authorizing statutes: The proposed amendment establishes conditions under which horse racing will be conducted in the Commonwealth. Therefore, this amendment conforms to KRS 230.215(2) and KRS 230.260(8).

(d) How the amendment will assist in the effective administration

of the statutes: The proposed amendments establish a distance pole and conditions on two-year-old Quarter Horse racing and these further the interests of integrity and safety in racing.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Kentucky Horse Racing Commission and those who engage in Quarter Horse racing 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: To comply with the proposed amendment, racing associations conducting Quarter Horse race meets must have the additional distance pole and offer two-year-old Quarter Horse races under the appropriate conditions.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): An entity may incur additional cost if it needs to add the distance pole.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance, flat races will have requisite distance poles and appropriate conditions for two-year-old Quarter Horses, benefitting all engaged in horse racing.

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

(a) Initially: There is no initial administrative cost to implement this administrative regulation.

(b) On a continuing basis: There is no continuing cost 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: No funding will be necessary to implement and enforce this administrative regulation.

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

(9) TIERING: Is tiering applied? Tiering is not applied, because this amended regulation will apply to all similarly situated entities in an equal manner.

#### FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Horse Racing Commission 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 230.215 and 230.260 authorize the action taken by this regulation.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

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

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

(c) How much will it cost to administer this program for the first year? It is expected there will be no cost to administer this regulation

during the first year.

(d) How much will it cost to administer this program for subsequent years? It is expected there will be no cost to administer this regulation 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 (+/-): Neutral

Expenditures (+/-): Neutral

Other Explanation: None

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

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

(c) How much will it cost the regulated entities for the first year? Regulated entities may incur costs in the first year if they need to add a distance pole.

(d) How much will it cost the regulated entities for subsequent years? This regulation is not expected to generate additional costs in subsequent years.

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

Cost Savings (+/-): \$0.00

Expenditures (+/-): Potential cost to regulated entities that need to add a distance pole.

Other Explanation:

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)]. This administrative regulation is not expected to have a major economic impact as set forth above.

#### PUBLIC PROTECTION CABINET Kentucky Horse Racing Commission (Amendment)

#### 810 KAR 3:010. Licensing of racing associations.

RELATES TO: KRS 230.215, 230.260, 230.280, 230.290, 230.300, 230.320, 230.811, 230.817

STATUTORY AUTHORITY: KRS 230.215(2), 230.260(9), 230.280, 230.300(1), (9), 230.811

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) vests the Kentucky Horse Racing Commission with the authority to promulgate regulations prescribing conditions under which all legitimate horse racing and wagering thereon is conducted in the Commonwealth. KRS 230.280 prohibits any person from conducting a horse race meeting for any stake, purse, or reward within the Commonwealth without securing the required license from the commission. KRS 230.260(9) authorizes the commission to prescribe by administrative regulation application forms for licenses. KRS 230.300 authorizes the commission to issue licenses to conduct race meetings. KRS 230.811 requires all applicants for a sports wagering operator's license to apply to the commission. KRS 230.260(16) requires the commission to promulgate administrative regulations to establish standards for the conduct of sports wagering. This administrative regulation establishes licensing application procedures and requirements for conducting horse racing at horse race meetings in the Commonwealth, and also establishes licensing application procedures and requirements for a licensed racing association to obtain a sports wagering operator's

license and offer sports wagering in the Commonwealth.

Section 1. Definitions.

(1) "Application" means Initial/Renewal Application for License to Conduct Live Horse Racing, Simulcasting, Pari-Mutuel Wagering, and Sports Wagering Form KHRC 3-010-1, incorporated by reference in Section 2 of this administrative regulation.

(2) "Applicant for operator license" means a person licensed as an association under KRS 230.300 that is eligible for an operator license pursuant to KRS 230.811.

(3) "Operator" means a sports wagering operator license applicant that has been granted a license.

(4) "Operator license" means a license to conduct, manage, or offer to conduct sports wagering within the Commonwealth of Kentucky, pursuant to KRS 230.811.

(5) "Occupational licensee" means a person holding a license authorized by KRS 230.210 and 809 KAR 1:003.

(6) "Principal" is defined by KRS 230.210(14).

(7)[(2)] "Publicly traded corporation" means a corporation that:

- (a) Has voting securities registered under Section 12 of the Securities Exchange Act of 1934 (1934 Act), 15 U.S.C. 78a et seq.;
- (b) Issues securities subject to Section 15(d) of the 1934 Act;
- (c) Has voting securities exempted from the registration requirements due to Section 3 of the Securities Act of 1933, 48 U.S.C. 77a et seq.; or

(d) Is required to file under the 1934 Act.

(8) "Service provider" is defined by KRS 230.210.

(9) "Sports wagering" is defined as established in KRS 230.210.

(10) "Substantial owner" is any person who owns five (5) percent or more of the business.

Section 2. Racing License Applications.

(1) New racing license applications. A person or legal entity desiring to conduct thoroughbred racing in the Commonwealth shall apply to the commission for an association license pursuant to KRS 230.300(1).

(2) Renewal racing applications. Racing association licenses shall be renewed annually in accordance with KRS 230.300(1).

(3) An initial or renewal license application to conduct a horse racing meeting shall be submitted on the form "Initial/Renewal Application for License to Conduct Live Horse Racing, Simulcasting, and Pari-mutuel Wagering," KHRC 3-010-1.

(4) An applicant that is unable to provide information required on the application shall fully explain and document to the satisfaction of the commission its inability to provide the information, and shall provide the information promptly upon being able to do so.

Section 3. Racing License and Investigation Fees.

(1) Racing license[License] fee.

(a) An initial applicant for an initial license shall submit with the application a non-refundable initial license fee of \$5,000.

(b) A renewal applicant shall not be charged a fee to renew a racing association license, unless an investigation fee is authorized by subsection (2) of this section.

(2) Racing license investigation[Investigation] fees.

(a) Initial applicants shall submit with the application an investigation fee of \$10,000.

(b)

1. The commission may require a renewal applicant or an applicant proposing a substantial change in ownership to pay an investigation fee of \$10,000 if:

- a. The applicant or one (1) of its principals has not previously been subject to an investigation;
- b. More than five (5) years has passed since the last investigation of the applicant or one (1) of its principals was conducted; or

c. The commission finds other good cause for an investigation.

2. If an investigation fee is requested, the applicant shall submit a cashier's check or certified check payable to the commission within ten (10) days of receipt of the request.

(c) The investigation fee shall pay all costs incurred by the commission in reviewing the application.

(d) Any portion of the investigation fee not required to complete

the investigation shall be refunded to the applicant within twenty (20) days of the withdrawal, rejection, or approval of the license application or proposed change of ownership.

(e) If additional costs are incurred in the conduct of the investigation, the applicant shall submit a cashier's check payable to the commission in the amount reasonably requested by the commission within ten (10) days of receipt of the request. Failure to submit this payment shall result in suspension of processing the license application or proposed change of ownership and may result in denial of the license or proposed change of ownership.

Section 4. Racing Licensing Criteria.

(1) The commission shall issue a racing license if it determines that:

(a) The applicant meets all requirements of KRS Chapter 230 and KAR Title 810;

(b) The applicant is qualified and financially capable of operating a race track;

(c) The applicant will conduct racing in accordance with KRS Chapter 230 and KAR Title 810;

(d) The applicant will conduct racing in accordance with the highest standards and the greatest level of integrity; and

(e) The issuance of a license will ensure the protection of the public interest.

(2) In reviewing an application, the commission may consider any information, data, reports, findings, or other factors available which it deems relevant to its determination of whether the applicant is qualified to hold a license, including:

(a) The integrity of the applicant and its principals, including:

1. Whether the applicant or its principals is unsuitable pursuant to KRS 230.280(2)(f);

2. Whether the applicant or its principals has been a party to litigation over business practices, disciplinary actions over a business license, or refusal to renew a license;

3. Whether the applicant or its principals has been a party to proceedings in which unfair labor practices, discrimination, or violation of government regulations pertaining to racing or gaming laws was an issue, or bankruptcy proceedings;

4. Whether the applicant or its principals has failed to satisfy judgments, orders, or decrees; and

5. Whether the applicant or its principals has been delinquent in filing tax reports or remitting taxes;

(b) The quality of physical facilities and equipment, including any improvements and equipment proposed or existing in the applicant's facility;

(c) If a new applicant, the schedule for completion of a racing facility and the feasibility of meeting the schedule;

(d) The types and variety of pari-mutuel horse racing which the applicant proposes to offer;

(e) The financial ability of the applicant to develop, own, and operate a pari-mutuel facility successfully;

(f) If a new applicant, the status of governmental actions required to approve or facilitate the applicant's facility;

(g) The management ability of the applicant and its principals;

(h) Compliance of the applicant with applicable statutes, charters, ordinances, or regulations;

(i) The efforts of the applicant to promote, develop, and improve the horse racing industry in Kentucky;

(j) The impact of the facility upon the Commonwealth of Kentucky in the following areas:

1. Employment created, purchases of goods and services, public and private investment, and taxes generated;

2. Ecological and environmental impact;

3. Social impact; and

4. Cost of public improvements;

(k) The extent of public support or opposition to horse racing and pari-mutuel wagering at the location where the license is sought; and

(l) The effects of the location of the track, including the following:

1. Number, nature, and relative location of other licensees; and

2. Minimum and optimum number of racing days sought by the applicant.

Section 5. Racing Date Assignments. In assigning racing

meetings and race dates to applicants, the commission shall consider factors relating to the economic and practical feasibility of conducting racing meetings at association race tracks, including:

- (1) The types and dates of racing meetings held elsewhere, both within and outside of the Commonwealth;
- (2) The effects that various types of pari-mutuel racing have upon one another;
- (3) The quality of horse racing provided at other racetracks;
- (4) Dates traditionally awarded racetracks in the past;
- (5) The past performance of the licensee;
- (6) Whether the licensee has complied with KRS Chapter 230 and KAR Title 810;
- (7) Whether the assignment of racing dates will maximize revenues to the state;
- (8) Whether the assignment of racing dates will adversely affect the public health, welfare, and safety;
- (9) The projected stability of the racing dates to be awarded; and
- (10) The stability of the racing circuit within and outside the Commonwealth.

Section 6. Racing License Applicant Presentation.

- (1) An applicant that has submitted a completed license application and all accompanying fees may request to make a presentation of its application at a meeting of the commission prior to the ruling on the application.
- (2) The presentation shall be limited to information contained in the application and any supplemental information relevant to the applicant's suitability. The admission of supplemental information shall be subject to the discretion of the commission.

Section 7. Additional Information. At any time prior to issuing a license, the commission may request additional information if the information would assist the commission in deciding whether to issue a license, including:

- (1) Copies of any documents used by the applicant in preparing the application; and
- (2) Contracts between the applicant and third parties related to operations.

Section 8. Change in Ownership.

- (1) A change in ownership shall be reported to the commission on the Kentucky Horse Racing Commission Racing Association Change of Control Form, KHRC 3-010-2.
- (2) Notice of a nominal change in ownership shall be filed with the commission within fifteen (15) days of the execution of the documents upon which the proposed nominal change is based.
- (3) Notice of a change of ownership shall not be required for:
  - (a) A nominal change in ownership if the licensee is a publicly traded corporation;
  - (b) The transfer of an ownership interest in an association, direct or indirect, whether substantial or nominal, if by a publicly traded corporation and the beneficial ownership is acquired by a person who will hold the voting securities of the publicly traded corporation for investment purposes only; or
  - (c) A debt transaction of a publicly traded corporation, unless the transaction results in the pledge or encumbrance of the assets or any portion thereof of the association.
- (4) Notice of a substantial change in ownership shall be filed with the commission prior to the execution of the documents upon which the proposed substantial change is based and shall constitute a request for approval of the change.
  - (a) Absent prior written approval from the commission, a substantial change in ownership shall result in termination of the license.
  - (b) Any attempt to effect substantial change in ownership not in writing shall be considered void by the commission.

Section 9. Material Modification of Proposed or Existing Facility.

A new applicant or association with an existing facility shall not materially alter the grounds or facilities after a license has been issued for that facility without prior written approval of the commission or, if designated by the commission, the executive director of the commission.

Section 10. Racing Licensee Late Fee.

- (1) A licensee that fails to conduct racing after the commencement date specified in the license may be subject to a late fee not to exceed \$15,000 per day.
- (2) The amount of the late fee shall be based on the economic impact caused by the licensee's failure to perform.
- (3) The late fee shall not be imposed for a particular day if the licensee can prove to the satisfaction of the commission that the cause of delay was:
  - (a) Beyond the control and without the fault or negligence of the licensee, its contractors, and subcontractors; or
  - (b) The default of a contractor or subcontractor, if:
    1. Arising from causes beyond the control of the licensee, its contractors, and subcontractors; and
    2. The supplies or services to be furnished by the contractor or subcontractor were not obtainable from other sources in sufficient time for the licensee to meet the completion date.

Section 11. Sports Wagering Operator License Applications; Deadlines; Provision for 2023.

- (1) No racing associations shall offer sports wagering without a valid license issued by the commission.
- (2) Initial applications. An applicant for an operator license in the Commonwealth shall apply to the commission for an operator license pursuant to KRS 230.811.
- (3) Renewal applications. An operator license shall be renewed annually in accordance with KRS 230.811.
- (4) Except as otherwise provided in Section 14 of this administrative regulation, an initial or renewal application for an Operator License shall be submitted on the form Initial/Renewal Application for License to Conduct Live Horse Racing, Simulcasting, Pari-Mutuel Wagering, and Sports Wagering Form" KHRC 3-010-1, 06/2023.
- (5) Initial applications completed for sports wagering conducted in 2023 shall be effective through December 31, 2023.
- (6) For sports wagering conducted in 2024 and thereafter, an application shall be filed with the commission prior to September 1 of the preceding calendar year.
- (7) For sports wagering conducted in 2023, operators that offer sports wagering in a licensed facility for sports wagering shall offer in-person sports wagering at their licensed facility for sports wagering starting on or after September 7, 2023. Operators shall not offer sports wagering via a Web site or mobile application before September 28, 2023.

Section 12. Operator License Fees.

- (1) An applicant for an operator license shall submit the initial fee of \$500,000 with its initial application for a license. The initial fee shall be non-refundable.
- (2) An operator shall submit the renewal fee of \$50,000 with a renewal application for their license. The renewal fee shall be non-refundable.
- (3) Pursuant to KRS 230.811, the fees in this section shall be deposited into the fund established by KRS 230.817.

Section 13. Operator Licensing Criteria.

- (1) The commission shall issue an operator license if it determines that the applicant for an operator's participation as a sports wagering operator is in the best interests of sports wagering in Kentucky.
- (2) In reviewing an application, the commission may consider any information, data, reports, findings, or other factors available that it deems relevant to its determination of whether the applicant for an operator license is qualified to be an operator. The commission shall consider, at a minimum, whether:
  - (a) The applicant for an operator license has completed and filed an Initial/Renewal Application for License to Conduct Live Horse Racing, Simulcasting, Pari-Mutuel Wagering, and Sports Wagering Form, KHRC 3-010-1;
  - (b) The applicant for an operator license meets all applicable requirements of KRS Chapter 230, KAR Title 810, and KAR Title 809;

(c) The applicant for an operator license is qualified and financially capable of conducting sports wagering;

(d) The applicant for an operator license will conduct sports wagering in accordance with KRS Chapter 230, KAR Title 810; and KAR Title 809;

(e) The applicant for an operator license will conduct sports wagering in a controlled environment that protects patrons from cheating and fraud; and

(f) The issuance of an operator license will ensure the protection of the public interest. The commission may authorize a temporary sports wagering operator license while determining suitability for the annual operator license. The commission shall consider at least the following factors in determining whether to issue a temporary operator license:

(g) The information submitted by the applicant is sufficient to determine the applicant's suitability;

(h) The applicant for an operator's history of offering pari-mutuel wagering in the Commonwealth; and

(i) The history, if any, of the applicant for an operator license or its parent company of offering sports wagering or other gaming in other jurisdictions.

#### Section 14. Operator Application Procedures.

(1) An applicant for an operator license shall submit a fully executed original application.

(2) An application is deemed filed when the commission has received the completed application forms, including the information and documentation required by the application, unless a waiver is granted pursuant to subsection (10) of this section.

(3) The completed applications shall be filed as follows:

(a) Applicants for an operator license shall submit six (6) copies or electronically in a method approved by the commission.

(b) Applicants for an operator license shall submit the application to the commission's office in Lexington, Kentucky.

(c) Applicants for an operator license shall submit the application prior to expiration of the deadlines established in Section 11 of this administrative regulation.

(4) An applicant for an operator license is under a continuing duty to disclose any changes in the information submitted to the commission.

(5) Any operator that enters into a contract with a new service provider to provide services in Kentucky shall provide notice to the commission and a copy of such contract within fourteen (14) calendar days. If an operator has entered into a contract with a service provider to provide services in Kentucky prior to the effective date of this regulation, the operator shall attach the contract to its application for an operator's license. The operator shall provide notice to the commission within fourteen (14) calendar days of any subsequent amendments, modifications, or revisions made to the contract.

(6) Any operator that enters into a contract with a new information services provider to provide services in Kentucky shall provide notice to the commission within fourteen (14) calendar days of entry into the contract and, as requested by the commission, a copy of such contract. If an operator has entered into a contract with an information services provider to provide services in Kentucky prior to the effective date of this administrative regulation, the operator shall attach the contract to its application for an operator's license. The operator shall provide notice to the commission within fourteen (14) calendar days of any subsequent amendments, modifications, or revisions made to the contract.

(7) If an occupational licensee ceases to offer goods and services to an operator licensee, then the operator licensee shall notify the commission.

(8) An application shall include at least the following information:

(a) The name, address, and business structure of the applicant for an operator license;

(b) A key employee license application for a substantial owner or key person;

(c) A description of all sports wagering services, equipment, devices, and supplies used by the applicant for an operator;

(d) Contracts with service providers or occupational licensees, which are related to the sports wagering;

(e) Disclosure of any criminal, civil, or administrative action brought against the applicant for an operator license;

(f) Description of all other licenses held by the applicant for an operator license;

(g) Internal controls related to the conduct of sports wagering;

(h) The applicant for an operator's license shall submit audited financial statements for each of the three (3) fiscal years immediately preceding the application.

(i) If the applicant for an operator's license has no audited financial statements, the applicant shall provide audited financial statements of its parent company and the applicant's unaudited financial statements, which document the applicant's financial performance, assets, and liabilities, including:

1. A balance sheet;

2. An income statement;

3. A cash flow statement;

4. A statement of retained earnings; and

5. Notes for financial statements.

(j) Organizational and ownership charts of the applicant for an operator license; and

(k) Information regarding all testing, certifications, or approvals on any component used by the applicant for an operator license to provide sports wagering services.

(9) For applicants for an operator license in 2024 and subsequent years, internal controls shall be produced to the commission simultaneously with licensure applications. For 2023 applicants for an operator license, internal controls shall be produced to the commission thirty (30) days before the applicant for an operator license intends to begin accepting sports wagers. No sports wagers shall be offered by an applicant for an operator license until the commission has approved its internal controls or otherwise issued a temporary license pursuant to Section 13 of this administrative regulation.

(10) Submission of the application fee and pages 23 through 31 of Form KHRC 3-010-1 on or before August 1, 2023, constitutes an application to provide sports wagering in 2023. Starting in 2023, submission of the application fee and the entire Form KHRC 3-010-1 on or before September 1 constitutes an application to provide live horse racing, simulcasting, pari-mutuel wagering, and sports wagering in the subsequent year.

(11) The commission may grant an applicant for an operator license a waiver to submit all or part of the required information if it deems that the applicant for an operator license has already submitted the information as a part of the application required under this administrative regulation. An applicant for an operator license shall request this waiver in advance of submitting an application under this chapter and provide written justification for each waiver sought. This justification shall be drafted to the commission's satisfaction.

#### Section 15. Operator License Requirements.

(1) A license issued under this chapter shall include, at a minimum:

(a) The applicant for an operator's license name and business address;

(b) License number assigned by the commission;

(c) Signature of the executive director, the chairman of the commission, or their designee;

(d) Date the license was issued;

(e) The date that the license will expire; and

(f) A reference to the conditions placed on the license.

(2) The operator license shall remain the property of the commission at all times and the commission may:

(a) Take licensure action as set forth in 810 KAR 10:008;

(b) Issue conditions thereon.

#### Section 16. Applicant for an Operator License Presentation.

(1) An applicant for an operator license that has submitted a completed license application and all accompanying fees may request to make a presentation of its application at a meeting of the commission prior to the ruling on the application.

(2) The presentation shall be limited to information contained in the application and any supplemental information relevant to the

applicant for an operator's suitability. The admission of supplemental information shall be subject to the discretion of the commission, in the best interests of sports wagering in the Commonwealth.

Section 17. Joint Ventures. Two (2) or more associations licensed under KRS 230.805 may conduct sports wagering together as part of a joint venture or pursuant to an agreement between them. Such joint venture agreements or contracts shall be submitted to the commission within five (5) days of the effective date.

Section 18.~~[Section 14.]~~ Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Initial/Renewal Application for License to Conduct Live Horse Racing, Simulcasting, ~~[and] Pari-Mutuel Wagering, and Sports Wagering Form~~", KHRC 3-010-1, 06/2023~~[44/2018]~~; and

(b) "Kentucky Horse Racing Commission Racing Association Change of Control Form", KHRC 3-010-2, 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 may also be obtained at the commission's Web site at <http://khrc.ky.gov>.

JONATHAN RABINOWITZ, Commission Chair

RAY PERRY, Secretary

APPROVED BY AGENCY: July 10, 2023

FILED WITH LRC: July 10, 2023 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 22, 2023, at 9:00 a.m., at Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511. 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 September 30, 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: Jennifer Wolsing, Title: General Counsel, Address: Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, Phone: (859) 246-2040, Fax: (859) 246-2039, Email: [jennifer.wolsing@ky.gov](mailto:jennifer.wolsing@ky.gov)

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jennifer Wolsing

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes the procedures and requirements for applying for a license to conduct racing in the Commonwealth of Kentucky. This regulation also establishes the procedures and requirements for a track to apply for a license to conduct sports wagering in Kentucky.

(b) The necessity of this administrative regulation: This regulation is necessary to establish clear requirements and guidelines concerning the process by which applications for a license to conduct racing and a license to conduct sports wagering in Kentucky are reviewed and approved.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.300 requires any person desiring to conduct horse racing at a horse race meeting within the Commonwealth of Kentucky to apply for a license to do so. This regulation sets forth the procedures and requirements for applying for a license. Additionally, KRS 230.811 states that only licensed racing associations shall conduct sports wagering.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation enables the commission to issue licenses to conduct a

horse racing meeting pursuant to KRS 230.300 and sports wagering pursuant to KRS 230.811 in a consistent and systematic way.

(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 procedures and requirements for licensed racing associations to apply for a license to conduct sports wagering.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to allow licensed racing associations to conduct sports wagering.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to KRS 230.811, because it provides clear requirements and guidelines concerning the process by which applications for a license to conduct sports wagering are reviewed and approved.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in effectively administering KRS 230.811, because it enables the commission to issue sports wagering licenses in a consistent and systematic way.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation affects applicants for a license to conduct horse racing in the Commonwealth. This regulation also affects licensed tracks that apply for a license to conduct sports wagering in the Commonwealth. There are currently nine (9) licensed tracks operating in the Commonwealth.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Applicants for a racing license under this administrative regulation will be required to file initial and renewal applications and corresponding fees to obtain and maintain a license to conduct horse racing in the Commonwealth. Additionally, licensed racing associations applying for a license to conduct sports wagering under this regulation will also be required to file initial and renewal applications and corresponding fees to obtain and maintain a license to conduct sports wagering in the Commonwealth.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Applicants for a new horse racing license are assessed a fee of \$5,000. Initial applicants are assessed a \$10,000 investigation fee, the unused portion of which is returned to the applicant. The investigation fee may also be charged to renewal applicants or where a licensee proposed undergoing a change of ownership. Applicants for a new sports wagering license are assessed a fee of \$500,000. Applicants seeking to renew a sports wagering license are assessed a fee of \$50,000.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance with the racing application requirements, racing associations will be allowed to conduct legal race meetings in the Commonwealth of Kentucky. As a result of compliance with the sports wagering application requirements, licensed racing associations will be allowed to conduct legal sports wagering in the Commonwealth of Kentucky.

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

(a) Initially: It is estimated that the commission will spend approximately \$2.4 million to implement sports wagering in Kentucky in the first year.

(b) On a continuing basis: It is further estimated that the commission will spend approximately \$1.2 million annually to continue regulating sports wagering in Kentucky on a yearly basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No additional funding is required for the implementation and enforcement of the race track licensure regulation. The funding to implement and enforce sports wagering in Kentucky will come from the sports wagering administrative fund, as established in KRS 230.817.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation,

if new, or by the change if it is an amendment: No additional funding will be necessary for the implementation and enforcement of the race track licensure portion of this regulation. However, the sports wagering licensure portion of this regulation establishes licensure fees for initial and renewal applicants for sports wagering licenses.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This regulation establishes that license and investigation fees are applicable to initial race track licensure applicants and that investigation fees may be charged for a track licensee to renew a license or when a substantial change in ownership is to occur. This regulation also establishes license fees for initial and renewal applicants for sports wagering licenses.

(9) TIERING: Is tiering applied? Tiering was not applied, because this amended regulation will apply to all similarly-situated entities in an equal manner.

#### FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Horse Racing Commission, racing association applicants, and licensed racing associations applying for sports wagering licenses 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 230.210, 230.215, 230.240, 230.260, 230.280, 230.290, 230.300, 230.310, 230.320, 230.370, 230.811, and 230.817.

(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 licensure of racing associations will not generate additional revenue for state or local government for the first year. It is estimated that the licensure of sports wagering facilities will generate approximately \$5 million for the Sports Wagering Administration Fund for the first year. It is anticipated that sports wagers will generate additional tax revenue 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? The licensure of racing associations will not generate additional revenue for state or local government for subsequent years. It is estimated that the licensure of sports wagering facilities will generate approximately \$500,000 in renewal fees per year for the Sports Wagering Administration Fund for subsequent years. As above, it is anticipated that sports wagers will generate additional tax revenue during subsequent years.

(c) How much will it cost to administer this program for the first year? It is estimated that the commission will spend approximately \$2.4 million in the first year to implement sports wagering in Kentucky.

(d) How much will it cost to administer this program for subsequent years? It is further estimated that the commission will spend approximately \$1.2 million annually to continue regulating sports wagering in Kentucky 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 (+/-): Any revenue increase will be dependent on the number of initial license applicants and renewal applicants. It is estimated that revenues will be increased by approximately \$5 million during the first year and \$500,000 during subsequent years. Revenues will also be increased by sports wagering taxes. The exact amount cannot be determined at this date, as it will depend on the number and type of wagers and the location of those wagers (i.e., online or in a retail location).

Expenditures (+/-): Any revenue increase will be dependent on the number of initial license applicants and renewal applicants. It is estimated that expenditures will increase by \$2.4 million during the first

year and \$1.2 million during subsequent years.

Other Explanation: N/A

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

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

(c) How much will it cost the regulated entities for the first year? Racing associations seeking an initial license to conduct horse race meetings will pay an initial license fee of \$5,000 and an investigation fee of \$10,000. Licensed associations seeking an initial license to conduct sports wagering will pay an initial fee of \$500,000.

(d) How much will it cost the regulated entities for subsequent years? Racing associations seeking to renew a license to conduct horse race meetings may pay an investigation fee of \$10,000 under certain limited conditions. Licensed associations seeking to renew a license to conduct sports wagering will pay a renewal fee of \$50,000.

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

Cost Savings (+/-): \$0.00

Expenditures (+/-): Please see the answers to (c) and (d) above.

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 will have a major economic impact. It is estimated that racing associations seeking an initial license to conduct horse race meetings will pay an initial license fee of \$5,000 and an investigation fee of \$10,000. Licensed associations seeking a license to conduct sports wagering will pay an initial fee of \$500,000 and/or a renewal fee of \$50,000. It is estimated that the commission will spend approximately \$2.4 million to implement sports wagering in Kentucky in the first year. It is further estimated that the commission will spend approximately \$1.2 million annually to continue regulating sports wagering in Kentucky in subsequent years. It is estimated that revenues will be increased by approximately \$5 million during the first year and \$500,000 during subsequent years. This estimate does not include tax revenue obtained from sports wagers, which cannot be estimated at this time.

#### PUBLIC PROTECTION CABINET Kentucky Horse Racing Commissions (Amendment)

#### 810 KAR 4:001. Definitions for 810 KAR Chapter 4.

RELATES TO: KRS [Chapter-]230

STATUTORY AUTHORITY: KRS 230.215, 230.260(8)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) authorizes the Kentucky Horse Racing Commission to regulate conditions under which thoroughbred racing shall be conducted in Kentucky. KRS 230.260(8) authorizes the commission to prescribe necessary and reasonable administrative regulations and conditions under which horse racing at a horse race meeting shall be conducted in Kentucky. This administrative regulation defines the terms used in 810 KAR Chapter 4.

#### Section 1. Definitions.

(1) "Added money" means the amount of money, exclusive of trophy, added into a stakes race by an association, a sponsor, a state-bred program, or other fund, and that is in addition to stakes fees paid by subscribers.

(2) "Age" means the number of years since a horse was foaled, reckoned as if the horse was foaled on January 1 of the year in which the horse was foaled.

(3) "Allowance race" means a race in which contestants receive weight allowance based on performance or winnings as stipulated in the conditions of the race.

(4) "Also eligible" means in flat racing an eligible horse, properly entered, which is not drawn for inclusion in a race, but which becomes eligible according to preference or lot if another horse is scratched prior to the scratch time deadline.

(5) "Appeal" means a request for the commission to investigate, consider, and review any decision or ruling of a steward or official of a meeting.

(6) "Arrears" means all sums due by a licensee as reflected by his or her account with the horsemen's bookkeeper, including subscriptions, jockey fees, forfeitures, and any default incident to KAR Title 810.

(7) "Association" is defined by KRS 230.210.

(8) "Authorized agent" means in flat racing any person currently licensed as an agent for a licensed owner, jockey, or jockey apprentice by virtue of notarized appointment of agency filed with the commission.

(9) "Calendar days" means consecutive days counted irrespective of number of racing days.

(10) "Claiming race" means a race in which ownership of a horse participating in the race may be transferred in conformity with 810 KAR 4:050.

(11) "Closing" means the time published by the association after which entries for a race are not accepted by the racing secretary.

(12) "Coggins test" means a blood test used to determine if a horse is positive for Equine Infectious Anemia.

(13) "Commission" is defined by 810 KAR 6:001.

(14) "Conditions" means qualifications that determine a horse's eligibility to be entered in a race.

(15) "Coupled entry" means two (2) or more horses in a race that are treated as a single betting interest for pari-mutuel wagering purposes.

(16) "Day" means any twenty-four (24) hour period beginning at 12:01 a.m. and ending at midnight.

(17) "Declaration" means in flat racing the withdrawal of a horse entered in a race prior to time of closing of entries for the race in conformance with 810 KAR 4:030.

(18) "Directive" means an official order issued by the commission or the executive director.

(19) "Disciplinary action" means action taken by the stewards or the commission for a violation of KRS Chapter 230 or KAR Title 810 and can include:

- (a) Refusal to issue or renew a license;
- (b) Revocation or suspension of a license;
- (c) Imposition of probationary conditions on a license;
- (d) Issuance of a written reprimand or admonishment;
- (e) Imposition of fines or penalties;
- (f) Denial of purse money;
- (g) Forfeiture of purse money; or
- (h) Any combination of paragraphs (a) through (g) of this subsection.

(20) "Disqualification" means a ruling of the stewards or the commission revising the order of finish of a race.

(21) "Draw" means the process of determining post positions by lot.

(22) "Entry" means the act of nominating a horse for a race in conformance with KAR Title 810.

(23) "Equipment" means in flat racing accoutrements other than ordinary saddle, girth, pad, saddle cloth, and bridle carried by a horse, and includes riding crop, blinkers, tongue strap, muzzle, hood, noseband, bit, shadow roll, martingale, breast plate, bandages, boots, and racing plates or shoes.

(24) "Field" or "mutuel field" means a single betting interest, which is not a mutuel entry, involving more than one (1) horse.

(25) "Flipping halter" means a halter used in the starting gate to help prevent a horse from flipping, which is used in Quarter Horse races only.

(26) [(25)] "Forfeit" means money due by a licensee because of

an error, fault, neglect of duty, breach of contract, or alternative ruling of the stewards or the commission.

(27) [(26)] "Foul" means any action by any jockey that tends to hinder another jockey or any horse in the proper running of the race.

(28) [(27)] "Handicap race" means in flat racing a race in which the weights to be carried by the horses are assigned by the association handicapper with the intent of equalizing the chances of winning for all horses entered in the race.

(29) [(28)] "Horse" means any equine irrespective of age or sex designation and registered for racing with the applicable breed registry.

(30) [(29)] "Ineligible" means a horse or person not qualified under Title 810 KAR or conditions of a race to participate in a specified racing activity.

(31) [(30)] "Inquiry" means an investigation by the stewards of a contest prior to declaring the result of the contest official.

(32) [(31)] "Jockey" means a rider currently licensed to ride in races as a jockey, apprentice jockey, amateur jockey, or a provisional jockey permitted by the stewards to ride in three (3) races prior to applying for a license.

(33) [(32)] "Lessee" means a licensed owner whose interest in a horse is a leasehold.

(34) [(33)] "Licensee" means an individual, firm, association, partnership, corporation, trustee, or legal representative that has been duly issued a currently valid license to participate in racing in the Commonwealth.

(35) [(34)] "Maiden" means in flat racing, a horse that has never won a race at a recognized meeting in any country.

(36) [(35)] "Meeting" means the entire period of consecutive days, exclusive of dark days, granted by the commission to a licensed association for the conduct of live horse racing that:

- (a) Begins at 10 a.m. of the first racing day; and
- (b) Extends through a period ending one (1) hour after the last scheduled race of the last day.

(37) [(36)] "Month" means calendar month.

(38) [(37)] "Mutuel entry" means a single betting interest involving two (2) or more horses entered in the same race and joined for pari-mutuel purposes because of common ties as to ownership or training so that a wager on one (1) horse joined in a mutuel entry is a wager on all horses joined in the same mutuel entry.

(39) [(38)] "Nominator" means the person in whose name a horse is entered for a stakes race.

(40) [(39)] "Objection" means a verbal claim of foul in a race lodged by the horse's jockey, trainer, or owner before the race is declared official.

(41) [(40)] "Official order of finish" means the order of finish of the horses in a contest as declared official by the stewards.

(42) [(41)] "Official time" means the elapsed time from the moment the first horse crosses the timing beam until the first horse crosses the finish line.

(43) [(42)] "Owner" means any person who holds, in whole or in part, any right, title, or interest in a horse, or any lessee of a horse, who has been duly issued a currently valid owner's license as a person responsible for the horse.

(44) [(43)] "Pari-mutuel wagering", "mutuel wagering", or "pari-mutuel system of wagering" is defined by KRS 230.210.

(45) [(44)] "Post" means the starting point of a race.

(46) [(45)] "Post position" means the relative place assigned to each horse, numbered from the inner rail across the track at the starting line, from which each horse is to start a race.

(47) [(46)] "Post time" means the advertised moment scheduled for the arrival of all horses at the starting point for a race.

(48) [(47)] "Protest" means a written objection charging that a horse is ineligible to race, alleging improper entry procedures, or citing any act of an owner, trainer, or official prohibited by rules, which, if true, would exclude that horse or jockey from racing.

(49) [(48)] "Purse" means the gross cash portion of the prize for which a race is run.

(50) [(49)] "Purse race" means any race for which entries close at a time designated by the racing secretary, and for which owners of horses entered are not required by its conditions to contribute money toward its purse.

(51) [(50)] "Race" means a running contest between horses,



ridden by jockeys at a recognized meeting, during regular racing hours, for a prize.

(52) [(51)] "Race day" means any period of twenty-four (24) hours beginning at 12:01 a.m. and ending at midnight in which live racing is conducted by an association.

(53) [(52)] "Racing official" means a racing commission member, commission staff, as duties require, and all association racing department employees, as duties require.

(54) [(53)] "Recognized meeting" means any meeting with regularly scheduled live horse races, licensed by and conducted under administrative regulations promulgated by a governmental regulatory body, and conducted with the applicable breed registry.

(55) [(54)] "Registration certificate" means the document, racing permit, or virtual certificate issued by the appropriate breed registry identifying the horse for racing.

(56) [(55)] "Result" means the part of the official order of finish in a race used to determine the pari-mutuel payoff of pari-mutuel pools.

(57) [(56)] "Rulings" means all determinations, decisions, or orders of the stewards or of the commission duly issued in writing and posted.

(58) [(57)] "Scratch" means the withdrawal of a horse entered for a race after the time of closing of entries for the race.

(59) [(58)] "Scratch time" means the time set by the racing secretary as a deadline for horsemen to indicate their desire to scratch out of a race.

(60) [(59)] "Specimen" means a sample of blood, urine, or other biologic sample taken or drawn from a horse for chemical testing.

(61) [(60)] "Stakes" mean all fees paid by subscribers to an added-money or stakes race for nominating, eligibility, entrance, or starting, as required by the conditions of the race, with the fees to be included in the purse.

(62) [(61)] "Stakes race" means a race that closes more than seventy-two (72) hours in advance of its running and for which subscribers contribute money towards its purse.

(63) [(62)] "Starter" means either:

(a) An official who dispatches the horses from the starting gate; or

(b) A horse in a race when the starting gate doors open in front of it at the moment the starter dispatches the horses for the race.

(64) [(63)] "Steward" means a duly appointed racing official with powers and duties established in 810 KAR 2:040 serving at a current meeting in the Commonwealth.

(65) [(64)] "Subscription" means nomination or entry of a horse in a stakes race.

(66) [(65)] "Suspended" means withdrawal of racing privileges by the stewards or commission.

(67) [(66)] "Thoroughbred racing" is defined by KRS 230.210.

(68) [(67)] "Tote" or "tote board" means the totalizator.

(69) [(68)] "Unplaced" means a horse that finishes a race outside the pari-mutuel payoff.

(70) [(69)] "Walkover" means a race in which the only starter or all starters represent single ownership.

(71) [(70)] "Weigh in" means in flat racing the presentation of a jockey to the clerk of scales for weighing after a race.

(72) [(71)] "Weigh out" means in flat racing the presentation of a jockey to the clerk of scales for weighing prior to a race.

JONATHAN RABINOWITZ, Chairman

RAY PERRY, Secretary

APPROVED BY AGENCY: July 12, 2023

FILED WITH LRC: July 12, 2023 at 11:00 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 9:00 a.m. on September 21, 2023 at 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the

proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. on September 30, 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 below.

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.

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jennifer Wolsing

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes definitions for terms used in 810 KAR Chapter 4.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to ensure that various terms used in 810 KAR Chapter 4 are properly and precisely defined.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.215(2) and 230.260(8) authorize the Commission to promulgate administrative regulations prescribing the conditions under which racing shall be conducted in Kentucky. This regulation sets forth defined terms that are used in the regulations in 810 KAR Chapter 4.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation fulfills the Commission's statutory mandate to prescribe the conditions under which horse racing is conducted in the Commonwealth by defining terms used in 810 KAR Chapter 4.

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

(a) How the amendment will change this existing administrative regulation: Section 1 is amended to include a definition for "flipping halter." A "flipping halter" is a halter used in the starting gate to prevent a horse from flipping. This type of halter is only used in Quarter Horse races.

(b) The necessity of the amendment to this administrative regulation: This amendment to Section 1 is necessary to define a piece of equipment for Quarter Horse racing.

(c) How the amendment conforms to the content of the authorizing statutes: The proposed amendment establishes a condition under which horse racing will be conducted in the Commonwealth. Therefore, this amendment conforms to KRS 230.215(2) and KRS 230.260(8).

(d) How the amendment will assist in the effective administration of the statutes: The amendment will define a piece of equipment for Quarter Horse racing.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Kentucky Horse Racing Commission and those who engage in Quarter Horse racing 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 amendment adds a definition and the regulated entities do not have to take any action to comply.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): A piece of equipment used in Quarter Horse racing is defined, benefitting all engaged in horse racing.

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

(a) Initially: There is no initial administrative cost to implement this administrative regulation.

(b) On a continuing basis: There is no continuing cost 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: No funding is necessary to implement and enforce this administrative regulation.

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

(9) TIERING: Is tiering applied? Tiering is not applied, because this amended regulation will apply to all similarly situated entities in an equal manner.

#### FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Horse Racing Commission 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 230.215(2) and 230.260(8) authorize the action taken by this regulation.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

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

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

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

(d) How much will it cost to administer this program for subsequent years? There will be no cost to administer this regulation 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 (+/-): Neutral.

Expenditures (+/-): Neutral.

Other Explanation: None.

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

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

(c) How much will it cost the regulated entities for the first year? There will be no cost to the regulated entities for the first year.

(d) How much will it cost the regulated entities for subsequent years? There will be no cost to the 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 (+/-): Neutral.

Expenditures (+/-): Neutral.

Other Explanation: N/A.

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)]. This regulation is not expected to have a major economic impact for the reasons stated above.

### PUBLIC PROTECTION CABINET Kentucky Horse Racing Commission (Amendment)

#### 810 KAR 4:010. Horses.

RELATES TO: KRS 230.215

STATUTORY AUTHORITY: KRS 230.215(2), 230.260(8)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) and 230.260(8) authorize the Kentucky Horse Racing Commission (the "commission") to promulgate administrative regulations regulating horse racing in Kentucky. This administrative regulation establishes requirements for the participation of horses in horse race meetings, protects the safety and welfare of the horse, and creates a level playing field for participants thereby protecting the integrity of pari-mutuel wagering.

Section 1. Definition. "Electronic registration system" means a software application available online and approved by the commission that allows an association's racing secretary or the secretary's designee, or horse identifier or the identifier's designee, full access to horse and trainer records from all tracks in North America, including current owner information.

#### Section 2. Registration and Identification Required.

(1) A horse shall not be entered or raced in Kentucky unless:

(a) The horse is duly registered, as applicable, in The Jockey Club breed registry, the American Quarter Horse Association, the Appaloosa Horse Club, the Arabian Horse Association Registry, or the American Paint Horse Association, or their respective successors; and

(b)

1. The registration certificate, virtual or digital certificate, or racing permit issued by the applicable breed registry for the horse is on file with the racing secretary; or

2. The information contained on the registration certificate, virtual or digital certificate, or racing permit is available to the racing secretary through the electronic registration system.

(2) The stewards may at any time require presentation of a horse's registration certificate, virtual or digital certificate, or racing permit or other proof of ownership.

(3) Upon claim, sale, or any other transfer of ownership, the horse's registration certificate or racing permit shall be given to the new owner, and any virtual or digital certificate shall be transferred to the new owner electronically. The new owner shall report the change in ownership to the stewards.

(4) If the electronic registration system fails for any reason, the stewards may require presentation of a horse's registration certificate, virtual or digital certificate, or racing permit prior to a horse being entered or raced in Kentucky.

#### Section 3. Ringers Prohibited.

(1) A horse shall not be entered or raced in Kentucky designated by a name other than the name under which the horse is currently registered with the applicable breed registry. If a horse's name is changed with the applicable breed registry, and the horse has raced under its previous name, the horse's former name shall be shown parenthetically in the daily race program the first three (3) times the horse races after the name change.

(2) A person shall not cause or permit the correct identity of a horse to be concealed or altered. A person shall not refuse to reveal the correct identity of a horse that he or she owns or is in his or her

care to a racing official or member of the regular news media.

(3) A horse shall not race in Kentucky unless identified by:

(a) A legible lip tattoo number applied by agents of the Thoroughbred Racing and Protective Bureau, or by the comparable authorized organization applicable to the breed of the horse;

(b) An electronic horse identification microchip that accurately identifies the horse, is compliant with the international standards ISO 11784, is verified by agents of the Thoroughbred Racing Protective Bureau, or its successor, and is documented in The Jockey Club database or by the comparable authorized organization applicable to the breed of the horse; or

(c) With regards to a horse from a foreign jurisdiction participating in a graded stakes race, has otherwise been correctly identified to the stewards' satisfaction.

(4) A horse shall not be entered or raced in Kentucky if previously involved in a "ringer" case to the extent that:

(a) A person having control of the horse knowingly entered or raced the horse while designated by a name other than the name under which the horse was registered with The Jockey Club; or

(b) The person having control of the horse participated in or assisted in the entry or racing of some other horse under the name registered as belonging to the horse in question.

#### Section 4. Denerving.

(1) A horse that has had a chemical, surgical, or thermal neurectomy at or above the fetlock shall not be permitted to race.

(2) A horse that has had a palmar or plantar digital neurectomy may be permitted to race if:

(a) The neurectomy has been reported by the trainer to the stewards; and

(b) The horse has been approved for racing by the commission veterinarian prior to being entered to race.

(3) A horse on which a neurectomy has been performed shall have that fact designated on its registration certificate, virtual or digital certificate, racing permit, and entry in the electronic registration system. Responsibility for ensuring that the neurectomy is correctly noted on the horse's registration certificate, virtual or digital certificate, racing permit, and entry in the electronic registration system shall fall:

(a) Jointly on the practicing veterinarian who performed the operation and the trainer of the denerved horse if the neurectomy was performed at a location under the commission's jurisdiction; and

(b) Solely on the owner of the denerved horse if the neurectomy was performed at a location not under the commission's jurisdiction.

(4) If a horse races in violation of this administrative regulation and participates in the purse distribution, then a protest shall not be considered unless submitted in writing to the stewards within forty-eight (48) hours after the race.

(5) If a horse races in violation of this administrative regulation and is claimed, then a protest shall not be considered unless the successful claimant submits a protest in writing within forty-eight (48) hours after the race requesting the claim be voided. If the claim is voided, the horse shall be returned to the owner who started the horse in the race, and the claim price shall be returned to the claimant.

(6) A list of all denerved horses shall be posted in the racing secretary's office.

#### Section 5. Health Certificate Required.

(1) A horse shall not be stabled on the grounds of a licensed association or any training center under the jurisdiction of the commission unless a Certificate of Veterinary Inspection is issued by an accredited veterinarian:

(a) Not more than ten (10) days prior to the horse's arrival on the grounds; or

(b) Within a lesser interval as prescribed by the racing association in consultation with the Kentucky Department of Agriculture.

(2) Notice of this requirement shall be included in the stall application of all licensed associations and training centers under the jurisdiction of the commission and all condition books of licensed associations.

Section 6. Workouts. A horse shall not be schooled in the paddock or taken onto a track on association grounds for training or workout, other than during normal training hours posted by the association, without special permission of the stewards.

#### Section 7. Thoroughbred Age Restrictions.

(1) A maiden six (6) years of age or older that has made five (5) life time starts on the flat shall not be entered or start.

(2) A first time starter five (5) years of age or older shall be approved by a commission veterinarian prior to entry.

Section 8. Other Age Restrictions. A quarter horse, paint horse, Arabian, or Appaloosa horse six (6) years of age or older shall not be entered or raced in a race restricted to maidens. A horse thirteen (13) years of age or older shall not be entered or raced.

#### Section 9. Fillies and Mares Bred.

(1) A filly or mare that has been covered by a stallion shall:

(a) Be so reported to the racing secretary prior to being entered in a race; and

(b) Not be entered in a claiming race, unless a written release from the stallion owner is attached to the filly's or mare's registration certificate, or otherwise provided to the stewards, indicating that the stallion service fee has been paid or satisfied.

(2) A list of all fillies and mares so reported, showing the names of stallions to which they have been bred, shall be posted in the racing secretary's office.

(3) A filly or mare in-foal shall not be entered in a race 120 days or more after the date of last cover.

Section 10. Serviceable for Racing. A horse shall not be entered or raced that:

(1) Is not in serviceable, sound racing condition. The stewards may at any time require a horse on association grounds to be examined by a qualified person;

(2) Is posted on a veterinarian's list, stewards' list, or starter's list in any racing jurisdiction, unless the horse on a veterinarian's list, stewards' list, or starter's list has a posted off date on or before the date of the race for which it is being entered;

(3) Has previously raced, but has made no starts in the last 365 days or more, unless approved by a commission veterinarian prior to entry;

(4) Is suspended in any jurisdiction;

(5) Has been administered any drug in violation of 810 KAR 8:010;

(6) Is blind or has seriously impaired vision in both eyes;

(7) Is not correctly identified to the satisfaction of the stewards; or

(8) Is owned wholly or in part by or is trained by an ineligible person.

#### Section 11. Equipment.

(1) Riding crops and blinkers shall be used consistently on a horse while racing.

(2) Permission to change use of any equipment used on a horse from its previous start shall be obtained from the stewards.

(3) A horse's tongue may be tied down during a race with a clean bandage or gauze.

(4) A horse's bridle shall not weigh more than two (2) pounds.

(5) Bits shall be of a metallic alloy base of stainless steel or aluminum and may be encased in rubber, plastic, or leather.

(6) War bridles and bitless bridles shall not be used.

(7) Bar shoes may be used for racing only with permission of the stewards.

(8) Any goading device, chain, spurs, electrical or mechanical device, or appliance, except for a riding crop, that can be used to alter the speed of a horse shall not be used on a horse in a race or workout.

(9)

(a) Any riding crop shall be subject to inspection and approval by the stewards or the clerk of the scales to ensure conformity with the specifications of paragraphs (c) through (e) of this subsection.

(b) Only riding crops meeting the specifications of this

subsection, including the mandatory shock absorbing characteristics, may be used in thoroughbred racing and training.

(c) A riding crop shall have a:

1. Maximum weight of eight (8) ounces;
2. Maximum length, including flap, of thirty (30) inches; and
3. Minimum diameter of the shaft of three-eighths (3/8) inch.

(d)

1. The only additional feature that may be attached to the riding crop is a flap that shall have a:

- a. Maximum length from the end of the shaft of one-half (1/2) inch; and
- b. Maximum width of one and six-tenths (1.6) inches, with a minimum width of eight-tenths (0.8) inch;

2. The flap from the end of the shaft shall not contain any reinforcements or additions;

3. There shall not be binding within seven (7) inches of the end of the flap;

4. The contact area of the shaft shall be smooth, with no protrusion or raised surface, and covered by shock absorbing material throughout its circumference; and

5. The flap shall have similar shock absorbing characteristics to that of the contact area.

(e) A riding crop shall not have:

1. Stingers or projections extending through the hole of a popper; and

2. Any metal parts.

(10)

(a) Except as set forth in paragraph (c) of this subsection, the following shall not be used on the front shoes of horses while racing or training on any racing surface:

1. Horse shoes that have toe grabs;

2. Bends;

3. Jar calks;

4. Stickers; and

5. Any other traction device worn on the front shoes of horses.

(b) Wear plates with a height no greater than two (2) millimeters may be used on the front shoes of horses while racing or training.

(c) Front horse shoes on quarter horses may have a toe grab that measures up to four (4) millimeters from the ground surface side of the shoe. Hind horse shoes on quarter horses may have a toe grab that measures up to one-quarter (1/4) inch from the ground surface side of the shoe.

(11) Indiscriminate or brutal use on a horse of a riding crop or any other equipment, as determined by the stewards, at any time on the grounds of a licensed racing association or training center under the jurisdiction of the commission shall be prohibited.

Section 12. Sex Alteration. Any alteration in the sex of a horse shall be reported by the horse's trainer to the racing secretary and to the appropriate breed registry applicable to the horse. The alteration shall be noted on the horse's registration certificate, racing permit, virtual or digital certificate, or entry in the electronic system.

Section 13. Reporting Death of Horse. A licensed racing association or training center under the jurisdiction of the commission shall report the death or euthanization of any horse on its grounds immediately to the chief commission veterinarian.

Section 14. Postmortem Examination. A horse that dies or is euthanized on the grounds of a licensed association or training center under the jurisdiction of the commission shall undergo a postmortem examination at the discretion of the commission. If a postmortem examination is conducted:

(1) All shoes and equipment on the horse's legs shall be left on the horse;

(2) The commission, through its designee:

(a) Shall take possession of the horse upon death;

(b) Shall, if commission personnel are present, collect and submit for analysis blood, urine, bodily fluids, or other biologic specimens immediately, if possible before euthanization occurs; and

(c) Shall coordinate with the owner or owner's licensed authorized agent to determine and address any insurance requirements.

(3) The remains of the horse shall not be returned after completion of the postmortem examination.

(4) The presence of a prohibited substance in a specimen collected during the postmortem examination may constitute a violation of 810 KAR 8:010.

Section 15. Incorporation by Reference.

(1) "ISO 11784", 2004 is incorporated by reference.

(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, Monday through Friday, 8 a.m. to 4:30 p.m. This document is also available on the International Organization for Standardization ("ISO") Web site at the following URL: <https://www.iso.org/standard/38799.html>.

JONATHAN RABINOWITZ, Chair

RAY PERRY, Secretary

APPROVED BY AGENCY: July 12, 2023

FILED WITH LRC: July 12, 2023 at 11:00 a.m.

PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 9:00 a.m. on September 21, 2023 at 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. on September 30, 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 below.

CONTACT PERSON: Jennifer Wolsing, General Counsel, Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859) 246-2039, email [jennifer.wolsing@ky.gov](mailto:jennifer.wolsing@ky.gov).

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jennifer Wolsing

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the rules concerning horses in thoroughbred and other flat racing.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide specific rules concerning the health and safety of horses in thoroughbred and other flat racing.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.215(2) and 230.260(8) authorize the Commission to promulgate administrative regulations prescribing the conditions under which racing shall be conducted in Kentucky. This administrative regulation prescribes the conditions relating to the health and safety of horses in thoroughbred and other flat racing.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation sets forth requirements and rules concerning the health and safety of horses in thoroughbred and other flat racing that enhance the integrity of racing.

(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 Quarter Horses to wear toe grab horse shoes.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to preserve the health and safety of the human and equine athletes participating in Quarter Horse racing.

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

statutes: KRS 230.215(2) and 230.260(8) authorize the commission to promulgate administrative regulations regulating horse racing in Kentucky and this amendment preserves the health and safety of the human and equine athletes participating in Quarter Horse racing.

(d) How the amendment will assist in the effective administration of the statutes: This amendment provides additional conditions in which a horse may be entered or raced in Kentucky, thereby continuing with the commission's legislative purpose of providing specific rules concerning the health and safety of horses in thoroughbred and other flat racing.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Kentucky Horse Racing Commission, Kentucky's licensed race tracks, and all individual participants in Quarter Horse racing are potentially 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: Participants in horse racing, and especially owners, trainers, veterinarians, and jockeys, will be required to adhere to the requirements and rules set forth in this administrative regulation pertaining to the health and safety of horses in thoroughbred and other flat racing. In particular, Quarter Horse owners and trainers may voluntarily choose to allow their horses to compete with toe grab horse shoes.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Participants in racing will benefit from clearly defined rules concerning the health and safety of horses that enhance the integrity of racing.

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

(a) Initially: There is no initial administrative cost to implement this administrative regulation.

(b) On a continuing basis: There is no continuing cost 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: No significant funding will be necessary to implement and enforce this administrative regulation. Any minimal costs will be funded from the budget of the Commission.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied because this administrative regulation will apply to all similarly situated entities in an equal manner.

#### FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Horse Racing Commission 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 230.215, 230.225, 230.240, 230.260, 230.290, 230.310, 230.320, 230.370.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to

explain the fiscal impact of the administrative regulation.

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

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

(d) How much will it cost to administer this program for subsequent years? There will be no cost to administer this 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 (+/-): Neutral.

Expenditures (+/-): Neutral.

Other Explanation: N/A.

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? This administrative regulation will generate no cost savings for the 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 generate no cost savings for the regulated entities during subsequent years.

(c) How much will it cost the regulated entities for the first year? There will be no cost to the regulated entities during the first year.

(d) How much will it cost the regulated entities for subsequent years? There will be no cost to the 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 (+/-): Neutral.

Expenditures (+/-): Neutral.

Other Explanation: N/A.

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)]: This regulation will not have a major economic impact as explained in the answers to the questions above.

#### PUBLIC PROTECTION CABINET Kentucky Horse Racing Commission (Amendment)

#### 810 KAR 4:030. Entries, subscriptions, and declarations.

RELATES TO: KRS 230.215, 230.240, 230.260, 230.290, 230.310, 230.320

STATUTORY AUTHORITY: KRS 230.215(2), 230.260(8)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) authorizes the Kentucky Horse Racing Commission (the "commission") to promulgate administrative regulations prescribing the conditions under which all horse racing is conducted in Kentucky. KRS 230.260(8) grants the commission the authority to regulate conditions under which horse racing shall be conducted in Kentucky. This administrative regulation establishes requirements for entry, subscription, and declaration of horses in order to race.

Section 1. Definition. "Subscriber" means an owner who enters a horse into a stakes race and pays the requisite entry fee.

Section 2. Entering Required. A horse shall not be qualified to start in any race unless it has been, and continues to be, entered in the race. Entries or subscriptions for any horse, or the transfer of entries or subscriptions for any horse, may be refused or cancelled by the association without notice or reason given.

Section 3. Procedure for Making Entries.

(1) An entry, subscription, declaration, or scratch shall be filed with the racing secretary and shall not be effective until received by the racing secretary. The racing secretary shall maintain a record of the time of receipt of an entry, subscription, declaration, or scratch for a period of at least one (1) year.

(2) An entry shall be made by the owner, the trainer, or an authorized agent of the owner or trainer. An entry shall be in the name of a horse's licensed owner, as completely disclosed and registered with the racing secretary pursuant to subsection (3) of this section.

(3) An entry shall be submitted in writing or by telephone to the racing secretary. A telephone entry shall be confirmed promptly in writing if requested by the stewards, the racing secretary, or an assistant to the racing secretary.

(4) An entry shall clearly designate the horse entered as reflected by its registration certificate, racing permit, or virtual certificate.

(a) A horse shall not race unless registered pursuant to 810 KAR 4:010 or otherwise correctly identified to the satisfaction of the stewards.

(b) Establishing the identity of a horse shall be the responsibility of its owner and of any other person required to certify the identity of the horse. A person shall be subject to appropriate disciplinary action under 810 KAR 8:030 for incorrect identification.

(5) The entry shall indicate usage of furosemide pursuant to 810 KAR 8:010.

(6) An entry shall not be altered after the closing of entries, except to correct an error with permission of the stewards.

(7) A horse shall not be entered in two (2) races to be run on the same day.

(8)

(a) A horse that has not started in the past forty-five (45) days shall not be permitted to start unless it has at least one (1) published workout within twenty (20) days of entry at a distance satisfactory to the stewards. If a horse has performed the requisite workout, but the workout does not appear in the past performances, the horse shall be permitted to start if the stewards determine that the workout failed to be published through no fault of the trainer.

(b) A horse that has not started in the past ninety (90) days shall not be permitted to start unless it has at least two (2) published workouts during the past ninety (90) day period, one of which occurs within twenty (20) days of entry at a distance satisfactory to the stewards. If a horse has performed the requisite workouts, but the workouts do not appear in the past performances, the horse shall be permitted to start if the stewards determine that the workout failed to be published through no fault of the trainer.

(c) A horse that has not started in the past 180 days shall not be permitted to start unless it has at least three (3) published workouts during the past 180-day period, one (1) of which occurs within twenty (20) days of entry, at a distance satisfactory to the stewards. If a horse has performed the requisite workouts, but the workouts do not appear in the past performances, the horse shall be permitted to start if the stewards determine that the workouts failed to be published through no fault of the trainer.

(d) A horse starting for the first time shall not be permitted to start unless it has three (3) workouts, one (1) of which is from the starting gate, one (1) of which is within twenty (20) days of entry, and at least one (1) of which is published.

(e) A workout not appearing in the official program shall be publicly displayed on television monitors, the tote board, and, if available, the bulletin boards where photo finishes are shown at the time when mutuel windows are opened and shall be displayed until the conclusion of the race in which the horse is entered.

(f) A horse that has never started shall not be entered until the trainer has produced a document or card issued by the starter indicating that the horse has been adequately trained to race from the starting gate.

(g) A minimum acceptable published workout time for a quarter horse is 220 yards at 14.00 seconds.

(h) Quarter horses that have never raced around the turn shall have completed at least one (1) workout at 660 yards or further within thirty (30) days prior to entry.

(i) Quarter horses that have previously started in a race around the turn, but have not started in such a race within sixty (60) days, shall complete at least one (1) workout at 660 yards or farther within thirty (30) day prior to entry.

(9) If the published conditions of the race permit, an association may accept in a turf race an entry designated "main track only." Preference shall apply to all horses drawn into a race, except that horses entered as "main track only" shall be listed as also-eligible and be considered only if the race is taken off the turf.

(10) A horse shall only be permitted to enter if at the time of entry, the owner, trainer, or an authorized agent of the owner or trainer submits a complete medical record for the horse for the fourteen (14) day period prior to the entry date.

(11) Quarter horses shall submit negative hair samples as a condition of entry. In addition, all quarter horses shall submit to out-of-competition testing governed by 810 KAR 8:040.

Section 4. Limitation as to Spouses.

(1) An entry in a race shall not be accepted for a horse owned wholly or in part or trained by a person whose spouse is under license suspension, revocation, or is otherwise ineligible to be licensed, at the time of the entry except as established in subsection (2) of this section.

(2) If the license of a jockey has been suspended for a routine riding offense, depending on the severity of the offense, the stewards may waive the application of this section as to the licensed spouse of the suspended jockey.

Section 5. Mutuel Entries.

(1) More than two (2) horses having common ties through training shall not be entered in a purse race.

(2) Horses entered in the same race and owned wholly or in part by the same owner or spouse, may be joined as a mutuel entry and single betting interest.

(3) More than two (2) horses having common ties through ownership or training shall not be joined as a mutuel entry in a purse race. If making a double entry of horses owned wholly or in part by the same owner or spouse, or having common ties through training, a preference for one (1) of the horses shall be made.

(4)

(a) Two (2) horses having common ties through ownership or training shall not start in a purse race to the exclusion of a single entry.

(b) In any race, the racing secretary may uncouple entries having common ties through training or ownership to make two (2) separate betting interests.

Section 6. Subscriptions.

(1) A subscriber to a stakes race may transfer or declare a subscription prior to the closing of entries for the race.

(2) Joint subscriptions and entries may be made by any one (1) of the joint owners of a horse. Each owner shall be jointly and severally liable for all payments due.

(3) Death of a horse or a mistake in its entry if the horse is eligible shall not release the subscriber or transferee from liability for all stakes fees due. Fees paid in connection with a subscription to a stakes race that is run shall not be refunded, except as otherwise stated in the conditions of the stakes race.

(4) Death of a nominator or original subscriber to a stakes race shall not render void any subscription, entry, or right of entry. All rights, privileges, and obligations shall attach to the successor owner, including the legal representatives of the decedent.

(5) If a horse is sold privately, sold at public auction, or claimed, stakes engagements for it shall be transferred automatically with the

horse to its new owner. If the horse is transferred to a person whose license is suspended, revoked, or is otherwise ineligible to be licensed, the subscription shall be void as of the date of the transfer.

(6) All stakes fees paid toward a stakes race shall be allocated to the winner unless otherwise provided by the condition for the stakes race. If a stakes race is cancelled for any reason, all subscription fees paid shall be refunded.

#### Section 7. Closings.

(1) Entries for purse races and subscriptions to stakes races shall close at the time designated by the association in previously published conditions for the races.

(a) If a race is not split, an entry, subscription, or declaration shall not be accepted after closing time.

(b) If a purse race fails to fill, or in an emergency, the racing secretary may extend the closing time, if the approval of a steward has been obtained.

(2) Entries that have closed shall be compiled without delay by the racing secretary and shall be posted along with declarations.

#### Section 8. Number of Starters in a Race.

(1) The maximum number of starters in any race shall be limited to the number of starting positions afforded by the association starting gate and any extensions approved by the commission as can be positioned across the width of the track at the starting point for the race. The maximum number of starters further shall be limited by the number of horses that, in the opinion of the stewards after considering the safety of the horses and riders and the distance from the start to the first turn, may be afforded a fair and equal start.

(2)

(a) A maiden, starter, or claiming race shall be run if:

1. Eight (8) or more horses are entered;
2. The horses entered represent different betting interests; and
3. The race is listed in the printed condition book.

(b) Except as established in paragraph (c) of this subsection, any other purse race shall be run if:

1. Six (6) or more horses are entered;
2. The horses entered represent different betting interests; and
3. The race is listed in the printed condition book.

(c) If a purse race under paragraph (b) of this subsection includes two (2) horses having common ties through training or ownership, the race shall be run if eight (8) or more horses are entered.

(3) If a purse race in the printed condition book fails to fill with the minimum number of entries required by subsection (2) of this section, the association may cancel or declare the race off. The names of all horses entered in the race shall be publicly posted in the office of the racing secretary on the date of entry.

#### Section 9. Split or Divided Races.

(1) If a race is cancelled or declared off, the association may split any race programmed for the same day that may previously have been closed. Races printed in the condition book shall have preference over substitute and extra races.

(2) If a purse race is split, forming two (2) or more separate races, the racing secretary shall give notice of the split not less than fifteen (15) minutes before the races are closed in order to grant time for the making of additional entries to the split races.

(3) Division of entries upon the splitting of any race shall be made in accordance with the conditions under which entries and subscriptions were made and the conditions established in paragraphs (a) through (c) of this subsection.

(a) Horses originally joined as a mutual entry may be placed in different divisions of a split race unless the person making the multiple entry, at the time of the entry, indicates the coupling of horses is not to be uncoupled if the race is split.

(b) Division of entries in any split stakes race may be made according to age, sex, or both.

(c) Entries for any split race not divided by any method provided for in this administrative regulation shall be divided by lot so as to provide a number of betting interests as nearly equal as possible for each division of the split race.

#### Section 10. Post Positions.

(1) Post positions for all races shall be determined by lot, except as established in Section 11(5) of this administrative regulation. Owners, trainers, and their representatives shall have the opportunity to be present at the drawing.

(2) The racing secretary shall assign program numbers for each starter to conform with the post position drawn, except if a race includes two (2) or more horses joined as a single betting interest.

#### Section 11. Also-Eligible List.

(1) If the number of entries for a race exceeds the number of horses permitted to start, as established by Section 8 of this administrative regulation, the names of no more than eight (8) horses entered but not drawn into the race as starters shall be posted on the entry sheet as "also-eligible" to start.

(2) After a horse has been excused from a race at scratch time, also-eligible horses shall be drawn into the body of the race based on preference. If preference is equal, horses shall be drawn by lot, unless otherwise stipulated in the conditions of the race.

(3)

(a) An owner or trainer of a horse on the also-eligible list not wishing to start the horse in a race shall notify the racing secretary prior to scratch time for the race. The horse shall forfeit any preference to which it may have been entitled.

(b) If there are no scratches in the body of a race, a horse on the also-eligible list not drawn into the race shall retain its previously established preference.

(4) A horse on the also-eligible list for a race on the present day that has been drawn into the body of a race on a future race day, shall not be permitted to run in the race on the present day for which it had been listed as also-eligible. This shall not include stakes, handicaps, races at subsequent meets, or races in other jurisdictions.

(5) A horse on the also-eligible list shall be assigned a post position by preference. If preference is equal, post positions shall be drawn by lot, unless otherwise stipulated in the published conditions of the race.

(6) Quarter horses that gain a position in the race from the also eligible list shall take the outside post position in the order drawn from the also eligible list.

#### Section 12. Preferred List.

(1) The racing secretary shall maintain a list of horses that were entered but denied an opportunity to race because they were eliminated from a race included in the printed condition book either by overfilling or failure to fill.

(2) The racing secretary shall submit, for approval of the commission at least thirty (30) days prior to the opening date of a race meeting, a detailed description of the manner in which preference will be allocated.

(3) Preferences shall not be given to a horse otherwise eligible for a race if it is also entered for a race on a future race day. This shall not include stakes and handicaps.

Section 13. Arrears. Unless approved by the racing secretary, a horse shall not be entered or raced unless its owner has paid all stakes fees owed.

#### Section 14. Declarations.

(1) Declarations shall be made in the same form, time, and procedure as required for the making of entries.

(2) Declarations shall be irrevocable.

(3) A declaration fee shall not be required by any licensed association.

#### Section 15. Scratches.

(1) Scratches shall be irrevocable and shall be permitted under the conditions established in this section.

(a) Except as established in paragraph (b) of this subsection, a horse may be scratched from a stakes race for any reason at any time until four (4) hours prior to post time for the race by obtaining approval from the stewards. Upon receiving a scratch from a stakes race, the racing secretary shall promptly notify the stewards and

pari-mutuel manager, and shall cause public announcement of the scratch to be made.

(b) If a list of also-eligible horses has been drawn, scratches shall be filed at the regular scratch time as posted by the racing secretary. Scratch time may be extended by the stewards at their discretion if warranted. Thereafter, a horse shall not be scratched unless:

1. A valid physical reason exists; or
2. The scratch is related to adverse track conditions or change of racing surface.

(c) A horse shall not be scratched from a purse race unless:

1. The approval of the stewards has been obtained; and
2. Intention to scratch has been filed in writing with the racing secretary or the secretary's assistant at or before scratch time.

(2) A scratch of one (1) horse coupled in a mutual entry in a purse race shall be made at or before scratch time, unless permission is granted by the stewards to allow both horses to remain in the race until a later appointed scratch time.

(3) In a purse race, a horse that is physically disabled or sick shall be permitted to be scratched first. If horses representing more than eight (8) betting interests remain in after horses with physical excuses have been scratched, an owner or trainer may scratch horses without physical excuses at scratch time, down to a minimum of eight (8) betting interests. This privilege shall be determined by lot if an excessive number of owners or trainers wish to scratch their horses.

(4) A horse that has been scratched or excused from starting by the stewards because of a physical disability or sickness shall be placed on the commission's veterinarian list for six (6) calendar days beginning the day after the horse was scratched or excused.

(5) Each association shall keep records and statistics documenting the effect upon field sizes of the six (6) day veterinarian list requirement in subsection (4) of this section. Records and statistics kept pursuant to this section shall be retained by the licensed racing association for at least one (1) year.

Section 16. Official Publication Statistics. In determining eligibility, allowances and penalties, the reports, records, and statistics as published in the Daily Racing Form or similar publication as the commission considers appropriate to advise the public and the monthly chart books, or corresponding official publications of any foreign country, shall be considered official, but may be corrected until forty-five (45) minutes prior to post time of the race.

Section 17. Examination by Attending Veterinarian.

(1) Subject to the exception in subsection (4), a horse shall only be entered if:

(a) The horse has been examined by an attending veterinarian licensed by the veterinary regulatory body in the jurisdiction where the examination occurs no more than three (3) days prior to entry;

(b) The attending veterinarian certifies in writing that the horse is in serviceable, sound racing condition; and

(c) The written certification is provided to the Equine Medical Director or designee no later than the time of entry.

(2) The examination required by paragraph (a) of subsection (1) of this section shall include watching the horse jog in hand.

(3) If the attending veterinarian who examines the horse prescribes a diagnostic test as part of the evaluation of the horse's soundness, the results of the test shall be provided to the commission's veterinarian no later than one (1) day before the horse is set to start.

(4) If a racing secretary contacts a trainer to fill a race, the trainer may enter a horse prior to obtaining the examination and written certification required in this section, if the certification required in this section is provided to the Equine Medical Director or designee on the day that the horse is entered.

JONATHAN RABINOWITZ, Chairman

RAY PERRY, Secretary

APPROVED BY AGENCY: July 12, 2023

FILED WITH LRC: July 12, 2023 at 11:00 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 9:00 a.m. on

September 21, 2023 at 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. on September 30, 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 below.

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](mailto:jennifer.wolsing@ky.gov).

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jennifer Wolsing

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for entries, subscriptions, and declarations in Thoroughbred and other flat racing.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide specific requirements and methods for entries, subscriptions and declarations in thoroughbred and other flat racing.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.215(2) and 230.260(8) authorize the commission to promulgate administrative regulations prescribing the conditions under which racing shall be conducted in Kentucky. This administrative regulation prescribes the conditions relating to entries, subscriptions and declarations in thoroughbred and other flat racing.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation sets forth requirements and rules concerning entries, subscriptions and declarations in thoroughbred and other flat racing that enhance the integrity of racing.

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

(a) How the amendment will change this existing administrative regulation: Section 3 is amended to state that the minimum acceptable published workout time for a Quarter Horse is 220 yards at 14.00 seconds; Quarter Horses that have never raced around the turn shall have completed at least one workout at 660 yards or further within 30 days prior to entry in a race; Quarter Horses that have previously started in a race around the turn, but have not started in such a race within 60 days, shall complete at least one workout at 660 yards or further within 30 days prior to entry; Quarter Horses shall submit negative hair samples as a condition of entry; and all Quarter Horses shall submit to out-of-competition testing governed by 810 KAR 8:040. Section 11 is amended to state that Quarter Horses that gain a position in the race from the also-eligible list shall take the outside post position in the order drawn from the also-eligible list.

(b) The necessity of the amendment to this administrative regulation: These amendments to Section 3 and 11 are necessary to ensure the safety and integrity of Quarter Horse racing by providing standards for entry eligibility, drug testing, and post positions.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 230.215(2) and 230.260(8) authorize the commission to promulgate administrative regulations prescribing the conditions under which racing shall be conducted in Kentucky. This amendment prescribes additional conditions relating to entries, subscriptions and declarations in thoroughbred and other flat racing.

(d) How the amendment will assist in the effective administration of the statutes: This amendment sets forth requirements and rules concerning entries, subscriptions and declarations in thoroughbred and other flat racing that enhance the integrity and safety of racing.



(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Kentucky Horse Racing Commission and those who engage in Quarter Horse racing 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 each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: To comply with the proposed amendment, racing associations conducting Quarter Horse race meets must abide by the amendments related to entries, drug testing, and position positions.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Quarter Horse owners will incur the expense of submitting negative hair samples.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance, Quarter Horse races will be conducted appropriately, benefitting all engaged in horse racing.

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

(a) Initially: There is no initial administrative cost to implement this administrative regulation.

(b) On a continuing basis: There is no continuing administrative cost 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: No funding will be necessary to implement and enforce this administrative regulation.

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

(9) TIERING: Is tiering applied? Tiering is not applied, because this amended regulation will apply to all similarly situated entities in an equal manner.

#### FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Horse Racing Commission 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 230.215 and 230.260 authorize the action taken by this regulation.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

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

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

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

(d) How much will it cost to administer this program for subsequent

years? There will be no costs to administer this regulation 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 (+/-): Neutral.

Expenditures (+/-): Neutral.

Other Explanation: None.

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? This administrative regulation will generate no cost savings for the 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 generate no cost savings for the regulated entities during subsequent years.

(c) How much will it cost the regulated entities for the first year? Quarter Horse owners will incur the expense of submitting negative hair samples.

(d) How much will it cost the regulated entities for subsequent years? Quarter Horse owners will incur the expense of submitting negative hair samples.

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

Cost Savings (+/-): Neutral.

Expenditures (+/-): Quarter Horse owners will incur the expense of submitting negative hair samples.

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 is not expected to have a major economic impact as explained by the answers to the questions above.

#### PUBLIC PROTECTION CABINET Kentucky Horse Racing Commission (Amendment)

#### 810 KAR 4:040. Running of the race.

RELATES TO: KRS 230.215(2), 230.260(1)

STATUTORY AUTHORITY: KRS 230.215(2), 230.260(8)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) and 230.260(8) authorize the Kentucky Horse Racing Commission to promulgate administrative regulations prescribing the conditions under which racing shall be conducted in Kentucky. This administrative regulation sets forth the standards and requirements governing the running of a horse race.

Section 1. Post Time. Post time for the first race on each racing day shall be approved by the commission. Post time for subsequent races on the same program shall be fixed by the pari-mutuels manager. No race shall start after 11:55 p.m.

Section 2. Horses in paddock not to be touched. Only the following persons may touch a horse while in the paddock:

- (1) Licensed owner;
- (2) Licensed trainer;
- (3) Authorized stable personnel;
- (4) Paddock judge;
- (5) Horse identifier;
- (6) Assigned valet;
- (7) Steward;
- (8) Farrier;
- (9) Outrider; or

(10) Jockey.

Section 3. Trainer Responsibility. The trainer shall be responsible for:

- (1) Arrival in the paddock, at the time prescribed by the paddock judge, of each horse entered;
- (2) Supervising the saddling of each horse entered; and
- (3) Providing his or her assistant trainer or another licensed trainer to serve as a substitute if absent from a track where the trainer's horses are participating in races.

Section 4. Withdrawal of a Horse. A horse whose starting is mandatory shall run the course, except that the stewards may order the withdrawal of a horse at any time up to the actual start of a race.

Section 5. Walkover. If at the time for saddling, only one (1) horse, or horses owned by only one (1) stable, will be weighed out, the horse or horses of single ownership shall be ridden past the stewards' stand, go to the post, and then move over the course before determination of the winner.

Section 6. Parade to the Post; Time.

- (1) All horses shall parade and carry their declared weight from the paddock to the starting post.
  - (a) The parade shall pass the stewards' stand.
  - (b) After passing the stewards' stand once, horses may break formation and canter, warm up, or go as they please to the post.
  - (c) With the permission of the stewards, a horse may be excused from parading with the other horses.
- (2) The parade to the post shall not exceed twelve (12) minutes from the time the field enters upon the track, except in cases of unavoidable delay.
- (3) If a jockey is thrown on the way to the post:
  - (a) The jockey shall remount at the point at which thrown; or
  - (b) If the jockey is so injured as to require a substitute jockey, the horse shall be returned to the paddock where the horse shall be remounted by a substitute jockey.

Section 7. Lead Pony. A horse may be led to the post by a lead pony. Lead ponies may be excluded from the paddock or walking ring, at the discretion of the stewards.

Section 8. Control of Horses and Jockeys by Starter. Horses and jockeys shall be under the control of the starter from the moment they enter the track until the race is started.

- (1) The starter may grant a delay if an injury occurs to any jockey or if a jockey's equipment malfunctions. During the delay, the stewards may require all jockeys to dismount.
- (2) The starter shall unload the horses in the gate when instructed by the stewards if:
  - (a) A horse breaks through the gate or unseats its jockey after any of the field is loaded in the starting gate; and
  - (b) The horse is not immediately taken in hand by the outrider and brought back for reloading.
- (3) The starter shall reload the horses in their proper order upon order of the stewards.
- (4) The starter shall report all causes of delay to the stewards.
- (5) A person other than the jockey, starter, or assistant starter shall not strike a horse or attempt, by shouting or other means, to assist the horse in getting a start.

Section 9. Starting Gate. Races on the flat shall use a starting gate approved by the commission unless exempted by the stewards. Exempted races shall not start until the assistant starter has dropped the flag in answer to the starter.

Section 10. Horses Left at Post.

- (1) If a door at the front of the starting gate fails to open properly and timely when the starter dispatches the field, or if a horse has inadvertently not been loaded in the starting gate when the field is dispatched, thereby causing the horse to be left at the post, the starter shall immediately report the circumstance to the stewards who shall:

- (a) Immediately post the "inquiry" sign;
  - (b) Advise the public to hold all pari-mutuel tickets; and
  - (c) Determine, after consulting with the starter and viewing the race replay, whether or not the horse was precluded from obtaining a fair start.
- (2) If the stewards determine that the horse was precluded from obtaining a fair start, the stewards shall rule the horse a nonstarter and shall order money wagered on the horse deducted from the pari-mutuel pool and refunded to holders of pari-mutuel tickets on the horse, unless the horse ruled a nonstarter is part of a pari-mutuel entry and another horse in the entry is not left at the post, in which case there shall not be a pari-mutuel refund.
  - (3) Stakes fees for a ruled nonstarter shall be refunded to the owner.
  - (4) The starter may, in his or her discretion, place an unruly or fractious horse on the outside of the starting gate and one (1) length behind the starting line. If the horse so stationed outside the starting gate by the starter dwells or refuses to break with the field and is thereby left at the post, there shall not be a refund of pari-mutuel wagers on the horse nor refund of stakes fees paid for the horse.
  - (5) The use of a flipping halter as safety equipment may be permitted in Quarter Horse races only, at a trainer's discretion, if approved by track management and the starter. The use of a flipping halter shall be noted at time of entry and in the official program.
  - (6) If the stewards in a quarter horse race determine that a door at the front of the starting gate failed to open properly or timely due to a horse equipped with a flipping halter:
    - (a) The stewards shall rule the horse to be a starter and eligible for race placement and purse earnings; and
    - (b) There shall not be a pari-mutuel refund.

Section 11. Horses Failing to Finish. Any horse that starts in a race but does not cross the finish line or is not ridden across the finish line by the jockey with whom it starts the race shall be declared unplaced and shall receive no portion of the purse money.

Section 12. Fouls.

- (1) A leading horse if clear is entitled to any part of the track.
- (2) If a leading horse or any other horse in a race swerves or is ridden to either side so as to interfere with, intimidate, or impede any other horse or jockey, or to cause the same result, this action shall be deemed a foul.
- (3) If a jockey strikes another horse or jockey, it is a foul.
- (4) If, in the opinion of the stewards, a foul alters the finish of a race, an offending horse may be disqualified by the stewards.
- (5) In a quarter horse straightaway race, every horse shall maintain position as nearly as possible in the lane in which the horse starts.
- (6) If a horse is disqualified for interference during the running of quarter horse time trials, the disqualified horse shall receive the time of the horse it is immediately placed behind, plus one one-thousandth second. The disqualified horse shall be eligible to qualify for a final or consolation race based upon the assigned time.

Section 13. Stewards to Determine Foul Riding.

- (1) A jockey shall make a best effort to control and guide his or her mount in such a way as not to cause a foul.
- (2) The stewards shall take cognizance of riding that results in a foul, irrespective of whether or not an objection is lodged.
- (3) If, in the opinion of the stewards, a foul is committed as a result of a jockey not making a best effort to control and guide his or her mount to avoid a foul, whether or not intentionally or through carelessness or incompetence, the jockey may be penalized at the discretion of the stewards.

Section 14. Horses to be Ridden Out.

- (1) Every horse in every race shall be ridden so as to win or finish as near as possible to first and demonstrate the best and fastest performance of which it is capable at the time, while in compliance with Section 15 of this administrative regulation.
- (2) A horse shall not be eased up without adequate cause, even if it has no apparent chance to earn a portion of the purse money.
- (3) A jockey who unnecessarily causes a horse to shorten stride

may be penalized at the discretion of the stewards.

(4) Stewards shall take cognizance of any marked reversal of form of a horse and shall conduct inquiries of the licensed owner, licensed trainer, and all other persons connected with the horse.

(5) If the stewards find that the horse was deliberately restrained or impeded in any way or by any means so as not to win or finish as near as possible to first, any person found to have contributed to that circumstance may be penalized at the discretion of the stewards.

#### Section 15. Use of Riding Crops.

(1) Although the use of a riding crop is not required, a jockey who uses a riding crop during a race shall do so only in a manner consistent with exerting his or her best efforts to win.

(2) In any race in which a jockey will ride without a riding crop, an announcement of that fact shall be made over the public address system.

(3) An electrical or mechanical device or other expedient designed to increase or retard the speed of a horse, other than a riding crop approved by the stewards pursuant to 810 KAR 4:010, Section 11 shall not be possessed by anyone, or applied by anyone to a horse at any time at a location under the jurisdiction of the racing commission.

(4) A riding crop shall not be used on a two (2) year-old horse in races before April 1 of each year.

##### (5) Allowable Uses of a Riding Crop.

(a) The riding crop may be used at any time, without penalty, if, in the opinion of the stewards, the riding crop is used to avoid a dangerous situation or preserve the safety of other riders or horses in a race.

(b) If necessary during a race, a riding crop may be used in a backhanded or underhanded fashion from the 3/8 pole to the finish line. This use shall not be counted toward the use of the crop six (6) times in the overhand fashion, as allowed in subsection (6) of this section. The use of the crop shall not rise above the rider's helmet at any point.

##### (c) A riding crop may also be used if:

1. The horse is tapped on the shoulder with the crop in the down position while both hands are holding onto the reins and both hands are touching the neck of the horse; and

2. The crop is shown or waved without contact with the horse and the horse is given time to respond before the horse is struck.

(6) A riding crop may be used to make contact with a horse to maintain focus and concentration, to control the horse for safety of the horse and rider, or to encourage a horse, with the following exceptions:

(a) Use of the crop in any manner, other than underhanded or backhanded as established in subsection (5)(b) of this section, or tapping on the shoulder as established in subsection (5)(c) of this section, resulting in more than six (6) times in the overhand manner;

(b) Use of the crop and making contact with the horse more than two (2) successive strikes without allowing the horse a chance to respond;

(c) Use of the crop with the rider's wrist above helmet height;

(d) Use of the crop on the head, flanks, or on any other part of its body other than the shoulders or hindquarters;

(e) Use of the crop during the post parade or after the finish of the race except if necessary to control the horse;

(f) Excessive or brutal use of the crop causing injury to the horse;

(g) Use of the crop causing welts or breaks in the skin;

(h) Use of the crop if the horse is clearly out of the race or has obtained its maximum placing; and

(i) Use of the crop even though the horse is showing no response.

(7) A riding crop shall not be used to strike another person.

(8) After the race, a horse shall be subject to inspection by a racing official or official veterinarian looking for cuts, welts, or bruises in the skin. Any adverse findings shall be reported to the stewards.

(9) A crop may be used during workouts if the use does not violate subsection (6)(c) through (i) of this section.

(10) The giving of instructions by any licensee that, if obeyed, would lead to a violation of this section may result in disciplinary action also being taken against the licensee who gave the instructions.

(11) Only padded/shock absorbing riding crops that have not been modified in any way may be carried in a race.

(12) During a race, if a jockey rides in a manner contrary to this rule, the stewards shall impose a minimum fine of \$500, a minimum suspension of three (3) days, or both, if in the opinion of the stewards, the violation is egregious or intentional. Factors in determining whether a violation is egregious shall include at least the following:

(a) Recent history of similar violations;

(b) Number of uses over the total and consecutive limits described in this section; and

(c) Using the crop in the overhanded position more than six (6) times.

Section 16. Other Means of Altering Performance. An electrical or mechanical appliance, other than a riding crop, shall not be used to affect the speed of a horse in a race or workout. A sponge or other object shall not be used to interfere with the respiratory system of a horse. Use or nonuse of ordinary racing equipment shall be consistent and any change of equipment shall be approved by the stewards.

Section 17. Official Order of Finish as to Pari-mutuel Payoff. Once satisfied that the order of finish is correct and that the race has been properly run in accordance with the rules and KAR Title 810, the stewards shall order that the official order of finish be confirmed and the official sign posted for the race. The decision of the stewards as to the official order of finish for pari-mutuel wagering purposes shall be final, and no subsequent action shall set aside or alter the official order of finish for the purposes of pari-mutuel wagering.

JONATHAN RABINOWITZ, Chairman

RAY PERRY, Secretary

APPROVED BY AGENCY: July 12, 2023

FILED WITH LRC: July 12, 2023 at 11:00 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 9:00 a.m. on September 21, 2023 at 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. on September 30, 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 below.

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.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jennifer Wolsing

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes a comprehensive set of rules for the conduct of flat and steeplechase horse races.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide a set of rules to ensure the orderly and fair running of flat and steeplechase horse races.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.215(2) and 230.260(8) authorize the Commission to promulgate administrative regulations prescribing the conditions under which racing shall be conducted in Kentucky. This administrative regulation prescribes the conditions relating to various aspects of the running of flat and steeplechase races.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation implements the statutory mandate of the Commission to promulgate regulations prescribing the conditions under which horse racing is conducted 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: Section 10 is amended to permit the use of a flipping halter in Quarter Horse races only, at a trainer's discretion, if approved by track management and the starter; require that the use of a flipping halter shall be noted at time of entry and in the official program; and state that if the stewards determine a door at the front of the starting gate failed to open properly or timely due to a horse equipped with a flipping halter that the stewards shall rule the horse a starter and there shall not be a pari-mutuel refund. Section 12 is amended to state that in a Quarter Horse straightaway race, every horse shall maintain position as nearly as possible in the lane in which the horse starts and if a Quarter Horse is disqualified for interference during the running of time trials, the disqualified horse shall receive the time of the horse it is immediately placed behind, plus one one-thousandth second.

(b) The necessity of the amendment to this administrative regulation: The amendment to Section 10 is necessary to accommodate the use of a flipping halter in Quarter Horse races and provide related regulations. The amendment to Section 12 is necessary to further safe racing and provide a time for a Quarter Horse disqualified for interference during the running of time trials.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 230.215(2) and 230.260(8) authorize the Commission to promulgate administrative regulations prescribing the conditions under which racing shall be conducted in Kentucky. This amendment pertains to the running of Quarter Horse races.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statutes by providing clear guidelines and regulations regarding the running of Quarter Horse races.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Kentucky Horse Racing Commission and those who engage in Quarter Horse racing 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 regulated entities must comply with the regulations regarding flipping halters, the running of the race, and disqualifications during time trials.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance, Quarter Horse races will be conducted appropriately, benefitting all engaged in horse racing.

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

(a) Initially: There is no initial administrative cost to implement this administrative regulation.

(b) On a continuing basis: There is no continuing administrative cost 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: No funding will be necessary to implement and enforce this administrative regulation.

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

fees.

(9) TIERING: Is tiering applied? Tiering is not applied, because this amended regulation will apply to all similarly situated entities in an equal manner.

#### FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Horse Racing Commission 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 230.215(2) and 230.260(8) authorize the action taken by this regulation.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

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

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

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

(d) How much will it cost to administer this program for subsequent years? There will be no cost to administer this regulation 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 (+/-): Neutral.

Expenditures (+/-): Neutral.

Other Explanation: None.

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? This administrative regulation will generate no cost savings for the 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 generate no cost savings for the regulated entities during subsequent years.

(c) How much will it cost the regulated entities for the first year? There is no cost for the regulated entities during the first year.

(d) How much will it cost the regulated entities for subsequent years? There will be no cost for the 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 (+/-): Neutral.

Expenditures (+/-): Neutral.

Other Explanation: N/A.

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)]. This regulation will not have a major economic impact as set forth in the answers to the questions above.

**CABINET FOR HEALTH AND FAMILY SERVICES  
Department for Community Based Services  
Division of Protection and Permanency  
(Amendment)**

**922 KAR 1:580. Standards for children's advocacy centers.**

RELATES TO: KRS Chapter 13B, 17.165, Chapter 273, 600.020(7)[202A.011(12), 309.130-1399, 314.011(14), 314.142, Chapter 319, Chapter 335, 431.600], 620.020, 620.045, 620.050

STATUTORY AUTHORITY: KRS 194A.050(1), 620.045(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the Secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary under applicable state laws to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of the citizens of the Commonwealth and to operate the programs and fulfill the responsibilities of the cabinet. In order to be eligible for grants from state government entities, KRS 620.045(2) requires children's advocacy centers to comply with the statutory definition established in KRS 620.020(4) and administrative regulations promulgated by the cabinet. This administrative regulation establishes ~~[staff qualifications and ]~~program standards for children's advocacy centers.

Section 1. Definitions. (1) "Cabinet" is defined by KRS 600.020(7).

(2) "Governing board" or "board" means the board of directors vested with the legal responsibility for management of the children's advocacy center.

~~[(2) "Mental health discipline" means:~~

~~(a) Art therapy in accordance with KRS 309.130 to 309.1399;~~

~~(b) Marriage and family therapy in accordance with KRS 335.300 to 335.399;~~

~~(c) Professional counseling in accordance with KRS 335.500 to 335.599;~~

~~(d) Psychiatric nursing in accordance with KRS 202A.011(12)(d);~~

~~(e) Psychiatry in accordance with KRS 202A.011(12)(b);~~

~~(f) Psychology in accordance with KRS Chapter 319; or~~

~~(g) Social work in accordance with KRS 335.010 to 335.160.]~~

(3) "Referral agreement" means a written protocol or process:

(a) Defined within the operating policies of the center; and

(b) That details how services required by Section 4 of this administrative regulation are established for the center's clients if the center does not have the capacity to provide these services.

(4) "Regional children's advocacy center" or "center" means an agency defined by KRS 620.020(4) and designated by the cabinet to serve as the regional children's advocacy center in accordance with KRS 620.045(1).

**Section 2. Governing Board of Directors.**

(1) A center shall be managed by a governing board in order to allow community involvement in the planning, development, and evaluation of services.

(2) ~~[A governing board shall adopt written bylaws. The bylaws shall include the:~~

~~(a) Purpose of the agency;~~

~~(b) Minimum and maximum number of board member positions;~~

~~(c) Qualifications for board members;~~

~~(d) Method of selecting board members;~~

~~(e) Terms of board members;~~

~~(f) Officers and duties;~~

~~(g) Method of election of officers and chairpersons;~~

~~(h) Quorum requirements for meetings of the board; and~~

~~(i) Method for removal of directors.~~

~~(3)] The duties of the board shall be to:~~

~~(a) [Schedule meetings of the board to be held at least six (6) times per state fiscal year;~~

~~(b) Maintain minutes of each meeting of the board containing:~~

~~1. The date and place of the meeting;~~

~~2. Names of board members present;~~

~~3. The subject matter discussed and actions taken; and~~

~~4. The name of the reporter;~~

~~(c) Establish standing committees of the board to include executive, nominating, finance, and personnel committees;~~

~~(d) Establish restrictions on reimbursement of board members, including the prohibition against a member contracting with the board to perform personal or professional services;~~

~~(e)] Ensure that the facility housing the center meets the standards established in the "National Children's Alliance 2023 Standards of Accreditation for Children's Advocacy Centers"[is properly clean, maintained, private, and child-friendly]; and~~

~~(b)[(f)] Recruit and maintain board members who provide broad regional representation of the area development district where the center is located.~~

(3) A center shall maintain good standing as a private, nonprofit agency within the Commonwealth of Kentucky and adhere to the applicable requirements of KRS Chapter 273 relating to the board of directors and organization.

**Section 3. Personnel Management.**

(1) A personnel file shall be maintained by the center for each employee.

(2) The minimum contents of the personnel file shall include:

(a) Current professional credentials to reflect training and experience adequate for qualification for the position to which the employee is hired;

(b) Conditions or terms of employment that shall include a confidentiality statement signed by the employee;

(c) A personnel action document reflecting a change in status of an employee, such as salary change, promotion, resignation, or termination;

(d) A position description document including title of the position, description of duties, and requirements of training and experience necessary to qualify for the position; and

(e) Results from a criminal records background and central registry check conducted in accordance with KRS 17.165 and 922 KAR 1:470 on the employee during the application process and every two (2) years thereafter while employed by the center.

(3) Written personnel policies and procedures shall be established by the center and shall meet the requirements established in the "National Children's Alliance 2023 Standards of Accreditation for Children's Advocacy Centers".~~[include:~~

~~(a) Attendance and leave policies;~~

~~(b) A compensation plan;~~

~~(c) Hiring, disciplinary, and firing practices;~~

~~(d) Staff development and continuing education provisions;~~

~~(e) Employee grievance procedures;~~

~~(f) Employee performance evaluations;~~

~~(g) Equal opportunity employment statements;~~

~~(h) Staff screening; and~~

~~(i) Staff training and orientation.]~~

(4) The governing board shall employ one (1) staff person as executive director of the children's advocacy center. The executive director shall have a minimum of a bachelor's degree from an accredited college or university.]:

~~(a) Be responsible for financial management of the center, including budgets and grant writing;~~

~~(b) Supervise the duties and activities of center staff and volunteers;~~

~~(c) Coordinate the design and delivery of services;~~

~~(d) Fulfill duties as required by the governing board;~~

~~(e) Report directly to the board on all center activities;~~

~~(f) Have a master's degree from an accredited college or university and three (3) years of experience in:~~

~~1. Human services;~~

~~2. Management; or~~

~~3. A criminal justice field; and~~

~~(g) Affirm a commitment to the welfare and protection of children.]~~

(5)[(a)] A governing board shall[may] establish the staff positions necessary to support the administration and service delivery of the agency.[specified in subparagraphs 1 through 5 of this paragraph.

1. Child advocate. A child advocate shall have a bachelor's degree from an accredited college or university and two (2) years of

experience in a human services or criminal justice field.

2. Therapist. A therapist shall:

a. Have a doctorate or master's degree from an accredited college or university in a mental health discipline and two (2) years post-degree counseling or clinical experience; and

b. Possess a certificate or license to practice under the laws of the Commonwealth of Kentucky in a mental health discipline.

3. Forensic interviewer. A forensic interviewer, if employed by the center, shall have:

a. A doctorate or master's degree from an accredited college or university in a mental health, education, human services, or criminal justice field;

b. Two (2) years of post-degree counseling or clinical experience; and

c. Three (3) years of experience working with children.

4. Multidisciplinary team facilitator. A multidisciplinary team facilitator shall have a bachelor's degree from an accredited college or university and two (2) years of experience in a human services or criminal justice field.

5. Other staff necessary to support the administration or service delivery of the agency.

(b) The qualifications established in paragraph (a)1 through 4 of this subsection shall not apply to center staff hired prior to December 17, 2007.

(c) Within three (3) months of employment, staff providing direct services to a child shall have received twenty-four (24) hours of training on issues related to child abuse.

(d) Within three (3) months of beginning service, a center volunteer who has access to or contact with a child shall have received twenty-four (24) hours of training on issues related to child abuse.

(e) An employee of a center shall receive at least eight (8) hours of the training required by paragraph (c) of this subsection before providing services to a child.

(f) A center volunteer who has access to or contact with a child shall receive at least eight (8) hours of training required by paragraph (d) of this subsection before providing services at the center.]

(6) Staff providing direct services shall have a minimum of a bachelor's degree from an accredited college or university.

(7) [(g)]

1. A center contracting for direct services to a child by a professional not on the staff of the center shall document that the professional meets the qualifications established in this section.

2. An agreement for provision of service shall:

a. Be on file at the center; and

b. Specify the qualifications of the staff.

(h) An employee of a children's advocacy center shall be at least twenty-one (21) years of age.

(8) [(h)] An applicant for employment shall submit to a criminal records check in accordance with KRS 17.165 and 922 KAR 1:470 during the application process and every two (2) years thereafter while employed by the center.

(9) [(i)] A center volunteer who has access to or contact with a child shall submit to a criminal records check in accordance with KRS 17.165 and 922 KAR 1:470 prior to beginning service to the center and every two (2) year thereafter while service is being provided to the center.

(10) [(k)] An employee of a center under indictment or legally charged with a violent or sex crime as defined in KRS 17.165 shall be immediately removed from contact with children in the center until the employee is cleared of the charge.

(11) [(h)] A center volunteer under indictment or legally charged with a violent or sex crime as defined in KRS 17.165 shall be immediately removed from contact with children in the center until the center volunteer is cleared of the charge.

(12) [(m)] An employee or designated agent shall have immunity from civil liability arising from performance within the scope of the person's duties and shall be provided a defense in civil actions pursuant to KRS 620.050(2).

Section 4. Center Services and Standards. [(Responsibilities. (1)]

A center shall meet the standards contained in the "National

Children's Alliance 2023 Standards for Accreditation for Children's Advocacy Centers". [:

(a) Provide:

1. Advocacy services;

2. Counseling services;

3. Clinical services;

4. Forensic interviewing;

5. Multidisciplinary team facilitation;

6. Medical examination services; and

7. Consultation and education services; or

(b) Develop a referral agreement to refer clients to a provider of the services listed in paragraph (a)1 through 7 of this subsection.

(2) Advocacy services assist child victims and their non-offending caregivers and may include:

(a) Accompaniment to court or court-related meetings;

(b) Case management services; or

(c) Information and referral services.

(3) Counseling services may include:

(a) A crisis telephone line;

(b) Crisis counseling services; and

(c) Support group services.

(4)(a) Clinical services may include:

1. A mental health evaluation;

2. Individual therapy services for a child and non-offending caretaker and family; or

3. Group therapy services for a child and non-offending caretaker.

(b) Clinical services shall be provided by a professional who meets the requirements of Section 3(5)(a)2 of this administrative regulation.

(5) Forensic interviewing shall include structured interviews with a child for the purpose of facilitating a criminal investigation and may be provided on site at the center by:

(a) The center staff forensic interviewer meeting the requirements established in Section 3(5)(a)3. of this administrative regulation;

(b) A law enforcement officer; or

(c) A worker who is employed by the cabinet.

(6) A child's recorded interview shall not be duplicated except in accordance with KRS 620.050(10).

(7) Multidisciplinary team facilitation may include:

(a) Scheduling of meetings;

(b) Case tracking;

(c) Case review; or

(d) Data collection.

(8)(a) Medical examination services shall be:

1. Reimbursed by the Department for Medicaid Services in accordance with 907 KAR 3:160; and

2. Provided by:

a. A licensed physician with pediatric experience and expertise in the evaluation and treatment of child abuse;

b. A licensed advanced practice registered nurse with pediatric experience and expertise in evaluation and treatment of child abuse; or

c. A sexual assault nurse examiner certified in accordance with KRS 314.011(14) and 314.142.

(b) If a medical exam is conducted by the center staff or a contractor, a mental health evaluation shall be provided:

1. Within twenty-four (24) hours of the medical exam; or

2. If the medical exam will be billed to Medicaid, the same day and at the same location as the medical exam, in accordance with Section 907 KAR 3:160, Section 1(2)(d).

(9)(a) Consultation and education services may include:

1. School-based prevention programs;

2. Community education programs;

3. Media presentations;

4. In-service training; or

5. Case consultation services.

(b) A center shall provide a minimum of one (1) training session per year for community partners or the community at large.

(10) In addition to providing services to children in the county in which the center is located, regional center staff shall serve:

(a) Children in other counties in the area development district,

including those who need medical examinations or forensic interviewing services; and

(b) As a technical assistant and consultation resource to criminal justice and human service professionals in the area development district in which the center is located.

(11) Services provided by a center shall be coordinated with multidisciplinary teams as defined in KRS 431.600 and 620.020.

(12) A center shall provide written policies and procedures for clients and volunteers that include:

- (a) Volunteer screening;
- (b) Volunteer training and orientation;
- (c) Grievance procedures for clients and volunteers;
- (d) Safety;
- (e) Clients of the center;
- (f) Client records;
- (g) Intake;
- (h) Comprehensive child sexual abuse examinations;
- (i) Therapy;
- (j) Forensic interviews; and
- (k) Mandatory reporting of child and adult abuse.

(13) A center shall provide to the non-offending caregiver written instructions that include:

- (a) The name and contact information for the center;
- (b) The name of the cabinet staff member involved in the case;
- (c) The names of law enforcement personnel handling the case;
- (d) The name and contact information for the County or Commonwealth's Attorney involved in the case;

(e) The name and contact information for the receiving medical provider if a referral for additional assessment or treatment is made;

(f) The name and contact information for the receiving mental health provider if a referral for additional assessment or treatment is made; and

(g) Any known information regarding follow-up appointment times and recommended after-care referrals.

(14) A center shall develop and maintain written confidentiality policies and procedures to ensure client privacy as provided in Kentucky Rules of Evidence 506 and 507.

(15) A center shall develop and maintain written policies to limit disclosure of confidential information pursuant to KRS 620.050(5).

(16) A center shall maintain good standing as a private, nonprofit agency within the Commonwealth of Kentucky.

(17)(a) A center shall obtain the following insurance coverage:

- 1. Malpractice insurance for the center staff, Board of Directors, and volunteers;
- 2. Liability insurance for the center staff, Board of Directors, and volunteers;
- 3. Fidelity bonding;
- 4. Facility insurance; and
- 5. Workers compensation insurance.

(b) If contracted professionals provide their own insurance and are not covered by the center, the center shall maintain documentation that shows an active and appropriate policy.

(c) The center shall submit documentation showing proof of insurance to the cabinet.]

Section 5. Client Files and Documentation. (1) A center shall open a client file for a child who is provided a service, excluding service that is limited to a telephone conversation.

(2) A client file shall include information sufficient to document the services provided or referral made by the center and shall include:

- (a) The names of the client and primary caregiver;
- (b) The name of the recipient of service;
- (c) The client's address;
- (d) The client's date of birth;
- (e) Each date of service provided by the center;
- (f) The name and title of each service provider of the center;
- (g) A description of any services provided by the center;
- (h) The referral sources used;
- (i) A description of any follow-up services provided; and
- (j) Descriptions of contacts with, report to, and referrals from the cabinet and law enforcement agency.

(3)(a) A center shall maintain a system for tracking:

1. Services rendered by region, except that comprehensive medical services and forensic interviewing shall be tracked by county of the client's residence;

2. Clients seen by county of client's residence;

3. Referrals made; and

4. Contacts with other community agencies on behalf of clients.

(b) Documentation shall be sufficient to support statistics reported to the cabinet.

Section 6. Funding. (1)(a) The cabinet shall designate one (1) regional children's advocacy center in each area development district.

(b) A children's advocacy center designated on or after July 1, 2007, shall retain the designation unless it has been rescinded by the cabinet based on:

1. Periodic review of the center's performance; or

2. The annual plan and budget submitted by the center to the cabinet for funding for the next fiscal year.

(c) The cabinet shall notify the Office of the Attorney General, the Department for Medicaid Services, and the Justice and Public Safety Cabinet of any designation of a regional children's advocacy center made pursuant to this administrative regulation.

(2) The requirements of this administrative regulation shall not prohibit the center from applying for nongovernmental grants or fundraising to support efforts consistent with the mission of the center.

(3)(a) In addition to the provisions of subsection (1)(b) of this section, the Commissioner of the Department for Community Based Services may rescind the designation of a center if a determination is made that the center failed to:

1. Submit a budget and plan for services that substantiates[, which shall substantiate] the capacity to provide services specified in KRS 620.020(4) and in accordance with this administrative regulation;

2. Operate in accordance with a budget and plan for services approved by the cabinet; or

3. Operate in accordance with the requirements of this administrative regulation.

(b) Any notice of rescission of a designation shall:

- 1. Be in writing;
- 2. Be mailed to the center's last known mailing address;
- 3. State the basis for the rescission;
- 4. State the effective date of the rescission; and
- 5. State any appeal rights.

(c) The cabinet shall notify the Office of the Attorney General, the Department for Medicaid Services, and the Justice and Public Safety Cabinet of any notice of rescission of a designation of a regional children's advocacy center issued pursuant to this administrative regulation. Failure by the cabinet to provide such notice shall not serve as grounds for the affected center to invalidate the notice of rescission.

(4) Cabinet funding for a center shall be contracted through the regional center or the centers' state association.

(5) A center may contract or establish referral agreements with other agencies or professionals to provide services established in the "National Children's Alliance 2023 Standards for Accreditation for Children's Advocacy Centers"[Section 4 of this administrative regulation].

(6)(a) Except in cases where designation has terminated, as established in subsection (1)(b) of this section, a center that has received written notice that its designation has been rescinded may appeal the determination of the Commissioner of the Department for Community Based Services by requesting an administrative hearing.

(b) Any request for an administrative hearing shall be in writing and shall be received by the Department for Community Based Services within thirty (30) days of the date of receipt of the notice of rescission. This type of request shall be sent to the Office of the Commissioner, Department for Community Based Services, Cabinet for Health and Family Services, 275 East Main Street, 3E-A, Frankfort, Kentucky 40621.

(c) Any administrative hearing held pursuant to this administrative regulation shall be conducted in accordance with

KRS Chapter 13B by a hearing officer employed by the cabinet.

(d) A request for an administrative appeal shall stay the rescission of the designation until the administrative appeal process is final.

(e) The stay on the rescission of the designation granted by paragraph (d) of this subsection shall not extend to judicial review, unless a stay is granted pursuant to KRS 13B.140(4).

Section 7. Audit and Monitoring. (1) The cabinet or its agent shall randomly, or upon receipt of a complaint, audit, monitor, or conduct program reviews of a center.

(2) A center shall allow the cabinet or its agent access to its property and records as required by subsection (1) of this section.

Section 8. Grievance and Appeals Process. Client grievances. A center shall establish a written grievance procedure that shall:

(1) Be given to the parent or guardian of each child who comes to the center for services; and

(2) Contain a description of the services provided by the center and the procedure for filing a client grievance in accordance with 922 KAR 1:320, Section 10.

Section 9. Incorporation by Reference. (1) "National Children's Alliance 2023 Standards of Accreditation for Children's Advocacy Centers", 2023 Edition, 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, 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, Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: July 7, 2023

FILED WITH LRC: July 13, 2023 at 11:45 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on September 25, 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 September 18, 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 September 30, 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](mailto:CHFSregs@ky.gov).

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Laura Begin and Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes program standards for children's advocacy centers.

(b) The necessity of this administrative regulation: KRS 194A.050(1) requires the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary under applicable state laws to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of the citizens of the

Commonwealth and to operate the programs and fulfill the responsibilities of the cabinet.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation is necessary to implement programs mandated by federal law and to qualify for the receipt of federal funds, establishes basic standards of care and service for child-placing agencies, and implements the provision of KRS Chapter 620.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 620.045(2) requires children's advocacy centers to comply with the statutory definition established in KRS 620.020(4) and administrative regulations promulgated by the cabinet. This administrative regulation establishes the standards and requirements for children's advocacy 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 administrative regulation establishes the program standards for children's advocacy centers. This amendment includes references to and provisions from the National Children's Alliance Standards of Accreditation for Children's Advocacy Centers for implementation through the statewide network of children advocacy centers in Kentucky. These national standards ensure that children receive consistent, evidence-based services.

(b) The necessity of the amendment to this administrative regulation: This amendment includes the program standards for children's advocacy centers and was requested by the Children's Advocacy Centers of Kentucky to reflect the National Standards of Accreditation for Children's Advocacy Centers.

(c) How the amendment 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 under applicable state laws to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of the citizens of the Commonwealth and to operate the programs and fulfill the responsibilities of the cabinet. This administrative regulation establishes the standards for children's advocacy centers to meet in serving vulnerable children in the commonwealth. KRS 620.045(2) requires children's advocacy centers to comply with this administrative regulation in order to be eligible for grant funding to operate.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation establishes program standards for children's advocacy centers, through which children in the commonwealth are served.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: During SFY 2022 (July 1, 2021-July 15, 2022), Children Advocacy Centers of Kentucky provided services to 616 child victims and 271 caregivers. The centers performed 195 forensic interviews and 17 child sexual abuse medical examinations.

(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: Children advocacy centers are required to meet the requirements contained in KRS 620.045(2) to be eligible for grants from any state government entity. This amendment deletes unnecessary, duplicative requirements and instead requires national standards be met. This makes the administrative regulation easier to follow and will ease administrative burdens for regulated entities. These changes were requested by the Children's Advocacy Centers of Kentucky.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Regulated entities will not incur a new or additional costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This amendment deletes unnecessary, duplicative requirements and instead requires national standards be met. This makes the administrative regulation easier to follow and will ease administrative burdens for regulated entities. These changes were requested by the Children's Advocacy Centers



of Kentucky.

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

(a) Initially: The amendment to this administrative regulation is not projected to have a fiscal impact on the administrative body.

(b) On a continuing basis: The amendment to this administrative regulation is not projected to have a fiscal impact on the administrative body.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The cabinet's provision of child protective services is funded by the federal Social Services Block Grant, General Funds, and Agency Restricted Funds derived from Medicaid. Child protective and other child welfare services are further enhanced and supported by funding made available through federal grants authorized through Title IV of the Social Security Act, including Child Abuse Prevention and Treatment Act as amended.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied, because this administrative regulation will be applied in a like manner statewide.

#### 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 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(1), 620.045(2).

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

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

(c) How much will it cost to administer this program for the first year? The amendment to this administrative regulation is not projected to have a new fiscal impact on the administrative body.

(d) How much will it cost to administer this program for subsequent years? The amendment to this administrative regulation is not projected to have a new fiscal impact on the administrative body.

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 include cost savings for regulated entities, but will ease administrative burdens.

(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? There are no costs associated with this amendment.

(d) How much will it cost the regulated entities for subsequent years? There are no costs associated with this amendment.

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] No, this administrative regulation is not anticipated to have an economic impact to regulated entities, but rather will ease administrative burdens on regulated entities.

NEW ADMINISTRATIVE REGULATIONS

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

**COUNCIL ON POSTSECONDARY EDUCATION  
(New Administrative Regulation)**

**13 KAR 5:010. Healthcare training scholarships.**

RELATES TO: KRS 164.0401, 164.0402, 164.0403

STATUTORY AUTHORITY: KRS 164.0402, 164.0403

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.0402 requires the Council on Postsecondary Education to promulgate administrative regulations to administer the Kentucky healthcare workforce investment fund. KRS 164.0403 requires the Council to set forth the requirements for partnership proposals between healthcare providers and healthcare partners to provide healthcare training scholarships to Kentucky residents enrolled in eligible healthcare programs in Kentucky. This administrative regulation establishes the Kentucky Healthcare Training Scholarships, established in KRS 164.0402, designed to reduce the financial barriers of Kentucky residents seeking high-demand eligible healthcare credentials.

Section 1. Definitions. (1) "Council" is defined by KRS 164.001(8).

(2) "Eligible healthcare credential" is defined by KRS 164.0401.

(3) "Eligible postsecondary institution" means an institution licensed by the Council or the Commission on Proprietary Education to operate in Kentucky that offers a healthcare program.

(4) "Fund" means the healthcare workforce investment fund as established by KRS 164.0402.

(5) "Healthcare partner" is defined by KRS 164.0401(5).

(6) "Healthcare program" is defined by KRS 164.0401(6).

(7) "Kentucky resident" is defined by KRS 164.020(8).

(8) "Match" means general fund appropriation monies from the fund provided to the institution subject to funds availability, based on at least a dollar-for-dollar contribution from the healthcare partner pursuant to KRS 164.0402(3)(a).

(9) "Steering committee" means the healthcare workforce investment steering committee established by the Council for the purpose of advising on issues related to healthcare training scholarships, including determining funding allocations, defining partnership proposal criteria, and making awards. The steering committee shall be comprised of a minimum of nine (9) members who have experience in healthcare programs, healthcare workforce, state government, and a minimum of one (1) member of the Council on Postsecondary Education. On making selections to the committee, and to the extent possible, the Council shall ensure equal representation of the experiences listed, and diversity in geography, healthcare program discipline, and size of healthcare workforce provider.

Section 2. Notice of Funding Opportunities. (1) Each year that general fund appropriations are available for distribution through the healthcare workforce investment fund, the Council shall publish notice of availability of funding opportunities for partnerships and issue a request for partnership proposals.

(2) The notice and request for partnership proposals shall include:

(a) The funding period;

(b) The date by which to submit a partnership proposal;

(c) The dollar amount of available matching funds;

(d) The partnership proposal evaluation criteria and relative weighting of each criteria;

(e) How to submit a partnership proposal; and

(f) The targeted date for making awards.

Section 3. Partnership Proposals. To be eligible for funding, a partnership proposal shall include:

(1) The participating healthcare partners and healthcare

programs certified by the signature of their respective chief executive officers and a designated point of contact and contact information for each partner;

(2) Certification that the healthcare program is offered by an eligible postsecondary institution or a Kentucky public high school or secondary career and technical center offering a healthcare vocational program;

(3) The total proposed budget for the program, which includes the healthcare partner contribution and the amount of healthcare workforce investment funds requested for match in accordance with requirements set forth by the Council;

(4) A narrative explaining how the institution plans to use the healthcare partner contribution and match from the fund to award healthcare training scholarships in eligible healthcare credentials;

(5) A description of the healthcare program's plan for student recruitment, scholarship award criteria, and selection process;

(6) An explanation of how the healthcare program shall increase student enrollment in eligible healthcare credentials, program completion, and meet local, regional, or state workforce demands;

(7) An explanation of how the healthcare partner shall onboard and retain graduates;

(8) An explanation of how graduates shall be supported through their service obligations;

(9) A response to any other partnership proposal criteria as determined by the steering committee;

(10) A description of how the partnership proposal shall meet the priorities set forth in KRS 164.0403;

(11) A statement of assurances that statutory requirements shall be satisfied as set forth in KRS 164.0403; and

(12) The amount of the healthcare partner's contribution certified by its chief financial officer and supported by appropriate documentation.

Section 4. Evaluation Process. (1) The steering committee shall review and rank each completed and timely submitted proposal on the extent to which the application meets the priorities set forth in Section 3 of this administrative regulation.

(2) Once the proposals are evaluated and ranked, the steering committee shall consider the distribution of funds to avoid a concentration in a small number of partnerships before determining final amounts awarded and the number of awards to be made.

(3) Once award distributions are finalized by the steering committee and approved by the Council, the Council shall notify the designated points of contact of the award.

Section 5. Partnership Awards. (1) Upon award, the Council, the healthcare partner, and healthcare program shall enter into a partnership contract in accordance with the terms set forth in KRS 164.0403.

(2) Once the partnership contract is finalized, the Council shall disburse from the fund moneys deposited by the healthcare partner and the matching funds appropriated by the General Assembly to the healthcare program.

Section 6. Responsibilities of the Healthcare Program. After an award is made and a partnership contract is finalized, a healthcare program shall:

(1) Establish and enforce a healthcare training scholarship application and process for solicitation, acceptance, and review of scholarship applications from students who are Kentucky residents in collaboration with the partner healthcare partner;

(2) Encourage healthcare training scholarship applicants to complete the Free Application for Federal Student Aid, if applicable;

(3) Establish healthcare training scholarship deadlines;

(4) Award healthcare training scholarships;

(5) Develop and administer a scholarship contract between the recipient and the healthcare program in accordance with KRS

164.0403; and

(6) Meet any reporting requirements set forth in the partnership contract.

MADISON SILVERT, Chair

STERLING CRAYTON, Attorney

APPROVED BY AGENCY: June 29, 2023

FILED WITH LRC: June 30, 2023 at 1 p.m.

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:** A public hearing on this administrative regulation shall be held on September 21, 2023 at 10:00 a.m. EST at the Council on Postsecondary Education, 100 Airport Road, Second Floor, Frankfort, Kentucky 40601 in Conference Room A. Individuals interested in being heard at this hearing shall notify this agency in writing five workdays prior to the hearing of their intent to attend. If no notification to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until September 30, 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:** Sterling Crayton, Attorney, Council on Postsecondary Education, 100 Airport Road, Second Floor, Frankfort, Kentucky 40601, phone 502.573.1555, email [sterling.crayton@ky.gov](mailto:sterling.crayton@ky.gov).

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Sterling Crayton

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the Kentucky Healthcare Training Scholarships, established in KRS 164.0402, designed to reduce the financial barriers of Kentucky residents seeking high-demand eligible healthcare credentials.

(b) The necessity of this administrative regulation: KRS 164.0402 requires the Council on Postsecondary Education to promulgate regulations to administer the Kentucky healthcare workforce investment fund. KRS 164.0403 requires the Council to set forth the requirements for partnership proposals between healthcare providers and healthcare partners to provide healthcare training scholarships to Kentucky residents enrolled in eligible healthcare programs in Kentucky.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The administrative regulation conforms explicitly to the authorizing statute.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation creates a process for issuing notice of funding opportunities, sets requirements for partnership proposals, creates an evaluation process, and a process for making awards as required by the statutes.

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

(a) How the amendment will change this existing administrative regulation: 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: Public postsecondary institutions, private postsecondary institutions licensed by the Council on Postsecondary Education or the Commission on Proprietary Education, a Kentucky public high school, or secondary career and technical center offering a healthcare vocational programs that offer eligible healthcare credentials are all eligible to collaborate on a proposal with a healthcare partner. A healthcare partner is defined as a grantor to the

Kentucky healthcare workforce investment fund that is a healthcare provider as defined in KRS 367.4081, a healthcare facility licensed by and operating in Kentucky, a qualified mental health professional as defined in KRS 202A.011, or any healthcare or healthcare-related association, individual, or corporation doing business in and incorporated under the laws of the Commonwealth as defined in KRS 164.0401(5). The number of both groups total in the hundreds. None are required to participate.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: A detailed explanation of the actions the entities referenced in paragraph (3) of this subsection will be required to undertake in order to comply with the proposed administrative regulation:

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): To be eligible for funding, a healthcare partner and healthcare program submit a partnership proposal. Upon proposal evaluation and subsequent award, the Council, the healthcare partner, and healthcare program shall enter into a partnership contract in accordance with the terms set forth in KRS 164.0403 and this regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): An estimate of the costs imposed on entities referenced in paragraph (3) of this subsection in order to comply with the proposed administrative regulation: The cost imposed on entities will not exceed the amount designated as their healthcare partner contribution. There will be some administrative cost in creating and submitting a proposal. The benefits that may accrue to the entities referenced in paragraph (3) of this subsection as a result of compliance: Once the partnership contract is finalized, the Council shall disburse from the fund moneys deposited by the healthcare partner and the matching funds appropriated by the General Assembly to the healthcare program. This will allow the healthcare program to provide scholarships to students in programs offering eligible healthcare credentials as outlined in the partnership agreement. Healthcare partners who are employers can employ these individuals upon graduation for the period to fulfill their scholarship service requirements and hopefully beyond.

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

(a) Initially: See 4(b) above.

(b) On a continuing basis: See 4(b) above.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? CPE staff are currently funded from appropriations made by the General Assembly in the 2022-2024 budget. Moving forward, a portion of the general fund appropriations made to the healthcare workforce investment fund can be used for administration pursuant to KRS 164.0402(6).

(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 assess fees.

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

(9) TIERING: Is tiering applied? Tiering is not applicable because similarly situated entities are treated similarly under this administrative regulation. However, upon advice of the steering committee, the Council may create separate pools of funding to meet geographic healthcare and/or workforce needs.

#### 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 Council on Postsecondary Education and any eligible healthcare program offered by an eligible postsecondary institution, or a Kentucky public high

school, or a secondary career and technical center offering a healthcare vocational program in Kentucky.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 164.0402, 164.0403

(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 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? See 3(a).

(c) How much will it cost to administer this program for the first year? Initially and on an ongoing annual basis, we estimate expenses totaling roughly \$650,000 to include the addition of staff (and associated costs) with specific expertise to include backgrounds in healthcare, finance, and legal to stand up/maintain the program in addition to a program/project manager and program evaluation-related costs.

(d) How much will it cost to administer this program for subsequent years? See 3(c).

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

Revenues (+/-): 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? This regulation will not directly generate any cost savings for the regulated entities, but will provide scholarships to students who may not have otherwise attended these programs and therefore could provide additional revenue to healthcare programs. Healthcare partners, while making significant contributions for the matching funds requirement, will be able to fill positions of need which should result in decreased employee recruitment costs and increased revenue.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? See 4(a).

(c) How much will it cost the regulated entities for the first year? Upon receipt of a partnership award, regulated entities will incur some cost of administration and compliance, but those should be subsumed by current staff in their current duties and responsibilities.

(d) How much will it cost the regulated entities for subsequent years? See 4(c).

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)] This regulation is not anticipated to have a major economic impact on state or local government or regulated entities. This regulation will provide healthcare training scholarships to Kentucky residents enrolled in healthcare programs in Kentucky. The potential economic impact is immensely positive.

## COUNCIL ON POSTSECONDARY EDUCATION (New Administrative Regulation)

### 13 KAR 5:020. Healthcare program incentives.

RELATES TO: KRS 164.0401, 164.0402, 164.0404

STATUTORY AUTHORITY: KRS 164.0402, 164.0404

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.0402

requires the Council on Postsecondary Education to promulgate administrative regulations to administer the Kentucky healthcare workforce investment fund. KRS 164.0404 requires the Council to set forth the requirements to provide healthcare program incentives to reward performance and excellence among Kentucky's healthcare programs. This administrative regulation establishes the Kentucky Healthcare Program Incentives, established in KRS 164.0402, designed to reward performance and excellence among the Commonwealth's healthcare programs.

Section 1. Definitions. (1) "Council" is defined by KRS 164.001(8).

(2) "Dedicated funds" is defined by KRS 164.0401(2).

(3) "Eligible postsecondary institution" means an institution licensed by the Council or the Commission on Proprietary Education to operate in Kentucky that offers a healthcare program.

(4) "Fund" means the healthcare workforce investment fund as established by KRS 164.0402.

(5) "Grantor" is defined by KRS 164.0401.

(6) "Healthcare partner" is defined KRS 164.0401(5).

(7) "Healthcare program" is defined in KRS 164.0401(6).

(8) "Incentives" means healthcare program incentives as established by KRS 164.0404.

(9) "Kentucky resident" is defined by KRS 164.020(8).

(10) "Match" means monies from the fund provided to the institution on a dollar-for-dollar basis, subject to funds availability, to the healthcare partner's contribution pursuant to KRS 164.0404(1).

(11) "Steering committee" means the healthcare workforce investment steering committee established by the Council for the purpose of advising on issues related to healthcare training scholarships, including determining funding allocations, defining partnership proposal criteria, and making awards. The steering committee shall be comprised of a minimum of nine (9) members who have experience in healthcare programs, healthcare workforce, state government, and a minimum of one (1) member of the Council on Postsecondary Education. On making selections to the committee, and to the extent possible, the Council shall ensure equal representation of the experiences listed, and diversity in geography, healthcare program discipline, and size of healthcare workforce provider.

Section 2. Healthcare Incentive Proposals without Dedicated Funds. To be eligible to receive funding, an incentive proposal without dedicated funds shall include:

(1) The name of the requesting healthcare programs certified by the signature of their respective chief executive officer and a designated point of contact with contact information;

(2) A narrative explaining how the healthcare program intends to use requested funds to support the performance and excellence in its production of specific eligible healthcare credentials solely through funding the areas outlined in KRS 164.0404;

(3) Certification that the healthcare program is offered by an eligible postsecondary institution or a Kentucky public high school or secondary career and technical center offering a healthcare vocational program in Kentucky;

(4) The total proposed budget for the incentive funds requested;

(5) Discussion of how the healthcare credentials aligns with Kentucky's high-demand workforce sectors identified by the Kentucky Workforce Innovation Board and the Education and Labor Cabinet. If not aligned, the healthcare program shall provide other verifiable proof of workforce demand for the healthcare credentials;

(6) An explanation of the program's past five (5) years of data on student retention and graduation rates and current efforts to retain and graduate students in applicable healthcare credentials;

(7) An explanation on how the program increased the average annual degree production in the credential over the past five (5)

years;

(8) A description of what career development or job placement programs are offered by the program;

(9) An explanation as to what learning experiences in simulated or clinical settings are offered by the program;

(10) A description of what learning experiences are offered by the program to middle or high school students, if any;

(11) Any relative data and analysis addressing the factors set forth in KRS 164.0404; and

(12) An explanation of how the program shall meet any other criteria determined by the steering committee.

Section 3. Incentive Proposals with Dedicated Funds. To be eligible to receive funding, an incentive proposal with dedicated funds shall include:

(1) The criteria established in Section 2 of this administrative regulation;

(2) A statement of assurances that the healthcare program shall not violate any of the requirements set forth by KRS 164.0404; and

(3) An explanation of how the program shall meet any criteria established by the grantor healthcare partner as part of their contribution of dedicated funds.

Section 4. Evaluation Process. (1) The steering committee shall review and rank each healthcare program proposal on the extent to which it meets the priorities set forth in Sections 2 and 3 of this administrative regulation, as applicable. The steering committee may engage with a grantor healthcare partner in evaluating incentive proposals with grantor criteria if required by the dedicated funds.

(2) Once the proposals are evaluated and ranked, the steering committee shall consider the distribution of funds to avoid a concentration in a small number of programs before determining award distributions.

(3) Once awards distributions are finalized by the steering committee, the Council shall notify the designated points of contact.

Section 5. Incentive Awards. (1) Upon award, the Council shall enter into a contract with the healthcare program to distribute the funds. The contract shall include the requirements of KRS 164.0404 and any reporting requirements set forth by the Council.

(2) Once the contract is finalized, the Council shall disburse from the fund moneys deposited by the healthcare partner and the matching funds appropriated by the General Assembly to the healthcare program.

MADISON SILVERT, Chair

STERLING CRAYTON, Attorney

APPROVED BY AGENCY: June 29, 2023

FILED WITH LRC: June 30, 2023 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 21, 2023 at 10:00 a.m. EST at the Council on Postsecondary Education, 100 Airport Road, Second Floor, Frankfort, Kentucky 40601 in Conference Room A. Individuals interested in being heard at this hearing shall notify this agency in writing five workdays prior to the hearing of their intent to attend. If no notification to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until September 30, 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: Sterling Crayton, Attorney, Council on Postsecondary Education, 100 Airport Road, Second Floor, Frankfort, Kentucky 40601, phone 502.573.1555, email sterling.crayton@ky.gov.

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Sterling Crayton

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the Kentucky Healthcare Program Incentives, established in KRS 164.0402, designed to reward performance and excellence among the Commonwealth's healthcare programs.

(b) The necessity of this administrative regulation: KRS 164.0402 requires the Council on Postsecondary Education to promulgate regulations to administer the Kentucky healthcare workforce investment fund and KRS 164.0404 requires the Council to set forth the requirements to provide healthcare program incentives to reward performance and excellence among Kentucky's healthcare programs.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The administrative regulation conforms explicitly to the authorizing statute.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation establishes the application process and requirements for issuing healthcare program incentives.

(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: Any eligible healthcare program offered by an eligible postsecondary institution, or a Kentucky public high school, or a secondary career and technical center offering a healthcare vocational program in Kentucky may be affected. There roughly over 100 of these entities total.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: A detailed explanation of the actions the entities referenced in paragraph (3) of this subsection will be required to undertake in order to comply with the proposed administrative regulation:

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): To be eligible to receive funding, healthcare programs must submit an incentive proposal. Upon proposal evaluation and subsequent award, the Council, shall enter into a contract with the healthcare program to distribute the funds. The contract shall include the requirements of KRS 164.0404 and any reporting requirements set forth by the Council.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): An estimate of the costs imposed on entities referenced in paragraph (3) of this subsection in order to comply with the proposed administrative regulation: There is no additional cost to entities. The benefits that may accrue to the entities referenced in paragraph (3) of this subsection as a result of compliance: Once the contract with the entity is finalized, the Council shall disburse from the fund moneys deposited by healthcare partners and the matching funds appropriated by the General Assembly to the healthcare program.

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

(a) Initially: See 4(b) above.

(b) On a continuing basis: See 4(b) above.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? The healthcare workforce investment fund established by KRS 164.0402.

(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 assess fees.

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

(9) TIERING: Is tiering applied? Tiering is not applicable because similarly situated entities are treated similarly under this administrative regulation. However, dedicated funds may put some parameters about what types of healthcare programs can receive incentives. In addition, upon advice of the steering committee, the Council may create separate pools of funding to reward performance in particularly high need areas.

#### 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 Council on Postsecondary Education and any eligible healthcare program offered by an eligible postsecondary institution, or a Kentucky public high school, or a secondary career and technical center offering a healthcare vocational program in Kentucky.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 164.0402, 164.0404

(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 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? See 3(a).

(c) How much will it cost to administer this program for the first year? Initially and on an ongoing annual basis, we estimate expenses totaling roughly \$650,000 to include the addition of staff (and associated costs) with specific expertise to include backgrounds in healthcare, finance, and legal to stand up/maintain the program in addition to a program/project manager and program evaluation-related costs.

(d) How much will it cost to administer this program for subsequent years? See 3(c).

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

Revenues (+/-): 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? This regulation will not generate any cost savings for the regulated entities, but will provide revenue for those awarded incentives.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? See 4(a).

(c) How much will it cost the regulated entities for the first year? Duties related to this regulation will generally be assumed by designated entity staff members as part of their many other responsibilities. There are no additional costs to regulated entities.

(d) How much will it cost the regulated entities for subsequent years? See 4(c).

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)] This regulation is not anticipated to have a major economic impact on state or local government or regulated entities. This regulation will provide incentives to eligible healthcare programs for high performance and excellence which is anticipated to have a positive economic impact.

#### EDUCATION AND LABOR CABINET Education Professional Standards Board (New Administrative Regulation)

##### 16 KAR 2:240. Interim certificate.

RELATES TO: KRS 161.020

STATUTORY AUTHORITY: HB 319 RS 2023

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.020(1) requires educators to hold a certificate of legal qualifications for the position, issued by the Education Professional Standards Board (EPSB). Section 8 of HB 319 RS 2023 creates an interim certificate and authorizes the EPSB to promulgate administrative regulations to issue the interim certificate.

Section 1. Interim Certificate. (1) A candidate shall be eligible for issuance of the one-year interim certificate upon application to the EPSB, compliance with 16 KAR 2:010, Section 3(1), and submission of the following documentation:

(a) A bachelor's degree or higher as evidenced by an official transcript from a nationally or regionally accredited institution of higher education;

(b) Confirmation from an employer of a minimum of four (4) years of work experience in the area in which certification is being sought; and

(c) An offer of employment in a Kentucky school district in the area in which certification is being sought.

(2) An applicant for certification in the area of career and technical education may substitute an additional four (4) years of work experience in the area in which certification is being sought to meet the requirements of subsection (1)(a) of this section.

(3) Work experience shall be considered in the area of certification if it includes the content taught by the certificate.

(4) The interim certificate shall be issued for the certification area that aligns with the applicant's work experience and job offer.

(5) The interim certificate shall be issued at the rank corresponding to the degree held by the teacher applicant in accordance with the requirements established in KRS 161.1211 and 16 KAR Chapter 8.

(6) An interim certificate shall not be valid after June 30, 2026.

Section 2. Renewal of the Interim Certificate. (1) A candidate shall be eligible for renewal of the one-year interim certificate upon application to the EPSB, compliance with 16 KAR 2:010, Section 3(1), and evidence of employment in a Kentucky school district in the content area or areas indicated on the initial certificate.

(2) The interim certificate may be renewed a maximum of two (2) times.

(3) The interim certificate shall not be renewed after June 30, 2026.

JUSTIN MITCHELL, Board Chair

APPROVED BY AGENCY: June 21, 2023

FILED WITH LRC: June 28, 2023 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on September 25, 2023, at 10:00 a.m. in the State Board Room, Fifth Floor, 300 Sower Boulevard, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date,

the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through September 30, 2023. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Todd Allen, General Counsel, Kentucky Department of Education, 300 Sower Boulevard, 5th Floor, Frankfort, Kentucky 40601, phone 502-564-4474, fax 502-564-9321; email regcomments@education.ky.gov.

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Todd Allen

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for issuance of the interim certificate.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the procedures for issuance and renewal of the interim certificate.

(c) How this administrative regulation conforms to the content of the authorizing statutes: Section 8 of HB 319 RS 2023 creates an interim certificate and authorizes the EPSB to promulgate administrative regulations to issue the interim certificate.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation sets the requirements for the issuance and renewal of the interim certificate.

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 171 Kentucky school districts, and individuals pursuing the interim certificate.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Applicants for the interim certificate will have to submit the application and documentation required 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 is no fee established by the Education Professional Standards Board in this regulation and there is no fee for the issuance of a one-year certificate.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Compliance will result in issuance of the interim certificate for interested applicants. Districts will be able to hire holders of the interim certificate as a teacher of record.

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

(a) Initially: There will be cost associated with the review and processing of applications for the interim certificate. At this time, it is unknown how many will pursue the certificate, so the cost is unknown.

(b) On a continuing basis: There will be continuing costs with the review and processing of the applications for the interim certificate, but it is unknown how many will pursue this certificate.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: General Fund and certification fees collected pursuant to 16 KAR

4:040.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: Certification fees are established by 16 KAR 4:040. No additional fees are established by this regulation.

(9) TIERING: Is tiering applied? Tiering is not applicable to the requirements of this regulation as all applicants are required to meet the requirements of the certificate sought.

## 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 Education Professional Standards Board and public-school districts.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. HB 319 RS 2023.

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

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

(c) How much will it cost to administer this program for the first year? There will be costs associated with the review and processing of applications, but it is unknown how many will pursue this certificate.

(d) How much will it cost to administer this program for subsequent years? There will be costs associated with the review and processing of applications, but it is unknown how many will pursue this certificate.

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: At this time, it is unknown how many will pursue the interim certificate. It is anticipated that the current staff will be able to review and process the additional applications.

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? None anticipated.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? None anticipated.

(c) How much will it cost the regulated entities for the first year? There are no costs created by this amendment.

(d) How much will it cost the regulated entities for subsequent years? There are no costs created by this amendment.

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation: As this is a new certificate it is unknown how many applicants will pursue the interim certificate.

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in

aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] There is not an expected major economic impact from this regulation as it does not create costs for the regulated entities and the cost to the Education Professional Standards Board are expected to be minimal.

**SECRETARY OF STATE  
(Repealer)**

**030 KAR 006:012. Repeal of 30 KAR 6:011.**

RELATES TO: Ky Acts ch. 172

STATUTORY AUTHORITY: Ky Acts ch. 172

NECESSITY, FUNCTION, AND CONFORMITY: The regulations repealed herein have been superseded by statute, which renders them redundant in violation of KRS 13A.120(e). KRS 13A.310(1) establishes a duty to repeal an ordinary administrative regulation if it is desired that it no longer be effective.

Section 1. (1) 30 KAR 6:011, Kentucky address confidentiality program, is hereby repealed.

MICHAEL G. ADAMS, Secretary of State

APPROVED BY AGENCY: June 27, 2023

FILED WITH LRC: June 29, 2023 at 3:00 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 26, 2023, at 10:00 a.m. EST, at Office of the Secretary of State. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. This hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until September 30, 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: Jennifer Scutchfield, Assistant Secretary of State, 700 Capital Avenue, State Capitol, Suite 152, Frankfort, Kentucky 40601, phone (502) 782-7417, fax (502) 564-5687, email jscutchfield@ky.gov.

**REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT**

Contact Person: Jennifer Scutchfield

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation repeals regulations that are redundant to statutory provisions.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with KRS 13A.120 and KRS 13A.310.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to existing statutory provisions by recognizing their preemptive effect.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation repeals regulations redundant to existing statutory provisions.

(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 amendment will not impact any

individuals, businesses, organizations, of state and local governments.

(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: N/A.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): It is anticipated there will be no cost.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): It is anticipated there will be a small benefit of uniformity and fidelity to the preemptive statutory provisions.

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

(a) Initially: There will be no costs to implement this administrative regulation.

(b) On a continuing basis: There is no cost to implement this administrative regulation on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Existing appropriations and fund sources for the Office of the Secretary of State.

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

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

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to similarly situated individuals and 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 will not impact the units, parts or divisions of state or local government.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This administrative regulation is authorized by KRS 14A.1-030.

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

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

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

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

(d) How much will it cost to administer this program for subsequent years? There will be no additional cost to administer this program in subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation. No fiscal impact is anticipated.

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? None

(d) How much will it cost the regulated entities for subsequent years? None

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

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 over all 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.

**SECRETARY OF STATE  
(New Administrative Regulation)**

**30 KAR 010:010. Definitions for 30 KAR Chapter 10.**

RELATES TO: Ky Acts ch. 172

STATUTORY AUTHORITY: Ky Acts ch. 172

NECESSITY, FUNCTION, AND CONFORMITY: Ky Acts ch. 172 authorizes the Secretary of State to promulgate administrative regulations implementing Ky Acts ch. 172. This administrative regulation implements Ky Acts ch. 172.

Section 1. Definitions. (1) "Agency" means every elected or appointed state or local public office, public officer, or official, department, division, bureau, board, commission, committee, council, authority, agency, institution of higher education, or other unit of the executive, legislative, or judicial branch of the state; or any city, county, city and county, town, special district, school district, local improvement district, or other statutory unit of state or local government or any functional subdivision of that agency, or any other kind of municipal, quasi-municipal, or public corporation.

(2) "Address" is defined by Ky Acts ch. 172.

(3) "Applicant" is defined by Ky Acts ch. 172.

(4) "Designated Address" is the address assigned to a program participant by the Secretary of State.

(5) "Mail" means first-class letters and flats delivered via the United States Postal Service, including priority, express, and certified mail.

(6) "Program Participant" is defined by Ky Acts ch. 172.

(7) "Safe at Home verification card" is the card provided to each program participant, that must contain the participant's name, substitute address designated by the Secretary of State, the participant's ID assigned by the Secretary of State, the participant's birthdate, the participant's picture, and the expiration date.

MICHAEL G. ADAMS, Secretary of State

APPROVED BY AGENCY: June 27, 2023

FILED WITH LRC: June 29, 2023 at 3:00 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 26, 2023, at 10:00 a.m. EST, at Office of the Secretary of State. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. This hearing will not be made unless a written request for a transcript is made. If you do not

wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until September 30, 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: Jennifer Scutchfield, Assistant Secretary of State, 700 Capital Avenue, State Capitol, Suite 152, Frankfort, Kentucky 40601, phone (502) 782-7417, fax (502) 564-5687, email jscutchfield@ky.gov.

**REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT**

Contact Person: Jennifer Scutchfield

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedures for the Safe at Home Program, previously known as the Address Confidentiality Program.

(b) The necessity of this administrative regulation: Safe at Home Program, previously known as the Address Confidentiality Program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: In order for the Secretary of State to fulfill its duties under KRS 14.300, 14.302, 14.304, 14.306 and 14.310, this administrative regulation is necessary to establish the procedures for the Safe at Home Program, previously known as the Address Confidentiality Program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation is necessary to establish procedures for the Safe at Home Program, previously known as the Address Confidentiality 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 regulation affects citizens of the Commonwealth that are impacted by domestic violence or others facing physical or mental abuse if their address were public record. It also affects state and local agencies who have the victims address in their database or records.

(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 identified in question (3) will have to familiarize themselves with this regulation and contact our office with questions. Our Office will also conduct outreach to increase knowledge amongst public entities.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There should be no cost to the public agencies. The Secretary of State will incur costs with the administration of this program but have funding, at least in this budget year to cover the program.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The victims of domestic violence will be protected from persons who pose them danger by not allowing those people to access their location.

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

(a) Initially: The cost is minimal but will include purchase of a device to make identification cards, forwarding postal mail, training of assistance officers and contacting other agencies.

(b) On a continuing basis: As the program grows, the cost of the program will increase, especially for mailing costs.

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

legislature provided funding for the Safe at Home 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 will not be necessary, at least initially.

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

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

#### FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This regulation will impact local and state agencies who hold addresses for victims of domestic violence.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This regulation is necessary because of 2023 RS SB 79 (2023 Regular Session Senate Bill 79) which creates the Safe at Home Program.

(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 minimal costs to state and local government agencies for the first full year the regulation would be in effect. The Office of the Secretary of State will have expenditures for mailing costs, card maker and creation of the Program.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? 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 actual cost is unknown, but after reviewing other programs around the country, the funds that are set aside for the Program by the legislature should cover the initial implementation of the Program. An estimate of first year costs is \$15,000.00.

(d) How much will it cost to administer this program for subsequent years? The cost to administer the Program will depend on how many participants. An estimate of subsequent year costs are \$10,000 a year.

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

Revenues (+/-): None

Expenditures (+/-): estimate \$15,000.00

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 regulation will increase the expenditures of the Secretary of State but it is anticipated the fund created by the legislature will accommodate the costs.

(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? Approximately \$15,000.00

(d) How much will it cost the regulated entities for subsequent years? Approximately \$15,000.00

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.

#### SECRETARY OF STATE (New Administrative Regulation)

#### 30 KAR 010:020. Application and certification.

RELATES TO: Ky Acts ch. 172

STATUTORY AUTHORITY: Ky Acts ch. 172

NECESSITY, FUNCTION, AND CONFORMITY: Ky Acts ch. 172

authorizes the Secretary of State to promulgate administrative regulations implementing. This administrative regulation implements Ky Acts ch. 172.

Section 1. Requirements for Application for Certification to Participate in the Safe at Home Program.

(1) Application for certification to participate in the safe at home program shall be made to the Secretary of State by submitting a completed Application for Certification to Participate in the Safe at Home Program which contains:

- (a) Full legal name;
- (b) Date of birth;
- (c) Other names that may appear on applicant's mail;
- (d) County of residence;
- (e) Residential address;
- (f) Phone number;
- (g) Email address; and
- (h) Dependent's legal names and identifying information (if applicable).

(2) The application must include a sworn statement and acknowledge the following:

(a) I am an adult survivor of domestic violence, sexual assault, stalking or human trafficking or am the parent of a child or guardian of an adult individual who is such a survivor, or I am a household member of such a survivor;

(b) I am not applying to participate in Safe at Home in order to avoid prosecution of any kind. I confirm that I am not a sexually violent predator;

(c) I give permission to the Secretary of State's Office to verify my participation in Safe at Home state or local agencies when requested;

(d) I designate the Secretary of State as my agent for service of process and for the purpose of receipt of mail. Therefore, if Safe at Home accepts legal documents or certified mail addressed to me, it is as if I received them;

(e) I understand that my participation in Safe at Home may be cancelled for any of the following reasons:

1. I change my legal name and do not notify the Secretary of State's Office in writing prior to the change;

2. Mail forwarded by the Secretary of State's Office is returned as undeliverable by the United States Postal Service;

3. If the Secretary accepts service of process on my behalf, and I do not acknowledge such;

4. If my application contains false information;

(f) I understand that it is my responsibility to notify family, friends, businesses, and government agencies of my Safe at Home designated address. I recognize that if I share my confidential address, the Safe at Home program cannot control its distribution;

(g) I realize that my mail address may include an apartment number. Without this apartment number, my mail may be delayed or may never reach me. Safe at Home will forward only first-class, legal, and certified mail, as well as packages of prescriptions;

(h) I understand that I am enrolled in Safe at Home for a four (4) year term. At the end of this term, I realize I will have to renew my enrollment or be cancelled from the program;

(i) I authorize the Safe at Home Program to notify the State Board of Elections to remove my physical and mailing address from voter registration documents that can be viewed by the public but

## VOLUME 50, NUMBER 2– AUGUST 1, 2023

maintain my physical address for the purpose of remaining registered and populated in the correct precinct.

(j) I realize that if I purchase or sell real estate, my information will appear on public records;

(k) I understand that I must notify the Safe at Home program if any of the information on my original Safe at Home application changes within fourteen (14) days;

(l) I understand that once I am enrolled in the Safe at Home program, my actual address will be confidential unless an agency has a bona fide statutory or administrative requirement for use of my address; and

(m) My children under the age of eighteen (18) may be enrolled with me as dependents. Individuals over the age of eighteen (18) must enroll separately. Minors who turn eighteen (18) during participation in the program are responsible for completing a renewal form at that time to continue Safe at Home participation.

(3) The Application for Certification to Participate in Safe at Home shall be:

- (a) Notarized; and
- (b) In English.

Section 2. Certification in the Safe at Home Program. (1) The Secretary of State shall approve an Application for Certification to Participate in Safe at Home Program and certify the applicant as a program participant if the applicant and the Application for Certification to Participate in Safe at Home Program meet the requirements established in Ky Acts ch. 172 and this administrative regulation.

(2) The Secretary of State shall notify the applicant or filer whether the Application for Certification to Participate in Safe at Home Program was denied, or the applicant was certified as a program participant.

(a) If an Application for Certification to Participate in Safe at Home Program is denied, the Secretary of State shall inform the applicant or filer of the reason for the denial.

(b) If an applicant is certified as a program participant, the Secretary of State shall:

1. Assign to the program participant a participant number and designated address; and
  2. Issue to the program participant a Safe at Home Program Participant Card.
  3. Provide information about the Safe at Home Program with instructions, frequently asked question and answers and other information deemed necessary.
  4. Provide a general letter from the Secretary of State the participant can provide to agencies.
- (3) If an applicant is certified as a program participant, participation in the Safe at Home program shall be effective as of the date of the notification of certification.

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

- (a) "Application for Certification to Participate in Safe at Home Program", July 2023;
- (b) "Address Confidentiality Program Participant Card", July 2023;
- (c) "Safe at Home Program Participant Change of Information Form", July 2023;

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Secretary of State's Office, 700 Capital Avenue, State Capitol, Suite 152, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m., or may be obtained at [sos.ky.gov](http://sos.ky.gov).

APPROVED BY AGENCY: June 27, 2023

FILED WITH LRC: June 29, 2023 at 3:00 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 26, 2023, at 10:00 a.m. EST, at Office of the Secretary of State. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. This hearing will not be made unless a written request for a transcript is made. If you do not

wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until September 30, 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: Jennifer Scutchfield, Assistant Secretary of State, 700 Capital Avenue, State Capitol, Suite 152, Frankfort, Kentucky 40601, phone (502) 782-7417, fax (502) 564-5687, email [jscutchfield@ky.gov](mailto:jscutchfield@ky.gov).

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jennifer Scutchfield

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedures for the Safe at Home Program, previously known as the Address Confidentiality Program.

(b) The necessity of this administrative regulation: Safe at Home Program, previously known as the Address Confidentiality Program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: In order for the Secretary of State to fulfill its duties under KRS 14.300, 14.302, 14.304, 14.306 and 14.310, this administrative regulation is necessary to establish the procedures for the Safe at Home Program, previously known as the Address Confidentiality Program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation is necessary to establish procedures for the Safe at Home Program, previously known as the Address Confidentiality 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 regulation affects citizens of the Commonwealth that are impacted by domestic violence or others facing physical or mental abuse if their address were public record. It also affects state and local agencies who have the victims address in their database or records.

(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 identified in question (3) will have to familiarize themselves with this regulation and contact our office with questions. Our Office will also conduct outreach to increase knowledge amongst public entities.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There should be no cost to the public agencies. The Secretary of State will incur costs with the administration of this program but have funding, at least in this budget year to cover the program.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The victims of domestic violence will be protected from persons who pose them danger by not allowing those people to access their location.

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

(a) Initially: The cost is minimal, but will include purchase of a device to make identification cards, forwarding postal mail, training of assistance officers and contacting other agencies.

(b) On a continuing basis: As the program grows, the cost of the program will increase, especially for mailing costs.

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

legislature provided funding for the Safe at Home 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 will not be necessary, at least initially.

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

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

#### FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This regulation will impact local and state agencies who hold addresses for victims of domestic violence.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This regulation is necessary because of 2023 RS SB 79 (2023 Regular Session Senate Bill 79) which creates the Safe at Home Program.

(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 minimal costs to state and local government agencies for the first full year the regulation would be in effect. The Office of the Secretary of State will have expenditures for mailing costs, card maker and creation of the Program.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? 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 actual cost is unknown, but after reviewing other programs around the country, the funds that are set aside for the Program by the legislature should cover the initial implementation of the Program. An estimate of first year costs are \$15,000.00.

(d) How much will it cost to administer this program for subsequent years? The cost to administer the Program will depend on how many participants. An estimate of subsequent year costs are \$10,000.00 a year.

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

Revenues (+/-): None

Expenditures (+/-): estimate \$15,000.00

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 regulation will increase the expenditures of the Secretary of State but it is anticipated the fund created by the legislature will accommodate the costs.

(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? Approximately \$15,000.00

(d) How much will it cost the regulated entities for subsequent years? Approximately \$15,000.00

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.

#### SECRETARY OF STATE (New Administrative Regulation)

#### 30 KAR 010:030. Notification of expiration and recertification in the Safe at Home Program.

RELATES TO: Ky Acts ch. 172

STATUTORY AUTHORITY: Ky Acts ch. 172

NECESSITY, FUNCTION, AND CONFORMITY: Ky Acts ch. 172 authorizes the Secretary of State to promulgate administrative regulations Ky Acts ch. 172. This administrative regulation implements Ky Acts ch. 172.

Section 1. Notification of Expiration. The Secretary of State shall send notification to the participant or filer of expiring certification at least four (4) weeks prior to expiration and provide an Application for Certification to Participate in Safe at Home Program.

Section 2. Application for Renewal of Certification in the Safe at Home Program.

(1) A program participant or filer wishing to renew certification in the Safe at Home Program shall submit to the Secretary of State at least five (5) business days prior to the date on which the program participant's certification expires an Application for Certification to Participate in Safe at Home Program pursuant 30 KAR 010:020.

(2) The Application for Certification to Participate in Safe at Home Program shall be considered timely submitted for purposes of renewal if it is date-stamped received by the Office of the Secretary of State at least five (5) business days prior to the date on which the program participant's certification expires.

Section 3. Review by the Secretary of State of a Renewal Application for Certification to Participate in Safe at Home Program.

(1) The Secretary of State shall approve a renewal Application for Certification to Participate in Safe at Home Program if the applicant and Application for Certification to Participate in Safe at Home Program meet the requirements established in Ky Acts ch. 172 and 30 KAR 010:020.

(2) The Secretary of State shall notify the program participant or filer whether the renewal Application for Certification to Participate in Safe at Home Program was denied or the program participant's certification was renewed within five (5) business days after it is date-stamped received by the Secretary of State.

(a) If a renewal Application for Certification to Participate in Safe at Home Program is denied, the Secretary of State shall inform the program participant or filer of the reason for denial.

(b) If a program participant's certification is renewed, the Secretary of State shall issue to the program participant a new Safe at Home Program Participant Card pursuant to 30 KAR 010:020, and the renewal shall be effective as of the date of the notification of renewal.

MICHAEL G. ADAMS, Secretary of State

APPROVED BY AGENCY: June 27, 2023

FILED WITH LRC: June 29, 2023 at 3:00 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 26, 2023, at 10:00 a.m. EST, at Office of the Secretary of State. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. This hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until September 30, 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: Jennifer Scutchfield, Assistant Secretary of State, 700 Capital Avenue, State Capitol, Suite 152, Frankfort, Kentucky 40601, phone (502) 782-7417, fax (502) 564-5687, email jscutchfield@ky.gov.

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jennifer Scutchfield

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedures for the Safe at Home Program, previously known as the Address Confidentiality Program.

(b) The necessity of this administrative regulation: Safe at Home Program, previously known as the Address Confidentiality Program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: In order for the Secretary of State to fulfill its duties under KRS 14.300, 14.302, 14.304, 14.306 and 14.310, this administrative regulation is necessary to establish the procedures for the Safe at Home Program, previously known as the Address Confidentiality Program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation is necessary to establish procedures for the Safe at Home Program, previously known as the Address Confidentiality 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 regulation affects citizens of the Commonwealth that are impacted by domestic violence or others facing physical or mental abuse if their address were public record. It also affects state and local agencies who have the victims address in their database or records.

(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 identified in question (3) will have to familiarize themselves with this regulation and contact our office with questions. Our Office will also conduct outreach to increase knowledge amongst public entities.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There should be no cost to the public agencies. The Secretary of State will incur costs with the administration of this program but have funding, at least in this budget year to cover the program.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The victims of domestic violence will be protected from persons who pose them danger by not allowing those people to access their location.

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

(a) Initially: The cost is minimal but will include purchase of a device to make identification cards, forwarding postal mail, training of assistance officers and contacting other agencies.

(b) On a continuing basis: As the program grows, the cost of the program will increase, especially for mailing costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The legislature provided funding for the Safe at Home 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 will not be necessary, at least initially.

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

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

## FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This regulation will impact local and state agencies who hold addresses for victims of domestic violence.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This regulation is necessary because of 2023 RS SB 79 (2023 Regular Session Senate Bill 79) which creates the Safe at Home Program.

(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 minimal costs to state and local government agencies for the first full year the regulation would be in effect. The Office of the Secretary of State will have expenditures for mailing costs, card maker and creation of the Program.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? 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 actual cost is unknown, but after reviewing other programs around the country, the funds that are set aside for the Program by the legislature should cover the initial implementation of the Program. An estimate of first year costs are \$15,000.00.

(d) How much will it cost to administer this program for subsequent years? The cost to administer the Program will depend on how many participants. An estimate of subsequent year costs are \$10,000.00 a year.

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

Revenues (+/-): None

Expenditures (+/-): estimate \$15,000.00

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 regulation will increase the expenditures of the Secretary of State but it is anticipated the fund created by the legislature will accommodate the costs.

(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? Approximately \$15,000.00

(d) How much will it cost the regulated entities for subsequent years? Approximately \$15,000.00

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.

**SECRETARY OF STATE  
(New Administrative Regulation)**

**30 KAR 010:040. Cancellation, appeal, and withdrawal.**

RELATES TO: Ky Acts ch. 172

STATUTORY AUTHORITY: Ky Acts ch. 172

NECESSITY, FUNCTION, AND CONFORMITY: Ky Acts ch. 172 authorizes the Secretary of State to promulgate administrative regulations implementing Ky Acts ch. 172. This administrative regulation implements Ky Acts ch. 172.

Section 1. Cancellation from Participation in Safe at Home Program.

(1) A program participant's certification in the Safe at Home Program shall be canceled if:

- (a) The program participant fails to notify the Secretary of State of a name change;
- (b) The program participant fails to notify the Secretary of State of an address change;
- (c) The Secretary of State determines the program participant applied using false information;
- (d) The program participant relocates outside of Kentucky;
- (e) The program participant is no longer eligible;
- (f) The program participant is required to register as a sex offender; or
- (g) The program participant fails to submit an Application for Participation in the Safe at Home Program for renewal upon the expiration of the initial four (4) year enrollment.

(2) Upon cancellation, the Secretary of State shall send notice to the program participant of the cancellation of participation in the Safe at Home Program and include:

- (a) The reasons for the cancellation;
- (b) A copy of the Appeal from Cancellation of Certification in Safe at Home Program;
- (c) Notification that an appeal must be received within thirty (30) days.

Section 2. Appeal from Cancellation of Certification in Safe at Home Program.

(1) A program participant or filer wishing to appeal from a cancellation of certification in the Safe at Home Program shall submit to the Secretary of State an Appeal from Cancellation of Certification in Safe at Home Program form.

(2) The Appeal from Cancellation of Certification in Safe at Home Program shall be considered timely submitted if it is date-stamped received by the Secretary of State within thirty (30) days of the date of the notice of certification cancellation.

(3) The Appeal from Cancellation of Certification in Safe at Home Program shall:

- (a) Be in writing;
- (b) Be in English;
- (c) Be signed by the program participant or filer; and
- (d) Include information as to why certification in the Safe at Home Program should not be cancelled.

(4) If an Appeal from Cancellation of Certification in Safe at Home Program is not timely submitted, cancellation of certification in the Safe at Home Program shall be effective upon the expiration of thirty (30) days after the date of the notice of certification cancellation.

Section 3. Review by the Assistant Secretary of State of an Appeal from Cancellation of Certification in Safe at Home Program.

(1) The Assistant Secretary of State shall approve or deny an Appeal from Cancellation of Certification in Safe at Home Program within five (5) business days after it is date-stamped received by the Office of the Secretary of State.

(a) The Assistant Secretary of State shall approve an Appeal from Cancellation of Certification in Safe at Home Program if he or she determines that grounds for cancellation pursuant to Ky Acts ch.

172 do not exist.

(b) The Assistant Secretary of State shall deny an Appeal from Cancellation of Certification in Safe at Home Program if he or she determines that grounds for cancellation pursuant to Ky Acts ch. 172 exist.

(2) The Assistant Secretary of State shall provide to the program participant or filer written notice of the decision regarding an Appeal from Cancellation of Certification in Safe at Home Program.

(3) If an Appeal from Cancellation of Certification in Safe at Home Program is timely submitted and denied pursuant to this section, cancellation of certification in the Safe at Home program shall be effective on the date on which the notice of denial is mailed.

(4) The decision of the Assistant Secretary of State shall conclude the appeal procedures pursuant to Ky Acts ch. 172 and this administrative regulation.

Section 4. Withdrawal from Participation in the Safe at Home Program. (1) A program participant or filer wishing to withdraw from participation in the Safe at Home Program shall submit to the Secretary of State a Withdrawal from Participation in Safe at Home Program form.

(2) The Withdrawal from Participation in Safe at Home Program form shall be:

- (a) In writing;
- (b) In English;
- (c) Signed by the program participant or a filer; and
- (d) Notarized or signed by an Application Assistant.

Section 5. Confirmation by the Secretary of State of a Withdrawal from Participation in the Safe at Home Program.

(1) Upon receiving a Withdrawal from Participation in Safe at Home Program form, the Secretary of State shall mail to the program participant or filer a written confirmation of withdrawal.

(2) The written confirmation shall notify the program participant or filer:

- (a) Of the date on which a Withdrawal from Participation in Safe at Home Program form was date stamped received by the Office of the Secretary of State; and
- (b) That program participation shall be terminated ten (10) days following the date of the written confirmation of withdrawal, unless the program participant or a filer notifies the Secretary of State on or before that date that the withdrawal request was not legitimate because it was not voluntarily submitted by the program participant or a filer.

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

- (a) "Withdrawal from Participation in Safe at Home Program", July 2023; and
- (b) "Appeal from Cancellation of Certification in Safe at Home Program", July 2023.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Secretary of State's Office, 700 Capital Avenue, State Capitol, Suite 152, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m., or may be obtained at [www.sos.ky.gov](http://www.sos.ky.gov).

MICHAEL G. ADAMS, Secretary of State

APPROVED BY AGENCY: June 27, 2023

FILED WITH LRC: June 29, 2023 at 3:00 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 26, 2023, at 10:00 a.m. EST, at Office of the Secretary of State. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. This hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until September 30, 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.

## VOLUME 50, NUMBER 2– AUGUST 1, 2023

CONTACT PERSON: Jennifer Scutchfield, Assistant Secretary of State, 700 Capital Avenue, State Capitol, Suite 152, Frankfort, Kentucky 40601, phone (502) 782-7417, fax (502) 564-5687, email [jscutchfield@ky.gov](mailto:jscutchfield@ky.gov).

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jennifer Scutchfield

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedures for the Safe at Home Program, previously known as the Address Confidentiality Program.

(b) The necessity of this administrative regulation: Safe at Home Program, previously known as the Address Confidentiality Program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: In order for the Secretary of State to fulfill its duties under KRS 14.300, 14.302, 14.304, 14.306 and 14.310, this administrative regulation is necessary to establish the procedures for the Safe at Home Program, previously known as the Address Confidentiality Program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation is necessary to establish procedures for the Safe at Home Program, previously known as the Address Confidentiality 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 regulation affects citizens of the Commonwealth that are impacted by domestic violence or others facing physical or mental abuse if their address were public record. It also affects state and local agencies who have the victims address in their database or records.

(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 identified in question (3) will have to familiarize themselves with this regulation and contact our office with questions. Our Office will also conduct outreach to increase knowledge amongst public entities.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There should be no cost to the public agencies. The Secretary of State will incur costs with the administration of this program but have funding, at least in this budget year to cover the program.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The victims of domestic violence will be protected from persons who pose them danger by not allowing those people to access their location.

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

(a) Initially: The cost is minimal but will include purchase of a device to make identification cards, forwarding postal mail, training of assistance officers and contacting other agencies.

(b) On a continuing basis: As the program grows, the cost of the program will increase, especially for mailing costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The legislature provided funding for the Safe at Home 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 will not be necessary, at least initially.

(8) State whether or not this administrative regulation establishes

any fees or directly or indirectly increases any fees: This administrative regulation neither establishes nor increases any fees.

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

### FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This regulation will impact local and state agencies who hold addresses for victims of domestic violence.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This regulation is necessary because of 2023 RS SB 79 (2023 Regular Session Senate Bill 79) which creates the Safe at Home Program.

(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 minimal costs to state and local government agencies for the first full year the regulation would be in effect. The Office of the Secretary of State will have expenditures for mailing costs, card maker and creation of the Program.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? 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 actual cost is unknown, but after reviewing other programs around the country, the funds that are set aside for the Program by the legislature should cover the initial implementation of the Program. An estimate of first year costs are \$15,000.00.

(d) How much will it cost to administer this program for subsequent years? The cost to administer the Program will depend on how many participants. An estimate of subsequent year costs are \$10,000.00 a year.

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

Revenues (+/-): None

Expenditures (+/-): estimate \$15,000.00

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 regulation will increase the expenditures of the Secretary of State but it is anticipated the fund created by the legislature will accommodate the costs.

(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? Approximately \$15,000.00

(d) How much will it cost the regulated entities for subsequent years? Approximately \$15,000.00

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.

**SECRETARY OF STATE  
(New Administrative Regulation)**

**30 KAR 010:050. Application assistant training and designation.**

RELATES TO: Ky Acts ch. 172

STATUTORY AUTHORITY: Ky Acts ch. 172

NECESSITY, FUNCTION, AND CONFORMITY: Ky Acts ch. 172 authorizes the Secretary of State to promulgate administrative regulations Ky Acts ch. 172. This administrative regulation implements Ky Acts ch. 172.

Section 1. The Application Assistant training and designation process consists of:

- (1) Completing an in-person or online training which is conducted or approved by the Secretary of State Safe at Home Program; and
- (2) Submitting a completed Application Assistant Agreement.

Section 2. Valid Period. The Application Assistant designation is valid for a three (3) year period and may be renewed by submitting a new Application Assistant Agreement prior to the end of the three (3) year term.

Section 3. Employment.

- (1) The Application Assistants must provide the Safe at Home Program with current employer and contact information.
- (2) Application Assistants who change employment may retain their designation as long as they continue to meet the statutory criteria for the Application Assistant designation and submit an updated Application Assistant Agreement.

Section 4. Expiration/Cancellation.

- (1) The Safe at Home Program will notify Application Assistants prior to the expiration of their designation using the contact information on record with the program.
- (2) An Application Assistant designation will expire if the Application Assistant fails to submit a new Application Assistant Agreement before the end of his/her three (3) year term.
- (3) An Application Assistant may cancel his or her designation at any time by notifying the Safe at Home Program.

Section 5. Incorporation by Reference.

- (1) "Application Assistant Agreement", July 2023, is incorporated by reference.
- (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Secretary of State's Office, 700 Capital Avenue, State Capitol, Suite 152, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m., or may be obtained at [www.sos.ky.gov](http://www.sos.ky.gov).

MICHAEL G. ADAMS, Secretary of State

APPROVED BY AGENCY: June 27, 2023

FILED WITH LRC: June 29, 2023 at 3:00 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 26, 2023, at 10:00 a.m. EST, at Office of the Secretary of State. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. This hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until September 30, 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: Jennifer Scutchfield, Assistant Secretary of State, 700 Capital Avenue, State Capitol, Suite 152, Frankfort, Kentucky 40601, phone (502) 782-7417, fax (502) 564-5687. Email: [jscutchfield@ky.gov](mailto:jscutchfield@ky.gov).

**REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT**

Contact Person: Jennifer Scutchfield

- (1) Provide a brief summary of:
  - (a) What this administrative regulation does: This administrative regulation establishes the procedures for the Safe at Home Program, previously known as the Address Confidentiality Program.
  - (b) The necessity of this administrative regulation: Safe at Home Program, previously known as the Address Confidentiality Program.
  - (c) How this administrative regulation conforms to the content of the authorizing statutes: In order for the Secretary of State to fulfill its duties under KRS 14.300, 14.302, 14.304, 14.306 and 14.310, this administrative regulation is necessary to establish the procedures for the Safe at Home Program, previously known as the Address Confidentiality Program.
  - (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation is necessary to establish procedures for the Safe at Home Program, previously known as the Address Confidentiality 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 regulation affects citizens of the Commonwealth that are impacted by domestic violence or others facing physical or mental abuse if their address were public record. It also affects state and local agencies who have the victims address in their database or records.
- (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 identified in question (3) will have to familiarize themselves with this regulation and contact our office with questions. Our Office will also conduct outreach to increase knowledge amongst public entities.
  - (b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There should be no cost to the public agencies. The Secretary of State will incur costs with the administration of this program but have funding, at least in this budget year to cover the program.
  - (c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The victims of domestic violence will be protected from persons who pose them danger by not allowing those people to access their location.
- (5) Provide an estimate of how much it will cost to implement this administrative regulation:
  - (a) Initially: The cost is minimal but will include purchase of a device to make identification cards, forwarding postal mail, training of assistance officers and contacting other agencies.
  - (b) On a continuing basis: As the program grows, the cost of the program will increase, especially for mailing costs.
- (6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The legislature provided funding for the Safe at Home 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 will not be necessary, at least initially.
- (8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation neither establishes nor increases any fees.
- (9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.



FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This regulation will impact local and state agencies who hold addresses for victims of domestic violence.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This regulation is necessary because of 2023 RS SB 79 (2023 Regular Session Senate Bill 79) which creates the Safe at Home Program.

(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 minimal costs to state and local government agencies for the first full year the regulation would be in effect. The Office of the Secretary of State will have expenditures for mailing costs, card maker and creation of the Program.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? 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 actual cost is unknown, but after reviewing other programs around the country, the funds that are set aside for the Program by the legislature should cover the initial implementation of the Program. An estimate of first year costs are \$15,000.00.

(d) How much will it cost to administer this program for subsequent years? The cost to administer the Program will depend on how many participants. An estimate of subsequent year costs are \$10,000.00 a year.

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

Revenues (+/-): None

Expenditures (+/-): estimate \$15,000.00

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 regulation will increase the expenditures of the Secretary of State but it is anticipated the fund created by the legislature will accommodate the costs.

(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? Approximately \$15,000.00

(d) How much will it cost the regulated entities for subsequent years? Approximately \$15,000.00

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.

SECRETARY OF STATE  
(New Administrative Regulation)

**30 KAR 010:060. Release of participant information to criminal justice officials or agencies.**

RELATES TO: Ky Acts Ch. 172

STATUTORY AUTHORITY: Ky Acts Ch. 172

NECESSITY, FUNCTION, AND CONFORMITY: Ky Acts Ch. 172 authorizes the Secretary of State to promulgate administrative regulations implementing Ky Acts Ch. 172. This administrative regulation implements Ky Acts Ch. 172.

Section 1. Expedited release of participant information shall be granted in response to a written request setting forth the reason(s) requiring the expedited release of information to the criminal justice agency. The request must be on agency letterhead and signed by the employee of the criminal justice agency requesting such information and his or her direct supervisor or acting supervisor if the employee's direct supervisor is unavailable.

Section 2. If the participant indicates on their application he/she has reason to believe he or she is a victim of domestic violence, sexual assault, trafficking or stalking perpetrated by an employee of a law enforcement agency, the letter must be accompanied by a court order for release of records in the program participant's file.

MICHAEL G. ADAMS, Secretary of State

APPROVED BY AGENCY: June 27, 2023

FILED WITH LRC: June 29, 2023 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 26, 2023, at 10:00 a.m. EST, at Office of the Secretary of State. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. This hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until September 30, 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: Jennifer Scutchfield, Assistant Secretary of State, 700 Capital Avenue, State Capitol, Suite 152, Frankfort, Kentucky 40601, phone (502) 782-7417, fax (502) 564-5687, email jscutchfield@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jennifer

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedures for the Safe at Home Program, previously known as the Address Confidentiality Program.

(b) The necessity of this administrative regulation: Safe at Home Program, previously known as the Address Confidentiality Program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: In order for the Secretary of State to fulfill its duties under KRS 14.300, 14.302, 14.304, 14.306 and 14.310, this administrative regulation is necessary to establish the procedures for the Safe at Home Program, previously known as the Address Confidentiality Program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation is necessary to establish procedures for the Safe at Home Program, previously known as the Address Confidentiality 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 regulation affects citizens of the Commonwealth that are impacted by domestic violence or others facing physical or mental abuse if their address were public record. It also affects state and local agencies who have the victims address in their database or records.

(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 identified in question (3) will have to familiarize themselves with this regulation and contact our office with questions. Our Office will also conduct outreach to increase knowledge amongst public entities.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There should be no cost to the public agencies. The Secretary of State will incur costs with the administration of this program but have funding, at least in this budget year to cover the program.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The victims of domestic violence will be protected from persons who pose them danger by not allowing those people to access their location.

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

(a) Initially: The cost is minimal but will include purchase of a device to make identification cards, forwarding postal mail, training of assistance officers and contacting other agencies.

(b) On a continuing basis: As the program grows, the cost of the program will increase, especially for mailing costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The legislature provided funding for the Safe at Home 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 will not be necessary, at least initially.

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

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

#### FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This regulation will impact local and state agencies who hold addresses for victims of domestic violence.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This regulation is necessary because of 2023 RS SB 79 (2023 Regular Session Senate Bill 79) which creates the Safe at Home Program.

(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 minimal costs to state and local government agencies for the first full year the regulation would be in effect. The Office of the Secretary of State will have expenditures for mailing costs, card maker and creation of the Program.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? 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 actual cost is unknown, but after reviewing other programs around the country, the funds that are set aside for the Program by the legislature should cover the initial implementation of the Program. An estimate of first year costs are \$15,000.00.

(d) How much will it cost to administer this program for subsequent years? The cost to administer the Program will depend on how many participants. An estimate of subsequent year costs are \$10,000.00 a year.

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

Revenues (+/-): None

Expenditures (+/-): estimate \$15,000.00

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 regulation will increase the expenditures of the Secretary of State but it is anticipated the fund created by the legislature will accommodate the costs.

(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? Approximately \$15,000.00

(d) How much will it cost the regulated entities for subsequent years? Approximately \$15,000.00

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.

#### SECRETARY OF STATE (New Administrative Regulation)

#### 30 KAR 010:070. School enrollment and record transfers.

RELATES TO: Ky Acts ch. 172

STATUTORY AUTHORITY: Ky Acts ch. 172

NECESSITY, FUNCTION, AND CONFORMITY: Ky Acts ch. 172 authorizes the Secretary of State to promulgate administrative regulations implementing Ky Acts ch. 172. This administrative regulation implements Ky Acts ch. 172.

Section 1. At the request of an enrolling school, the Safe at Home Program will determine the student/participant's school district eligibility based on the current residential address listed in the participant's program file. The Safe at Home Program will notify the enrolling school of district eligibility in writing. The Safe at Home Program will request a student's records for the purpose of transferring such records from one school to another upon receiving the written request and authorization from the student's parent or legal guardian.

MICHAEL G. ADAMS Secretary of State

APPROVED BY AGENCY: June 27, 2023

FILED WITH LRC: June 29, 2023 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 26, 2023 at 10:00 a.m. EST, at Office of the Secretary of State.

Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. This hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until September 30, 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: Jennifer Scutchfield, Assistant Secretary of State, 700 Capital Avenue, State Capitol, Suite 152, Frankfort, Kentucky 40601, phone (502) 782-7417, fax (502) 564-5687, email jscutchfield@ky.gov.

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jennifer Scutchfield

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedures for the Safe at Home Program, previously known as the Address Confidentiality Program.

(b) The necessity of this administrative regulation: Safe at Home Program, previously known as the Address Confidentiality Program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: In order for the Secretary of State to fulfill its duties under KRS 14.300, 14.302, 14.304, 14.306 and 14.310, this administrative regulation is necessary to establish the procedures for the Safe at Home Program, previously known as the Address Confidentiality Program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation is necessary to establish procedures for the Safe at Home Program, previously known as the Address Confidentiality 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 regulation affects citizens of the Commonwealth that are impacted by domestic violence or others facing physical or mental abuse if their address were public record. It also affects state and local agencies who have the victims address in their database or records.

(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 identified in question (3) will have to familiarize themselves with this regulation and contact our office with questions. Our Office will also conduct outreach to increase knowledge amongst public entities.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There should be no cost to the public agencies. The Secretary of State will incur costs with the administration of this program but have funding, at least in this budget year to cover the program.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The victims of domestic violence will be protected from persons who pose them danger by not allowing those people to access their location.

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

(a) Initially: The cost is minimal but will include purchase of a device to make identification cards, forwarding postal mail, training of

assistance officers and contacting other agencies.

(b) On a continuing basis: As the program grows, the cost of the program will increase, especially for mailing costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The legislature provided funding for the Safe at Home 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 will not be necessary, at least initially.

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

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

## FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This regulation will impact local and state agencies who hold addresses for victims of domestic violence.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This regulation is necessary because of 2023 RS SB 79 (2023 Regular Session Senate Bill 79) which creates the Safe at Home Program.

(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 minimal costs to state and local government agencies for the first full year the regulation would be in effect. The Office of the Secretary of State will have expenditures for mailing costs, card maker and creation of the Program.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? 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 actual cost is unknown, but after reviewing other programs around the country, the funds that are set aside for the Program by the legislature should cover the initial implementation of the Program. An estimate of first year costs are \$15,000.00.

(d) How much will it cost to administer this program for subsequent years? The cost to administer the Program will depend on how many participants. An estimate of subsequent year costs are \$10,000.00 a year.

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

Revenues (+/-): None

Expenditures (+/-): estimate \$15,000.00

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 regulation will increase the expenditures of the Secretary of State but it is anticipated the fund created by the legislature will accommodate the costs.

(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? Approximately \$15,000.00

(d) How much will it cost the regulated entities for subsequent years? Approximately \$15,000.00

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.

**SECRETARY OF STATE  
(New Administrative Regulation)**

**30 KAR 010:080. Substitute address.**

RELATES TO: Ky Acts ch. 172

STATUTORY AUTHORITY: Ky Acts ch. 172

NECESSITY, FUNCTION, AND CONFORMITY: Ky Acts ch. 172 authorizes the Secretary of State to promulgate administrative regulations implementing Ky Acts ch. 172. This administrative regulation implements Ky Acts ch. 172.

Section 1. (1) Program participants may use the substitute address provided by the Secretary of State when interacting with any state or local agency on all forms or applications that require an address.

(2) Every state or local government agency, or office, shall accept the substitute address issued by the Secretary of State as the only address for all program participants when the participant provides the address and authorization card and authorization number. Program participants are not required to respond to any question regarding the details or circumstances of the person's inclusion in the program. The public agency may contact the Secretary of State to verify program participation and for additional program information.

(3) The agency official creating a new record may make a file photocopy of the authorization card and will immediately return the authorization card to the program participant.

(4) The agency official may call the Safe at Home Program to verify an individual's participation status in the program and to confirm the participant's authorization number.

(5) The Secretary of State is the agent for receipt of all mail sent to program participants at the substitute address.

(6) All first-class mail specifically addressed to the program participant at the substitute address will be forwarded at least every second business day to each participant's mailing address, using "return service requested" designation on the envelope. The Secretary of State is not required to forward mail that is not specifically addressed to the participant.

(7) The Secretary of State may hold a participant's mail for up to three weeks if the participant provides a Mail Hold Request. The Secretary of State must compare the signature on the hold request with that on file for the participant prior to holding the mail.

Section 2. Incorporation by Reference. (1) "Safe at Home Mail Hold Request", July 2023, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Secretary of State's Office, 700 Capital Avenue, State Capitol, Suite 152, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m., or may be obtained at [www.sos.ky.gov](http://www.sos.ky.gov).

MICHAEL G. ADAMS Secretary of State

APPROVED BY AGENCY: June 27, 2023

FILED WITH LRC: June 29, 2023 at 3 p.m.

APPROVED BY AGENCY: June 27, 2023

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 26, 2023, at 10:00 a.m. EST, at Office of the Secretary of State. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent

to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. This hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until September 30, 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: Jennifer Scutchfield, Assistant Secretary of State, 700 Capital Avenue, State Capitol, Suite 152, Frankfort, Kentucky 40601, phone (502) 782-7417, fax (502) 564-5687, email [jscutchfield@ky.gov](mailto:jscutchfield@ky.gov).

**REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT**

Contact Person: Jennifer Scutchfield

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedures for the Safe at Home Program, previously known as the Address Confidentiality Program.

(b) The necessity of this administrative regulation: Safe at Home Program, previously known as the Address Confidentiality Program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: In order for the Secretary of State to fulfill its duties under KRS 14.300, 14.302, 14.304, 14.306 and 14.310, this administrative regulation is necessary to establish the procedures for the Safe at Home Program, previously known as the Address Confidentiality Program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation is necessary to establish procedures for the Safe at Home Program, previously known as the Address Confidentiality 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 regulation affects citizens of the Commonwealth that are impacted by domestic violence or others facing physical or mental abuse if their address were public record. It also affects state and local agencies who have the victims address in their database or records.

(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 identified in question (3) will have to familiarize themselves with this regulation and contact our office with questions. Our Office will also conduct outreach to increase knowledge amongst public entities.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There should be no cost to the public agencies. The Secretary of State will incur costs with the administration of this program but have funding, at least in this budget year to cover the program.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The victims of domestic violence will be protected from persons who pose them danger by not allowing those people to access their location.

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

(a) Initially: The cost is minimal, but will include purchase of a device to make identification cards, forwarding postal mail, training of assistance officers and contacting other agencies.

(b) On a continuing basis: As the program grows, the cost of the

program will increase, especially for mailing costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The legislature provided funding for the Safe at Home 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 will not be necessary, at least initially.

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

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

#### FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This regulation will impact local and state agencies who hold addresses for victims of domestic violence.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This regulation is necessary because of 2023 RS SB 79 (2023 Regular Session Senate Bill 79) which creates the Safe at Home Program.

(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 minimal costs to state and local government agencies for the first full year the regulation would be in effect. The Office of the Secretary of State will have expenditures for mailing costs, card maker and creation of the Program.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? 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 actual cost is unknown, but after reviewing other programs around the country, the funds that are set aside for the Program by the legislature should cover the initial implementation of the Program. An estimate of first year costs are \$15,000.00.

(d) How much will it cost to administer this program for subsequent years? The cost to administer the Program will depend on how many participants. An estimate of subsequent year costs are \$10,000.00 a year.

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

Revenues (+/-): None

Expenditures (+/-): estimate \$15,000.00

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 regulation will increase the expenditures of the Secretary of State but it is anticipated the fund created by the legislature will accommodate the costs.

(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? Approximately \$15,000.00

(d) How much will it cost the regulated entities for subsequent years? Approximately \$15,000.00

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.

#### SECRETARY OF STATE (New Administrative Regulation)

#### 30 KAR 010:090. Exercise of program participant's privileges.

RELATES TO: Ky Acts ch. 172

STATUTORY AUTHORITY: Ky Acts ch. 172

NECESSITY, FUNCTION, AND CONFORMITY: Ky Acts ch. 172 authorizes the Secretary of State to promulgate administrative regulations implementing Ky Acts ch. 172. This administrative regulation implements Ky Acts ch. 172.

Section 1. (1) At the time any state or local government agency creates a new record or updates an existing record, a program participant may request that the agency use the substitute mailing address as the participant's residence, work and/or school address.

(2) Program participants are solely responsible for requesting the use of a substitute address.

(3) A program participant shall show his/her authorization card to the agency official creating a new record and request address confidentiality through the use of the substitute mailing address as it appears on the authorization card, in lieu of the actual location.

MICHAEL G. ADAMS Secretary of State

APPROVED BY AGENCY: June 27, 2023

FILED WITH LRC: June 29, 2023 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 26, 2023, at 10:00 a.m. EST, at Office of the Secretary of State. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. This hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until September 30, 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: Jennifer Scutchfield, Assistant Secretary of State, 700 Capital Avenue, State Capitol, Suite 152, Frankfort, Kentucky 40601, phone (502) 782-7417, fax (502) 564-5687, email jscutchfield@ky.gov.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jennifer Scutchfield

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedures for the Safe at Home Program, previously known as the Address Confidentiality Program.

(b) The necessity of this administrative regulation: Safe at Home Program, previously known as the Address Confidentiality Program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: In order for the Secretary of State to fulfill its duties under KRS 14.300, 14.302, 14.304, 14.306 and 14.310, this administrative regulation is necessary to establish the procedures for the Safe at Home Program, previously known as the Address Confidentiality Program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative

regulation is necessary to establish procedures for the Safe at Home Program, previously known as the Address Confidentiality 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 regulation affects citizens of the Commonwealth that are impacted by domestic violence or others facing physical or mental abuse if their address were public record. It also affects state and local agencies who have the victims address in their database or records.

(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 identified in question (3) will have to familiarize themselves with this regulation and contact our office with questions. Our Office will also conduct outreach to increase knowledge amongst public entities.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There should be no cost to the public agencies. The Secretary of State will incur costs with the administration of this program but have funding, at least in this budget year to cover the program.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The victims of domestic violence will be protected from persons who pose them danger by not allowing those people to access their location.

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

(a) Initially: The cost is minimal, but will include purchase of a device to make identification cards, forwarding postal mail, training of assistance officers and contacting other agencies.

(b) On a continuing basis: As the program grows, the cost of the program will increase, especially for mailing costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The legislature provided funding for the Safe at Home 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 will not be necessary, at least initially.

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

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

#### FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This regulation will impact local and state agencies who hold addresses for victims of domestic violence.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This regulation is necessary because of 2023 RS SB 79 (2023 Regular Session Senate Bill 79) which creates the Safe at Home Program.

(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 minimal costs to state and local government agencies for the first full year the regulation would be in effect. The Office of the Secretary of State will have expenditures for mailing costs, card maker and creation of the Program.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? 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 actual cost is unknown, but after reviewing other programs around the country, the funds that are set aside for the Program by the legislature should cover the initial implementation of the Program. An estimate of first year costs are \$15,000.00.

(d) How much will it cost to administer this program for subsequent years? The cost to administer the Program will depend on how many participants. An estimate of subsequent year costs are \$10,000.00 a year.

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

Revenues (+/-): None

Expenditures (+/-): estimate \$15,000.00

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 regulation will increase the expenditures of the Secretary of State but it is anticipated the fund created by the legislature will accommodate the costs.

(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? Approximately \$15,000.00

(d) How much will it cost the regulated entities for subsequent years? Approximately \$15,000.00

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.

#### SECRETARY OF STATE (New Administrative Regulation)

#### 30 KAR 010:100. Attaining Age of Majority.

RELATES TO: Ky Acts ch. 172

STATUTORY AUTHORITY: Ky Acts ch. 172

NECESSITY, FUNCTION, AND CONFORMITY: Ky Acts ch. 172 authorizes the Secretary of State to promulgate administrative regulations implementing Ky Acts ch. 172. This administrative regulation implements Ky Acts ch. 172.

Section 1. When the Secretary of State becomes aware that a minor child participant has reached the age of eighteen (18), the Secretary of State will inform the minor child participant of options related to continued participation in the Safe at Home Program. These options include leaving the program and reapplying on their own behalf.

(1) In anticipation of the minor child participant's 18<sup>th</sup> birthday, the Secretary of State will send an application packet via first class

mail to the participant's address. The packet will include instructions on actions to be taken by age eighteen (18). The packet will include notice that if the participant does not respond within thirty (30) days they will be removed from the program, and mail forwarding will stop. If thirty (30) days pass without contact from the participant, the Secretary of State will mail a final notice that the participant's certification will be canceled if the participant fails to submit the Application for Certification within ten (10) days.

(2) The packet will include the application form.

(3) The Secretary of State shall renew the certification of a participant upon receipt of a properly completed application form.

(4) A participant who reaches age eighteen (18) and changes residence may reapply or withdraw.

(5) Program participants that have reached age eighteen (18) who have withdrawn or allowed certification to expire, may reapply on their own behalf.

MICHAEL G. ADAMS, Secretary of State

APPROVED BY AGENCY: June 27, 2023

FILED WITH LRC: June 29, 2023 at 3 p.m.

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:** A public hearing on this administrative regulation shall be held on September 26, 2023, at 10:00 a.m. EST, at Office of the Secretary of State. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. This hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until September 30, 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:** Jennifer Scutchfield, Assistant Secretary of State, 700 Capital Avenue, State Capitol, Suite 152, Frankfort, Kentucky 40601, phone (502) 782-7417, fax (502) 564-5687, email jscutchfield@ky.gov.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jennifer Scutchfield

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedures for the Safe at Home Program, previously known as the Address Confidentiality Program.

(b) The necessity of this administrative regulation: Safe at Home Program, previously known as the Address Confidentiality Program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: In order for the Secretary of State to fulfill its duties under KRS 14.300, 14.302, 14.304, 14.306 and 14.310, this administrative regulation is necessary to establish the procedures for the Safe at Home Program, previously known as the Address Confidentiality Program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation is necessary to establish procedures for the Safe at Home Program, previously known as the Address Confidentiality 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 regulation affects citizens of the Commonwealth that are impacted by domestic violence or others facing physical or mental abuse if their address were public record. It also affects state and local agencies who have the victims address in

their database or records.

(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 identified in question (3) will have to familiarize themselves with this regulation and contact our office with questions. Our Office will also conduct outreach to increase knowledge amongst public entities.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There should be no cost to the public agencies. The Secretary of State will incur costs with the administration of this program but have funding, at least in this budget year to cover the program.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The victims of domestic violence will be protected from persons who pose them danger by not allowing those people to access their location.

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

(a) Initially: The cost is minimal, but will include purchase of a device to make identification cards, forwarding postal mail, training of assistance officers and contacting other agencies.

(b) On a continuing basis: As the program grows, the cost of the program will increase, especially for mailing costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The legislature provided funding for the Safe at Home 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 will not be necessary, at least initially.

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

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

#### FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This regulation will impact local and state agencies who hold addresses for victims of domestic violence.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This regulation is necessary because of 2023 RS SB 79 (2023 Regular Session Senate Bill 79) which creates the Safe at Home Program.

(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 minimal costs to state and local government agencies for the first full year the regulation would be in effect. The Office of the Secretary of State will have expenditures for mailing costs, card maker and creation of the Program.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? 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 actual cost is unknown, but after reviewing other programs around the country, the funds that are set aside for the Program by the legislature should cover the initial implementation of the Program. An estimate of first year costs are \$15,000.00.

(d) How much will it cost to administer this program for subsequent years? The cost to administer the Program will depend on how many participants. An estimate of subsequent year costs are \$10,000.00 a

year.

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

Revenues (+/-): None

Expenditures (+/-): estimate \$15,000.00

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 regulation will increase the expenditures of the Secretary of State but it is anticipated the fund created by the legislature will accommodate the costs.

(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? Approximately \$15,000.00

(d) How much will it cost the regulated entities for subsequent years? Approximately \$15,000.00

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.

# SECRETARY OF STATE (New Administrative Regulation)

## 30 KAR 010:110. Service of process.

RELATES TO: Ky Acts ch. 172

STATUTORY AUTHORITY: Ky Acts ch. 172

NECESSITY, FUNCTION, AND CONFORMITY: Ky Acts ch. 172 authorizes the Secretary of State to promulgate administrative regulations implementing Ky Acts ch. 172. This administrative regulation implements Ky Acts ch. 172.

Section 1. Service of Process. (1) The Secretary of State shall be an agent of the program participant upon whom any summons, writ, notice, demand or process may be served;

(2) Service on the Secretary of State of any such summons, writ, demand, notice, or process shall be made by mailing to the designated address or by delivering to the Secretary of State at his/her office in Frankfort, Kentucky;

(3) If a summons, writ, notice, demand, or process is served on the Secretary of State, the Secretary of State shall immediately forward a copy summons, writ, notice, demand or process at the participant's mailing address shown on the records;

(4) The Secretary of State shall maintain in the program participant's file, a record of all summonses, writs, notices, demands, and processes served upon the Secretary of State for that participant, which shall include the date of such service and the Secretary of State's action.

MICHAEL G. ADAMS, Secretary of State

APPROVED BY AGENCY: June 27, 2023

FILED WITH LRC: June 29, 2023 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 26, 2023, at 10:00 a.m. EST, at Office of the Secretary of State. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent

to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. This hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until September 30, 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: Jennifer Scutchfield, Assistant Secretary of State, 700 Capital Avenue, State Capitol, Suite 152, Frankfort, Kentucky 40601, phone (502) 782-7417, fax (502) 564-5687, email jscutchfield@ky.gov.

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jennifer Scutchfield

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedures for the Safe at Home Program, previously known as the Address Confidentiality Program.

(b) The necessity of this administrative regulation: Safe at Home Program, previously known as the Address Confidentiality Program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: In order for the Secretary of State to fulfill its duties under KRS 14.300, 14.302, 14.304, 14.306 and 14.310, this administrative regulation is necessary to establish the procedures for the Safe at Home Program, previously known as the Address Confidentiality Program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation is necessary to establish procedures for the Safe at Home Program, previously known as the Address Confidentiality 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 regulation affects citizens of the Commonwealth that are impacted by domestic violence or others facing physical or mental abuse if their address were public record. It also affects state and local agencies who have the victims address in their database or records.

(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 identified in question (3) will have to familiarize themselves with this regulation and contact our office with questions. Our Office will also conduct outreach to increase knowledge amongst public entities.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There should be no cost to the public agencies. The Secretary of State will incur costs with the administration of this program but have funding, at least in this budget year to cover the program.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The victims of domestic violence will be protected from persons who pose them danger by not allowing those people to access their location.

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

(a) Initially: The cost is minimal, but will include purchase of a device to make identification cards, forwarding postal mail, training of assistance officers and contacting other agencies.

(b) On a continuing basis: As the program grows, the cost of the



program will increase, especially for mailing costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The legislature provided funding for the Safe at Home 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 will not be necessary, at least initially.

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

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

#### FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This regulation will impact local and state agencies who hold addresses for victims of domestic violence.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This regulation is necessary because of 2023 RS SB 79 (2023 Regular Session Senate Bill 79) which creates the Safe at Home Program.

(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 minimal costs to state and local government agencies for the first full year the regulation would be in effect. The Office of the Secretary of State will have expenditures for mailing costs, card maker and creation of the Program.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? 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 actual cost is unknown, but after reviewing other programs around the country, the funds that are set aside for the Program by the legislature should cover the initial implementation of the Program. An estimate of first year costs are \$15,000.00.

(d) How much will it cost to administer this program for subsequent years? The cost to administer the Program will depend on how many participants. An estimate of subsequent year costs are \$10,000.00 a year.

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

Revenues (+/-): None

Expenditures (+/-): estimate \$15,000.00

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 regulation will increase the expenditures of the Secretary of State but it is anticipated the fund created by the legislature will accommodate the costs.

(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? Approximately \$15,000.00

(d) How much will it cost the regulated entities for subsequent years? Approximately \$15,000.00

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.

#### SECRETARY OF STATE (New Administrative Regulation)

#### 30 KAR 010:120. Recognition of certification in other state.

RELATES TO: Ky Acts ch. 172

STATUTORY AUTHORITY: Ky Acts ch. 172

NECESSITY, FUNCTION, AND CONFORMITY: Ky Acts ch. 172 authorizes the Secretary of State to promulgate administrative regulations implementing Ky Acts ch. 172. This administrative regulation implements Ky Acts ch. 172.

Section 1. A participant in a program in another state that is similar to the Safe at Home Program may apply for approval in the Kentucky Secretary of State Safe at Home Program.

(1) The application for recognition shall be made to the Secretary of State by submitting a completed Application for Recognition of Out of State Participant which contains:

- (a) Full legal name;
- (b) Date of birth;
- (c) Other names that may appear on applicant's mail;
- (d) County of residence;
- (e) Residential address;
- (f) Phone number;
- (g) Email address; and
- (h) Dependent's legal names and identifying information (if applicable).

(i) The state where applicant is currently enrolled.

(j) Contact information for the other State's administrator of the similar program.

(k) Whether the applicant is permanently moving to the Commonwealth, temporarily living in the Commonwealth or doing business or engaged in other transactions in the Commonwealth.

(2) The application must include a sworn statement and acknowledge the following:

(a) I am an adult survivor of domestic abuse, domestic abuse assault, sexual abuse, stalking, or human trafficking or I am the parent/guardian of a child or incapacitated individual who is such a survivor. I fear for my safety, the safety of those who reside in my household, or the safety of the person on whose behalf I completed this application;

(b) I am not applying to participate in Safe at Home in order to avoid prosecution of any kind. I confirm that I am not a sexually violent predator;

(c) I give permission to the Secretary of State's Office to verify my participation in Safe at Home to third parties when requested;

(d) I designate the Secretary of State as my agent for service of process and for the purpose of receipt of mail. Therefore, if Safe at Home accepts legal documents or certified mail addressed to me, it is as if I received them;

(e) I understand that my participation in Safe at Home may be cancelled for any of the following reasons:

1. I change my legal name and do not notify the Secretary of State's Office in writing prior to the change,

2. Mail forwarded by the Secretary of State's Office is returned as undeliverable by the United States Postal Service,

3. If I do not accept service of process or am unavailable for delivery of service of process,

4. If my application contains false information,

5. I become ineligible for Safe at Home in the original state certification;

(f) I understand that it is my responsibility to notify family, friends, businesses, and government agencies of my Safe at Home

designated address. I recognize that if I share my confidential address, the Safe at Home program cannot control its distribution;

(g) I realize that my mail address could include an apt. number. Without this apt. number, my mail may be delayed or may never reach me. Safe at Home will forward only first-class, legal, and certified mail, as well as packages of prescriptions;

(h) I understand that my approval in Safe at Home is for a one-year term. At the end of this term, I realize I will have to renew my enrollment or be cancelled from the program;

(i) I realize that if I purchase real estate, my information will appear on public records;

(j) I understand that I must notify the Safe at Home program if any of the information on my original Safe at Home application changes;

(k) I understand that once I am enrolled in the Safe at Home program, my actual address will be confidential unless otherwise ordered by a court or released by the lawful custodian of the record. The Safe at Home program may release my information to the Department of Public Safety, who may release it to law enforcement upon verification that it will aid in responding to an emergency situation, criminal complaint, or an ongoing investigation; and

(l) My children under the age of eighteen (18) may be enrolled with me as dependents. Individuals over the age of eighteen (18) must enroll separately. Minors who turn eighteen (18) during participation in the program are responsible for completing a renewal form at that time to continue Safe at Home participation.

Section 2. Certification in the Safe at Home Program. (1) The Secretary of State shall approve an Application for Certification to Participate in Safe at Home Program and certify the applicant as a program participant if the applicant and the Application for Certification to Participate in the Safe at Home Program meet the requirements established Ky Acts ch. 172 and this administrative regulation.

(2) The Secretary of State shall notify the applicant or filer whether the Application for Certification to Participate in the Safe at Home Program was denied, or the applicant was certified as a program participant.

(a) If an Application for Certification to Participate in the Safe at Home Program is denied, the Secretary of State shall inform the applicant or filer of the reason for the denial.

(b) If an applicant is certified as a program participant, the Secretary of State shall:

1. Assign to the program participant a participant number and designated address; and

2. Issue to the program participant a Safe at Home Program Participant Card.

3. Provide information about the Safe at Home Program with instructions, frequently asked question and other information deemed necessary.

4. Provide a general letter from the Secretary of State the participant can provide to agencies.

(3) If an applicant is certified as a program participant, participation in the Safe at Home program shall be effective as of the date of the notification of certification.

Section 3. Incorporation by Reference. (1) "Application for Recognition of Out of State Participant", July 2023; is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Secretary of State's Office, 700 Capital Avenue, State Capitol, Suite 152, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m., or may be obtained at [www.sos.ky.gov](http://www.sos.ky.gov).

MICHAEL G. ADAMS, Secretary of State

APPROVED BY AGENCY: June 27, 2023

FILED WITH LRC: June 29, 2023 at 3 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. EST, at Office of the Secretary of State. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date,

the hearing may be cancelled. This hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 31, 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: Jennifer Scutchfield, Assistant Secretary of State, 700 Capital Avenue, State Capitol, Suite 152, Frankfort, Kentucky 40601, phone (502) 782-7417, fax (502) 564-5687, email [jscutchfield@ky.gov](mailto:jscutchfield@ky.gov).

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jennifer Scutchfield

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedures for the Safe at Home Program, previously known as the Address Confidentiality Program.

(b) The necessity of this administrative regulation: Safe at Home Program, previously known as the Address Confidentiality Program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: In order for the Secretary of State to fulfill its duties under KRS 14.300, 14.302, 14.304, 14.306 and 14.310, this administrative regulation is necessary to establish the procedures for the Safe at Home Program, previously known as the Address Confidentiality Program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation is necessary to establish procedures for the Safe at Home Program, previously known as the Address Confidentiality 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 regulation affects citizens of the Commonwealth that are impacted by domestic violence or others facing physical or mental abuse if their address were public record. It also affects state and local agencies who have the victims address in their database or records.

(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 identified in question (3) will have to familiarize themselves with this regulation and contact our office with questions. Our Office will also conduct outreach to increase knowledge amongst public entities.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There should be no cost to the public agencies. The Secretary of State will incur costs with the administration of this program but have funding, at least in this budget year to cover the program.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The victims of domestic violence will be protected from persons who pose them danger by not allowing those people to access their location.

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

(a) Initially: The cost is minimal, but will include purchase of a device to make identification cards, forwarding postal mail, training of assistance officers and contacting other agencies.

(b) On a continuing basis: As the program grows, the cost of the program will increase, especially for mailing costs.

(6) What is the source of the funding to be used for the

implementation and enforcement of this administrative regulation: The legislature provided funding for the Safe at Home 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 will not be necessary, at least initially.

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

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

#### FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This regulation will impact local and state agencies who hold addresses for victims of domestic violence.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This regulation is necessary because of 2023 RS SB 79 (2023 Regular Session Senate Bill 79) which creates the Safe at Home Program.

(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 minimal costs to state and local government agencies for the first full year the regulation would be in effect. The Office of the Secretary of State will have expenditures for mailing costs, card maker and creation of the Program.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? 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 actual cost is unknown, but after reviewing other programs around the country, the funds that are set aside for the Program by the legislature should cover the initial implementation of the Program. An estimate of first year costs are \$15,000.00.

(d) How much will it cost to administer this program for subsequent years? The cost to administer the Program will depend on how many participants. An estimate of subsequent year costs are \$10,000.00 a year.

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

Revenues (+/-): None

Expenditures (+/-): estimate \$15,000.00

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 regulation will increase the expenditures of the Secretary of State but it is anticipated the fund created by the legislature will accommodate the costs.

(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? Approximately \$15,000.00

(d) How much will it cost the regulated entities for subsequent years? Approximately \$15,000.00

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 Registry of Election Finance (Repealer)

#### 32 KAR 2:221. Repeal of 32 KAR 2:220.

RELATES TO: KRS 121.015(13), 121.120(6), 121.180

STATUTORY AUTHORITY: KRS 121.120(1)(g), 121.120(6)

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 121.120(6)(i) requires all candidates, committees, and contributing organizations to make all campaign finance reports electronically. The registry must repeal administrative regulation 32 KAR 2:220 because the process it describes for electronic reporting and testing of the compliance of electronic files reflects the procedures necessary under a previous electronic filing procedure that has not been in use since 2020.

Section 1. 32 KAR 2:220, Electronic reporting file format and test file compliance procedure, is hereby repealed.

JOHN. R. STEFFEN, Executive Director

APPROVED BY AGENCY: July 6, 2023

FILED WITH LRC: July 10, 2023 at 8:30 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 25, 2023, at 10:00 a.m., 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 September 30, 2023, at 11:59 p.m. 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, General Counsel

(1) Provide a brief summary of:

(a) What this administrative regulation does: The underlying administrative regulation provided a manner by which filers who were using the previous electronic filing system could submit their files and could test the formatting they used for compliance.

(b) The necessity of this administrative regulation: This administrative regulation was necessary because, at the time it was promulgated, KRS 121.120(6)(b) required the registry to "accept test files from software vendors and persons wishing to file reports electronically" to determine whether the software and data format submitted complies with the registry's file format. The administrative regulation establishes a data file format for electronic reporting, as

defined by KRS 121.015(13), and a procedure for the submission of test files.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 121.120(1)(g) grants the registry the authority to "promulgate administrative regulations necessary to carry out the provisions of this chapter"

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This amendment repeals an administrative regulation that describes a process no longer applicable to the current electronic filing system.

(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 repeals the current administrative regulation 32 KAR 2:220.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary because it describes a process no longer applicable to electronic filing

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

(d) How the amendment will assist in the effective administration of the statutes: This amendment repeals an administrative regulation that no longer correctly interprets or administers the underlying statutes.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: No one is currently affected by this administrative regulation, as the process it describes ceased being part of the electronic filing system in 2020.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: None.

(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): None, except for the removal of the confusion that the regulation causes because it describes an obsolete process that applied to a subset of filers prior to 2020.

(5) Provide an estimate of how much it will cost the administrative body to implement 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: There will be no cost involved in the implementation and enforcement of this repealer.

(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? Tiering is not applied in this repealer regulation, as it is no longer applicable to any segment of the regulated population.

#### 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 121.120

(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? 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 (New Administrative Regulation)

#### 32 KAR 2:230. Processing of records requests.

RELATES TO: KRS 121.120

STATUTORY AUTHORITY: KRS 121.120(1)(g), 61.876

NECESSITY, FUNCTION, AND CONFORMITY: KRS 121.120(1)(g) authorizes the Registry of Election Finance to promulgate administrative regulations necessary to carry out the provisions of KRS Chapter 121. Further, KRS 61.876 mandates that each public agency adopt rules and regulations in conformity with Kentucky open records law in KRS 61.870 to 61.884. This administrative regulation provides the process by which the public may access the public records held by the Kentucky Registry of

Election Finance that are not available through the agency's website.

Section 1. Records Requests.

(1) The principal office for the registry is 140 Walnut St., Frankfort, Kentucky 40601. Regular office hours are from 8 a.m. to 4:30 p.m., Monday through Friday, prevailing time in Frankfort, Kentucky.

(2) The title of the official custodian of records of the registry is the Records Custodian, whose address is the address of the agency's principal office and whose email address is KREFRequests@ky.gov.

(3) Requested records will be sent via electronic means to the extent possible and that the requestor provides an email address through which to receive them.

(4) Fees, to the extent authorized by KRS 61.874, shall be charged for physical copies of requested materials, with a charge of ten (10) cents a page for each photocopy and reasonable costs for materials provided in any other format, such as on storage media. Requestor shall view the records on the registry's searchable public database to the extent they are available.

(5) Procedure for requesting records.

(a) Requests to inspect records shall be made to the Records Custodian by U.S. postal mail or by email address provided in (2) of this Section.

(b) Requests to inspect public records shall be made in writing, describing in reasonably sufficient detail the records to be inspected, including party and case number, if applicable and known. The registry shall also accept any standardized open records request form provided by the Office of the Attorney General.

Section 2. Public Disclosure of Registry Action.

(1) If the registry makes a finding of no reason to believe or no probable cause or otherwise terminates an enforcement action, it shall make public its determination and the basis for the determination no later than thirty (30) days from the date on which the required notifications are sent to complainant and respondent.

(2) If a conciliation agreement is finalized, the registry shall make the agreement public.

(3) Except as provided in subsections (1) and (2) of this section, a complaint filed with the registry, any notification sent by the registry, any investigation conducted by the registry, or any findings made by the registry shall not be made public by the registry without the written consent of the respondent until a written response has been received or the expiration of the fifteen (15) day response period required by Section 3 of 32 KAR 2:030. Upon receipt of a response or the expiration of the fifteen (15) day period, the complaint, response, and materials related thereto, exclusive of materials exempted by KRS 61.878(1), shall be open for public inspection.

(4) Except as provided in subsections (1) and (2) of this section, an action by the registry or by any person, and information derived in connection with conciliation efforts shall not be made public by the registry until a final action with regard to a conciliation attempt is taken.

JOHN. R. STEFFEN, Executive Director

APPROVED BY AGENCY: July 6, 2023

FILED WITH LRC: July 10, 2023 at 8:30 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 25, 2023, at 10:00 a.m., 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 September 30, 2023, at 11:59 p.m. 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, General Counsel

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides procedures for making open records requests from the registry, such as filling in the details necessary to get the request to the correct person and describing when certain records are considered "open."

(b) The necessity of this administrative regulation: This administrative regulation is necessary because KRS 61.876 requires agencies to adopt rules consistent with Kentucky open records laws that describe how to access the agency's records.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 121.120(1)(g) grants the registry the authority to "promulgate administrative regulations necessary to carry out the provisions of this chapter[.]" Further, KRS 61.876 mandates that agencies adopt rules that carry out Kentucky's Open Records Act.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It sets procedures for making records requests and provides agency specific information on where to send them.

(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: Anyone who would like to make an open records request with the registry 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: Regulated entities will use this regulation to know where to send requests and when to be able to access certain types of records.

(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 unless they request hard copies of the documents and then will be subject to the normal costs for open records requests.

(c) As a result of compliance, what benefits will accrue to the entities identified in question(3): Compliance will allow for the orderly processing of open records requests before the registry.

(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? Tiering is not used here, nor is it applicable. Open records laws are generally made by individuals, but in any event, the underlying law is the same for all requestors.

#### 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 121.120 and KRS 61.876.

(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, except the costs to compensate the agency for the costs of copying requested documents where applicable.

(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, except the costs of copying requested documents where applicable.

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.

#### FINANCE AND ADMINISTRATION CABINET Kentucky Public Pensions Authority (New Administrative Regulation)

#### 105 KAR 1:457. In-line-of-duty survivor benefits.

RELATES TO: KRS 13B.010-13B.170, 16.578, 16.601, 61.505, 61.615, 61.640, 61.665, 61.691, 78.545, 78.5518, 78.5528, 78.5532, 78.5534

STATUTORY AUTHORITY: KRS 61.505(1)(g)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 61.505(1)(g) authorizes the Kentucky Public Pensions Authority to promulgate administrative regulations on behalf of the Kentucky Retirement Systems and the County Employees Retirement System that are consistent with KRS 16.505 to 16.652, 61.510 to 61.705, and 78.510 to 78.852. KRS 16.601 and 78.5534 establish survivor benefits for certain eligible beneficiaries in the event of a hazardous position employee's death resulting from an act in-line-of-duty. This administrative regulation establishes the procedures for filing and administering an application for in-line-of-duty survivor benefits, and the appeal procedures if denied.

#### Section 1. Definitions.

(1) "Contingent eligible beneficiary" means a person that meets the requirements to be an eligible beneficiary, except that he or she is superseded by a different eligible beneficiary.

(2) "Eligible beneficiary" means a person who meets the eligibility qualifications for in-line-of-duty survivor benefits as provided by KRS 16.601(1)-(3) and 78.5534(1)-(3).

(3) "Submit" means the required form, documentation, report, or payment has been received by the retirement office via mail, fax, electronic mail, the Employer Self Service Web site, or other mode specifically detailed in this administrative regulation.

#### Section 2. Use of Third-party Vendors.

(1) The agency may contract with third-party vendors to act on its behalf throughout the in-line-of-duty survivor benefit application and review process.

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

(3) Third-party vendors may act on behalf of the agency and the systems with all the rights and responsibilities therein.

#### Section 3. Requesting In-line-of-duty Survivor Benefits.

(1)(a) In-line-of-duty survivor benefits pursuant to KRS 16.601 and 78.5534 may be requested for an eligible beneficiary by filing a written request that shall include:

1. Member's name and date of birth or other identifying number;
2. Member's date of death;
3. Employer's name and circumstance surrounding the member's death; and
4. Name, relationship, and contact information for the person making the request.

(b) If the agency becomes aware of a hazardous position employee's death potentially resulting from an act in-line-of-duty, the agency or the agency's third-party vendor may notify an eligible beneficiary, or his or her parent or legal guardian, of his or her ability to file a written request for in-line-of-duty survivor benefits.

(2) If the agency becomes aware of a hazardous position employee's death potentially resulting from an act in-line-of-duty, the agency or the agency's third-party vendor shall notify the member's employer of the following requirements that shall be completed and submitted to the agency or the agency's third-party vendor:

- (a) A copy of the deceased member's death certificate;
- (b) The employer's death investigation report;
- (c) A detailed position description or a valid Form 8030, Employer Job Description; and
- (d) A valid Form 6800, Application for Duty Related/In-Line-of-Duty Survivor Benefits, certified by the deceased member's immediate supervisor and agency head.

(3) If requested by the agency or the agency's third-party

vendor, the eligible beneficiary or his or her parent or legal guardian, or the employer, shall respectively file or submit any additional information including additional medical information, autopsy or other medical records, information about the member's job duties and accommodations, documentation relating to workers' compensation claims, and police or other crime reports.

#### Section 4. Determining Eligibility for In-line-of-duty Survivor Benefits.

(1) Once all forms and documentation required by Section 3 of this administrative regulation are on file, the agency or the agency's third-party vendor shall evaluate and make a determination regarding in-line-of-duty survivor benefits pursuant to KRS 16.601 and 78.5534. The agency or the agency's third-party vendor shall notify the eligible beneficiary, or his or her parent or legal guardian, of the findings.

(2) If in-line-of-duty survivor benefits are approved, the eligible beneficiary, or his or her parent or legal guardian, shall complete all requirements in Sections 6 to 8 of this administrative regulation prior to any benefits beginning.

(3)(a) If in-line-of-duty survivor benefits are denied, the eligible beneficiary, or his or her parent or legal guardian, shall have until the end of day one hundred eighty (180) calendar days from the date the notice of denial is mailed to complete one of the following:

1. Submit additional supporting information in accordance with Section 5 of this administrative regulation; or
2. Request a formal hearing to appeal the decision in accordance with Section 10 of this administrative regulation.

(b) Denial of in-line-of-duty survivor benefits shall not affect any other benefits to which an eligible beneficiary may be entitled.

#### Section 5. Additional Supporting Information After Denial.

(1) If the eligible beneficiary, or his or her parent or legal guardian, files additional supporting information including additional medical information, autopsy or other medical records, information about the member's job duties and accommodations, documentation relating to Workers' Compensation claims, police or other crime reports, or other required documentation by the end of day 180 calendar days from the date of a denial of in-line-of-duty survivor benefits, the agency or the agency's third-party vendor shall review and evaluate the additional supporting information.

(2) Once the agency or the agency's third-party vendor completes the evaluation of the additional supporting information provided in accordance with subsection (1) of this section, the agency or the agency's third-party vendor shall make a determination and notify the eligible beneficiary of the findings.

(a) If the application for in-line-of-duty survivor benefits is approved, the eligible beneficiary, or his or her parent or legal guardian, shall complete all requirements in Sections 6 to 8 of this administrative regulation prior to any benefits beginning.

(b) If the findings indicate the additional supporting information filed failed to provide enough evidence to approve in-line-of-duty survivor benefits, the in-line-of-duty survivor benefits shall be denied, and the eligible beneficiary, or his or her parent or legal guardian, shall have 180 calendar days from the date the notification of denial is mailed to request a formal hearing to appeal the findings in accordance with Section 10 of this administrative regulation.

#### Section 6. Election of Benefits.

(1) An eligible beneficiary who has been approved for in-line-of-duty survivor benefits in accordance with Section 4 or 5 of this administrative regulation shall have the option to select either in-line-of-duty survivor benefits pursuant to KRS 16.601(1)-(3) and 78.5534(1)-(3) or any other type of benefit under the provisions of KRS 16.505-16.582 and 78.510-78.852.

(2) If the deceased member's accumulated account balance has been withdrawn by his or her beneficiary pursuant to KRS 16.578, 61.592(4), and 78.5532, no beneficiary shall be eligible for in-line-of-duty survivor benefits.

(3) While an application for in-line-of-duty survivor benefits is pending, but not approved, a potential eligible beneficiary may elect to receive benefits under KRS 16.578(2)(a) or (b), 61.592(4), or 78.5532(2)(a) or (b). If the potential eligible beneficiary is approved for in-line-of-duty survivor benefits, the agency shall determine what

is owed to the eligible beneficiary in accordance with KRS 16.601(6) and 78.5534(6).

#### Section 7. Requirements to Receive In-line-of-duty Survivor Benefits.

(1) The agency shall provide the eligible beneficiary, or his or her parent or legal guardian, with a Form 6810, Certification of Beneficiary. The eligible beneficiary, or his or her parent or legal guardian, shall complete and file a valid Form 6810.

(2) The agency shall provide the eligible beneficiary, or his or her parent or legal guardian, the monthly payment options available on the Form 6010, Estimated Retirement Allowance. The eligible beneficiary, or his or her parent or legal guardian, shall complete and file a valid Form 6010.

(3)(a) If the eligible beneficiary, or his or her parent or legal guardian, elects the in-line-of-duty survivor benefit option that includes the one-time payment of \$10,000, the eligible beneficiary, or his or her parent or legal guardian, shall be given the option to receive the payment as either a direct rollover or as a direct payment. The eligible beneficiary, or his or her parent or guardian, shall complete and file a valid Form 6025, Direct Rollover/Direct Payment Election Form for a Member, or a Spouse Beneficiary of an Eligible Rollover Distribution, indicating the payment option elected.

(b) If the eligible beneficiary, or his or her parent or legal guardian, intends to have the funds rolled over directly into an IRA or other qualified plan, the eligible beneficiary, or his or her parent or legal guardian, shall have the trustee or institution relevant to the IRA or other qualified plan complete the applicable section of the Form 6025 certifying that the rollover will be accepted.

(4) If an eligible beneficiary is a spouse, he or she shall file the following documents:

(a) A copy of his or her certificate of marriage to the member; and

- (b) Proof of his or her date of birth by filing one of the following:
1. Age record of the Social Security Administration;
  2. Immigration and naturalization service records;
  3. Birth certificate;
  4. Military discharge;
  5. U.S. passport;
  6. Driver's license issued by the Commonwealth of Kentucky; or
  7. Other reliable proof of date of birth that may be used by the courts to verify date of birth.

(5) If an eligible beneficiary is a dependent child, each dependent child, or his or her parent or legal guardian, shall file the following documents:

(a) A valid Form 6458, Designation of Dependent Child for In Line of Duty/Duty-Related;

(b) If a dependent child is under the age of eighteen (18), a valid Form 6110, Affidavit of Authorization to Receive Funds on Behalf of Minor. If the dependent child has a court appointed guardian or conservator and the court appointed guardian or conservator completed the Form 6110, the guardian or conservator shall file a copy of the court order appointing the guardian or conservator.

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

(d) If the dependent child is age eighteen (18) or over and receives federal Social Security disability benefits, a copy of the most recent statement issued by the Social Security Administration indicating the dependent child is disabled; or if the dependent child is being claimed as a qualifying child for tax purposes due to the dependent child's total and permanent disability, a copy of the deceased member's most recent tax return showing the dependent child was totally and permanently disabled for tax purposes, or duly appointed order of the court specifying the dependent child is a disabled dependent child of the deceased member; and

- (e) 1. A copy of the dependent child's birth certificate; or
2. A final order or decree of adoption which shall include his or her date of birth or other reliable proof of date of birth that may be used by the courts to verify date of birth.

(6) If an eligible beneficiary is a dependent as provided by KRS 16.601(3) and 78.5534(3), each dependent, or each dependent's parent or legal guardian, shall file the following:

(a) A copy of the deceased member's most recent tax return

showing the dependent was the deceased member's qualifying dependent for tax purposes, or duly appointed order of the court specifying the dependent is a dependent of the deceased member.

(b) If the dependent is under the age of eighteen (18), a valid Form 6110, Affidavit of Authorization to Receive Funds on Behalf of Minor. If the dependent has a court appointed guardian or conservator and the court appointed guardian or conservator completed the Form 6110, the guardian or conservator shall file a copy of the court order appointing the guardian or conservator; and

(c) Proof of his or her date of birth by filing one (1) of the following:

1. Age record of the Social Security Administration;
2. Immigration and naturalization service records;
3. Birth certificate;
4. Military discharge;
5. U.S. passport;
6. Driver's license issued by the Commonwealth of Kentucky; or
7. Other reliable proof of date of birth that may be used by the courts to verify date of birth.

(7) A contingent eligible beneficiary shall be required to provide proof that he or she is the eligible beneficiary. The agency shall not process benefits for a contingent eligible beneficiary unless the following requirements are met:

(a) If the agency identified eligible beneficiary is deceased, a copy of his or her death certificate shall be on file; or

(b) If the agency identified eligible beneficiary was divorced from the deceased member, a copy of the divorce decree shall be on file.

#### Section 8. Distribution of Payments.

(1) The agency shall not disburse payment for in-line-of-duty survivor benefits until the eligible beneficiary, or his or her parent or legal guardian, has completed the requirements of either subsection (2) or (3) of this section.

(2)(a) To receive in-line-of-duty survivor benefits the eligible beneficiary, or his or her parent or legal guardian, shall authorize direct deposit to an account in a financial institution, in the following way:

1. File a valid Form 6130, Authorization for Deposit of Retirement Payment; and

2. Provide the information and authorizations required for the electronic transfer of funds from the State Treasurer's Office to the designated financial institution, including any authorizations or information needed from the financial institution.

(b) At any time while receiving a monthly benefit, the eligible beneficiary, or his or her parent or legal guardian, may change the designated institution by completing and filing a new valid Form 6130, Authorization for Deposit of Retirement Payment, or by updating the authorization for deposit of retirement payments on the Member Self-Service Web site maintained by the agency.

(3) If the eligible beneficiary, or his or her parent or legal guardian, does not currently have an account with a financial institution, or his or her financial institution does not participate in the electronic funds transfer program, the eligible beneficiary, or his or her parent or guardian, may receive in-line-of-duty survivor benefits by check. For the eligible beneficiary to receive payment by check, the eligible beneficiary, or his or her parent or legal guardian, shall complete and file a valid Form 6135, Request for Payment by Check.

(4) The most recently filed valid Form 6130, Authorization for Deposit of Retirement Payment, authorization for deposit of retirement payments on the Member Self-Service Website, or valid Form 6135, Request for Payment by Check, shall control the payment or electronic transfer designation of the eligible beneficiary's in-line-of-duty survivor benefits.

(5)(a) Once an eligible beneficiary is approved for in-line-of-duty survivor benefits and has completed and filed all forms and documentation required by Sections 3 to 8 of this administrative regulation, in-line-of-duty survivor benefits shall be paid retroactive to the month following the month of the member's date of death.

(b) Any increases provided under KRS 61.691 and 78.5518 shall be applied in determining the ongoing monthly payments and total retroactive payments owed to the eligible beneficiaries.

Section 9. Requirements for Dependent Children After In-line-of-duty Survivor Benefits Begin.

(1) Once an eligible dependent child begins receiving in-line-of-duty survivor benefits, each dependent child, or his or her parent or legal guardian, shall be required to:

(a) Notify the agency of the death or marriage of the dependent child;

(b) If applicable, notify the agency if the dependent child ceases to be a full-time student;

(c) If applicable, notify the agency if the dependent child's disability status changes; and

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

(2) Each dependent child, or his or her parent or legal guardian, shall be responsible for repaying any benefits overpaid to the dependent child, or his or her parent or legal guardian, due to the failure of the dependent child, or his or her parent or legal guardian, to provide the information required by this section.

#### Section 10. Right to Appeal.

(1) A request for a formal hearing to appeal a denial of in-line-of-duty survivor benefits may be made by an eligible beneficiary, or his or her parent or legal guardian, in accordance with KRS 61.665 and 78.545. The request shall be made by filing a written request containing a short and plain statement of the issues being appealed.

(2) The hearing shall be conducted in accordance with KRS Chapter 13B.010-13B.170.

(3) The hearing officer presiding over an administrative hearing shall review the administrative record and any records introduced at the administrative hearing.

(a) The determination of other state and federal agencies' approval of benefits, including the Kentucky Department of Workers' Claims and the Social Security Administration, may support a final determination if accompanied by underlying objective medical evidence or vocational evidence.

(b) Written statements from medical providers within the administrative record shall not themselves be objective medical evidence, but may be relied upon if accompanied by, and reviewed in concert with, other supporting objective medical evidence.

(4) The final determination shall not be bound by factual or legal findings of other state or federal agencies. The final determination shall be based on objective medical evidence and vocational records, including objective medical evidence and vocational records contained within or that accompany a determination by another state or federal agency.

(5) Once a final determination is issued, the person who filed the appeal shall be notified of the final order of the Administrative Appeals Committee (AAC) in accordance with KRS 61.615(3)(g) and 78.5528(3)(g).

#### Section 11. Incorporation by Reference.

(1) The following material is incorporated by reference:

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

(b) Form 6025, "Direct Rollover/Direct Payment Election Form for a Member, beneficiary, or Alternate Payee Regarding an Eligible Rollover Distribution", updated June 2023;

(c) Form 6110, "Affidavit of Authorization to Receive Funds on Behalf of Minor", updated June 2023;

(d) Form 6130, "Authorization for Deposit of Retirement Payment", updated June 2023;

(e) Form 6135, "Request for Payment by Check", updated June 2023;

(f) Form 6458, "Designation of Dependent Child for In Line of Duty/Duty-Related", updated June 2023;

(g) Form 6800, "Application for Duty Related/In Line of Duty Survivor Benefits", updated June 2023;

(h) Form 6810, "Certification of Beneficiary", updated April 2021; and

(i) Form 8030, "Employer Job Description", updated June 2023.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Public Pensions



Authority, 1260 Louisville Road, Frankfort, Kentucky 40601, Monday through Friday, from 8:00 a.m. to 4:30 p.m. This material is also available on the agency's Web site at [kyret.ky.gov](http://kyret.ky.gov).

DAVID L. EAGER, Executive Director

APPROVED BY AGENCY: June 30, 2023

FILED WITH LRC: July 6, 2023 at 11:40 a.m.

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:** A public hearing to allow for public comment on this administrative regulation shall be held on Tuesday, September 26, 2023, at 2:00 p.m. Eastern Time at the Kentucky Public Pensions Authority (KPPA), 1270 Louisville Road, Frankfort, Kentucky 40601. Individuals interested in presenting a public comment at this hearing shall notify this agency in writing no later than 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 until September 30, 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. KPPA shall file a response with the Regulations Compiler to any public comments received, whether at the public comment hearing or in writing, via a Statement of Consideration no later than the 15th day of the month following the end of the public comment period, or upon filing a written request for extension, no later than the 15th day of the second month following the end of the public comment period.

**CONTACT PERSON:** Jessica Beaubien, Policy Specialist, Kentucky Public Pensions Authority, 1260 Louisville Road, Frankfort, Kentucky 40601, phone (502) 696-8800 ext. 8570, fax (502) 696-8615, email [Legal.Non-Advocacy@kyret.ky.gov](mailto:Legal.Non-Advocacy@kyret.ky.gov).

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Jessica Beaubien

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedures and requirements for applying or reapplying for in-line-of-duty survivor benefits and for administratively appealing a denial of an application for in-line-of-duty survivor benefits.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the procedures and requirements for applying or reapplying for in-line-of-duty survivor benefits and for administratively appealing a denial of an application for in-line-of-duty survivor benefits.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the authorizing statute by establishing the procedures and requirements for applying or reapplying for in-line-of-duty survivor benefits and for administratively appealing a denial of an application for in-line-of-duty survivor benefits in accordance with KRS 16.601 and 78.5534.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the statutes by establishing the procedures and requirements for applying or reapplying for in-line-of-duty survivor benefits and for administratively appealing a denial of an application for in-line-of-duty survivor benefits in accordance with KRS 16.601 and 78.5534.

(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 Kentucky Public Pensions Authority, the Kentucky Retirement Systems, and the County Employees Retirement System, and the members and beneficiaries of the Kentucky Retirement Systems and the County Employees Retirement System. Number of individuals is unknown. Number of businesses, organizations, or state and local governments affected is three (3): the Kentucky Public Pensions Authority, the Kentucky Retirement Systems, and the County Employees Retirement System.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This amendment should not substantially alter the actions that the Kentucky Public Pensions Authority, the Kentucky Retirement Systems, and the County Employees Retirement System will have to take to comply with this regulation.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The amendment allows the Kentucky Public Pensions Authority, the Kentucky Retirement Systems, and the County Employees Retirement System to conform with KRS 61.505 to 61.705, 16.510 to 16.652, and 78.520 to 78.852, particularly the in-line-of-duty survivor benefit application process as well as the process for administratively appealing the denial of in-line-of-duty survivor benefit applications.

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

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

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

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Administrative expenses of the Kentucky Public Pensions Authority are paid from the Retirement Allowance Account (trust and agency funds).

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

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

(9) TIERING: Is tiering applied? Tiering is not applied. All members are subject to the same processes and procedures.

#### FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Public Pensions Authority, the Kentucky Retirement Systems, and the County Employees Retirement System.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 61.505(1)(g).

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. None.

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

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

(c) How much will it cost to administer this program for the first year? The cost to Kentucky Public Pensions Authority should be negligible.

(d) How much will it cost to administer this program for subsequent

years? The cost to Kentucky Public Pensions Authority should be negligible.

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

Revenues (+/-): None  
Expenditures (+/-): Unknown  
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? Unknown

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

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

Cost Savings (+/-): None  
Expenditures (+/-): Unknown  
Other Explanation:

(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 Veterinary Examiners**  
**(New Administrative Regulation)**

**201 KAR 16:701. Standards for medical records.**

RELATES TO: KRS 257.080, 258.043, 258.065, 321.175, 321.181, 321.185, 321.187, 321.188, 321.200

STATUTORY AUTHORITY: KRS 321.175., 321.187, 321.235(2)(b)3.c

NECESSITY, FUNCTION, AND CONFORMITY: KRS 321.175 states the purpose of the Kentucky Veterinary Medicine Practice Act is to promote, preserve, and protect the public health, safety, and welfare. KRS 321.235 allows the Kentucky Board of Veterinary Examiners to promulgate administrative regulations to establish standards in medical records. This administrative regulation establishes standards for medical records created for animal patients by board credential holders.

**Section 1. Veterinary medical records shall be:**

(1) Safeguarded against loss, tampering, or use by unauthorized persons;

(2) Be readily available to the veterinarian, other veterinarians at the same practice, employees of the veterinarian, and other authorized persons; and

(3) Contain sufficient information to permit any veterinarian to proceed with the care and treatment of the patient by reading the medical record.

**Section 2. Maintenance of Records.**

(1) The practice where the records were prepared shall be the official records custodian.

(2) Original patient records shall be retained by the practice, veterinarian, or AAHP who prepared them and be readily retrievable for a period of five (5) years following the last patient encounter.

(3)(a) Records shall not be stored by a third party without a record of signed, informed consent by the client.

(b) Records stored by a third party shall not relieve the veterinarian or AAHP from the responsibility of supplying records to

the client upon request.

(4)(a) The veterinarian or AAHP permittee may require that a request for medical records be in writing and may charge a reasonable fee for copying or the staff time in preparing the requested medical records.

(b) In the event of a board investigation, no charges shall be authorized.

(c) Copies of the medical records shall be provided to the client, designated veterinarian, AAHP permittee, or authorized representative within seven (7) calendar days after receipt of a proper request or sooner in accordance with the patient's medical condition.

(d) Failure to provide the medical records in a timely fashion upon proper request shall be considered unprofessional conduct.

Section 3. Veterinary medical records shall include the following information at a minimum:

(1) Patient or herd identification;

(2) Client identification;

(3) A record of every encounter and consultation regarding the patient;

(4) Written or digital records and notes of each encounter, including:

(a) Diagnosis;

(b) Treatments recommended, including spectrum of care options;

(c) Treatment plan agreed upon with client;

(d) If a prescription is issued, prescription details consistent with the requirements of 201 KAR 16:600;

(e) Recommendations;

(f) If a medical determination is made via telemedicine, a written statement about the digital information used to make the decision;

(g) If surgery is performed, details of surgery, including:

1. Amounts and duration of any drugs, sedatives, or other substances administered;

2. Documentation of appropriate, species-specific anesthetic monitoring, which may include temperature, pulse, and respiration; and

3. Documentation of recovery;

4. Materials used and the amounts so used, including at a minimum:

a. Suture materials;

b. Mesh materials; and

c. Other materials used; and

(h) Any other pertinent details.

(5) Radiographs, sonographic images, video recordings, photographs, or other imaging and laboratory reports;

(6) Any information received as the result of a consultation, including the date, name, and contact information of the consultant;

(7) Any authorizations, details of conversations, releases, waivers, patient discharge instructions, records of informed consent, or other related documents;

(8) The first and last name of the veterinarian, licensed veterinary technician, or veterinary assistant, or allied animal health professional (AAHP) permit holder practicing on the patient during the visit, whether in-person or via telehealth; and

(9) The first and last name of the person making each entry in the medical record.

**Section 4. (1) A person shall not:**

(a) Intentionally create a false record;

(b) Make a false statement; or

(c) Alter or modify any medical record, document, or report concerning treatment of a patient.

(2) When correcting a medical record, the original content shall be readable, and the alteration shall be clearly identified with the:

(a) Correction,

(b) Reason for the correction,

(c) Date of correction, and

(d) First and last name of the person making the correction.

Section 5. During each rabies clinic held pursuant to KRS 258.043, copies of medical records shall be retained for each patient encounter.

Section 6. (1) Pursuant to KRS 321.187, an animal patient's medical record and medical condition is confidential and may not be furnished to or discussed with any person other than the client or other veterinarians, veterinary technicians, veterinary assistants, veterinary practice staff, AAHP permittees, or consultants involved in the care or treatment of the patient, except upon written authorization of the client or under the following circumstances:

(a) In response to a court order, or subpoena with notice given to the client or the client's legal representative;

(b) For statistical and scientific research, if the information is abstracted in a way as to protect the identity of the patient and the client;

(c) As part of an inspection or investigation conducted by the board or an agent of the board;

(d) To verify the rabies vaccination status of an animal to law enforcement or local health department officials;

(e) In the course of a consultation as defined in KRS 321.181(24) or provided for in KRS 321.200(1)(f);

(f) In cases of animal abuse, pursuant to KRS 321.188;

(g) Pursuant to KRS 321.185(4)(b)3., in cases of reportable diseases as they relate to public or animal health pursuant to KRS 257.080 and 258.065 and the administrative regulations promulgated under the authority of those chapters;

(h) Access to the records is specifically required by other state or federal law; and

(i) Upon request by the board.

(2)(a) For purposes of written authorization from the client, nothing in this section shall require a veterinarian whose records are being authorized to be released to the client only to provide medical records, reports, and opinions to a client that may be used by a third party who does not have a veterinarian-client-patient relationship with the veterinarian for the purpose of, or in consideration of, the buying or selling of the animal.

(b) A veterinarian taking radiographs for an animal shall only be liable to the owner of the animal for the content of the record, and not liable to third parties for the purpose of buying or selling of the animal.

MICHELLE M. SHANE, Executive Director

For STEVEN J. WILLS, DVM, Board Chair

APPROVED BY AGENCY: July 12, 2023

FILED WITH LRC: July 12, 2023 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 25, 2023 at 1:00 p.m., at the Kentucky Department of Agriculture, Office of the State Veterinarian, 109 Corporate Drive, 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 prior to the end of the hearing. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through September 30, 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: Michelle Shane, Executive Director, Kentucky Board of Veterinary Examiners, 107 Corporate Drive, Second Floor, Frankfort, Kentucky 40601, phone (502) 782-0273, fax (502) 695-5887, email michelle.shane@ky.gov.

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michelle Shane

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes standards regarding the contents of medical records for animal patients.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the standard protocols and procedures for credential holders of the board to create,

maintain, and share medical records.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 321.235, 321.351, 321.360, 321.990 specifically direct the board enforce the provisions of KRS Chapter 321 and impose penalties, where appropriate. KRS 321.235 authorizes the board promulgate administrative regulations to carry out the provisions of the chapter.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation shall assist in effective administration by clearly detailing the expectations for the contents of a patient's medical records.

(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: 2,690 veterinarians, 590 licensed veterinary technicians, 50 animal control agencies, and 232 animal euthanasia specialists, an unknown number of allied animal health professionals (AAHP), and future applicants.

(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 identified in question (3) are required to keep and maintain animal patient medical records for a period of five (5) years. This new administrative regulation establishes the requirements for the contents of the records, ensuring transparency of board expectations and standardizing medical records in order to assist in patient care and welfare. Identified persons will need to ensure they capture all necessary information in the records.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There shall be no additional costs imposed as a result of this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Administrative ease of clear communications of the approved requirements.

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

(a) Initially: No costs are anticipated.

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

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This administrative regulation does not establish fees. Funding for the KBVE comes from licensure and certification 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: There is no anticipation of an increase in fees or needed funding to implement this administrative regulation, as the regulation establishes standards for medical records created and maintained by credential holders of the board.

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

(9) TIERING: Is tiering applied? No. All regulated entities have 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 Board of Veterinary Examiners.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 321.175, 321.235(2)(b)3.c., 321.187

(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 from this filing.

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

(c) How much will it cost to administer this program for the first year? This is not a new program. There will not be any costs to administration because the medical records are created and maintained by the credential holder, not the board.

(d) How much will it cost to administer this program for subsequent years? Costs may decrease as both practitioners and clients understand the expectations for medical records; the board hopes to see a reduction in grievance cases.

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 or negligible.

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? There will be no cost savings; this amendment simply codifies the requirements, making them easily accessible for regulated entities.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? There will be no cost savings.

(c) How much will it cost the regulated entities for the first year? There will be no additional costs involved.

(d) How much will it cost the regulated entities for subsequent years? There will be no additional costs involved.

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 or negligible.

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 amendment shall not have a "major economic impact", as defined in KRS 13A.010(13).

**BOARDS AND COMMISSIONS**  
**Board of Veterinary Examiners**  
**(New Administrative Regulation)**

**201 KAR 16:702. Standards for veterinary surgery.**

RELATES TO: KRS 321.175, 321.190, 321.193, 321.441, 321.443

STATUTORY AUTHORITY: KRS 321.175, 321.235(2)(b)3.c.

NECESSITY, FUNCTION, AND CONFORMITY: KRS 321.175 and 321.235 declare that the Kentucky Board of Veterinary Examiners shall protect the public by ensuring only qualified individuals are allowed to practice veterinary medicine the Commonwealth in the interest of the health, safety, and welfare of the animal population and the citizens of Kentucky. KRS 321.190

and 321.193 detail that a license is required for veterinarians to practice veterinary medicine in the Commonwealth. KRS 321.441 and 321.443 detail that veterinary technicians and veterinary assistants shall be properly supervised when assisting a veterinarian with the practice of veterinary medicine. This administrative regulation sets forth minimum standards for surgical procedures to ensure the safety and welfare of animal patients, and provides confidence in basic care and support for clients.

Section 1. All veterinary medical procedures performed in the Commonwealth shall comply with the following basic surgical standards.

(1) If animals are housed or retained for treatment:

(a) Appropriate housing shall be provided for each animal before and after surgery; and

(b) Enclosures shall be secure and provide a flat surface for the animal that is clean, dry, and warm with adequate space for the animal to turn around, while allowing for safety at various stages of sedation and anesthesia and sufficient visibility by the staff.

(2) All drugs and biologicals shall be labeled in accordance with 201 KAR 16:600, and maintained, administered, dispensed, and prescribed in compliance with state and federal laws.

(3) During the postoperative period, care shall be taken to provide patients with a smooth transition from the anesthetized state.

(4) Plans shall be in place to handle any emergency that might occur throughout the procedure, and postoperatively.

(5) Patients shall be evaluated and deemed adequately recovered, stable, ambulatory, and within normal physiological parameters following anesthesia immediately prior to release.

(6) Clear instructions for postoperative care by the client shall be provided to the client both verbally and in writing.

(7) Arrangements for follow-up or emergency care during the 48-hour period after surgery shall be provided to the client both verbally and in writing.

(8) A veterinarian may perform emergency aseptic surgical procedures in another room when the room designated for aseptic surgery is occupied or temporarily unavailable.

Section 2. Additional Requirements for Small Animals. All veterinary medical procedures performed on small animals in the Commonwealth shall comply with Section 1 of this administrative regulation and the following basic surgical standards.

(1) The operating area shall:

(a) Be dedicated to surgery; and

(b) Contain the necessary equipment for anesthesia, appropriate intubation, administration of oxygen, and monitoring; and

(2) Establish, maintain, and follow the following protocols:

(a) Infectious disease protocols to be performed in an environment to minimize infectious disease;

(b) Aseptic surgical technique protocols;

(c) Sterile instruments protocols ensuring separate sterile instruments to be used for each patient. Cold sterilization is not considered an appropriate method to adequately sterilize surgical instruments for small animals, except for cold sterilization for endoscopic, laparoscopic, and arthroscopic procedures. In these allowable instances of cold sterilization, the method is permitted only by use of glutaraldehyde-based products;

(d) Anesthetic protocols that are balanced and include sedation, the provision of pre- and post-operative analgesia, stress reduction, muscle relaxation, and controlled, complete recovery of consciousness prior to discharge;

(e) Pre- and post-op monitoring protocols to monitor patients; and

(f) Thermal support protocols.

Section 3. Responsibility for Patient Care.

(1) During the forty-eight (48) hour period after surgery, the veterinarian who performed the surgery is responsible for patient aftercare and 24/7 emergency management following the surgery.

(2) If there are no personnel on the premises during any time an animal is left at the veterinary facility:

(a) Prior notice of this fact shall be given to the client in writing

and the notification recorded in the medical records; and

(b) If requested, the client shall be provided an option to transfer the patient care to a twenty-four (24) hour facility.

(3) The veterinarian who performed the surgery shall be relieved of this responsibility only when the following conditions are met:

(a) The veterinarian or veterinary facility has made specific arrangements in writing with another veterinarian to provide emergency care for the surgical patient;

(b) The client has been informed both verbally and in writing of the transfer of responsibility; and

(c) The client has been provided current contact information for the new responsible care provider.

Section 4. Client Notification. Clients, owners, or the designated care provider for the patient shall be informed both verbally and in writing of the following information following surgery.

(1) Post-operative medical care instructions; and

(2) 24/7 emergency contact information for the forty-eight (48) hour period following surgery.

MICHELLE M. SHANE, Executive Director

For STEVEN J. WILLS, DVM, Board Chair

APPROVED BY AGENCY: July 12, 2023

FILED WITH LRC: July 12, 2023 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 25, 2023 at 1:00 p.m., at the Kentucky Department of Agriculture, Office of the State Veterinarian, 109 Corporate Drive, 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 prior to the end of the hearing. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through September 30, 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: Michelle Shane, Executive Director, Kentucky Board of Veterinary Examiners, 107 Corporate Drive, Second Floor, Frankfort, Kentucky 40601, phone (502) 782-0273, fax (502) 695-5887, email michelle.shane@ky.gov.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michelle Shane

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes standards regarding basic requirements for veterinary surgery.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the standard protocols and procedures for credential holders of the board to perform veterinary surgery on animals.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 321.235, 321.351, 321.360, 321.990 specifically direct the board enforce the provisions of KRS Chapter 321 and impose penalties, where appropriate. KRS 321.235 authorizes the board promulgate administrative regulations to carry out the provisions of the chapter.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation shall assist in effective administration by clearly detailing the basic requirements and standards for veterinary surgery.

(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: 2,690 veterinarians and 590 licensed veterinary technicians, and future applicants.

(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 licensees identified in question (3) are required to have and maintain minimum equipment and supplies to safely and humanely conduct animal surgery. This new administrative regulation establishes the requirements for veterinary surgery, ensuring transparency of board expectations and standardizing veterinary surgery in order to assist in patient care and welfare.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There shall be no additional costs imposed as a result of this administrative regulation unless a licensee does not have appropriate equipment and supplies on hand for the services offered.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Administrative ease of clear communications of the approved requirements.

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

(a) Initially: No costs are anticipated.

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

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This administrative regulation does not establish fees. Funding for the KBVE comes from licensure and certification 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: There is no anticipation of an increase in fees or needed funding to implement this administrative regulation, as the regulation establishes standards for veterinary surgery performed by licensees of the board.

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

(9) TIERING: Is tiering applied? No. All regulated entities have 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 Board of Veterinary Examiners.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 321.235, 321.351, 321.360, 321.990.

(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 from this filing.

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

(c) How much will it cost to administer this program for the first year? This is not an agency program. This regulation establishes requirements for licensees of the board.

(d) How much will it cost to administer this program for subsequent years? This is not an agency program. Costs will be very 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 (+/-): None or negligible.

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? There will be no cost savings; this amendment simply codifies the requirements for veterinary surgery standards, making them easily accessible for regulated entities and the public.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? There will be no cost savings.

(c) How much will it cost the regulated entities for the first year? There will be no additional costs involved.

(d) How much will it cost the regulated entities for subsequent years? There will be no additional costs involved.

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 or negligible.

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 amendment shall not have a "major economic impact", as defined in KRS 13A.010(13).

# **BOARDS AND COMMISSIONS** **Board of Veterinary Examiners** **(New Administrative Regulation)**

## **201 KAR 16:750. Licensed veterinary technicians (LVTs) -- Scope of practice and supervisory requirements.**

RELATES TO: KRS 321.175, 321.190, 321.441, 321.443

STATUTORY AUTHORITY: KRS 321.235(2)(b)3.c., 321.441(3)(b)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 321.175 and 321.235 declare that the Kentucky Board of Veterinary Examiners shall protect the public by ensuring only qualified individuals are allowed to engage in the practice of veterinary technology the Commonwealth to promote, preserve, and protect the public health, safety, and welfare. KRS 321.441 details that a license is required for veterinary technicians to practice veterinary technology in the Commonwealth. KRS 321.441 and 321.443 detail that veterinary technicians and veterinary assistants must be properly supervised when assisting a veterinarian with the practice of veterinary medicine. This administrative regulation sets forth the scope of practice under various levels of veterinarian supervision to ensure the safety and welfare of animal patients, clearly define appropriate roles to be assigned by supervisors, and to provide confidence in basic care and support for clients.

### **Section 1. Definitions.**

(1) "Direct supervision" is defined by KRS 321.181(59)(c).

(2) "Immediate supervision" is defined by KRS 321.181(59)(b).

(3) "Indirect supervision" is defined by KRS 321.181(59)(d).

(4) "Veterinarian-client-patient relationship" or "VCPR" is defined in KRS 321.185.

Section 2. (1) A licensed veterinary technician (LVT) may perform the following acts as set forth in this administrative regulation under the direction, supervision, and responsibility of a board-licensed veterinarian, who has established and maintains a current veterinarian-client-patient relationship (VCPR).

(2) The veterinarian and LVT shall comply with the record keeping rule established by the board in 201 KAR 16:701 (Standards

for Medical Records).

(3) The decision about the level of supervision required by an LVT is ultimately up to the discretion of the supervising veterinarian as long as:

(a) The tasks assigned to the LVT do not provide a lower level of supervision than that which is prescribed in this administrative regulation;

(b) The supervising veterinarian is confident in the level of training and trust in the LVT; and

(c) The tasks assigned to the LVT comply with all state and federal laws.

(4) Pursuant to KRS 321.443, a veterinary assistant under the employ of a board-licensed veterinarian may be assigned work similar to an LVT, as described in subsection (3) of this section, so long as the supervising veterinarian is confident in the level of training and trust in the veterinary assistant and their ability to competently and safely perform assigned tasks.

(5) Except as authorized by KRS 321.200, nothing in KRS Chapter 321 or 201 KAR Chapter 16 shall be construed to permit an LVT or veterinary assistant, or any person who is not a veterinarian to perform any of the following activities relating to animals:

(a) Surgery;

(b) Diagnosis;

(c) Prognosis; or

(d) Prescription.

Section 3. Immediate Supervision. Allowable animal healthcare tasks for LVTs under immediate supervision are:

(1) Assisting the veterinarian with surgical procedures; and

(2) Placement of abdominal, thoracic, or PEG tubes.

Section 4. Direct Supervision. Allowable animal healthcare tasks under direct supervision are:

(1) Dental procedures including, at a minimum:

(a) The removal of calculus, soft deposits, plaque, and stains;

(b) The smoothing, filing, and polishing of teeth;

(c) Dental single root extractions not requiring sectioning of the tooth or sectioning of the bone;

(d) Suturing a gingival incision;

(2) Euthanasia; and

(3) Placement of intraosseous catheterization.

Section 5. Indirect Supervision. Telesupervision falls under the definition of indirect supervision. Allowable animal healthcare tasks under indirect supervision are:

(1) General anesthesia and sedation, maintenance, and recovery;

(2) Non-emergency endotracheal intubation;

(3) Regional anesthesia, including paravertebral blocks, epidurals, local blocks;

(4) Placement of tubes, including at a minimum:

(a) Gastric tubes;

(b) Nasogastric tubes; and

(c) Nasoesophageal tubes;

(5) Placement of epidural and nasal catheters;

(6) Ear flushing with pressure or suction;

(7) Application of casts, splints, and slings for the immobilization of fractures;

(8) Administration of chemotherapy;

(9) Administration of radiation therapy;

(10) Intravascular catheterization through creation of a relief hole in the skin;

(11) Intra-arterial catheterizations;

(12) Unless prohibited by state or federal regulation administration, preparation and application of treatments, including at a minimum:

(a) Drugs;

(b) Medications;

(c) Controlled substances;

(d) Enemas; and

(e) Biological and immunological agents,

(13) Suturing, stapling, and gluing of an existing surgical skin incision;

(14) Fluid aspiration from a body cavity or organ, as known as

cystocentesis;

(15) Intravenous catheterization, intra-arterial catheterization, and maintenance;

(16) Imaging, including at a minimum:

(a) Radiography;

(b) Ultrasonography;

(c) Computed tomography;

(d) Magnetic resonance imaging;

(e) Fluoroscopy; and

(f) Administration of radio-opaque agents/materials;

(17) Except when in conflict with state or federal law:

(a) Collection of blood;

(b) Collection and preparation of cellular or microbiological samples by skin scrapings, impressions, or other non-surgical methods;

(18) Collection of urine by expression, catheterization (unobstructed), and insertion of an indwelling urinary catheter;

(19) Monitoring, including at a minimum:

(a) ECG;

(b) Blood pressure; and

(c) CO<sub>2</sub> and blood oxygen saturation;

(20) Clinical laboratory test procedures;

(21) Handling and disposal of biohazardous waste materials;

(22) Implantation of a subcutaneous identification chip;

(23) Laser therapy;

(24) Animal rehabilitation therapies;

(25) Ocular tonometry, Schirmer tear test, and fluorescein stain application;

(26) Suture and staple removal;

(27) Reproductive ultrasound, and semen evaluation;

(28) Floating equine teeth; and

(29) Tasks at the discretion of the veterinarian, which are not in contravention of KRS 321.190 and 321.181(50).

#### Section 6. Emergency Animal Patient Care.

(1) A supervising veterinarian in emergency animal patient care may assign to an LVT:

(a) Application of tourniquets and/or pressure procedures to control hemorrhage;

(b) Application of appropriate wound dressings in severe burn cases;

(c) Resuscitative oxygen procedures;

(d) Anti-seizure treatment; and

(e) Supportive treatment in heat prostration cases.

(2) In emergency situations and while under the direct supervision of a veterinarian via verbal communication or in accordance with supervising veterinarian's protocols, an LVT may:

(a) Administer drugs to control pain and shock;

(b) Initiate and perform CPR and provide immediate post resuscitation care, including:

1. Administration of medication; and

2. Defibrillation according to protocols established in writing at the veterinary facility.

MICHELLE M. SHANE, Executive Director

For STEVEN J. WILLS, DVM, Board Chair

APPROVED BY AGENCY: July 12, 2023

FILED WITH LRC: July 12, 2023 at 1 p.m.

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:** A public hearing on this administrative regulation shall be held on September 25, 2023 at 1:00 p.m., at the Kentucky Department of Agriculture, Office of the State Veterinarian, 109 Corporate Drive, 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 prior to the end of the hearing. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through September 30, 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:** Michelle Shane, Executive Director, Kentucky Board of Veterinary Examiners, 107 Corporate Drive, Second Floor, Frankfort Kentucky 40601, phone (502) 782-0273, fax (502) 695-5887, email michelle.shane@ky.gov.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michelle Shane

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the level of supervision required for various veterinary medicine tasks assigned by a supervising veterinarian to a licensed veterinary technician or veterinary assistant.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish clearly delineated tasks that a veterinarian may safely assign to veterinary technicians and veterinary assistants, ensuring that the employees are utilized to the fullest extent of their abilities and help reduce workload pressures on veterinarians.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 321.235, 321.351, 321.360, 321.990 specifically direct the board enforce the provisions of KRS Chapter 321 and impose penalties, where appropriate. KRS 321.235 authorizes the board promulgate administrative regulations to carry out the provisions of the chapter.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation shall assist in effective administration by clearly detailing the tasks a veterinarian can safely and confidently assign to staff.

(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: 2,690 veterinarians, 590 licensed veterinary technicians, and future applicants.

(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 identified in question (3) generally work together in a veterinary facility. This new administrative regulation establishes the level of supervision required for licensed veterinary technicians (LVTs) and veterinary assistants, increasing work efficiencies. Veterinarians shall be required to assign tasks, and LVTs and veterinary assistants shall be required work within the supervisory parameters established 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 shall be no additional costs imposed as a result of this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Administrative ease of clear communications of the approved requirements.

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

(a) Initially: No costs are anticipated.

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

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This administrative regulation does not establish fees. Funding for the KBVE comes from licensure and certification 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: There is no anticipation of an increase in fees or needed funding to implement this

administrative regulation, as the regulation establishes supervisory requirements only.

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

(9) TIERING: Is tiering applied? No. All regulated entities have 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 Board of Veterinary Examiners.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 321.235, 321.351, 321.360, 321.441, 321.990.

(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 from this filing.

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

(c) How much will it cost to administer this program for the first year? This is not a new program. There are no costs involved.

(d) How much will it cost to administer this program for subsequent years? There are no costs involved.

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 or negligible.

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? There will be no cost savings; this amendment simply codifies the requirements, making them easily accessible for regulated entities.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? There will be no cost savings.

(c) How much will it cost the regulated entities for the first year? There will be no additional costs involved.

(d) How much will it cost the regulated entities for subsequent years? There will be no additional costs involved.

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 or negligible.

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 amendment shall not have a "major economic impact", as defined in KRS 13A.010(13).

#### BOARDS AND COMMISSIONS

##### Board of Social Work (New Administrative Regulation)

#### 201 KAR 23:160. Temporary permission to practice.

RELATES TO: KRS 335.080, 335.090, 335.100

STATUTORY AUTHORITY: KRS 335.070(1), (3), (9)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 335.070(1) requires the board to evaluate and approve the qualifications of applicants for licensure. KRS 335.070(3) authorizes the board to promulgate administrative regulations. KRS 335.070(9) authorizes the board to establish requirements for temporary permits to practice social work. This administrative regulation establishes the requirements for the granting of temporary permission to engage in the practice of social work.

#### Section 1. Temporary Permits without the Examination.

(1) A temporary permit to engage in the practice of social work shall be granted, if requested, to an applicant who has applied for licensure under the provisions of KRS 335.080 or 335.090 and completed all of the requirements for licensure except having passed the required examination.

(2) The application required by subsection (1) of this section shall be made to the board or to the online application management system and shall:

(a) Include a certification by the applicant that the:

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

2. The applicant is aware that the board may take disciplinary action if the application contains a misrepresentation or falsification;

(b) Be accompanied by payment of the application fee that shall:

1. Be made payable to the Kentucky State Treasurer if the application is processed through the board; or

2. Be made to the online application management system as directed by the board.

(3) A person practicing social work under a temporary permit as a licensed social worker or a certified social worker shall be under the supervision of a certified social worker or licensed clinical social worker licensed in Kentucky, who becomes the supervisor of record.

(4) A supervisor of record for a temporary permit holder not practicing clinical social work must have been licensed in Kentucky for two (2) years.

(5) Any changes to the terms of the temporary permit shall be submitted to the board and approved by the board before the temporary permit holder continues social work practice.

(6)(a) A temporary permit shall not extend for more than 180 days after the temporary permit is approved by the board unless renewed.

(b) A person may re-apply for a temporary permit before the issued permit expires, and this permit shall not extend for more than 180 days after the temporary permit is approved by the board for a maximum of 360 days.

(7) Temporary permit holders shall not practice telehealth outside of Kentucky, which means that the location of the temporary permit holder and the client at the time of service must be in Kentucky.

(8) The applicant shall pay the required fee for the permit and any renewal.

(9) Receipt of applications, contracts, and notification of approvals can be done by mail or electronically.

#### Section 2. Temporary Permits to Practice Clinical Social Work without the Examination.

(1) Section 1(1), (2), (7), (8), and (9) are the same for this section.

(2) A certified social worker who seeks to practice clinical social work under a temporary permit shall be under the supervision of a licensed clinical social worker who qualifies to provide supervision under 201 KAR 23:070.

(3) A person practicing under a temporary permit as a certified social worker to provide clinical social work shall not accumulate hours towards the supervision requirements of KRS 335.100(1)(b).

(4) The application for a temporary permit to practice clinical



social work shall include a contract/letter signed by the proposed supervisor acknowledging the responsibility for supervision and for the practice of the person holding the temporary permit.

(5) A licensee shall not serve as the supervisor for more than two (2) persons holding a temporary permit at any one (1) time.

(6) A licensed clinical social worker who qualifies to provide supervision under 201 KAR 23:070 must include temporary permit persons in the required limit of six (6) supervisees as supervisor of record.

(7) Supervision during the period of temporary permission to practice shall be a minimum of one (1) hour of individual, face-to-face, or virtual supervision per week.

(8) A person practicing under a temporary permit as a certified social worker to provide clinical social work shall be valid until the applicant for the Certified Social Work license is denied under the provisions of KRS 335.080, or the temporary permit expires.

(9) The temporary permit to practice clinical social work shall only be issued with an approved contract as required in KRS 335.080(3).

(a) The temporary permit applicant must complete the temporary permit application that includes a contract with an approved supervisor.

(b) The temporary permit remains in effect until a new contract is approved after the Certified Social Work license is issued under KRS 335.080, even when the maximum of 360 days of the permit is exceeded.

(c) A new application for a temporary permit shall be submitted to the board immediately for approval if the supervisee changes their:

1. Supervisor of record; or
2. Place of employment.

(10) A temporary permit holder shall cease and desist the practice of clinical social work if:

(a) The supervisor of record terminates supervision; or

(b) The temporary permit holder ceases employment listed on the application.

(11) Any changes to the terms of the temporary permit to practice clinical social shall be submitted to the board and approved by the board before the temporary permit holder continues social work practice.

(12) Temporary permit holders who violate the provisions of the section are subject to disciplinary action by the board.

Section 3. Temporary Permits for Out-of-state Independent Clinical License Holders. A temporary permit can be issued for clinical social work practice in Kentucky if requested, as prescribed when:

(1) A temporary permit to provide clinical social work in Kentucky may be granted for not more than ninety consecutive days in one calendar year from the date of application is approved.

(2) A temporary permit to provide clinical social work in Kentucky may be granted for not more than ninety consecutive days in one (1) calendar year from the date of application is approved.

(3) A temporary permit holder under this provision is subject to the complaint procedures of the Kentucky Board of Social Work. Any complaints are reportable to the license board of the jurisdiction where the permit holder/applicant is licensed.

(4) The temporary permit applicant is not a resident of Kentucky.

(5) The temporary permit holder informs the client of the limited nature of their services and that the person is not currently licensed in Kentucky.

(6) The permit applicant has no complaints filed against their license in their current jurisdiction or in the National Practitioner Database or the Public Protection Database.

(7) A permit holder may be required to submit billing records or other records to demonstrate compliance with the requirements of this section.

(8) The permit holder must pay the required fee for the permit.

(9) The applicant shall maintain licensure in the other jurisdiction during the time period of the temporary license.

(10) The person informs the client of the limited nature of their services and that the person is not currently licensed in Kentucky.

(11) The person informs the client of how to make a complaint to the board for improper practice.

(12) The permit holder is allowed to practice telehealth in Kentucky so long as the permit holder:

(a) Provides evidence to the board of appropriate training for telehealth practice;

(b) Is complying with all telehealth laws and regulations of Kentucky; and

(c) Has written consent for telehealth with clients.

Section 4. Temporary Permits for Out-of-state Social Workers. A temporary permit can be issued for social work practice in this state, if requested, for not more than ninety consecutive days during any one calendar year from the date of application approval as prescribed when:

(1) A person who is currently licensed, certified, or regulated pursuant to another jurisdiction or pursuant to the laws of a federally recognized tribe and who provides social work services within the person's scope of practice.

(2) A temporary permit holder under this provision is subject to the complaint procedures of the Kentucky Board of Social Work. Any complaints are reportable to the license board of the jurisdiction where the permit holder/applicant is licensed.

(3) The person seeks permission to practice social work within the state of Kentucky.

(4) The person is not a resident of Kentucky.

(5) The person pays the required fee.

(6) The person completes the required application and is approved.

(7) The person ceases practice when the permit expires.

(8) The person has no disciplinary actions against their license in their current jurisdiction.

(9) A temporary permit holder under this provision is subject to the complaint procedures of the Kentucky Board of Social Work. Any complaints are reportable to the license board of the jurisdiction where the permit holder/applicant is licensed.

(10) The person provides evidence to the board of appropriate training for social work telehealth practice.

(11) The person informs the client of the limited nature of their services and that the person is only temporarily licensed in Kentucky.

(12) The person informs the client of how to make a complaint to the board for improper practice.

Section 5. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Temporary Non-Clinical Social Work Application", 6/15/2023;

(b) "Temporary Clinical Social Work Application", 6/15/2023;

(c) "Temporary Non-Resident Social Work Application", 6/15/2023; and

(d) "Temporary Social Work Non-Clinical and Non-Resident Application", 6/15/2023.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Social Work, 125 Holmes Street, Suite 310, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m., or from its Web site at <https://telehealth.ky.gov>.

WHITNEY CASSITY-CAWOOD, LCSW, PhD., Board Chair

APPROVED BY AGENCY: June 22, 2023

FILED WITH LRC: June 28, 2023 at 3:00 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Sept 22, 2023, at 10:00 a.m. ET at the Justice and Public Safety Building, Third Floor Board Room, 125 Holmes Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through September

30, 2023. Send written notice of intent to be heard or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Marc Kelly, Executive Director, Kentucky Board of Social Work, 125 Holmes Street, Suite 310, Frankfort, Kentucky 40601, phone (502) 564-2350 or (502) 782-2856, or email marc.kelly@ky.gov.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Marc Kelly, Executive Director

(1) Provide a brief summary of:

(a) What this administrative regulation does: This emergency administrative regulation is being promulgated pursuant to KRS 13A.180 and KRS 13A.190(1)(a)(1) to meet an imminent threat to public health, safety, or welfare. This regulation is necessary to mitigate the shortage of social work professionals in the Commonwealth of Kentucky at this time. The need for care continues to increase while the availability of practitioners to provide that care lags behind. Specifically, this regulation allows individuals that meet the appropriate educational requirements to practice social work under a license. Access to licensure would maintain the current access to services to the citizens of the Commonwealth and provide social workers access to current employment opportunities. This regulation will be replaced with an ordinary regulation in due course.

(b) The necessity of this administrative regulation: This emergency administrative regulation is necessary to address the shortage of social work professionals in the Commonwealth of Kentucky at this time.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 335.070(3) authorizes the board to promulgate administrative regulations to carry out of the provisions of KRS 335.10 to 335.160 and KRS 335.990. KRS 39A.180(2) permits the board to suspend its written administrative regulations during a period of emergency, KRS 13A.190(1)(a)(1) authorizes the board to promulgate an emergency administration regulation to meet an imminent threat to public health, safety, or welfare, and KRS 335.070(7) authorizes the board to establish requirements for a license to practice social work.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This emergency administrative regulation will assist the board in lawfully addressing the ability of individuals who meet certain educational requirements to practice social work under licensure pursuant to KRS 335.080, 335.090 or 335.100.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of: This administrative regulation replaces 201 KAR 23:016, which has been withdrawn. This administrative regulation more clearly distinguishes between clinical and non-clinical social work practice under a temporary permit. This new administrative regulation allows for the certified social worker who is permitted to provide clinical social work to be able to move from the temporary permit to full licensure because this regulation is consistent with KRS 335.080(3), which requires a contract with a licensed clinical social worker for supervision. This regulation also provides for non-resident social workers to have a temporary permit for 90 days to provide time for the transition of care, the social worker to obtain a Kentucky license, or proper closure of services.

(a) How the amendment will change this existing administrative regulation: The amendment will distinguish between general social work practice and clinical social work practice. The amendment will allow non-resident social workers to obtain a temporary permit in Kentucky to accommodate telehealth and greater access for citizens.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to ensure the proper supervision for the temporary certified social worker and continuity of care between the time the temporary license ends and the full license begins. The amendment ensures increased access to social work services by citizens.

(c) How the amendment conforms to the content of the authorizing statutes: LRS 335.080(3) requires a contract for certified social workers to practice clinical social work. The amendment conforms to this statute more than 201 KAR 23:016 did. The amendment will allow non-resident social workers to practice in Kentucky for the first time.

(d) How the amendment will assist in the effective administration

of the statutes: The amendment will assist the Board and the approved supervisors, and the certified social workers practicing clinical social to move from the temporary license to the full license without a lapse in services which occurs under 201 KAR 23:016. The amendment makes the contracting for supervision more efficient for the Executive Director to administer. The amendment will allow non-resident social workers to practice in Kentucky for the first time and allows the Board to exercise protection of the public through disciplinary action, and prevents social workers with disciplinary action from practicing in Kentucky.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This emergency administrative regulation will affect approximately 7,000 licensed social workers, licensed clinical social workers, and certified social workers in Kentucky, public schools, hospitals, community mental health centers, public and private agencies.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Individuals meeting the appropriate educational and testing requirements will be able to apply for a renewal or reinstatement immediately upon the filing of the emergency administrative regulation or will have their prior license validated.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The board does not anticipate that there will be a cost increase to any of the entities and will waive any fees incurred.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The board believes that the entities will benefit from the ability to provide services to clients more efficiently and quickly without any disruptions.

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

(a) Initially: The board estimates that it will incur no additional costs to implement this emergency administrative regulation.

(b) On a continuing basis: The board estimates that it will incur no additional costs to implement this emergency administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this emergency administrative regulation: The board's operations are wholly self-funded by fees paid by licensees, applicants, and continuing education providers and sponsors.

(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 emergency administrative regulation does not directly establish or increase fees.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No, this amendment does not.

(9) TIERING: Is tiering applied? No, tiering was not applied. This emergency administrative regulation is applied uniformly to each certified social worker practicing clinical social work under board-approved supervision.

#### 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 Social Work and entities that employ licensed social workers to provide social work services will be impacted by this administrative regulation. These entities include public school districts, hospitals, community mental health centers, and other public agencies and private businesses.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation KRS 39A.180, 13A.190, 335.070(3) and (7) and 335.158(3).

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. None.

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

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

(c) How much will it cost to administer this program for the first year? None.

(d) How much will it cost to administer this program for subsequent years? None.

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

Revenues (+/-): \$0.00

Expenditures (+/-): \$0.00

Other Explanation: There are no fiscal impacts of this regulation; no fee increase.

(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. None

(a) How much cost savings will this administrative regulation generate for the regulated entities for the subsequent years? 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? None.

(d) How much will it cost the regulated entities for subsequent years? None.

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

Cost Savings (+/-): \$0.00 there are no cost savings on the fiscal impact for this administrative regulation

Expenditures (+/-): \$0.00 there are no expenditures on the fiscal impact for this administrative regulation

Other Explanation: There may be an increase in income to the Board depending on the number of out-of-state social workers who apply for a temporary 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 a major economic impact.

## BOARDS AND COMMISSIONS

### Board of Social Work

#### (New Administrative Regulation)

#### 201 KAR 23:170. Telehealth and social work practice.

RELATES TO: KRS 335.158

STATUTORY AUTHORITY: KRS 335.158(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 335.158 requires social workers utilizing telehealth to ensure a patient's informed consent and to maintain confidentiality. This administrative regulation protects the health and safety of individuals and establishes procedures for preventing abuse and fraud through the use of telehealth, prevents fee-splitting through the use of telehealth by social workers who utilize telehealth in the provision of social work services, and the provision of continuing education.

#### Section 1. Definitions.

(1) "Client" is defined by 201 KAR 23:080, Section 1.

(2) "Clinical social worker" means a licensed clinical social worker or a certified social worker under the supervision of a licensed clinical social worker.

(3) "Electronic social work service" means the use of Technology-Enabled Modalities and other electronic means to:

(a) Provide information to the public;

(b) Deliver social work services to clients;

(c) Communicate with clients;

(d) Manage confidential information, personally identifiable information, protected health information, and financial and case records;

(e) Deliver services through videoconferencing, electronic mail, text, chat, facsimile, virtual/augmented/extended/mixed reality, artificial intelligence, standard audio-only telephone, or digital and analog methods;

(f) Store and access information about clients;

(g) Provide synchronous telehealth or asynchronous telehealth; and

(h) Arrange payment for professional services.

(4) "Telehealth" is defined in KRS 335.158(3) and 211.332(5).

(5) "Telehealth service" means any service provided via electronic means that utilizes the social worker's skills, knowledge, and training for a client,

(a) Event;

(b) Encounter;

(c) Consultation;

(d) Visit;

(e) Store-and-forward transfer;

(f) Remote patient monitoring;

(g) Referral; or

(h) Treatment.

(6) "Telehealth Terminology Glossary" in 900 KAR 12:005 is incorporated by reference.

(7) "Teletherapy" means the practice of clinical social work as defined in KRS 335.020 and 201 KAR 23:070; and,

Section 2. Standards of Practice. All licensees using telehealth to deliver telehealth, teletherapy, or electronic social work services shall, upon initial contact with a potential client and with the client thereafter:

(1) Make reasonable attempts to verify and document the identity of the client(s);

(2) Make reasonable attempts to verify and document the physical location of the client(s);

(3) Obtain alternative means of contacting the client(s) other than including electronically;

(4) Provide how communications can be directed to the social worker other than electronically;

(5) Assess and document that the client's needs are appropriate for telehealth, teletherapy, or electronic social work services and that the client has the necessary knowledge and skill to benefit from telehealth, teletherapy, or electronic social work services provided by the social worker;

(6) Use secure communications with clients, including encrypted text messages, email, non-public remote communication facing products, or secure internet sites.

(7) Not use personally identifying information or PHI in non-secure communications without expressed written and periodically reviewed informed consent to use non-secure communication.

(8) Obtain written informed consent for telehealth, teletherapy, or electronic social work services that include:

(a) The informed consent as required 201 KAR 23:080;

(b) The client's right to request in-person visits;

(c) The limitations of using technology in the provision of services;

(9) Potential risks to privacy and confidentiality of information due to the use of technology in the provision of services;

(a) Potential risks of disruption in the use of technology;

(b) When and how the social worker utilizes electronic messages;

(c) The circumstances in which the social worker will use alternative communications for emergency purposes, including medical, psychiatric, or other emergencies;

(d) Anyone who may have access to client communications with the social worker;

(e) Identification of the social worker, their credentials, and the jurisdiction(s) of licensed practice;

(f) How or when recording of services is permitted by either the licensee or the client; and,

(g) How electronic signatures are obtained.

(10) The requirement of written informed consent shall not apply

to an emergency if the client cannot provide informed consent, and the client's legally authorized representative is unavailable.

(11) Provide how the social worker stores and disposes of recordings or electronic communications from the client; and,

(12) Document in the client's record that a service was provided by electronic social work service within forty-eight (48) hours of the service, including any technical difficulties and adherence to all standards of care;

(13) All licensees using telehealth, teletherapy, or electronic social work services to deliver social work services shall adhere to the same or appropriately adapted standards of care as in-person care.

(14) All licensees shall be aware of the terminology and concepts defined in the Telehealth Terminology Glossary, such as, but not limited to, asynchronous telehealth, clinical text/chat, distant site, and originating site.

### Section 3. Competence, Limits on Practice, Maintenance, and Retention of Records.

(1) A social worker using telehealth, teletherapy, or electronic social work services to deliver social work services shall:

(a) Limit the practice of telehealth or teletherapy, or electronic social work services to the area of competence in which proficiency has been gained through education, training, and experience;

(b) Maintain current competency in the practice of telehealth, teletherapy, or electronic social work services through continuing education, consultation, or other methods, in conformance with standards of care and professional knowledge;

(2) Document the client's presenting problem, service needs, care plan, treatment, diagnosis, or reasons for social work services;

(a) Ensure that confidential communications obtained and stored electronically cannot be recovered and accessed by unauthorized persons when the social worker disposes of electronic equipment and data;

(b) Ensure the availability and integrity of digital records;

(c) Have a set and disclosed retention period for secure storage of records, recordings, or electronic communications; and

(d) Provide services only within their scope of practice.

(3) Licensees providing clinical social work under supervision by an approved LCSW supervisor shall:

(a) Disclose all telehealth, teletherapy, or electronic social work services in the contract for supervision required under 201 KAR 23:070 or 201 KAR 23:160; and,

(b) Comply with the directives of the board.

(4) A social worker licensed in another jurisdiction and using telehealth, teletherapy, or electronic social work services to deliver social work services to a client located in Kentucky at the time of service or is located in Kentucky at the time of service shall have a temporary permit to provide services or be licensed in Kentucky.

### Section 4. Continued Education.

(1) All licensees shall attain or maintain their competence to deliver telehealth, teletherapy, or electronic social work services through appropriate supervision and continued education.

(2) All new licensees shall take a board approved two-hour course once within their first license cycle on the regulations for delivering telehealth, teletherapy, or electronic social work services.

(3) All current licensees shall take a two-hour course on the regulations for delivering telehealth, teletherapy, or electronic social work services approved by the board by June 30, 2024.

(4) Continued education presented as an electronic social work service shall comply with 201 KAR 23:075.

Section 5. Compliance with Federal, State, and Local Law. All licensees using telehealth to deliver social work services or teletherapy, or electronic social work services shall comply with the following:

(1) The federal Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. secs. 1320d to 1320d-9, any amendments or changes subsequently included, and other applicable federal and state laws.

(2) The laws and regulations of the jurisdiction in which they are located and in which the client is located at the time service is rendered and under KRS 211.336(2)(i) when not in conflict with

another state's laws;

(3) Section 508 of the Rehabilitation Act, 29 U.S.C. 794(d), to allow telehealth, teletherapy, or electronic social work services accessible to a client with disabilities.

Section 6. Representation of Services and Code of Conduct. A licensee using telehealth to deliver social work services or teletherapy, or electronic social work services:

(1) Shall not, by or on behalf of the social worker, engage in false, misleading, or deceptive advertising of services via telehealth, teletherapy, or electronic social work services;

(2) Shall not employ fee-splitting with other telehealth persons or entities;

(3) Shall comply with 201 KAR 23:080, Code of ethical conduct; and

(4) Shall comply with all applicable administrative regulations.

### Section 7. Incorporation by Reference.

(1) "Telehealth Terminology Glossary", August 2022, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Telehealth Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m., or from its Web site at <https://telehealth.ky.gov>.

WHITNEY CASSITY-CAWOOD, LCSW, PhD., Board Chair

APPROVED BY AGENCY: June 22, 2023

FILED WITH LRC: June 28, 2023 at 3:00 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 21, 2023, at 10:00 a.m. ET at the Justice and Public Safety Building, Third Floor Board Room, 125 Holmes Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through September 30, 2023. Send written notice of intent to be heard or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Marc Kelly, Executive Director, Kentucky Board of Social Work, 125 Holmes Street, Suite 310, Frankfort, Kentucky 40601, phone (502) 564-2350 or (502) 782-2856, or email [marc.kelly@ky.gov](mailto:marc.kelly@ky.gov).

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Marc Kelly

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation is being promulgated pursuant to KRS 13A.180 and KRS 13A.190(1)(a)(1) to meet an imminent threat to public health, safety, or welfare. This regulation is necessary to provide directions for social workers to practice telehealth and allow social work licensees in the Commonwealth of Kentucky to improve access to services and meet the needs of citizens. The need for care continues to increase while the availability of practitioners to provide that care lags behind. Specifically, this regulation allows individuals that meet the appropriate requirements to practice telehealth responsibly and respectfully of federal and state laws.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to address the necessity of allowing social work licensees to practice telehealth in the Commonwealth of Kentucky and prevent fraud and abuse.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 335.070(2) authorizes the board to promulgate administrative regulations to carry out the provisions of KRS 335.10 to 335.160 and KRS 335.990. KRS 335.158(2) authorizes the board to promulgate administrative regulations for

telehealth.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist the board in lawfully addressing the ability of social workers to practice telehealth and protect the public under licensure pursuant to KRS 335.080, 335.090 or 335.100.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of: This regulation provides directions to social workers who use telehealth and includes training, informed consent, and directives for social workers to abide by state and federal law regarding the delivery of telehealth.

(a) How the amendment will change this existing administrative regulation: This amendment does not change an existing amendment.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary as it is specific to social work practices, both clinical and non-clinical.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the requirements of KRS 355.158(3) to promulgate regulations.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist the Kentucky Board of Social Work in administering KRS 335.158 for social work practice.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect approximately 7,000 licensed social workers, licensed clinical social workers, and certified social workers in Kentucky, public schools, hospitals, community mental health centers, public and private agencies.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Individuals meeting the appropriate educational and license requirements will be able to practice telehealth at their level of licensure.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The board does not anticipate that there will be a cost increase to any of the entities and will waive any fees incurred.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The board believes that the entities will benefit from the ability to provide services to clients more efficiently and quickly without any disruptions.

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

(a) Initially: The board estimates that it will incur no additional costs to implement this emergency administrative regulation.

(b) On a continuing basis: The board estimates that it will incur no additional costs 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: The board's operations are wholly self-funded by fees paid by licensees, applicants, and continuing education providers and sponsors.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No, this amendment does not.

(9) TIERING: Is tiering applied? No, tiering was not applied. This emergency administrative regulation is applied uniformly to each certified social worker practicing clinical social work under board-approved supervision.

#### 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 Social Work and entities that employ licensed social workers to provide social work services will be impacted by this administrative regulation. These

entities include public school districts, hospitals, community mental health centers, and other public agencies and private businesses.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation KRS 39A.180, 13A.190, 335.070(3) and (7) and 335.158(2).

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. None. There is no effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None. There is no revenue generated.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None. There is no revenue generated.

(c) How much will it cost to administer this program for the first year? 0 -There is no cost

(d) How much will it cost to administer this program for subsequent years? 0 -there is no cost.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation. This administrative regulation requires no fees and no cost to licensees or the Commonwealth of Kentucky.

Revenues (+/-): 0 – there are no anticipated revenues that will impact this administrative regulation

Expenditures (+/-): 0 – there are no anticipated expenditures that will impact this administrative regulation

Other Explanation: None. There are not any other revenues or expenditures that will impact this administrative 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 subsequent years? 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? None.

(d) How much will it cost the regulated entities for subsequent years? None.

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

Cost Savings (+/-): 0 - There is no anticipated cost savings that will impact this administrative regulation

Expenditures (+/-): 0 - There is no anticipated expenditures that will impact this administrative regulation

Other Explanation: 0 - There is not any other income or expenditure that will impact this administrative regulation.

(5) Explain whether this administrative regulation will have a major economic impact as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies [KRS 13A.010(13)]. This administrative regulation will not have a major economic impact as defined above.

#### KENTUCKY HOUSING CORPORATION (New Administrative Regulation)

##### 202 KAR 002:020. Rural Housing Trust Fund.

RELATES TO: KRS 198A.740 to 198A.750

STATUTORY AUTHORITY: KRS 198A.746(5), 198A.748(5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 198A.744 authorizes Kentucky Housing Corporation to administer the Rural Housing Trust Fund by providing loans or grants for eligible activities, as established in KRS 198A.746, in order to create new sources of funding or to supplement existing sources of funding for

the development of housing for moderate-income individuals or families in rural areas. KRS 198A.746 authorizes Kentucky Housing Corporation to define relocation costs to be paid if the development of rural housing displaces moderate-income individuals or families. This administrative regulation is necessary to establish additional criteria to qualify for the loans and grants and to establish the procedures to be followed in paying relocation costs.

Section 1. Qualification Criteria. (1) Applications shall be prioritized based on the priorities established in KRS 198A.748(6).

(2) Single-family project applications shall be competitively ranked based on the following criteria:

- (a) Willingness to serve those in the most impacted and distressed disaster counties;
- (b) Readiness to proceed;
- (c) Number of units to be addressed by the project;
- (d) Demonstrated experience in development or repair of housing;
- (e) Projects to house disaster survivors still living in shelters, doubled up with family, or in another unsustainable housing situation;
- (f) Established relationships and mechanisms to ensure a pipeline of moderate-income homebuyer referrals;
- (g) Demonstrated expansion of capacity to develop at scale; and
- (h) Demonstrated financial capacity to carry out larger-scale housing projects.

(3) Multifamily project applications shall be competitively ranked based on the following criteria:

- (a) Willingness to serve those in the most impacted and distressed western Kentucky disaster counties;
  - (b) Readiness to proceed;
  - (c) Experience in development of multifamily housing utilizing Kentucky Housing Corporation financing resources;
  - (d) Demonstrated financial capacity to carry out larger-scale housing projects; and
  - (e) Projects awarded under the Kentucky Housing Corporation tax exempt bond notice of funding availability in accordance with the terms of such notice of funding availability.
- (4) Approval of applications shall be based on the numerical ranking received and the availability of funds.

Section 2. Relocation Costs. In the development of rural housing under the Rural Housing Trust Fund, displacement of moderate-income individuals or families is not permitted unless the project pays all reasonable relocation costs. Reasonable relocation costs shall be determined on a case-by-case basis based on the following criteria:

- (1) Provision of relocation advisory services to displaced tenants and owner occupants;
- (2) Provision of a minimum of ninety (90) days written notice to vacate prior to requiring possession;
- (3) Reimbursement for moving expenses; and
- (4) Provision of payments for the added cost of renting or purchasing comparable replacement housing.

WINSTON E. MILLER, Executive Director

APPROVED BY AGENCY: June 29, 2023

FILED WITH LRC: July 5, 2023 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on September 21, 2023 at 1:00 p.m. at Kentucky Housing Corporation, 1231 Louisville Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until 11:59 p.m. on September 30, 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: Samuel Thorne, General Counsel, Kentucky Housing Corporation, 1231 Louisville Road, Frankfort, Kentucky 40601, phone (502) 564-7630, fax (502) 564-7322, email sthorne@kyhousing.org.

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Samuel Thorne

(1) Provide a brief summary of:

(a) What this administrative regulation does: Establishes uniform criteria for qualifying for Rural Housing Trust Fund grants and loans and establishes criteria for the payment of relocation costs.

(b) The necessity of this administrative regulation: Sets standards to create new sources of funding or to supplement existing sources of funding for the development of housing for moderate-income individuals or families in rural areas. Sets standards for payment of relocation costs if development of rural housing displaces moderate-income individuals or families.

(c) How this administrative regulation conforms to the content of the authorizing statutes: Kentucky Housing Corporation may administer the Rural Housing Trust Fund, by KRS 198A.744, KRS 198A.746, and KRS 198A.748, to promote development of housing for moderate-income individuals and families in rural areas. This regulation establishes uniform standards for the use of funds and standards for relocation costs, in furtherance of those goals.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By providing clear notice to organizations eligible for funding of any standards and rules which exist in regard to the use of funds in housing development and relocation costs.

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

(a) How the amendment will change this existing administrative regulation: This is not applicable.

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

(c) How the amendment conforms to the content of the authorizing statutes: This is not applicable.

(d) How the amendment will assist in the effective administration of the statutes: This is not applicable.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects all potential applicants seeking to apply for loans or grants for eligible activities under the Rural Housing Trust Fund, which includes local governments, local government housing authorities, nonprofit organizations, regional or statewide housing assistance organizations, and business organizations that undertake new construction or rehabilitation of rural housing units for moderate-income individuals.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This regulation establishes criteria for selection of applications for funding under the Rural Housing Trust Fund and defines reasonable relocation costs. The identified entities must ensure the project pays all reasonable relocation costs in the event it involves displacement of moderate-income individuals or families.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This regulation establishes criteria for selection of applications for funding under the Rural Housing Trust Fund and defines reasonable relocation costs. There is no cost to complying with the criteria portion of the regulation. In the event reasonable relocation projects must be paid, those costs will be paid by the project, not the identified entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This regulation establishes criteria for the evaluation and selection of applications for funding under the Rural Housing Trust Fund. The more criteria a project application meets, the more likely it is to be funded. The portion of the regulation establishing reasonable relocation costs will not cause any benefits to accrue to

the identified entities.

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

(a) Initially: Administrative costs associated with notifying appropriate organizations of funding, designing and reviewing applications, administering funding to eligible applicants and monitoring funded agencies.

(b) On a continuing basis: There will be some long-term direct costs associated with continued monitoring of funded agencies to ensure long-term compliance.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Administrative fees charged to the Rural Housing Trust Fund.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: There are no fees directly or indirectly increased by this administrative regulation.

(9) TIERING: Is tiering applied? Tiering is not applied, all organizations applying for funds will be subject to the same requirements to provide a fair and equitable selection process.

#### 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 regulation impacts the Kentucky Housing Corporation and organizations eligible for funding from the Rural Housing Trust Fund which includes all local governments, local government housing authorities, nonprofit organizations, regional or statewide housing assistance organizations, and business organizations that undertake new construction or rehabilitation of rural housing units for moderate-income individuals.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 198A.744, KRS 198A.746, and KRS 198A.748.

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

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

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

(c) How much will it cost to administer this program for the first year? Kentucky Housing Corporation estimates it will cost approximately 7.5% of expenditures. All costs shall be charged to the Rural Housing Trust Fund as administrative costs.

(d) How much will it cost to administer this program for subsequent years? Kentucky Housing Corporation estimates it will cost approximately 7.5% of expenditures. All costs shall be charged to the Rural Housing Trust Fund as administrative 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: Kentucky Housing Corporation is unable to determine specific dollar estimates for costs at this time. The percentage of expenditures is given as an estimate.

(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? No additional costs.

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

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation: No additional costs.

(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 administrative bodies. [KRS 13A.010(13)]. There is not an expected major economic impact from this regulation.

#### PUBLIC PROTECTION CABINET Department of Insurance Licensing Division (New Administrative Regulation)

#### 806 KAR 9:400. Public adjuster filings.

RELATES TO: KRS 304.9-020, 304.9-430, 304.9-433, 304.9-435, 304.9-440

STATUTORY AUTHORITY: KRS 304.9, 304.2-110

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110 authorizes the Commissioner of Insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code as defined in KRS 304.1-010. KRS 304.9-433 requires public adjusters to file a form to be approved by the commissioner prior to executing a contract with an insured. This administrative regulation sets forth the prefilling requirements for public adjusters prior to executing a contract with an insured.

#### Section 1. Definitions.

(1) "Commissioner" is defined by KRS 304.1-050(1).

(2) "Catastrophe" is defined by KRS 304.9-020(6).

(3) "Department" is defined by KRS 304.1-050(2).

(4) The term "emergency circumstance" shall mean:

(a) A catastrophe as defined by KRS 304.9-020(6); or

(b) A catastrophe as defined by KRS 39A.100.

(5) "Public adjuster" is defined by KRS 304.9-020(20).

#### Section 2. Contract Filings.

(1) Before a public adjuster may execute a contract or provide services to an insured, the public adjuster shall:

(a) File a form with the commissioner for approval that meets the contract standards prescribed by KRS 304.9-433 and included in the Contracting Checklist Form; and

(b) Provide the insured with a written disclosure as prescribed by KRS 304.9-433 and the contact information for the Department's Consumer Protection Division provided on the Contracting Checklist Form.

(2) The public adjuster shall file this form:

(a) On the Department's secure Web site, <https://insurance.ky.gov/doiservices/userrole.aspx>; or

(b) By electronic mail to [doi.licensingmail@ky.gov](mailto:doi.licensingmail@ky.gov).

(3)(a) The commissioner shall have thirty (30) business days to approve or disapprove a contract form filing. The public adjuster shall be prohibited from using a contract form prior to receiving the approval for the contract form filing.

(b) If the commissioner disapproves a contract form filing, the public adjuster shall have fifteen (15) business days to amend the original filing for the commissioner's approval.

#### Section 3. Emergency Circumstance-Intent to Contract.

(1) If an emergency circumstance occurs and a public adjuster is unable to reasonably execute a contract before providing services to an insured, a public adjuster shall file an Intent to Contract Form with the insured's insurer.

(2) The public adjuster must file this form with the insurer within three (3) business days of providing any services to the insured.

(3) If a contract has not been executed within seven (7) business



days following the filing of an Intent to Contract Form, the Intent to Contract Form shall be deemed null and void.

(4) The public adjuster shall not receive any compensation unless he or she executes a contract with the insured on a general contract form previously approved by the commissioner.

#### Section 4. Amending Filings.

(1) A public adjuster may amend a previously approved form with the commissioner only if the public adjuster files the amended form and receives prior approval before utilizing the new contract form.. use.

(2) The approval process for any amended contract form filings shall be governed by Section 2 of this administrative regulation.

Section 5. Materials Incorporated by Reference. (1) The following material is incorporated by reference:

(a) "Contracting Checklist Form", 7/23; and

(b) "Intent to Contract Letter", 7/23.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Insurance, The Mayo-Underwood Building, 500 Mero Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available on the department's Web site at <https://insurance.ky.gov/ppc/CHAPTER.aspx>.

SHARON P. CLARK, Commissioner

RAY A. PERRY, Secretary

APPROVED BY AGENCY: July 13, 2023

FILED WITH LRC: July 13, 2023 at 3:00 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 9:00 a.m. on September 21, 2023 at 500 Mero Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. on September 30, 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 below.

CONTACT PERSON: Abigail Gall, Executive Advisor, 500 Mero Street, Frankfort, Kentucky 40601, phone +1 (502) 564-6026, fax +1 (502) 564-1453, email [abigail.gall@ky.gov](mailto:abigail.gall@ky.gov).

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Abigail Gall

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation will provide filing guidelines for public adjusters.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to aide and effectuate the provisions of HB 232-2023 Reg. Session.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The statute allows for the Commissioner to promulgate administrative regulations to set forth requirements for public adjusters.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation provides the calculations for future experience through a generational mortality table for annuities.

(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 460 licensed public adjusters in Kentucky who will all 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: Public adjusters in this state must file their template/general contract form to be approved by the Commissioner. Public adjusters must also file any intent to contract with an insured's insurer should there be an emergency circumstance.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The contract between the public adjuster and consumer will meet the standards of Kentucky law.

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

(a) Initially: No associated cost

(b) On a continuing basis: No associated cost

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

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No, this regulation does not establish any fees directly or indirectly.

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

#### FISCAL NOTE

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 304.2-110

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

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: There is no expectation of any fiscal impact.

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? No cost savings



are associated with this administrative regulation.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? No cost savings are associated with this administrative regulation.

(c) How much will it cost the regulated entities for the first year? There is no cost expected.

(d) How much will it cost the regulated entities for subsequent years? There is no cost expected.

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation: There is no cost associated with this administrative regulation and therefore no fiscal impact.

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] No, this administrative regulation will not have a major economic impact.

**PUBLIC PROTECTION CABINET  
Kentucky Horse Racing Commission  
Service Provider Licensing  
(New Administrative Regulation)**

**809 KAR 1:002. Service provider licensing.**

RELATES TO: KRS Chapter 230

STATUTORY AUTHORITY: KRS 230.260, 230.361, 230.811, 230.814

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.260 requires the commission to "promulgate administrative regulations to establish standards for the conduct of sports wagering." KRS 230.361 states the "racing commission shall promulgate administrative regulations to establish a fully functioning sports wagering system...." KRS 230.811 and KRS 230.814 permit a licensed service provider to conduct sports wagering in Kentucky. This administrative regulation establishes clear requirements and guidelines concerning the process by which applications for a service provider license for sports wagering in Kentucky are reviewed and approved.

**Section 1. Definitions.**

(1) "Applicant" means a person applying for a service provider license under KRS 230.814.

(2) "Application" means "Initial/Renewal Application for Service Provider License," KHRC 01-003-01, 06/2023.

(3) "Service provider" is defined by KRS 230.210.

(4) "Service provider license" means a license granted to a service provider that has a contract with an operator to provide sports wagering services pursuant to KRS 230.814.

(5) "Substantial owner" means a person who owns five (5) percent or more of the company.

**Section 2. Applications for Sports Wagering Service Providers.**

(1) Initial applications. An applicant shall apply to the commission for a service provider license pursuant to KRS 230.814.

(2) Renewal applications. A service provider license shall be renewed annually in accordance with KRS 230.814.

(3) An initial or renewal application for a service provider license shall be submitted on the form "Initial/Renewal Application for a Service Provider License," KHRC 01-003-01, 06/2023, pursuant to Section 6 of this administrative regulation.

**Section 3. License Fees.**

(1) An applicant shall submit the initial fee of \$50,000 with an initial application for a service provider license. The initial fee shall not be refundable.

(2) A service provider shall submit the renewal fee of \$10,000

with a renewal application for a service provider license. The renewal fee shall not be refundable.

(3) Pursuant to KRS 230.811, the fees in this section shall be deposited into the fund established by KRS 230.817.

(4) Renewal applications for a service provider license shall be received by the commission 120 days before the expiration of the current license.

**Section 4. Licensing Criteria.** The commission shall grant a service provider application if the commission determines that the applicant's participation as a sports wagering service provider is in the best interests of sports wagering in Kentucky. The commission shall consider, at a minimum, the following factors:

(1) Whether the applicant otherwise qualifies to receive a license under KRS Chapter 230;

(2) Whether the applicant's key persons and substantial owners qualify to receive applicable occupational licenses under 809 KAR 1:003;

(3) Whether the applicant, in the case of an individual, or the applicant's substantial owners, is at least eighteen (18) years of age;

(4) Whether the applicant demonstrates a level of skill, experience, knowledge, and ability necessary to operate as a service provider as required under this administrative regulation;

(5) Whether the applicant was convicted or charged with any offense for a violation of a gaming law in any jurisdiction;

(6) Whether the applicant appears on the exclusion list of any jurisdiction for having violated a rule of gaming;

(7) Whether the applicant has at least one (1) contract to provide services pursuant to KRS 230.814 to a sports wagering operator; and

(8) Whether the applicant or the applicant's substantial owners are in substantial compliance with all state and federal tax laws.

**Section 5. Temporary Licensing.**

(1) The commission may grant a temporary license after an applicant submits an initial application.

(2) An applicant issued a temporary license pursuant to this administrative regulation or KRS 230.260 shall not be entitled to receive any refund of the license fee submitted in connection with the license application.

(3) The commission may change a temporary license issued pursuant to this administrative regulation into an annual license if:

(a) All investigations into the license application are complete;

(b) The commission is satisfied the holder of a temporary license qualifies to hold an annual license; and

(c) The applicant, its parent company, or affiliate subsidiaries have demonstrated that it is licensed to provide gaming services in at least three (3) other United States gaming jurisdictions.

(4) When the commission changes a temporary license into an annual license, the date of issuance of the annual license shall be deemed to be the date that the commission approved the annual license.

(5) A temporary authorization may expire of its own accord, or it may be suspended, revoked, or summarily suspended under the same terms and conditions as an annual license.

(6) The temporary license shall not extend beyond one (1) year and shall expire at the end of the calendar year for which it was issued.

**Section 6. Application Procedure.**

(1) Application procedures for service providers shall be as follows:

(a) A material misrepresentation or omission made with respect to an application may be grounds for denial of the application.

(b) An application shall be deemed filed when the commission receives the completed application forms, including all additional information that the commission requires.

(c) The completed applications shall be filed as follows:

1. An applicant shall submit an original and five (5) copies of a fully-executed hard copy application to the commission at the commission's office in Lexington, Kentucky or shall submit the application online at <https://khrc.ky.gov/>.

2. Applicants shall submit the application prior to November 1 of each year.

(d) An applicant shall be under a continuing duty to disclose any changes in the information submitted to the commission.

(e) Any service provider license holder that enters into a contract with a new operator licensed under 810 KAR 3:010 shall provide notice to the commission and a copy of the contract within fourteen (14) calendar days.

(f) Any service provider license holder that enters into a contract with a new occupational licensee that is an information services provider shall provide notice to the commission within fourteen (14) calendar days and, as requested, a copy of the contract.

(g) If a service provider license holder ceases to offer goods and services to an operator licensee, then the service provider shall notify the commission.

(2) An application for a service provider's license shall include the following information:

(a) The name, address, and legal information of the applicant that allows the commission to verify the applicant's legal existence, status, and eligibility for a license, including the applicant's:

1. Business registration details,
2. Business structure, and
3. Business identification number.

(b) A Key Employee License Application for a substantial owner or key person;

(c) A description of all sports wagering services, equipment, devices, and supplies offered for sale or lease by the applicant in connection with sports wagering;

(d) Details regarding the corporate form of the applicant, including the legal structure or type of business applying for the license;

(e) Relevant contracts related to the sports wagering;

(f) Disclosure of any criminal, civil, or administrative action brought against the applicant;

(g) Description of all other licenses held by the applicant;

(h) The applicant's audited financial statements for each of the three (3) fiscal years immediately preceding the application; and

(i) Organizational and ownership charts of the applicant.

(3) Initial applications completed for sports wagering conducted in 2023 may also serve as the renewal application for sports wagering conducted in 2024.

(4) For sports wagering conducted in 2025 and thereafter, an application shall be filed with the commission prior to November 1 of the preceding calendar year.

Section 7. Duty to Maintain Suitability; Duty to Disclose; Transfer of Ownership Interest.

(1) A service provider shall have a continuing duty to maintain suitability for licensure. A license issued under this administrative regulation does not create a property right but shall be a revocable privilege granted by the commission contingent upon continuing suitability for licensure.

(2) A service provider shall be responsible for the following:

(a) Ensuring that all aspects of the sports wagering operation are conducted in accordance with 809 KAR 10:001 through 809 KAR 10:007;

(b) The acts of its employees and agents in the course of their employment; and

(c) Notification of a material change in the information submitted in the application, or a matter that renders the service provider ineligible to hold a service provider license.

(3) A substantial change in ownership shall not occur without prior approval from the commission.

Section 8. Incorporation by Reference. "Initial/Renewal Application for Service Provider License", KHRC 01-002-001, 06/2023, is incorporated by reference.

JONATHAN RABINOWITZ, Chair

RAY PERRY, Secretary

APPROVED BY AGENCY: July 10, 2023

FILED WITH LRC: July 10, 2023 at 4:00 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 22, 2023 at 9:00 a.m. at the Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511.

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 September 30, 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: Jennifer Wolsing, General Counsel, Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859) 246-2039, email jennifer.wolsing@ky.gov

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jennifer Wolsing

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes the procedures and requirements for applying for a service provider license for sports wagering.

(b) The necessity of this administrative regulation: This regulation is necessary to establish clear requirements and guidelines concerning the process by which applications for a service provider license for sports wagering in Kentucky are reviewed and approved.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.260 requires the commission to "promulgate administrative regulations to establish standards for the conduct of sports wagering." KRS 230.361 states the "racing commission shall promulgate administrative regulations to establish a fully functioning sports wagering system...." KRS 230.811 and KRS 230.814 permit a licensed service provider to conduct sports wagering in Kentucky.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation enables the commission to issue licenses to conduct sports wagering pursuant to KRS 230.811 and KRS 230.814 in a consistent and systematic way.

(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 regulation.

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation affects applicants for a service provider license for sports wagering 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: Applicants for a service provider license for sports wagering will be required to file initial and renewal applications and pay corresponding fees to obtain and maintain a service provider license. Service providers must also maintain suitability for licensure.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Applicants for a service provider license are assessed a fee of \$50,000. Applicants seeking to renew a sports wagering license are assessed a fee of \$10,000.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance, service providers will be permitted to contract with licensed racing associations to conduct sports wagering in Kentucky.

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

(a) Initially: It is estimated that the commission will spend approximately \$2.4 million to implement sports wagering in Kentucky in the first year.

(b) On a continuing basis: It is further estimated that the commission will spend approximately \$1.2 million annually to continue regulating sports wagering in Kentucky on a yearly basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The funding to implement and enforce sports wagering in Kentucky will come from the sports wagering administrative fund, as established in KRS 230.817.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: This regulation establishes licensure fees for initial and renewal applicants for service provider licenses.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This regulation establishes licensure fees for initial and renewal applicants for service provider licenses.

(9) TIERING: Is tiering applied? Tiering was not applied, because this amended regulation will apply to all similarly-situated entities in an equal manner.

#### FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Horse Racing Commission 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 230.260, 230.361, 230.811, and 230.814.

(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 licensure of racing associations will not generate additional revenue for state or local government for the first year. It is estimated that the licensure of sports wagering facilities will generate approximately \$5 million for the Sports Wagering Administration Fund for the first year. It is anticipated that sports wagers will generate additional tax revenue 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? The licensure of racing associations will not generate additional revenue for state or local government for subsequent years. It is estimated that the licensure of sports wagering facilities will generate approximately \$500,000 in renewal fees per year for the Sports Wagering Administration Fund for subsequent years. As above, it is anticipated that sports wagers will generate additional tax revenue during subsequent years.

(c) How much will it cost to administer this program for the first year? It is estimated that the commission will spend approximately \$2.4 million in the first year to implement sports wagering in Kentucky.

(d) How much will it cost to administer this program for subsequent years? It is further estimated that the commission will spend approximately \$1.2 million annually to continue regulating sports wagering in Kentucky 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 (+/-): Any revenue increase will be dependent on the number of initial license applicants and renewal applicants. It is estimated that revenues will be increased by approximately \$5 million during the first year and \$500,000 during subsequent years. Revenues will also be increased by sports wagering taxes. The exact amount cannot be determined at this date, as it will depend on the number and type of wagers and the location of those wagers (i.e., online or in a retail location).

Expenditures (+/-): Any revenue increase will be dependent on the number of initial license applicants and renewal applicants. It is estimated that expenditures will increase by \$2.4 million during the first year and \$1.2 million during subsequent years.

Other Explanation: N/A

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

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

(c) How much will it cost the regulated entities for the first year? Service providers seeking an initial license to conduct sports wagering will pay an initial fee of \$50,000.

(d) How much will it cost the regulated entities for subsequent years? Service providers seeking to renew a license to conduct sports wagering will pay a renewal fee of \$10,000.

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

Cost Savings (+/-): \$0.00

Expenditures (+/-): Please see the answers to (c) and (d) above.

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 will have a major economic impact. Service providers seeking a license to conduct sports wagering will pay an initial fee of \$50,000 and/or a renewal fee of \$10,000. It is estimated that the commission will spend approximately \$2.4 million to implement sports wagering in Kentucky in the first year. It is further estimated that the commission will spend approximately \$1.2 million annually to continue regulating sports wagering in Kentucky in subsequent years. It is estimated that revenues will be increased by approximately \$5 million during the first year and \$500,000 during subsequent years. This estimate does not include tax revenue obtained from sports wagers, which cannot be estimated at this time.

#### PUBLIC PROTECTION CABINET Kentucky Horse Racing Commission (New Administrative Regulation)

##### 809 KAR 1:003. Occupational licenses.

RELATES TO: KRS Chapter 230

STATUTORY AUTHORITY: 230.260(9), 230.310(2)

NECESSITY, FUNCTION AND CONFORMITY: KRS 230.260(16) requires the commission to promulgate administrative regulations to establish standards for the conduct of sports wagering. KRS 230.310(2) requires the commission to license applicants for occupations related to sports wagering, particularly those who have the capacity to affect the outcome of sports wagering and their supervisors. This administrative regulation establishes occupational licensing application procedures and requirements for individuals involved in the conduct and management of sports wagering in the Commonwealth.

##### Section 1. Definitions.

(1) "Annual license" means the occupational license issued by the commission after a thorough review of an application, valid for the calendar year for which it is applied.

(2) "Applicant" means a person that applies for an occupational license.

(3) "Background check" means a review of an applicant's

criminal, financial, and personal history conducted by the commission.

(4) "Critical component" means any sub-system for which failure or compromise can lead to loss of player entitlements, government revenue or unauthorized access to data used for generating reports for the regulatory body.

(5) "Fees" mean the administrative charges levied by the commission for the processing, issuance, and renewal of occupational licenses.

(6) "Information technology professional license" means a category of occupational license, which is required for all individuals who are responsible for managing, maintaining, developing, and securing the digital and technical assets and systems of an Operator or Service Provider.

(7) "Key employee license" means a category of occupational license, which is required for all significant employees working for an Operator or a Service Provider who have substantial decision-making power.

(8) "Licensee" means any individual or entity that has been granted an occupational license by the commission.

(9) "Occupational license" means the categories of licenses established by the commission for participants in sports wagering pursuant to KRS 230.210.

(10) "Race and sportsbook employee license" means a category of occupational license, which is required for all individuals listed in Section 6 of this administrative regulation.

(11) "Temporary license" means a provisional license granted by the commission during the process of evaluating an application for a permanent license.

#### Section 2. General Requirements for Applications.

(1) Eligibility: Any individual or entity desiring to participate professionally in sports wagering activities in the Commonwealth shall apply to the commission for an occupational license as categorized in Section 4 of this administrative regulation. This type of license shall be required for certain persons working in a licensed facility for sports wagering, supervisors of individuals who can influence the outcome of sports wagering, specific individuals who have the capability to affect the outcome of sports wagering through the deployment of code and other persons required under this KAR Title 809.

(2) Submission timeframe: Applications for licenses shall be submitted annually. Licenses granted shall remain active only for the calendar year for which they have been applied.

(3) Legal compliance: All applicants shall demonstrate compliance with all laws and regulations regulating sports wagering in Kentucky and any other regulatory, state, federal, or taxing authority.

(4) Lack of material misrepresentation: All information provided on the application form shall be accurate and complete. Material misrepresentation on the application may result in immediate suspension, revocation, denial of the license, or imposition of fines by the commission.

(5) Minimum age: The minimum age requirement for an occupational license in sports wagering shall be eighteen (18) years.

(6) Transparency in entities: If an entity consisting of multiple individuals applies for a license, the entity shall fully disclose the identities and the type of ownership held by all controlling individuals. This information shall include the degree and type of ownership held by each individual in the entity.

(7) Categories of licenses: Different roles within the sports wagering industry may require distinct categories of licenses as set forth in Section 5 of this administrative regulation.

#### Section 3. Application Fees.

(1) All required application fees described under this section shall be submitted to the commission in the form of a certified check, ACH payment, or cashier's check made payable to the commission, or other form as prescribed by the commission.

(2) The following fees shall accompany applications for the following categories of occupational license:

- (a) Race and Sportsbook Employee License: \$150;
- (b) Information Services Provider: \$5,000; and
- (c) Key Employee: \$1,500.

(3) All occupational licenses shall be renewed annually. The renewal fee for each category shall be the same as the initial licensing fee.

(4) If additional costs become necessary to investigate an applicant for a license, the commission may assess an additional investigation fee at its discretion. Failure to submit an additional requested payment shall result in suspension of the processing of the license application and may result in denial of the license. The investigative fee shall be based on actual costs. If any portion of the investigative fee remains after the investigation is concluded, the remaining portion shall be returned to the applicant or licensee.

(5) Except as noted in subsection (4) of this section, all fees are non-refundable, regardless of whether the application is approved, denied, withdrawn, or if the license is surrendered or revoked.

#### Section 4. Applications.

(1) Application procedures shall be as follows:

(a) An application shall be deemed filed when the commission has received the completed application forms, including the information that the commission has required.

(b) Applicants shall submit the application online at <https://khrc.ky.gov/> or in hard copy to the commission's office in Lexington, Kentucky.

(c) An applicant shall be under a continuing duty to disclose any changes in the information submitted to the commission.

(d) Any change in information required for licensing shall be submitted in writing and filed at the commission's office in Lexington, Kentucky, within thirty (30) days of the change, unless it is information listed in (e) of this section.

(e) Alternatively, any change in information may be reported online via a method approved by the commission.

(f) The applicant shall report changes in information in writing within five (5) days of the occurrence for these items:

- 1. Criminal charges;
- 2. Criminal convictions;
- 3. License denials and license suspensions of ten (10) days or more;
- 4. License revocations or fines of \$500 or more in other jurisdictions;
- 5. Racing related disciplinary charges pending in other jurisdictions; and
- 6. Withdrawal, with or without prejudice, of a license application by the licensee in any jurisdiction.

(2) An applicant for a racing and sportsbook employee license or an information services license shall include with its application an agreement or statement of intent indicating that a licensed operator or service provider shall utilize the applicant for the provision of goods and services. For 2023, the agreement or statement of intent supporting the applicant's claims may come from a person applying for an operator or service provider license.

(3) The application forms shall be accompanied and supplemented by such documents and information as may be specified or required by the commission. Failure to supply the information requested within five (5) days after the request has been made by the commission shall constitute grounds for delaying consideration of the application.

(4) Renewal applications for licenses may be submitted and may be renewed upon the filing and approval of an application for renewal. Renewal applications for occupational licenses shall be received by the commission sixty (60) days before the expiration of the current license. Renewal applicants who fail to submit their completed applications when due shall not be considered to have made a timely and sufficient application for renewal.

#### Section 5. Temporary Licenses.

(1) The commission may issue a temporary license in accordance with KRS 230.805.

(2) The commission may issue the applicant a temporary license if the application and a criminal history check completed by the commission reveals that the applicant:

- (a) has not been charged or convicted of a felony under state or federal law;
- (b) has not been charged or convicted of a misdemeanor related to gaming; and

(c) otherwise meets the statutory criteria set forth in KRS Chapter 230.

(3) A temporary license issued under this section shall include, at a minimum, the following:

- (a) The applicant's name and business address;
- (b) A temporary license number assigned by the commission;
- (c) Signature of the executive director, the commission chair, or their designee;
- (d) The date the temporary license was issued;
- (e) The date the temporary license will expire; and
- (f) A reference to any conditions placed on the temporary license.

(4) If the commission grants an annual license to a temporary license holder, the temporary license shall automatically expire upon the start date of the annual license.

(5) A temporary license shall not be transferred without prior approval by the commission.

(6) Failure to advise the commission that the applicant has failed to begin or has ceased providing a licensee with goods and services shall be grounds for the commission to withdraw the temporary license and deny licensure in the future.

#### Section 6. Categories of Occupational Licenses.

(1) Race and sportsbook employee licenses

(a) Race and sportsbook employee license holders shall include the following categories of people, except as otherwise provided in this section:

1. Individuals who work directly in a licensed facility for sports wagering regarding the sports wagering aspect of the facility, including:

- a. Sports wagering customer service representatives;
- b. Sports wagering ticket writers;
- c. Sports wagering supervisors;
- d. Sports wagering security personnel; and
- e. Sports wagering facility management;

2. Individuals directly supervising other employees in any licensed Kentucky sports wagering business who have the capability of affecting the outcome of sports wagering;

3. Employees in any licensed Kentucky sports wagering business who have the capability to affect the outcome of sports wagering through the deployment of code to production for any critical component of a sports wagering system; and

4. Employees whose duties are performed in the licensed facility for sports wagering that involve money obtained as a result of sports wagering, including the handling of tickets, money, or performing accounting and auditing functions.

(b) The following people shall hold a race and sportsbook employee license, even if they do not work directly in a licensed facility for sports wagering regarding the sports wagering aspect of the facility:

- 1. Audit manager;
- 2. Chief of security;
- 3. Chief of surveillance;
- 4. Chief financial officer or controller;
- 5. General manager;
- 6. Support operations manager;
- 7. Change management employees; and
- 8. Compliance employee supervisors;

9. Information technology professionals responsible for maintaining the technology infrastructure of the sports wagering system; and

10. Any other employee of an operator or service provider whose duties:

- a. Are performed in the licensed facility for sports wagering and whose duties affect sports wagering;
- b. Affect the flow of money obtained as a direct result of sports wagering operations; or
- c. Include accounting and auditing functions and whose duties relate to money obtained as a result of sports wagering;

(2) Information services licenses. All business entities that provide information services to sports wagering licensees in Kentucky shall obtain an information services license, such as:

- (a) Sports Wagering Oddsmakers or Traders;
- (b) Sports Wagering Data Source;

(c) Sports Wagering Risk Management;

(d) Sports Wagering Player Account Management; and

(e) Sports Wagering Platform Providers, including geolocation technology, Know Your Customer, or Sports Wagering Equipment Manufacturer.

(3) Key employee licenses.

(a) Each person applying for a license under this administrative regulation that is not an individual shall designate an individual with decision-making authority for its day-to-day operations to apply for a key employee license.

(b) Additionally, a licensed sports wagering business operating in Kentucky shall designate a supervisor for the following areas to apply for a key employee license:

- 1. Compliance;
- 2. Trading;
- 3. Customer Service;
- 4. Finance and Audit;
- 5. Risk and Payments; and
- 6. Information Technology.

#### Section 7. Waiver for Race and Sports Book Employee License or Key Employee License.

(1) At any time, an applicant shall submit a written request for a waiver to be exempt from licensure to prevent dual licensing for one individual across multiple disciplines. This waiver shall be submitted to the commission's office in Lexington, Kentucky on form Race & Sportsbook and Key Employee License Waiver Form, KHRC 01-003-04 or online at <http://khrc.ky.gov>.

(2) The written request for waiver shall include at least the following information:

- (a) The name and contact information of the waiver applicant;
- (b) All gaming licenses issued to the waiver applicant;
- (c) All horse racing licenses issued to the waiver applicant; and
- (d) The waiver applicant's current position and job description.

(3) Upon receipt of a waiver request, the commission may grant or deny a waiver, upon consideration of at least the following factors:

- (a) The nature of the employee's duties; and
- (b) The best interests and integrity of horse racing, pari-mutuel wagering, and sports wagering.

#### Section 8. Background Checks. After an applicant files a license application, the commission may:

(1) Investigate the criminal background, employment history, and gaming history record of the applicant;

(2) Verify information provided by the applicant; or

(3) Engage in research and interviews to determine the applicant's character and qualifications.

#### Section 9. License Denial, Revocation, or Suspension.

(1) The commission or its designee shall deny, suspend, or revoke a license, or otherwise penalize in accordance with KRS 230.310, 230.260, or 230.814 a sports wagering licensee, for any of the following reasons:

- (a) Lack of suitability as set forth in KRS Chapter 230;
- (b) Adverse effect on public interest, failure to uphold the integrity of the regulatory activities, or engagement in conduct that is otherwise against the best interest of sports wagering, pari-mutuel wagering, or horse racing;
- (c) Any criminal conviction, pending charges, or violation of regulatory laws;
- (d) Previous license denial, suspension, or revocation by any authority of any state or federal jurisdiction;
- (e) Material misrepresentation, falsification, or omission of information in a license application;
- (f) Violation or attempt to manipulate outcomes of regulated activities, such as sports wagering, pari-mutuel wager, or horse racing, in any jurisdiction;
- (g) Financial irresponsibility or engagement in actions against the best interest of the regulated activities;
- (h) Failure to comply with rulings, orders, or requirements of the commission, such as failure to cooperate with a commission investigation;
- (i) Misconduct or disorderly behavior on regulated grounds; or
- (j) Possession of prohibited substances or devices, or

employment of unlicensed personnel.

(2) A license suspension, revocation, or denial shall be reported in writing to the applicant by the commission or its designee.

(3) Licensees or applicants may appeal the suspension, revocation or denial accordance with KRS Chapters 13B and 230.

Section 10. Reciprocity. If a person's license has been denied, suspended, or revoked in another jurisdiction, the commission may require reinstatement of the license in that jurisdiction before a license is granted by the commission.

Section 11. Changes in Application Information.

(1) Any changes in the information provided by the licensee or applicant required for obtaining or maintaining a license shall be promptly reported to the commission in writing.

(2) Changes in information that are not detailed in subsection (2) shall be reported to the commission within thirty (30) days of the change occurring.

(3) The licensee or applicant shall report the following changes in information to the commission in writing within five (5) days:

(a) The licensee or applicant is charged with criminal activity related to sports wagering;

(b) The licensee or applicant is convicted of a crime related to sports wagering;

(c) The licensee or applicant's sports wagering license is denied or suspended for ten (10) days or more in any jurisdiction; and

(d) The licensee or applicant's sports wagering license is revoked or they are fined \$500 or more in other jurisdictions;

Section 12. License Identification and Display.

(1) For each issued license, the commission shall provide an identification badge to individuals or a certificate of licensure to entities.

(2) All individuals working in a licensed facility for sports wagering shall wear an identification badge.

(3) Operators or service providers shall disable the work badge of any person whose license has been revoked or suspended.

(4) Each identification badge or license shall contain essential details, including, but not limited to, the licensee's name, license number, date of issuance, and expiration date.

(5) Individual licensees shall be required to wear their identification badges visibly at all times during their working hours in any licensed facility for sports wagering.

(6) In cases where a licensee fails to display their badge or license as required, the commission may impose penalties, which may include fines, suspension, or revocation of the license.

(7) Loss, theft, or damage of an identification badge or license shall be reported to the commission immediately. The commission shall provide a process for obtaining replacement badges or licenses under these circumstances.

(8) Any attempt to falsify, alter, or misuse an identification badge or License shall be considered a severe violation and may result in immediate revocation of the license and potential legal action.

Section 13. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Information Services License Application Form", KHRC 01-003-01, 06/2023;

(b) "Multi-Jurisdictional Key Employee License Form", KHRC 01-003-02, 06/2023;

(c) "Race and Sportsbook Employee Application Form", KHRC 01-003-03, 06/2023; and

(d) "Race & Sportsbook and Key Employee License Waiver Form", KHRC 01-003-04, 06/2023.

(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 may also be obtained at the commission's Web site at <http://khrc.ky.gov>.

JONATHAN RABINOWITZ, Chair

RAY PERRY, Secretary

APPROVED BY AGENCY: July 10, 2023

FILED WITH LRC: July 10, 2023 at 4:00 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 22, 2023 at 9:00 a.m. at the Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511. 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 September 30, 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: Jennifer Wolsing, General Counsel, Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859) 246-2039, email [jennifer.wolsing@ky.gov](mailto:jennifer.wolsing@ky.gov).

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jennifer Wolsing

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes the procedures and requirements for applying for occupational licenses related to sports wagering in the Commonwealth of Kentucky.

(b) The necessity of this administrative regulation: This regulation is necessary to establish clear requirements and guidelines concerning the process by which applications for occupational licenses related to sports wagering in Kentucky are reviewed and approved.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.260(16) requires the commission to promulgate administrative regulations to establish standards for the conduct of sports wagering. KRS 230.310(2) requires the commission to license applicants for occupations related to sports wagering. This regulation sets forth the procedures and requirements for applying for an occupational license.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation enables the commission to issue occupational licenses to conduct sports wagering pursuant to KRS 230.310(2) in a consistent and systematic way.

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation directly affects individuals who will apply to be licensed to engage in certain occupations to conduct sports wagering in the Commonwealth. Since this is a new regulation creating new types of licenses, it is unknown how many individuals will be impacted by this regulation. This regulation may also affect licensed racing associations that offer sports wagering and choose to hire occupational licensees. There are currently nine (9) licensed tracks operating in the Commonwealth.

(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 a license to conduct sports wagering under this regulation will be required to file initial and renewal applications and corresponding fees to obtain and maintain a license to conduct sports wagering in the Commonwealth.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Applicants for a new race and sportsbook employee license are assessed a fee of \$150. Applicants for an information services provider license are assessed a fee of \$5,000. Applicants for a key employee license are assessed a \$1,500 fee. The same fees apply to renew these licenses.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance with the occupational license application requirements, licensees will be allowed to work in certain occupations in the sports wagering industry.

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

(a) Initially: It is estimated that the commission will spend approximately \$2.4 million to implement sports wagering in Kentucky in the first year.

(b) On a continuing basis: It is further estimated that the commission will spend approximately \$1.2 million annually to continue regulating sports wagering in Kentucky on a yearly basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No additional funding is required for the implementation and enforcement of the sports wagering occupational licensure regulation. The funding to implement and enforce sports wagering in Kentucky will come from the sports wagering administrative fund, as established in KRS 230.817.

(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 establishment of fees will be necessary to implement this regulation, because the regulation establishes licensure fees for initial and renewal applicants for sports wagering occupational licenses.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This regulation establishes licensure fees for initial and renewal applicants for sports wagering occupational licenses.

(9) TIERING: Is tiering applied? Tiering was not applied because this regulation will apply to all similarly-situated entities in an equal manner.

#### FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Horse Racing Commission and individuals applying for sports wagering occupational licenses 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 230.260(9) and KRS 230.310(2).

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? It is unknown how much revenue this occupational licensure regulation will generate for state government during the first year, as it is unknown how many people will apply for occupational licenses.

(b) How much revenue will this administrative regulation

generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? It is unknown how much revenue this occupational licensure regulation will generate for state government during subsequent years, as it is unknown how many people will apply for occupational licenses.

(c) How much will it cost to administer this program for the first year? It is estimated that the commission will spend approximately \$2.4 million in the first year to implement sports wagering in Kentucky. (d) How much will it cost to administer this program for subsequent years? It is further estimated that the commission will spend approximately \$1.2 million annually to continue regulating sports wagering in Kentucky 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 (+/-): Any revenue will be dependent on the number of initial license applicants and renewal applicants, which is unknown at this time.

Expenditures (+/-): Any expenditures will be dependent on the number of initial license applicants and renewal applicants, which is unknown at this time. It is estimated that expenditures will increase by \$2.4 million during the first year and \$1.2 million during subsequent years.

Other Explanation: N/A

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

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

(c) How much will it cost the regulated entities for the first year? Applicants for a new race and sportsbook employee license are assessed a fee of \$150. Applicants for an information services provider license are assessed a fee of \$5,000. Applicants for a key employee license are assessed a \$1,500 fee.

(d) How much will it cost the regulated entities for subsequent years? The cost of renewing these licenses is the same cost as the initial application fee.

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 (+/-): Please see answers to (c) and (d) above.

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)]. It is unknown whether this regulation will have a major economic impact. It is estimated that applicants seeking a race and sportsbook employee license will pay an initial license fee of \$150 and another \$150 each year they seek to renew their license. Applicants seeking licensure as an information services provider will pay an initial fee of \$5,000 and a renewal fee of \$5,000 each year they seek renewal. It is estimated that applicants seeking licensure as a key employee will pay an application fee of \$1,500 for an initial license and a renewal fee of \$1,500 each year they seek to renew the license. It is unknown how many people will apply for occupational licenses in the Commonwealth.

**PUBLIC PROTECTION CABINET  
Kentucky Horse Racing Commission  
(New Administrative Regulation)**

**809 KAR 10:001. General provisions.**

RELATES TO: KRS Chapter 230

STATUTORY AUTHORITY: KRS 230.260(16), 230.210

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.260(16) requires the commission to promulgate administrative regulations to establish standards for the conduct of sports wagering. This administrative regulation establishes definitions of various terms used throughout the commission's sports wagering administrative regulations.

**Section 1. Definitions.**

(1) "Abnormal wagering activity" means wagering activity exhibited by one (1) or more patrons and considered by a licensee to be an indicator of suspicious or illegal wagering activity.

(2) "Account holder" means an individual for whom the licensee has opened a sports wagering account.

(3) "Act" means 2023 Ky. Acts Ch. 147, of the Kentucky Revised Statutes, the Kentucky Sports Wagering Act of 2023.

(4) "Adjusted gross revenue" is defined by KRS 138.552.

(5) "Affiliate" means a person that, owns, controls, manages, or is operationally interdependent with a licensee.

(6) "Amateur youth sporting event" is defined by KRS 230.210.

(7) "Applicant" means a person that applies with the racing commission to be an authorized licensee.

(8) "Cancelled wager" means a sports wager that was valid at the time it was made but has since been invalidated in a manner acceptable by the commission due to an event or action that prevents its completion.

(9) "Card" means the list of sporting events and types of wager from which a patron can make selections for a given pool.

(10) "Cash" means U.S. currency.

(11) "Cash equivalent" means an asset convertible to cash for use in connection with authorized sports wagering, as follows:

(a) Traveler's checks;

(b) Foreign currency and coin;

(c) Certified checks, cashier's checks, and money orders;

(d) Personal checks and drafts;

(e) Digital, crypto, and virtual currencies;

(f) Online and mobile payment systems that support online money transfers; and

(g) Electronic devices with prepaid access, as defined by 31 C.F.R. Section 1010.100(ww).

(12) "Confidential information" means:

(a) The amount of money credited to, debited from, withdrawn from, or present in any particular sports wagering account;

(b) The amount of money wagered by a particular patron on any event or series of events;

(c) The unique sports wagering account ID or username and authentication credentials that identify the particular account holder;

(d) The identities of particular sporting events or types of wagers on which the patron is wagering or has wagered; and

(e) Unless otherwise authorized by the patron, the name, address, and other information in possession of the licensee that would identify the patron to anyone other than the racing commission or the licensee.

(13) "Communications technology" means the methods used and the components employed to facilitate the transmission of information, such as electronic communications, and transmission and reception systems based on wire, cable, radio, microwave, light, optics, or computer data networks or any similar electronic agent, such as the internet and intranets.

(14) "Critical employee" means any employee whose duties directly impact the integrity of sports wagering in the Commonwealth, including:

(a) An individual who has the capability of affecting the outcome of sports wagering through deployment of code to production for any critical components of a sports wagering system;

(b) An individual who can deploy code to production and directly supervises individuals who have the capability of affecting the

outcome of sports wagering in Kentucky through deployment of code to production for other than read-only or the equivalent access to any critical components of a sports wagering system;

(c) An individual who directly manages a licensee or who directly supervises an individual who directly manages a licensee; or

(d) An individual who has the capability to directly affect the outcome of a sports wager or a payout to a patron.

(15) "Data source" means a supplier that sells league or event data, participant, or team statistics necessary to enable sports wagering.

(16) "Department" means Department of Revenue.

(17) "Electronic sports, e-sports, and competitive video game events" or "Electronic sporting events" means leagues, competitive circuits, tournaments, or similar competitions where individuals or teams play video games, typically for spectators, either in-person or online, for the purpose of prizes, money, or entertainment.

(18) "Electronic sporting event operator" means a person or entity which sanctions, regulates, or organizes an electronic sporting event.

(19) "Geofence" is defined by KRS 230.210.

(20) "GLI-CMP Guide" means the Gaming Laboratories International, GLI-CMP: Change Management Program Guide, Version 1.0, Published May 6, 2020.

(21) "GLI-33 Standards" means the Gaming Laboratories International, GLI-33: Standards for Event Wagering Systems, Version. 1.1, and its appendices, Revised May 14, 2019.

(22) "Integrity monitoring" means the monitoring of sports wagering to identify abnormal or suspicious wagering activities from a match-fixing and sporting corruption standpoint.

(23) "Internal controls," "minimum internal control standards," or "control standards" means a system of internal procedures, as well as administrative and accounting controls related to the integrity of sports wagering. This type of system shall include wagering rules and shall be required by the racing commission as a condition to sports wagering, pursuant to the license conditions issued by the racing commission pursuant to KRS 230.290(3).

(24) "Layoff wager" means a wager placed by a licensee with another licensee for the purpose of offsetting sports wagers.

(25) "Licensed premises" is defined in KRS 230.210.

(26) "Licensed facility for sports wagering" is defined in KRS 230.210

(27) "Licensee" means the holder of a sports wagering operator's license or a service provider license, as applicable.

(28) "License holder" means any person who holds a sports wagering operator's license, a service provider license, or an occupational license.

(29) "Mobile sports wagering" means the conduct of sports wagering through or by means of Web sites, mobile applications, or other off-site technology approved by the commission.

(30) "Multi-factor authentication" means a type of authentication which uses two (2) or more of the following to verify a person's identity:

(a) Information known only to the person (e.g., a password, pattern or answers to challenge questions);

(b) An item possessed by a person (e.g., an electronic token, physical token or an identification card); or

(c) A person's biometric data (e.g., fingerprints, facial or voice recognition).

(31) "Operator licensee" or "sports wagering operator" or means a Kentucky racing association licensed to conduct sports wagering pursuant to KRS 230.805.

(32) "Person" is defined by KRS 230.210.

(33) "Personal identifying information" means any sensitive information that could potentially be used to identify a particular patron, such as a legal name, date of birth, place of birth, social security number (or equivalent government identification number), driver's license number, passport number, residential address, phone number, email address, debit instrument number, credit card number, or bank account number.

(34) "Patron" means a person who wagers on sporting events.

(35) "Pool" means an offering where patrons may make selections of outcomes on a set number of sporting events and types of wager on a card in order to enter for a chance to win all or a portion of the prize pool.



(36) "Prize pool" means the prizing available for an individual tournament, contest, or pool.

(37) "Prohibited patron" means:

(a) Any underage person;

(b) Any individual wagering while not in the authorized geographic boundaries within the Commonwealth of Kentucky;

(c) Any individual wagering on behalf of another;

(d) Any restricted patron wagering in violation of their restrictions;

(e) Any voluntarily or involuntarily excluded person; or

(f) Any individual wagering in violation of commonwealth, local, or federal law.

(38) "Race and sports book" means the area designated by the licensee and approved by the commission that is utilized as the primary location for displaying sporting events and offering sports wagering on the licensed premises.

(39) "Racing commission" is defined by KRS 230.210.

(40) "Rake" means the fee that is deducted by a licensee from entry fees paid by patrons who participate in a tournament, contest, or pool.

(41) "Rake adjustment" means an adjustment made by a licensee to account for any shortfall in connection with a tournament, contest, or pool.

(42) "Restricted patron" means any patron restricted by KRS 230.820 or 230.823 and close family members of the persons included in KRS 230.823, who are defined as parents, children, grandparents, and siblings.

(43) "Self-exclusion list" means a list of individuals who voluntarily excluded themselves from establishing or maintaining a sports wagering account with a licensee.

(44) "Sensitive information" means personal identifying information, transactional wagering data, authentication credentials, and other data that shall be handled in a secure manner such as PINs and passwords, and secure seeds and keys used in encryption.

(45) "Service provider" is defined by KRS 230.210.

(46) "Shared liquidity pool" means a tournament, contest, or pool offering in Kentucky and at least one other jurisdiction where patrons may make selections of outcomes on a set number of sporting events and types of wager on a card in order to enter for a chance to win all or a portion of the prize pool.

(47) "Sporting event" is defined by KRS 230.210.

(48) "Sports governing body" is defined by KRS 230.210.

(49) "Sports wagering" is defined by KRS 230.210.

(50) "Sports wagering account" or "account" means an account established by an account holder for use in sports wagering with a specific identifiable record of deposits, wagers, and withdrawals.

(51) "Sports wagering device" is defined by KRS 230.210.

(52) "Sports wagering kiosk" means a sports wagering device within a licensed facility for sports wagering that, at a minimum, may be used for the submission of wagers placed by a patron directly and may be used for redemption of applicable awards or prizes.

(53) "Sports wagering service provider" or "service provider" is defined by KRS 230.210.

(54) "Sports wagering system" means the hardware, software, firmware, communications technology, other equipment, as well as procedures implemented in order to allow patron participation in sports wagering, and, if supported, the corresponding equipment related to the display of the wager outcomes, and other similar information necessary to facilitate patron participation.

(55) "Sports wagering ticket" or "ticket" means a printed record, or digital representation thereof, issued by a sports wagering system that contains information pertaining to a sports wager.

(56) "Sports wagering voucher" or "voucher" means a printed record, or digital representation thereof, issued by a sports wagering system that may be used to fund a sports wager or may be redeemable for cash.

(57) "Sufficient clarity" means the capacity of a surveillance system to record images at a minimum of twenty (20) frames per second or equivalent recording speed, or other recording speed approved by the commission, and at a resolution determined by the racing commission to clearly identify the intended activity, person, object, or location.

(58) "Surveillance operation room(s)" means the secured

area(s) where surveillance takes place or where active surveillance equipment is located.

(59) "Surveillance system" means a system of video cameras, monitors, recorders, video printers, switches, selectors, and other equipment used for surveillance.

(60) "Suspicious or illegal wagering activity" means abnormal wagering activity that cannot be explained and is indicative of any prohibited activity or conduct that may corrupt the outcome of an event, including the following:

(a) Match-fixing;

(b) The manipulation of an event;

(c) Misuse of inside information;

(d) A potential breach of a sports governing body's or equivalent's internal rules or code of conduct pertaining to sports wagering; or

(e) Any other conduct that corrupts the outcome of an event.

(61) "Supplier" means a person who provides services, goods, software, or other components necessary for the creation of sports wagering markets and determination of sports wager outcomes, to any licensee involved in the acceptance of sports wagers, such as: providers of data feeds and odds services, internet platform providers, risk management providers, integrity monitoring providers.

(62) "Ticket writer station" means a sports wagering device that at a minimum will be used by a ticket writer for the execution or formalization of wagers placed on behalf of a patron.

(63) "Type of wager" means the form of a wager offered by a licensee, such as single game bets, teaser bets, parlays, over-under bets, money line bets, pools, in-game wagering, in-play bets, proposition bets, and straight bets.

(64) "Underage person" means any person under eighteen (18) years of age.

(65) "Void wager" or "voided wager" means a sports wager that was not valid at the time it was placed or a sports wager that was valid at the time it was placed but has since become invalid as defined in 809 KAR 10:002, Section 8.

(66) "Voluntarily excluded person" means any individual whose name is included, at their own request, on a self-exclusion list.

(67) "Wager" or "sports wager" means a sum of money or representation of value that is risked on an occurrence for which the outcome is uncertain.

(68) "Wagering windows" means teller windows dedicated to the receipt and processing of sports wagers and pari-mutuel wagers on horse racing in the race and sports book location of a licensed facility for sports wagering.

(69) "Website or mobile application" means a website or application on a mobile phone or other device through which an individual is able to place a sports wager.

(70) "Winnings" means the total cash value of all property or sums, such as the currency or instruments of monetary value paid to a patron by a licensee as a direct result of a winning sports wager.

## Section 2. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Gaming Laboratories International, GLI-33: Standards for Event Wagering Systems, Version 1.1, and its appendices, May 14, 2019 Revision Date", KHRC 10-001-1, 06/2023; and

(b) "Gaming Laboratories International, GLI-CMP: Change Management Program Guide, Version 1.0, Published May 6, 2020", KHRC 10-001-02, 06/2023.

(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 may also be obtained at the commission's Web site at <http://khrc.ky.gov>.

JONATHAN RABINOWITZ, Chair

RAY PERRY, Secretary

APPROVED BY AGENCY: July 10, 2023

FILED WITH LRC: July 10, 2023 at 4:00 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 22, 2023, at 9:00 a.m. at the Kentucky Horse Racing Commission,

4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511. 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 September 30, 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: Jennifer Wolsing, General Counsel, Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859) 246-2039, email jennifer.wolsing@ky.gov.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jennifer Wolsing

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes definitions for terms used in 809 KAR Chapter 10.

(b) The necessity of this administrative regulation: This regulation is necessary to ensure that various terms in 809 KAR Chapter 10 are properly and precisely defined.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.260 requires the commission to promulgate administrative regulations to establish standards for the conduct of sports wagering. This regulation sets forth the defined terms that are used in the regulations in 809 KAR Chapter 10.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation fulfills the commission's statutory mandate to prescribe the conditions under which sports wagering is conducted in the Commonwealth by defining terms used in 809 KAR Chapter 10.

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation affects the licensed tracks that apply for and receive a license to conduct sports wagering in the Commonwealth. There are currently nine (9) licensed tracks operating in the Commonwealth. Each track is allowed to contract with up to three (3) service providers. Therefore, up to 27 service providers may be affected by the definitions in this regulation. Additionally, there are an unknown number of entities and persons who may apply for and receive an occupational license for sports wagering, who may also be affected by the definitions in 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: This amendment establishes definitions only. The regulated entities do not have to take actions to comply with definitions.

(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 costs for compliance with this definitional regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This amendment establishes definitions only. The regulated entities do not have to take actions to comply with definitions.

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

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

(b) On a continuing basis: There will be no continuing cost 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: No funding is necessary to implement and enforce this administrative regulation.

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

(9) TIERING: Is tiering applied? Tiering is not applied, because this administrative regulation will apply to all similarly situated entities in an equal manner.

#### FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Horse Racing Commission 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 230.260(16) authorizes the action taken by this regulation.

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

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

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

(c) How much will it cost to administer this program for the first year? It is estimated that the commission will spend approximately \$2.4 million in the first year to implement sports wagering in Kentucky.

(d) How much will it cost to administer this program for subsequent years? It is further estimated that the commission will spend approximately \$1.2 million annually to continue regulating sports wagering in Kentucky in subsequent years.

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

Revenues (+/-): Neutral.

Expenditures (+/-): Neutral.

Other Explanation: 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 definitional regulation will not generate any cost savings for regulated entities for the first year.

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

(c) How much will it cost the regulated entities for the first year? There will be no cost to the regulated entities for the first year.

(d) How much will it cost the regulated entities for subsequent years? There will be no cost to 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 (+/-): Neutral.

Expenditures (+/-): Neutral.

Other Explanation: N/A

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] This regulation is not anticipated to have a major economic impact on Kentucky for the reasons stated above.

**PUBLIC PROTECTION CABINET  
Kentucky Horse Racing Commission  
(New Administrative Regulation)**

**809 KAR 10:002. Standards for sports wagering.**

RELATES TO: KRS Chapter 230

STATUTORY AUTHORITY: KRS 230.260(16), 230.361, 230.808

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.260 requires the commission to "promulgate administrative regulations to establish standards for the conduct of sports wagering." KRS 230.361 states the "racing commission shall promulgate administrative regulations to establish a fully functioning sports wagering system...." KRS 230.808 lists the categories of sporting events that may be wagered upon and permits a sports governing body to submit a request to the commission to restrict, limit, or exclude a type, form, or category of sports wagering. This administrative regulation establishes standards for sports wagering in Kentucky, including authorized and prohibited sporting events and types of wagers and data sources for sports wagering

Section 1. Authorized and Prohibited Sporting Events and Types of Wagers.

(1) Sporting events that may be wagered upon include those listed in KRS 230.808.

(2) Of those events listed in KRS 230.808, only those categories of sporting events and their types of wager authorized by the racing commission in accordance with Section 2 of this administrative regulation and posted on the racing commission's Web site may be offered for sports wagering by a licensee.

(3) Notwithstanding any contrary provisions of this regulation, any wager which complies with the following criteria and does not involve any criteria listed in subsection (4) of this section is generally approved and does not need specific approval under Section 2 of this administrative regulation prior to being offered by a licensee:

(a) It is decided based on an outcome or outcomes determined because of a sporting event or sporting events sanctioned by a sports governing body or equivalent that is approved by the racing commission;

(b) It is based on statistical results that can be verified by a data source, box score, aggregation of box scores, or other statistical analysis;

(c) It is based on the performance of a single or group of rostered or otherwise registered participants; and

(d) It is based on the result of an outcome on the field of play.

(4) A licensee shall not offer sports wagering on:

(a) Any electronic sporting event that:

1. Is not sanctioned by an approved sports governing body or equivalent; or

2. Has not been approved by the racing commission pursuant to the regulations established in Section 2 of this administrative regulation;

(b) Any occurrence of injuries or penalties;

(c) Any outcome of replay reviews;

(d) Any disciplinary proceedings against a participant in a sporting event;

(e) Any amateur youth sporting events in which the majority of participants are under the age of eighteen (18) or are competing on behalf of or under the sponsorship of one or more public or private

preschools or public or private elementary, middle or junior high, or high schools;

(f) Any sporting event or type of wager in which the outcome has already been determined and is publicly known;

(g) Any dog or horse races; and

(h) Any categories of sporting event or type of wager until the sporting event or type of wager has been approved by the racing commission in accordance with Section 2 of this administrative regulation.

Section 2. Petition for a category of sporting event or type of wager except as provided in Section 1(3) of this administrative regulation, all types of wagers and categories of sporting events shall be reviewed and approved by the racing commission before a Licensee is permitted to offer the wager to the public. A licensee may petition the racing commission for approval of a new category of sporting event or type of wager.

(1) A proposed new sporting event or type of wager may be a variation of an authorized sporting event or type of wager, a composite of authorized sporting events or types of wager, or a new sporting event or type of wager.

(2) A petition for a proposed new sporting event or type of wager shall be in writing and shall include the following information or material as requested by the racing commission:

(a) The name(s) and address(es) of petitioner(s);

(b) The name of the sporting event or type of wager;

(c) Whether the sporting event or type of wager is a variation of an authorized sporting event or type of wager, a composite of authorized sporting events or types of wager, or a new sporting event or type of wager;

(d) The name of the licensee serving as a sponsor of the new sporting event or type of wager variation petition;

(e) A complete and detailed description of the sporting event or type of wager for which approval is sought, including:

1. A summary of the sporting event or type of wager and the manner in which sports wagers would be placed and winning sports wagers would be determined;

2. A draft of the proposed wagering rules, which includes a description of any technology that would be used to offer the sporting event or type of wager;

3. Any rules or voting procedures related to the sporting event or type of wager; and

4. Written attestation that the sporting event or type of wager meets the requirements of subsection (3) of this section;

(f) For the approval of an electronic sporting event, complete information about:

1. The proposed location(s) of the electronic sporting event;

2. The video game used for the electronic sporting event, including the key role of game publishers as creators of the underlying video game;

3. The electronic sporting event operator, whether the electronic sporting event operator is approved to host events by the video game publisher, and whether the electronic sporting event operator has any affiliation with the video game publisher; and

4. The manner in which the electronic sporting event is conducted by the electronic sporting event operator, including electronic sporting event rules; and

5. As required by the commission, certification from a third party, such as an electronic sporting event operator or game publisher certifies that the electronic sporting event meets all event integrity requirements of the racing commission;

(g) The name of the sports governing body or equivalent; and

(h) A description of the licensee's policies and procedures regarding event integrity.

(3) The type of wager being requested shall meet the following criteria before the request may be approved:

(a) The outcome can be verified;

(b) The outcome can be generated by a reliable and independent process;

(c) The sporting event generating the outcome is conducted in a manner that ensures sufficient integrity monitoring controls exist so the outcome can be trusted;

(d) The outcome is not likely to be affected by any sports wager placed; and

(e) The sporting event is conducted in conformity with applicable laws.

(4) The racing commission shall approve types of wagers and categories of sporting events in a reasonable time frame. The racing commission will consider the request, all provided materials and any relevant input from the sports governing body or equivalent, or the conductor of the sporting event, prior to authorizing a sporting event or type of wager.

(5) The racing commission may require an appropriate test or experimental period before granting final approval to a sporting event or type of wager. The racing commission may subject any technology that would be used to offer a sporting event or type of wager to such testing, investigation, and approval.

(6) The racing commission may grant, deny, limit, restrict, or condition a request made pursuant to this procedure for reasonable cause, in order to ensure the integrity of sports wagering in the commonwealth. The racing commission may issue an order revoking, suspending, or modifying any approval of a sporting event or type of wager granted under this procedure for reasonable cause.

(7) The racing commission shall notify all licensees of any additions, deletions, or changes regarding authorized sporting events and types of wager. Once a particular category of sporting event or type of wager is approved for its first use, it may be used on multiple events without further approval. The racing commission may issue general approval for licensees to offer wagers on enumerated categories of sporting events and types of wagers.

(8) The racing commission reserves the right to prohibit the acceptance of any sports wagers and may order the cancellation of sports wagers and require refunds on any sporting event or type of wager for which wagering would be contrary to the public policies of the Commonwealth.

(9) If it is determined that a Licensee has offered an unauthorized or prohibited sporting event or type of wager, the licensee shall immediately cancel and refund all sports wagers associated with the unauthorized or prohibited sporting event or type of wager. The licensee shall notify the racing commission promptly after cancelling and refunding the sports wagers. This notice shall include, without limitation, which sports wagers were cancelled or refunded and the reasons for the cancellations or refund.

(10) The racing commission may use any information it considers appropriate, such as information received from a sports governing body or equivalent, to determine whether to authorize or prohibit wagering on a particular sporting event or type of wager, consistent with industry standards.

(11) The racing commission may restrict, limit, or exclude a certain type, form, or category of sports wagering if the racing commission determines that the restriction, limitation, or exclusion is necessary to ensure the integrity of the licensee.

**Section 3. Limitations on Certain Sports Wagering for Good Cause.** A sports governing body may submit a request to the racing commission to restrict, limit, or exclude a certain type, form, or category of sports wagering pursuant to KRS 230.808.

(1) The sports governing body shall provide the racing commission with notice of a request to restrict, limit, or exclude a certain type, form, or category of sports wagering, which shall contain information required by the racing commission, including:

(a) The identity of the sports governing body and contact information for at least one specific individual who will be the primary point of contact for questions related to the request;

(b) A description of the sports wagering information, event, or wager type that is the subject of the request; and

(c) Information explaining why granting the request is necessary to protect the integrity of the event, or public confidence in the integrity of the event, that is the subject of the request. This may include information regarding any credible threat to the integrity of the event that is beyond the control of the sports governing body to preemptively remedy or mitigate.

(2) The request shall be sent to the racing commission at least ten (10) calendar days before the particular sporting event. At any time, however, a sports governing body shall report information to the racing commission if it involves allegations of prohibited activity, such as match-fixing, the manipulation of an event, or misuse of inside information.

(3) The racing commission shall request comment from licensees on all requests made under subsection (1) of this section. The request for comment shall include the date by which written comments shall be submitted to the racing commission.

(4) The racing commission shall grant or deny the request pursuant to the criteria established in KRS 230.808.

(5) The racing commission may provisionally grant the request pursuant to the criteria established in KRS 230.808.

(6) The racing commission may reconsider its decision if there is a material change in the circumstances related to the original request.

**Section 4. Data Sources for Sports Wagering.** A licensee shall report to the racing commission in its sports wagering license application the data source that it uses to resolve sports wagers. The racing commission may disapprove of a data source for any reason in the best interest of sports wagering integrity.

(1) The data source and corresponding data shall be complete, accurate, reliable, timely, and available.

(2) The data source shall be appropriate to settle the category of sporting events and types of wagers for which it is used.

**Section 5. Wagering Rules.** The licensee shall adopt comprehensive wagering rules, which shall be approved by the racing commission.

(1) The wagering rules shall be conspicuously displayed on the licensee's Web site or mobile application and within the race and sports book location, and copies shall be made readily available to individuals and patrons. Licensees may elect to display copies of comprehensive wagering rules solely in electronic form on sports wagering kiosks, provided such licensees display commission-approved short-form house rules in race and sports book locations.

(2) The wagering rules shall comply with GLI-33 Standards and shall specify the amount to be paid on winning wagers and the effect of schedule changes.

(3) The licensee shall not implement any changes or modifications of the practices, procedures, or representations upon which the approval of wagering rules was based without the prior approval of the racing commission. Failure by a licensee to act in accordance with its approved wagering rules may result in disciplinary action.

**Section 6. Tournaments, Contests, and Pools.**

(1) No sports wagering tournament, contest, or pool shall be conducted unless the Licensee, before the first time a tournament, contest, or pool type is offered, files written notice with the racing commission of its intent to offer that tournament, contest, or pool type and obtains approval from the racing commission. The licensee may file a master list with the racing commission to satisfy this requirement.

(2) The request shall provide a detailed description of the tournament, contest, or pool type and shall include the rules of the tournament, contest, or pool, the requirements for entry, the entry fees, the rake, and potential payouts. The request shall also indicate whether the proposed type involves a shared liquidity pool available to patrons in Kentucky and other jurisdictions with the prize pool being comprised of entry fees collected from patrons in multiple jurisdictions.

(3) The request shall be submitted to the commission in writing via electronic mail and in hard copy. All such requests shall be submitted at least ten (10) business days prior to start date of the tournament, contest, or pool.

(4) Once a licensee receives approval to offer a tournament, contest, or pool type the licensee shall not be required to seek additional approvals from the racing commission for each subsequent type that has only minor variations, such as to the size, number of entries permitted, entry fee, rake, or prize structure.

(5) Each licensee shall maintain a record of each tournament, contest, or pool it offers for five (5) years. These records shall include the following:

- (a) Name or identification of the tournament, contest, or pool;
- (b) The date and time the tournament, contest, or pool occurred or will occur (if known);
- (c) Sporting events and types of wager;

- (d) Rules concerning tournament, contest, or pool play and participation; and
  - (e) For each patron:
    1. Unique patron identification;
    2. Amount of entry fee collected, including any promotional or bonus credits, and the date collected;
    3. Patron scorings or rankings; and
    4. Amount of payouts paid, including any promotional or bonus credits, and the date paid;
  - (f) Total amount of entry fees collected, including any promotional or bonus credits;
  - (g) Total amount of payouts paid to patrons, including any promotional or bonus credits;
  - (h) Total rake, takeout, or fees collected;
  - (i) Funding source amount or amounts comprising the prize pool, such as buy-ins, re-buys, or add-ons;
  - (j) Prize structure on payout;
  - (k) Methodology for determining winner or winners; and
  - (l) The current status of the tournament, contest, or pool, such as whether the event is in-progress, complete, interrupted, cancelled.
- (6) The licensee shall be responsible for the rake. At no time shall the calculation resulting from a rake or rake adjustment be negative.
- (7) For a contest, tournament, or pool which utilizes shared liquidity available to patrons in Kentucky and other jurisdictions, the rake rate shall be the same for all jurisdictions participating.

#### Section 7. Acceptance of Wagers.

- (1) A licensee shall comply with GLI-33 Standards when accepting wagers.
- (2) A licensee shall not set lines or odds or offer wagering propositions designed for the purposes of ensuring that a patron will win a sports wager or a series of sports wagers, unless the lines, odds, or wagering propositions are offered in connection with a promotion or bonus conducted in accordance with Section 9 of this administrative regulation.
- (3) A Licensee shall not accept a sports wager on a sporting event unless a wagering proposition is posted by electronic or manual means.
- (4) Sports wagers may only be made by patrons using forms of payment approved by the racing commission including the following:
  - (a) Cash;
  - (b) Cash equivalents converted to cash;
  - (c) Credit or debit cards;
  - (d) Electronic funds transfers (EFTs) including automated clearing house and other electronic methods;
  - (e) Promotional or bonus credit;
  - (f) Winning sports wagering tickets or vouchers; and
  - (g) Funds within a sports wagering account.
- (5) The licensee shall debit the amount wagered by a patron from their sports wagering account. Wagers shall not be accepted in an amount in excess of a sports wagering account balance.
- (6) No licensee shall accept a sports wager from a person on the sports wagering account of or for any other person.
- (7) The licensee shall operate and communicate with the sports wagering system in a way that does not provide or facilitate a wagering advantage based on access to information and processing of mobile sports wagers by account holders relative to patrons who wager at a licensed premises.

Section 8. Cancelled or Voided Wagers. Wagers shall not be cancelled or voided without prior approval of the commission, unless the wagers are cancelled or voided by an authorized supervisory employee of the licensee, in accordance with GLI-33 standards and this section.

- (1) Cancellation of an otherwise validly placed sports wager by a licensee shall be nondiscretionary. A licensee may cancel or void a sports wager without prior authorization of the racing commission only under the following circumstances:
  - (a) Any sports wager where after a patron has placed a sports wager, the sporting event is cancelled, postponed or rescheduled to a different date prior to completion of the sporting event;
  1. In the case of a sports wager on a portion of a sporting event,

that wager shall be valid when the event is canceled, postponed, or rescheduled if the outcome of the affected portion was determined prior to the cancellation, postponement or rescheduling; or

2. A licensee may establish a timeframe in which an event may be rescheduled or postponed without canceling the sports wager. This timeframe shall be tied to specific sporting events, subject to the approval of the racing commission, and documented in the internal controls;

(b) A change in the venue where a sporting event was scheduled to be held occurs after a patron has placed a sports wager and the licensee cancels or voids the sports wager prior to the commencement of the sporting event;

(c) Any sports wager when an individual participant fails to participate in a sporting event and the outcome of the wager is solely based upon that individual participant's performance;

(d) Any sports wager received for an act, or set of acts, to be performed during a sporting event when such act or acts does not occur and the ability to wager on the non-occurrence of the event was not offered;

(e) Any wager received on whether a team will qualify to participate in post-season competitions when the number of teams allowed to participate in the post-season changes after a patron has placed a wager;

(f) Changes to rules are made by a sports governing body or equivalent regarding the format or number of participants scheduled to participate in a defined phase of a sporting event or that particular phase is not played at all;

(g) Where the licensee has reasonable basis to believe there was an obvious error in the placement or acceptance of the wager, including:

1. The wager was placed with incorrect odds;
2. Human error in the placement of the wager; or
3. Any other obvious error specifically defined in the licensee's internal controls.

(h) When a patron requests a sports wager be cancelled or voided prior to the commencement of the sporting event due to an error in communicating the type, amount or parameters of the sports wager; or

(i) When authorized or ordered by the racing commission pursuant to this section.

(2) A licensee may cancel or void at sports wager for a material change in circumstances for a given sporting event or type of wager occurs, provided:

- (a) The racing commission approves the material change;
- (b) The licensee documents the material change in its internal controls; and
- (c) The licensee displays the material change to a patron at the time of placement of the sports wager;

(3) For all circumstances that are not established in subsection (1), a licensee may request the racing commission authorize the cancellation or voiding of all sports wagers of a specific type, kind, or subject. A licensee shall submit its request to cancel or void the sports wager in writing, and such request shall contain the following:

- (a) A description of the type, kind, or subject of sports wager the licensee is requesting to cancel or void;
- (b) A description of any facts relevant to the request; and
- (c) An explanation why cancelling or voiding the sports wager is in the best interests of the Commonwealth or ensures the integrity of the sports wagering industry.

(4) The racing commission shall issue a written order granting or denying the request to cancel or void the sports wager. In determining whether to grant or deny the request, the racing commission shall consider at least the following factors:

- (a) Whether the alleged facts implicate the integrity of the sporting event subject to the wager or the sports wagering industry;
  - (b) Whether the alleged facts implicate possible illegal activity relating to the sporting event or the sports wagering industry;
  - (c) Whether allowing the wager would be unfair to patrons; or
  - (d) Whether allowing the wager is contrary to public policy.
- (5) No sports wager subject to the request to cancel or void shall be redeemed, cancelled, or voided, until the racing commission or its designee issues an order granting the request to cancel.

(6) If the racing commission or its designee grants the request to cancel or void, the licensee shall make commercially and

technologically reasonable efforts to notify patrons of the cancellation or voiding of the sports wager.

(7) The racing commission or its designee has discretion to order all licensees to cancel or void all wagers on a specific sporting event or wagers of a specific type or kind on a specific sporting event. In exercising its discretion, the racing commission shall apply the same factors described in subsection (1).

(8) A patron may request the racing commission or its designee review any sports wager declared cancelled or voided by a licensee. If the racing commission or its designee concludes there is no reasonable basis to believe there was obvious error in the placement or acceptance of the sports wager, the racing commission or its designee may order the licensee to honor the sports wager.

(9) A sports wager shall not be declared canceled or voided without the approval of an authorized supervisory employee of the licensee pursuant to the licensee's internal controls, unless the racing commission or its designee has issued an order requiring the sports wager to be canceled or voided.

(10) If a sports wager is declared canceled or voided, the sports wager shall be refunded to the patron and that amount shall be deducted from the adjusted gross revenue.

Section 9. Promotional or Bonus Wagering. A licensee may conduct sports wagering promotions or bonuses in accordance with this section:

(1) Procedures for the issuance, acceptance, and tracking of promotions or bonuses shall be defined in the licensee's internal controls.

(2) A licensee shall maintain a record of all promotions or bonuses related to sports wagering to facilitate the racing commission's tracking of promotional or bonus activity, which shall address the following:

- (a) Unique ID for each promotion or bonus;
- (b) The date and time the promotion or bonus was or is scheduled to be available;
- (c) Current balance for promotional or bonus awards;
- (d) Total amount of promotional or bonus awards issued;
- (e) Total amount of promotional or bonus awards redeemed;
- (f) Total amount of promotional or bonus awards expired;
- (g) Total amount of promotional or bonus award adjustments;
- (h) The current status of the promotion or bonus (active, disabled, decommissioned, etc.); and
- (i) The date and time the promotion or bonus was or is scheduled to be decommissioned.

(3) All promotion or bonus rules shall be full, accurate, concise, transparent, and shall not contain misleading information. Promotion or bonus rules shall be readily accessible by the patron and provide unambiguous notice of the:

- (a) Date and time the promotion or bonus is active and expires;
- (b) Rules of play;
- (c) Nature and value of prizes or awards;
- (d) Eligibility restrictions or limitations;
- (e) Wagering and redemption requirements, which shall include a description of any limitations on such;
- (f) How the patron is notified when they have received an award;
- (g) Order in which funds are used for wagers;
- (h) Eligible events or wagers; and
- (i) Cancellation requirements.

(4) Promotions or bonuses shall not be described as free or risk-free if those promotions or bonuses require the patron to incur any loss or risk the patron's own money to use or withdraw winnings from the free wager;

(5) A licensee shall provide a clear and conspicuous method for a patron to cancel their participation in a promotion or bonus that utilizes restricted wagering credits that cannot be cashed out until a wagering requirement or other restriction associated with the credits is met:

(a) Upon request for cancellation, the licensee shall inform the patron of the amount of unrestricted funds that will be returned upon cancellation and the value of restricted wagering credits that will be removed from the sports wagering account; and

(b) If a patron elects to proceed with cancellation, unrestricted funds remaining in a patron's sports wagering account shall be returned according to the rules of a promotion or bonus.

(6) Once a patron has met the terms of a promotion or bonus, a licensee shall not limit winnings earned while participating in the promotion or bonus.

JONATHAN RABINOWITZ, Chair

RAY PERRY, Secretary

APPROVED BY AGENCY: July 10, 2023

FILED WITH LRC: July 10, 2023 at 4:00 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 22, 2023 at 9:00 a.m. at the Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511. 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 September 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: Jennifer Wolsing, Title: General Counsel, Address: Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, Phone: (859) 246-2040, Fax: (859) 246-2039, Email: jennifer.wolsing@ky.gov

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jennifer Wolsing

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation specifies standards for sports wagering in Kentucky related to authorized and prohibited sporting events, types of wagers, and data sources for sports wagering.

(b) The necessity of this administrative regulation: This regulation is necessary to establish standards for sports wagering in Kentucky, including authorized and prohibited sporting events and types of wagers and data sources for sports wagering.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.260 requires the commission to "promulgate administrative regulations to establish standards for the conduct of sports wagering." KRS 230.361 states the "racing commission shall promulgate administrative regulations to establish a fully functioning sports wagering system...." KRS 230.808 lists the categories of sporting events that may be wagered upon and permits a sports governing body to submit a request to the commission to restrict, limit, or exclude a type, form, or category of sports wagering.

(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 the statutes by establishing standards for sports wagering in Kentucky, including authorized and prohibited sporting events and types of wagers and data sources for sports wagering.

(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 regulation.

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation affects the licensed tracks that apply for and receive a license to conduct sports wagering in the Commonwealth. There are currently nine (9) licensed tracks operating in the Commonwealth. Each track is allowed to contract with up to three (3) service providers. Therefore, up to 27 service providers may be affected by this regulation. Additionally, there are an unknown number of patrons who will choose to engage in sports wagering.

Sports Governing Bodies also may be affected 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: Licensed tracks and service providers offering sports wagering must observe the regulatory requirements when offering wagers. Sports Governing Bodies must follow the regulatory requirements to request to restrict, limit, or exclude a certain type, form, or category of sports wagering.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Compliance costs are uncertain, but licensed tracks and service providers offering sports wagering are likely to incur costs to comply with the regulations. Sports Governing Bodies may incur costs to comply with this regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Licensed tracks and service providers will benefit from having clear standards for sports wagering. Kentuckians will benefit from the effective administration of sports wagering. Sports Governing Bodies will have the opportunity to request the commission restrict certain types, forms, or categories of sports wagering.

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

(a) Initially: It is estimated that the commission will spend approximately \$2.4 million to implement sports wagering in Kentucky in the first year.

(b) On a continuing basis: It is further estimated that the commission will spend approximately \$1.2 million annually to continue regulating sports wagering in Kentucky on a yearly basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The funding to implement and enforce sports wagering in Kentucky will come from the sports wagering administrative fund, as established in KRS 230.817.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied, because this amended regulation will apply similarly to all similarly situated entities in an equal manner.

#### FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Horse Racing Commission 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 230.260(16), KRS 230.361, and KRS 230.808 require or authorize the actions taken by this regulation.

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

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

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

(c) How much will it cost to administer this program for the first year? It is estimated that the commission will spend approximately \$2.4 million in the first year to implement sports wagering in Kentucky.

(d) How much will it cost to administer this program for subsequent

years? It is further estimated that the commission will spend approximately \$1.2 million annually to continue regulating sports wagering in Kentucky in subsequent years.

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

Revenues (+/-): Neutral.

Expenditures (+/-): See answers to (c) and (d) above.

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 regulation is not expected to generate cost savings for the first year.

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

(c) How much will it cost the regulated entities for the first year? Licensed tracks and service providers offering sports wagering and Sports Governing Bodies may incur costs to ensure compliance with the regulations.

(d) How much will it cost the regulated entities for subsequent years? Licensed tracks and service providers offering sports wagering and Sports Governing Bodies may incur costs to ensure compliance with the regulations.

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

Cost Savings (+/-): \$0.00

Expenditures (+/-): Licensed tracks and service providers offering sports wagering and Sports Governing Bodies may incur costs to ensure compliance with regulations.

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 regulation is not anticipated to have a major economic impact on Kentucky for the reasons stated above.

#### PUBLIC PROTECTION CABINET Kentucky Horse Racing Commission (New Administrative Regulation)

#### 809 KAR 10:003. Technical requirements and oversight.

RELATES TO: KRS Chapter 230

STATUTORY AUTHORITY: KRS 230.260(16), 230.805, 230.811(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.260(16)(a) requires the racing commission to promulgate regulations to establish standards related to sports wagering, including standards for "maintaining and auditing books and financial records, securely maintaining records of bets and wagers, integrity requirements for sports wagering and related data, ... surveillance and monitoring systems, and other reasonable technical criteria related to conducting sports wagering." KRS 230.811(2) requires tracks and service providers to "comply with the standards established by the racing commission. ... to ensure the integrity of the system of sports wagering." KRS 230.805 establishes requirements for geolocation, technology, and servers. This administrative regulation establishes the technical standards for sports wagering technology within the state, establish testing procedures, as well the handling of changes in sports wagering technology.

Section 1. Sports Wagering Standards. A licensee shall use a sports wagering system to offer, conduct, or operate sports wagering in accordance with applicable laws and these regulations. Only an

approved licensee may process, accept, offer, or solicit sports wagers.

(1) The licensee shall operate in conformity with the license conditions issued by the racing commission pursuant to KRS 230.290(3) and GLI-33 Standards.

(2) A sports wagering system shall meet the specifications established in subsection (1) of this section and these regulations. Failure to comply with the approved specifications, internal controls, or technical specifications may result in disciplinary action by the racing commission.

#### Section 2. Testing and Certification of Sports Wagering System.

Prior to conducting sports wagering, and annually thereafter, the sports wagering system utilized by the licensee shall be submitted to a nationally recognized, independent testing laboratory approved by the racing commission for certification testing. Certification and racing commission approval shall be received prior to the use of any sports wagering system to conduct sports wagering. The licensee is responsible for all costs associated with testing and obtaining such certifications.

(1) To obtain a temporary license, a licensee may submit to the racing commission a certification report of an independent testing laboratory of a system in operation in another jurisdiction in the United States where the licensee is currently licensed or permitted. The report must certify the system to either the GLI-33 Standards or, at the discretion of the racing commission, a standard deemed to be the equivalent of the GLI-33 Standards. This alternative certification report must include a list of all critical files and associated signatures and an appendix which lists the differences of any controlled items or processes required to be certified in Kentucky which were not certified in the jurisdiction in which the report was issued. Upon review of the certification report, the racing commission will make a determination on whether to accept the certification or require additional information or documentation or testing.

(2) Unless otherwise authorized by the racing commission, the independent testing laboratory shall be provided access to the sports wagering system's controlled software source code along with the means to verify compilation of such source code. The result of the compiled source code shall be identical to that in the software submitted for evaluation.

(3) If the sports wagering system meets or exceeds the GLI-33 Standards and the commission's regulatory requirements in KAR Title 809, the independent testing laboratory approved by the racing commission shall certify the sports wagering system. Licensees are prohibited from offering sports wagering in Kentucky without such certification.

Section 3. Integration Requirements. The licensee shall be responsible for sports wagering offered by the licensee through other service providers and suppliers, and other licensees where applicable.

(1) The servers and equipment of service providers and suppliers will be considered part of the licensee's sports wagering system and shall comply with these regulations.

(2) The licensee shall guarantee that any integration with the servers and other equipment of another licensee is completed in a way that complies with these regulations.

(3) An independent testing laboratory shall conduct integration testing and certification for each server and other equipment with the licensee's sports wagering system prior to its deployment and as requested by the racing commission.

Section 4. Change Management Processes. The licensee shall submit change management processes to the racing commission for approval. The change management processes shall detail evaluation procedures for identifying the criticality of updates and determining which updates shall be submitted to the approved independent testing laboratory for review and certification.

(1) These change management processes shall be:

(a) Developed in accordance with the Kentucky Horse Racing Commission license conditions issued by the commission pursuant to KRS 230.290(3) and the GLI-CMP Guide;

(b) Approved by the racing commission prior to its deployment; and

(c) Available for audit by the racing commission or its designee at any time.

(2) Quarterly change reports shall be issued to the racing commission for review to ensure risk is being assessed according to the change management processes and all documentation for all changes to the critical components are complete.

(3) At least once annually, each product operating under the approved change management processes shall be fully certified to the specifications established in these regulations and other technical specifications as prescribed by the racing commission and accompanied by formal certification documentation from an independent testing laboratory. The licensee shall be allowed to seek approval for extension beyond the annual approval if hardship can be demonstrated. Granting of a hardship waiver is the sole discretion of the racing commission, upon written proof of good cause by the licensee.

Section 5. Geolocation Requirements. Mobile sports wagers shall be initiated, received, and otherwise placed in the authorized geographic boundaries within the Commonwealth of Kentucky.

(1) The geographic boundaries shall be approved by the racing commission.

(2) The licensee shall use geolocation or geofencing technology pursuant to KRS 230.805 and to monitor and block unauthorized attempts to place sports wagers when an individual or patron is physically outside the authorized geographic boundaries within the Commonwealth of Kentucky at the time the sports wager is placed.

(3) The licensee shall trigger:

(a) A geolocation check prior to the placement of the first wager after login or upon a change of IP address;

(b) Recurring periodic geolocation checks as follows:

1. For static connections, at least every twenty (20) minutes or five (5) minutes if within one (1) mile of the border; and

2. For mobile connections, at intervals to be based on a patron's proximity to the border with an assumed travel velocity of seventy (70) miles per hour or a demonstrated average velocity of a roadway/path, not to exceed twenty (20) minutes.

(4) Mechanisms shall be in place to detect software, programs, virtualization, and other technology that may obscure or falsify the patron's physical location for the purpose of placing sports wagers.

(5) The geolocation services used by the licensee shall be certified by the approved independent testing laboratory, including, without limitation, applicable field testing as authorized by the commission, before its deployment.

(6) The racing commission may enter into agreements with other jurisdictions or entities to facilitate, administer, and regulate multi-jurisdictional sports wagering by licensees pursuant to KRS 230.805.

Section 6. Data Security. A licensee's data security policies shall comply with KRS 230.805. Nothing in this section shall preclude the use of internet or cloud-based hosting of such data and information or disclosure as required by Commonwealth or federal law or a court order.

Section 7. Location of Servers, Security, and Cloud Storage. A licensee shall maintain in secure locations in the Commonwealth its primary servers used to transmit information for purposes of accepting or settling of wagers on a sporting event placed by patrons in the Commonwealth.

(1) The location of all other technology and servers used by a licensee in connection with sports wagering shall be approved by the racing commission and shall be accessible by the racing commission.

(2) The racing commission may approve of the use of internet or cloud-based hosting of duplicate data or data not related to transactional wagering data upon written request of a licensee.

Section 8. Integrity and Security Assessments. Each licensee shall run integrity and security assessments that comply with GLI-33 Standards.

(1) Each licensee shall, within ninety (90) calendar days after commencing operations in Kentucky, and annually thereafter, have integrity and security assessments of the sports wagering system



conducted by a third-party contractor experienced in security procedures, including, without limitation, computer security and systems security. The third-party contractor shall be selected by the licensee and shall be subject to approval of the racing commission. Such integrity and security assessments shall include a review of the following:

- (a) Network vulnerability;
- (b) Application vulnerability;
- (c) Application code;
- (d) Wireless security;
- (e) Security policy and processes;
- (f) Security and privacy program management;
- (g) Technology infrastructure and security controls;
- (h) Security organization and governance; and
- (i) Operational effectiveness.

(2) The scope of the integrity and security assessments is subject to approval of the racing commission and shall include the following:

(a) A vulnerability assessment of all digital platforms, Web sites, mobile applications, internal, external, and wireless networks with the intent of identifying vulnerabilities of all devices, the sports wagering systems, and applications transferring, storing, or processing Personally Identifiable Information or other sensitive information connected to or present on the networks;

(b) A penetration test of all digital platforms, Web sites, mobile applications, internal, external, and wireless networks to confirm if identified vulnerabilities of all devices, the sports wagering systems, and applications are susceptible to compromise;

(c) A review of the firewall rules to verify the operating condition of the firewall and the effectiveness of its security configuration and rule sets performed on all of the perimeter firewalls and the internal firewalls;

(d) A security control assessment conducted in accordance with the provisions outlined in the racing commission's regulations, including the technical security controls specified within the GLI-33 Standards, and with generally accepted professional standards approved by the racing commission.

(e) If a cloud service provider is in use, an assessment performed on the access controls, account management, logging and monitoring, and over security configurations of their cloud tenant; and

(f) An evaluation of information security services, payment services such as financial institutions and payment processors, geolocation services, and any other services which may be offered directly by the sports wagering licensee or involve the use of service providers.

(3) To qualify as a third-party contractor, the third-party contractor shall demonstrate to the commission's satisfaction, at minimum, the following qualifications:

(a) Relevant education background or in other ways provide relevant qualifications in assessing sports wagering systems;

(b) Certifications sufficient to demonstrate proficiency and expertise as a network penetration tester by recognized certification boards, either nationally or internationally; and

(c) At least three (3) years' experience performing integrity and security assessments on sports wagering systems; and

(4) The third-party contractor's full security audit report containing the overall evaluation of sports wagering in terms of each aspect of security shall be provided to the racing commission no later than thirty (30) calendar days after the assessment is conducted and shall include the following:

- (a) Scope of review;
- (b) Name and company affiliation, contact information, and qualifications of the individual or individuals who conducted the assessment;
- (c) Date of assessment;
- (d) Findings;
- (e) Recommended corrective action, if applicable; and
- (f) The licensee's response to the findings and recommended corrective action.

(5) It is acceptable to reuse the results of prior assessments within the past year conducted by the same third-party contractor when the testing was conducted pursuant to accepted industry standards as approved by the commission, such as International

Organization for Standardization ("ISO")/International Electrotechnical Commission ("IEC") standards, the NIST Cybersecurity Framework ("CSF"), the Payment Card Industry Data Security Standards ("PCI-DSS"), or the equivalent. Such reuse shall be noted in the third-party contractor's security audit report. This reuse option does not include any critical components of a sports wagering system unique to the Commonwealth which will require fresh assessments.

(6) If the third-party contractor's security audit report recommends corrective action, the licensee shall provide the racing commission with a remediation plan and any risk mitigation plans which detail the Licensee's actions and schedule to implement the corrective action.

(a) The remediation and risk mediation plans shall be presented within a time period prescribed by the racing commission, which shall be based on at least the following factors:

- 1. The severity of the problem to be corrected;
- 2. The complexity of the problem to be corrected; and
- 3. The risks associated with the problem to be corrected.

(b) The commission may require suspension of operations until implementation of any critical corrective action(s).

(c) Once the corrective action has been taken, the licensee shall provide the racing commission with documentation evidencing completion.

Section 9. Quarterly Vulnerability Scans. Internal and external network vulnerability scans shall be run at least quarterly and after any significant change to the sports wagering system or network infrastructure.

(1) Testing procedures shall include protocol verifying that four (4) quarterly internal and external scans took place in the past twelve (12) months and that re-scans occurred until all "Medium Risk" (CVSS 4.0 or Higher) vulnerabilities were resolved or accepted via a formal risk acceptance program approved by the racing commission. Internal scans should be performed from an authenticated scan perspective. External scans can be performed from an uncredentialed perspective.

(2) The quarterly scans can be performed by either a qualified employee of the licensee or a qualified third-party contractor selected by the licensee and subject to approval of the racing commission.

(3) Verification of scans shall be submitted to the racing commission on a quarterly basis and within thirty (30) calendar days of running the scan. The scan verifications shall include a remediation plan and any risk mitigation plans for those vulnerabilities not able to be resolved. The commission may impose disciplinary action in the event of critical unresolved vulnerabilities or vulnerabilities that continue unabated.

JONATHAN RABINOWITZ, Chair

RAY PERRY, Secretary

APPROVED BY AGENCY: July 10, 2023

FILED WITH LRC: July 10, 2023 at 4:00 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 22, 2023, at 9:00 a.m. at Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511. 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 September 30, 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: Jennifer Wolsing, General Counsel, Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859) 246-2039, email jennifer.wolsing@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jennifer Wolsing

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes technical standards for sports wagering systems and establishes testing procedures to ensure the integrity of the systems.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish technical standards for sports wagering systems in the Commonwealth of Kentucky and a process by which the systems can be tested and certified by independent laboratories.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.260(16)(a) requires the racing commission to promulgate regulations to establish standards related to sports wagering, including standards for "maintaining and auditing books and financial records, securely maintaining records of bets and wagers, integrity requirements for sports wagering and related data, .. surveillance and monitoring systems, and other reasonable technical criteria related to conducting sports wagering." KRS 230.811(2) requires tracks and service providers to "comply with the standards established by the racing commission. .. to ensure the integrity of the system of sports wagering." KRS 230.805(g) establishes requirements for geolocation, technology, and servers.

(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 the statutes by establishing standards for sports wagering in Kentucky, including technical standards for sports wagering systems.

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation affects the licensed tracks that apply for and receive a license to conduct sports wagering in the Commonwealth. There are currently nine (9) licensed tracks operating in the Commonwealth. Each track is allowed to contract with up to three (3) service providers. Therefore, up to 27 service providers may be affected by this regulation. Independent testing labs that certify these systems will be impacted by this regulation. Additionally, there is an unknown number of patrons who will choose to engage in sports wagering.

(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 tracks and service providers offering sports wagering must observe the regulatory requirements when offering wagers. Independent testing labs must certify that sports wagering systems comply with the technical standards of this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Compliance costs are uncertain, but licensed tracks and service providers offering sports wagering are likely to incur costs to comply with the regulations, including the cost of paying independent labs to certify their systems.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Licensed tracks, independent testing laboratories, and service providers will benefit from having clear standards for sports wagering. Kentuckians will benefit from the effective administration of sports wagering.

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

(a) Initially: It is estimated that the commission will spend approximately \$2.4 million to implement sports wagering in Kentucky in the first year.

(b) On a continuing basis: It is further estimated that the commission will spend approximately \$1.2 million annually to continue regulating sports wagering in Kentucky on a yearly basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The funding to implement and enforce sports wagering in Kentucky will come from the sports wagering administrative fund, as established in KRS 230.817. The service providers will be required to pay the labs to test and certify their systems.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied, because this amended regulation will apply similarly to all similarly situated entities in an equal manner.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Horse Racing Commission 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 230.260(16), KRS 230.805, and KRS 230.811(2) authorize the actions taken by this regulation.

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

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

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

(c) How much will it cost to administer this program for the first year? It is estimated that the commission will spend approximately \$2.4 million in the first year to implement sports wagering in Kentucky.

(d) How much will it cost to administer this program for subsequent years? It is further estimated that the commission will spend approximately \$1.2 million annually to continue regulating sports wagering in Kentucky in subsequent years.

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

Revenues (+/-): Neutral

Expenditures (+/-): Neutral

Other Explanation: N/A

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

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

(c) How much will it cost the regulated entities for the first year? In the first year, licensed tracks offering sports wagering and service providers will likely incur costs to have their systems tested and certified by independent labs. Licensed tracks and service providers may incur additional costs to ensure compliance with the regulations.

(d) How much will it cost the regulated entities for subsequent years? In subsequent years, service providers will likely incur costs to have their systems tested and certified by independent labs. Licensed tracks and service providers offering sports wagering may incur additional costs to ensure compliance with the regulations.

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

Cost Savings (+/-): None.

Expenditures (+/-): Expenditures are uncertain. See (c) and (d) above.

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 is not anticipated to have a major economic impact on Kentucky for the reasons stated above.

**PUBLIC PROTECTION CABINET  
Kentucky Horse Racing Commission  
(New Administrative Regulation)**

**809 KAR 10:004. Sports wagering accounts.**

RELATES TO: KRS Chapter 230

STATUTORY AUTHORITY: KRS 230.260(16), 230.361(2), 230.805

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.260 requires the commission to "promulgate administrative regulations to establish standards for the conduct of sports wagering." KRS 230.361(2) requires the commission to "promulgate administrative regulations governing and regulating sports wagering, including administrative regulations for the deposit of funds by credit or debit cards or other means of electronic funds transfer." KRS 230.805(3) establishes additional requirements for registration of sports wagering patrons' accounts, such as account registration and wager placement. This administrative regulation establishes sports wagering account requirements, dormant and closed account requirements, and responsible gaming limits.

Section 1. Sports Wagering Account Requirements. Patrons shall register their sports wagering accounts with the licensee pursuant to KRS 230.805. Licensees shall adopt account registration policies pursuant to KRS 230.805. All account registration policies shall be subject to approval by the commission. Nothing in this section shall be interpreted to prohibit the licensee from accepting anonymous wagers by a sports wagering device within the licensed premises.

(1) An account shall only be established in the name of an account holder who is a natural person and shall not be in the name of any beneficiary, custodian, joint trust, corporation, partnership, or any other entity.

(2) A licensee shall collect the following personally identifiable information from each account holder through the sports wagering system:

(a) The account holder's full legal name;

(b) The account holder's date of birth;

(c) The account holder's Social Security number, or the last four (4) digits of the Social Security number, or an equivalent government identification number for a noncitizen, such as a passport or taxpayer identification number; and

(d) All data required by KRS 230.805.

(3) During the sports wagering account registration process, the licensee shall:

(a) Deny patrons the ability to register for account if they submit a birth date which indicates that they are an underage person; and

(b) Inform the patron on the account application which information fields are "required," which are not, and what will be the consequences of not filling in the required fields.

(4) During the sports wagering account registration process,

patrons shall:

(a) Agree to the terms and conditions and privacy policies of the licensee;

(b) Acknowledge that they are prohibited from:

1. Transferring or selling an account or account balance;

2. Using any technology that may obscure or falsify the account holder's physical location for the purpose of placing sports wagers;

3. Allowing any unauthorized person to access or use their account; and

4. Any form of collusion, cheating, or other unlawful activity.

(c) Consent to the monitoring and recording of the use of their account by the licensee and the racing commission;

(d) Attest that:

1. The account holder meets all eligibility requirements to place a wager with a licensee in this Commonwealth; and

2. The personally identifiable information the account holder is providing to open the account is accurate.

(e) Authorize the provision of notices and other required communications either through a designated mobile or other interface or to an electronic mail address designated by the account holder.

(5) A licensee shall maintain an electronic patron file, which shall include the following for each sports wagering account:

(a) Unique sports wagering account ID and username (if different);

(b) The information indicated in subsection (2) of this section to register an account holder and create the account;

(c) The date and method of identity verification:

1. Where applicable, the licensee shall maintain the document number of the government-issued identification credential examined and its date of expiration.

2. If a government-issued identification credential is not required for registration, the electronic record that details the process used to confirm the account holder's identity shall be recorded.

(d) The date of account holder agreement to the terms and conditions and privacy policies;

(e) Previous sports wagering accounts, if any, and reason for de-activation;

(f) The date and method from which the sports wagering account was registered;

(g) The date and time a sports wagering account is accessed by any person;

(h) The IP address at which a sports wagering account is accessed by any person;

(i) A history of financial transactions, including deposits, withdrawals, and account adjustments;

(j) Account details and current balance, including any incentive credits. All restricted wagering credits and unrestricted funds that have a possible expiration shall be maintained separately; and

(k) The current status of the sports wagering account (e.g., active, dormant, closed, suspended, excluded).

(6) The following information maintained as part of the electronic patron file shall be stored in encrypted form:

(a) The account holder's government identification number, or portion(s) thereof;

(b) The account holder's previous and current password(s), PIN(s), or other authentication credential(s); and

(c) The account holder's previous and current debit instrument number(s), credit or debit card number(s), bank account number(s) or other personal financial information.

(7) A licensee may allow the account holder to update authentication credentials, registration information and the account used for financial transactions. A multi-factor authentication process shall be employed for these purposes.

Section 2. Age and Identity Verification. The licensee shall comply with KRS 230.805. The licensee shall also adopt commercially and technologically reasonable policies and procedures to verify and authenticate the age and identity of each account holder.

(1) Only eligible persons may create a sports wagering account, deposit funds, or participate in sports wagering. The licensee shall make commercially and technologically reasonable efforts to deny the ability to create a sports wagering account, deposit funds, or

participate in sports wagering to any prohibited patron. This section shall not be construed to prevent a restricted patron from creating a sports wagering account and depositing funds into such an account even if they are prohibited from placing certain wagers.

(2) At the time of account establishment, the licensee shall employ electronic verification with respect to the following:

(a) All information required by KRS 230.805, and

(b) Each account holder's government identification number or portion(s) thereof.

(3) The electronic verification information shall be verified by a commission-approved independent reference company, or through an alternative process approved by the commission.

(4) The following data shall be verified before account holders can initiate activity including deposits, withdrawals, and wagering:

(a) Items that require an exact match:

1. The account holder's last name;

2. The account holder's date of birth;

3. The account holder's government identification number, or portion(s) thereof.

(b) Items that permit flexible match for common interpretations of names and abbreviations used in the address fields:

1. The account holder's first name; and

2. The account holder's principal residential address.

(5) Reasonable measures shall be taken to ensure the person providing identity information is truly the owner of the identity before an account holder can initiate any activity including deposits, withdrawals, and wagering. One (1) of the following methods, or another method approved by the racing commission, is required:

(a) Correctly answer three dynamic knowledge-based questions compiled from public and private data such as public records, credit reports, marketing data and other recorded facts;

(b) Verification that the account holder's phone number or e-mail address match the information provided by the account holder; or

(c) Valid government issued identification credential.

(6) The licensee may refuse to establish an account if it is found that any of the information supplied is false or incomplete or for any other reason the licensee deems sufficient.

(7) A licensee shall use commercially available and demonstrable standards to confirm that an individual attempting to create a sports wagering account is not prohibited from placing a wager.

(8) A licensee shall periodically re-verify an account holder's identification upon reasonable suspicion that the account holder's identification has been compromised.

Section 3. Limitation to One (1) Account per Account Holder. A Licensee shall use all commercially and technologically reasonable means to ensure that each individual is limited to one (1) sports wagering account with that licensee in the Commonwealth.

(1) The licensee shall implement procedures to terminate all accounts of any account holder that establishes or seeks to establish more than one (1) username or more than one (1) account, whether directly or by use of another person as proxy.

(2) Such procedures may allow an account holder that establishes or seeks to establish more than one (1) username or more than one (1) account to retain one (1) account provided that the licensee investigates and makes a good-faith determination that the account holder's conduct was not intended to obtain a competitive advantage.

(3) This section shall not be construed to prevent an individual from holding other sports wagering accounts in other jurisdictions.

(4) If an operator licensee has contracted with multiple service provider licensees to offer mobile sports wagering on its behalf, individuals may have one (1) sports wagering account with each service provider licensee offering mobile sports wagering.

Section 4. Terms and Conditions and Privacy Policies for Sports Wagering Accounts. All terms and conditions and privacy policies for sports wagering accounts shall be included in the internal controls of the licensee and shall be readily accessible to the account holder before and after registration and noticed when materially updated.

(1) All terms and conditions for sports wagering accounts shall address all aspects of the licensee, including:

(a) A statement that only individuals located in the authorized

geographic boundaries within the Commonwealth of Kentucky can participate in sports wagering;

(b) A statement that prohibited patrons are prohibited from participating in sports wagering;

(c) Advice to the account holder to keep their authentication credentials (e.g., password and username) secure;

(d) All processes for dealing with lost authentication credentials, forced password changes, password strength and other related items as required by the racing commission;

(e) Full explanation of all rules applicable to dormant sports wagering accounts, including the conditions under which an account is declared dormant and what actions will be undertaken on the account once this declaration is made;

(f) Actions that will be taken on the account holder's pending wagers placed prior to any exclusion or suspension, including the return of all wagers, or settling all wagers, as appropriate;

(g) Information about timeframes and limits regarding deposits to and withdrawals from sports wagering accounts, including a clear and concise explanation of all fees, if applicable; and

(h) Statements indicating that the licensee has the right to:

1. Refuse to establish a sports wagering account for what it deems good and sufficient reason;

2. Refuse deposits to or withdrawals from sports wagering accounts for what it deems good and sufficient reason; and

3. Unless there is a pending investigation or dispute, suspend or close any sports wagering account at any time pursuant to the terms and conditions between the licensee and the account holder.

(2) All privacy policies for sports wagering accounts shall address all aspects of the personally identifiable information protection, including:

(a) The personally identifiable information required to be collected;

(b) The purpose and legal basis for personally identifiable information collection and of every processing activity for which consent is being sought;

(c) The period in which the personally identifiable information is stored, or, if no period can be possibly set, the criteria used to set this;

(d) The conditions under which personally identifiable information may be disclosed;

(e) An affirmation that measures are in place to prevent the unauthorized or unnecessary disclosure of the personally identifiable information; and

(f) The identity and contact details on the licensee who is seeking the consent.

Section 5. Account Access.

(1) The sports wagering system shall use authentication credentials, such as a username (or similar) and a password or a secure alternative means to assure that only the account holder has access to the sports wagering account. Allowable authentication credentials are subject to the discretion of the racing commission as necessary. The requirement does not prohibit the option for more than one (1) method of authentication being available for an account holder to access their account.

(2) If the sports wagering system does not recognize the authentication credentials when entered, an explanatory message shall be displayed to the account holder which prompts the account holder to try again. The error message shall be the same regardless of which authentication credential is incorrect.

(3) Account holders shall be given the option to use a multi-factor authentication process when accessing their sports wagering account. In addition, a multi-factor authentication shall be employed for the retrieval or reset of an account holder's forgotten or lost authentication credentials.

(4) Current account balance information, such as any restricted wagering credits and unrestricted funds, and transaction options shall be available to the account holder once authenticated. All restricted wagering credits and unrestricted funds that have a possible expiration shall be indicated separately.

(5) The sports wagering system shall support a mechanism that allows for an account to be locked if suspicious activity is detected, such as three (3) consecutive failed access attempts in a thirty (30) minute period. A multi-factor authentication process shall be

employed for the account to be unlocked.

Section 6. Financial Transactions.

(1) Licensees shall provide the account holder written confirmation or denial of every financial transaction initiated on sports wagering accounts, including:

- (a) The type of transaction (deposit or withdrawal);
- (b) The transaction value; and

(c) For denied transactions, a descriptive message, if appropriate and available, as to why the transaction did not complete as initiated.

(2) A sports wagering account may be funded using acceptable form of payment or advance deposit method which shall produce a sufficient audit trail for verification of the source of the wagers.

(a) Payment or advance deposit methods for funding sports wagering accounts may be funded by forms or methods approved by the racing commission including:

- 1. All forms of payment authorized in KRS 230.805;
- 2. Cash equivalents converted to cash;
- 3. Electronic funds transfers (EFTs), such as automated clearing house and other electronic methods;
- 4. Promotional or bonus credit;
- 5. Winnings;
- 6. Adjustments made by the licensee with documented notification to the account holder; and
- 7. Any other form of payment authorized by the commission.

(b) The sports wagering account shall be credited for any deposit in accordance with the internal controls as submitted by the licensee and approved by the racing commission.

(c) For credit or debit cards, and EFTs, the account holder may be liable for any charges imposed by the transmitting or receiving licensee and the charges may be deducted from the account holder's sports wagering account.

(3) Where financial transactions are conducted through EFT, the licensee shall have security measures and controls to prevent EFT fraud. A failed EFT attempt is not considered fraudulent if the account holder has successfully performed an EFT on a previous occasion with no outstanding chargebacks. Otherwise, the licensee shall do the following:

(a) Temporarily block the account holder's sports wagering account for investigation of fraud after five (5) consecutive failed EFT attempts within a ten (10) minute period. If there is no evidence of fraud, the block may be vacated; and

(b) Suspend the account holder's sports wagering account after five (5) additional consecutive failed EFT attempts within a ten (10) minute period.

(4) An account holder shall be allowed to withdraw the funds maintained in their sports wagering account, whether the account is open or closed, except as otherwise provided in these regulations, or any other applicable state or federal laws.

(a) A licensee shall employ a mechanism that can detect and prevent any withdrawal activity initiated by an account holder that would result in a negative balance of the sports wagering account.

(b) A licensee shall not allow a sports wagering account to be overdrawn unless caused by payment processing issues outside the control of the licensee.

(c) A licensee shall honor the account holder's request to withdraw funds within five (5) business days after the request, unless the conditions established in paragraph (d) of this subsection are met.

(d) The licensee may decline to honor an account holder's request to withdraw funds only if the licensee believes in good faith that the account holder engaged in either fraudulent conduct or other conduct that would put the licensee in violation of the act and these regulations. In such cases, the licensee shall do the following:

- 1. Suspend the account holder's sports wagering account and provide notice to the account holder; and
- 2. Conduct its investigation in a reasonable and expedient fashion, providing the account holder additional written notice of the status of the sports wagering account every 10th business day starting from the day the original notice was provided to the account holder.

(e) For purposes of this subsection, a request for withdrawal is considered honored if it is processed by the licensee

notwithstanding a delay by a payment processor, credit or debit card issuer, or the custodian of a financial account.

(5) All adjustments to sports wagering accounts for amounts of \$500 or less shall be periodically reviewed by supervisory personnel as established in the licensee's internal controls. All other adjustments shall be authorized by an authorized supervisory personnel of the licensee before being entered.

Section 7. Account Information. Upon request of the account holder, the licensee shall provide a statement detailing account activity for the past year, including wagers, deposit amounts, withdrawal amounts, and bonus or promotion information.

Section 8. Patron-Imposed Limits. A licensee shall allow an account holder to limit the amount of money that may be deposited into an account and spent through an account.

(1) A deposit limit shall be offered on a daily, weekly and monthly basis and shall specify the maximum amount of money an account holder may deposit into their sports wagering account during a particular period of time.

(2) A wager limit shall be offered on a daily, weekly and monthly basis and shall specify the maximum amount of account holder funds that may be put at risk during a particular period of time.

(3) Any decrease to these limits shall be effective immediately or at the point in time (e.g., next login, next day) that was clearly indicated to the account holder. Any increase to these limits shall become effective only after the time period of the previous limit (e.g., day, week, month, etc.) has expired and the account holder reaffirms the requested increase.

Section 9. Breaks from Wagering.

(1) A licensee shall enable an account holder to request a break from wagering for a period of time the account holder specifies, which shall not be less than seventy-two (72) hours, by submitting a request to the licensee through its Web site or mobile application.

(2) The licensee shall provide to an account holder who requests a break from wagering information concerning:

- (a) Available resources addressing addiction and compulsive behavior;
- (b) How to close an account and restrictions on opening a new account during the break;
- (c) Requirements to reinstate an account at the end of the break;
- (d) The ability to enroll in the voluntary self-exclusion program and a link to such site; and
- (e) How the licensee addresses bonuses or promotions and account balances during and after the break, and when the account holder closes their sports wagering account.

Section 10. Suspension and Restoration of Sports Wagering Accounts.

(1) A sports wagering account may be placed into a suspended mode by the Licensee for any reason, not otherwise prohibited by state or federal law, at the sole discretion of the licensee.

(2) A sports wagering account shall be placed into a suspended mode by the licensee under any of the following conditions:

- (a) When the account holder requests a break from wagering under subsection (1) of this section;
- (b) When required by the racing commission;
- (c) If the licensee determines it lacks sufficient information to verify the age and eligibility of the account holder;
- (d) Upon a determination by a licensee that an account holder:
  - 1. Has provided any false or misleading information in connection with the opening of the account or has engaged in collusion, cheating or other unlawful conduct;
  - 2. Is barred from placing sports wagers in the Commonwealth of Kentucky; or
  - 3. Is a prohibited patron; or
- (e) When the licensee has evidence that indicates any of the following:

- 1. Illegal activity including providing any false or misleading information in connection with the opening of the account, or engaging in collusion, cheating, or other unlawful conduct;
- 2. A negative sports wagering account balance; or
- 3. A violation of the terms and conditions has taken place on an

account holder's sports wagering account.

(3) When a sports wagering account is in a suspended mode, the licensee shall:

- (a) Prevent the account holder from placing sports wagers;
- (b) Prevent the account holder from depositing funds unless the account is suspended due to having a negative sports wagering account balance but only to the extent the sports wagering account balance is brought back to zero dollars;
- (c) Prevent the account holder from withdrawing funds from their sports wagering account, unless the licensee acknowledges that the funds have cleared, and that the reason(s) for suspension would not prohibit a withdrawal;
- (d) Prevent the account holder from making changes to their sports wagering account;
- (e) Prevent the removal of the sports wagering account from the sports wagering system;
- (f) Prominently display to the account holder that the sports wagering account is in a suspended mode, the restrictions placed on the sports wagering account, and any further course of action needed to remove the suspended mode; and
- (g) Remove the account holder from any advertising or marketing distribution lists.

(4) A sports wagering account in a suspended mode may be restored for any of the following reasons:

- (a) Upon completion of the break from wagering established by the account holder under subsection (1) of this section;
  - (b) If authorized by the racing commission;
  - (c) When the account holder is no longer a prohibited patron; or
  - (d) When the licensee has lifted the suspended status.
- (5) If the sports wagering account is terminated in accordance with this section, any funds remaining in the sports wagering account shall be refunded to the account holder, provided that the licensee acknowledges that the funds have cleared, and that the reason(s) for termination would not prohibit a withdrawal.

#### Section 11. Account Closure.

(1) A sports wagering system shall provide a conspicuous and readily accessible method for an account holder to close their sports wagering account through the account management or similar page or through the licensee's customer support team.

(2) Upon closure, any funds remaining in the sports wagering account shall be refunded to the account holder, provided that the licensee acknowledges that the funds have cleared and no racing commission investigation regarding the funds is pending.

Section 12. Dormant Accounts. Any sports wagering account with no log-in activity for at least three (3) years may be closed. When a sports wagering account is closed, the licensee shall issue any funds, less processing fees, within five (5) business days to the account holder's last-known address.

Section 13. Test Accounts. A licensee may establish test accounts to be used to test the various components and operation of a licensee pursuant to the internal controls, which shall address the following:

- (1) The procedures for issuing funds used for testing, including the identification of who may issue the funds and the maximum amount of funds that may be issued;
- (2) The procedures for assigning each test account for use by only one (1) individual, unless each user's activities are separately logged;
- (3) The maintenance of a record for all test accounts, to include when they are active, to whom they are issued, and the employer of the individual to whom they are issued;
- (4) The procedures for auditing testing activity by the licensee to ensure the accountability of funds used for testing and proper adjustments to adjusted gross revenue; and
- (5) The procedures for authorizing and auditing out-of-state test activity.

JONATHAN RABINOWITZ, Chair  
RAY PERRY, Secretary

APPROVED BY AGENCY: July 10, 2023

FILED WITH LRC: July 10, 2023 at 4:00 p.m.

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:** A public hearing on this administrative regulation shall be held on September 22, 2023 at 9:00 a.m., at Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511. 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 September 30, 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:** Jennifer Wolsing, General Counsel, Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859) 246-2039, email jennifer.wolsing@ky.gov.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jennifer Wolsing

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation specifies the sports wagering account requirements and responsible gaming limits, and also establishes requirements for dormant and closed accounts.

(b) The necessity of this administrative regulation: This regulation is necessary to provide specific rules concerning the establishment and maintenance of sports wagering accounts.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.260 requires the commission to "promulgate administrative regulations to establish standards for the conduct of sports wagering." KRS 230.361(2) requires the commission to "promulgate administrative regulations governing and regulating sports wagering, including administrative regulations for the deposit of funds by credit or debit cards or other means of electronic funds transfer." KRS 230.805(3) establishes additional requirements for registration of sports wagering patrons' accounts, such as account registration and wager placement. This regulation proscribes the conditions relating to the establishment and maintenance of sports wagering accounts, which includes patrons' account registration, identity verifications, and wager placements.

(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 statutes by ensuring that sports wagering providers properly establish and maintain patrons' sports wagering accounts.

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation affects the licensed tracks that apply for and receive a license to conduct sports wagering in the Commonwealth. There are currently nine (9) licensed tracks operating in the Commonwealth. Each track is allowed to contract with up to three (3) service providers. Therefore, up to 27 service providers may be affected by the definitions in this regulation. Additionally, there are an unknown number of patrons who will choose to set up a sports wagering account.

(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 tracks that obtain a sports wagering license, as well as service providers, must observe the regulatory requirements when allowing patrons to use their sports wagering accounts.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Compliance costs are uncertain. Tracks may incur the costs of contracting with service providers to manage patrons' accounts.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance, tracks will benefit from having clear standards for patrons' sports wagering accounts. Kentuckians will benefit because people under 18 will be precluded from placing sports wagers. Sports wagering patrons will benefit from secure accounts that only allow authorized financial transactions. Patrons will also benefit from being able to request a break from wagering if needed.

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

(a) Initially: It is estimated that the commission will spend approximately \$2.4 million to implement sports wagering in Kentucky in the first year.

(b) On a continuing basis: It is further estimated that the commission will spend approximately \$1.2 million annually to continue regulating sports wagering in Kentucky on a yearly basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The funding to implement and enforce sports wagering in Kentucky will come from the sports wagering administrative fund, as established in KRS 230.817. No additional funding is required 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: No increase in fees or funding will be necessary to implement this administrative regulation.

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

(9) TIERING: Is tiering applied? Tiering is not applied, because this amended regulation will apply similarly to all similarly situated entities in an equal manner.

#### FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Horse Racing Commission 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 230.260(16), KRS 230.361(2), and KRS 230.805 require or authorize the actions taken by this regulation.

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

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

(c) How much will it cost to administer this program for the first year? It is estimated that the commission will spend approximately \$2.4 million in the first year to implement sports wagering in Kentucky.

(d) How much will it cost to administer this program for subsequent years? It is further estimated that the commission will spend approximately \$1.2 million annually to continue regulating sports wagering in Kentucky in subsequent years.

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

regulation.

Revenues (+/-): Neutral.

Expenditures (+/-): Neutral.

Other Explanation: 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 regulation may generate cost savings in establishing regulatory criteria for patron account confidentiality and security. This could prevent costs associated with hackers or phishing attacks.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? This regulation may generate cost savings in establishing regulatory criteria for patron account confidentiality and security. This could prevent costs associated with successful hacking or phishing attacks.

(c) How much will it cost the regulated entities for the first year? Tracks may incur the costs of contracting with service providers to manage patrons' accounts.

(d) How much will it cost the regulated entities for subsequent years? Tracks may incur the costs of contracting with service providers to manage patrons' accounts.

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

Cost Savings (+/-): This regulation may prevent costs associated with successful hacking or phishing attacks.

Expenditures (+/-): Tracks may incur the costs of contracting with service providers to manage patrons' accounts.

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 regulation is not anticipated to have a major economic impact on Kentucky for the reasons stated above.

#### PUBLIC PROTECTION CABINET Kentucky Horse Racing Commission (New Administrative Regulation)

##### 809 KAR 10:005. Licensed premises.

RELATES TO: KRS Chapter 230

STATUTORY AUTHORITY: KRS 230.260(16), 230.361, 230.805

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.260 requires the commission to "promulgate administrative regulations to establish standards for the conduct of sports wagering." KRS 230.361 states the "racing commission shall promulgate administrative regulations to establish a fully functioning sports wagering system..." KRS 230.805 permits sports wagering at a licensed facility for sports wagering on licensed premises. This administrative regulation establishes controls for sports wagering on licensed premises, including the floor plan, security, surveillance, sports wagering windows, sports wagering kiosks, sports wagers and vouchers, drop and count, and incident reporting.

##### Section 1. Floor Plan.

(1) An applicant for a sports wagering operator's license shall specify where sports wagering will take place within the licensed facility for sports wagering, if any, by providing the following information:

(a) A drawing to scale of the building, and each floor thereof, in which sports wagering shall be conducted, at a scale sufficient to identify all of the information established in this section.

(b) The drawing shall depict the following information:

1. The total square footage of the race and sports book location;
2. A diagram, outlined in red, of the proposed designated area for the sports wagering, if any, on each floor within the building;

3. The race and sports book locations, including each wagering window;

4. The locations of each sports wagering kiosk. Notwithstanding the foregoing, licensees may move sports wagering kiosks from one location to another with approval of the racing commission;

5. Any race and sports book location that is, or is from time to time, a restricted race and sports book location, specifying the nature of the restrictions and when they will apply;

6. Each cage;

7. The count room;

8. The vault;

9. Any other restricted areas; and

10. All areas subject to surveillance.

(c) A certificate of compliance approved by the local fire and building officials which has been approved; and a written statement by the appropriate local official that handicapped access to the designated licensed facility for sports wagering has been provided.

(2)(a) The race and sports book shall include both sports wagering and pari-mutuel products.

(b) All floor plans for a race and sports book shall be approved by the commission. In considering a request related to a floor plan, the commission shall consider, among other things:

1. The equitable number, size, and picture clarity of displays or other equipment used to show broadcasts of horse racing and sporting events;

2. The equitable number of sports wagering kiosks and pari-mutuel wagering terminals; and,

3. The presence of a live sports wagering teller on the licensed premises.

(3) The designated licensed facility for sports wagering and simulcasting areas shall be approved by the commission as a condition of license approval.

(4) A floor plan may be amended upon request by the licensed premises and approval by the racing commission. Such a request shall be filed with the racing commission in writing at least seventy-two (72) hours prior to the time for which implementation of the amendment(s) is sought.

(5) If a licensee includes a sports wagering kiosk in a simulcast area, the layout of the simulcast area shall be subject to commission approval.

**Section 2. Race and Sports Book Locations.** Designated race and sports book locations within the licensed premises shall be established so as to control access by the general public and prevent entry by any patron who is under eighteen (18) years of age or is otherwise not permitted to place wagers.

**Section 3. Underage Persons Prohibited from Wagering.** An underage person shall not be permitted by any licensee to purchase or cash a sports wagering ticket or voucher.

**Section 4. Anonymous Wagers and Payouts Greater Than \$10,000.** The requirements of this section only apply for wagers and payouts not associated with a sports wagering account.

(1) Prior to accepting any wager in excess of \$10,000 or making a payout in excess of \$10,000 on a winning wager, a licensee shall obtain and record the following information:

(a) The patron's full legal name;

(b) The patron's date of birth;

(c) The patron's principal physical address other than a post office box;

(d) The patron's Social Security number, or the last four (4) digits of the Social Security number, or an equivalent government identification number for a noncitizen, such as a passport or taxpayer identification number; and

(e) The document number from one of the following valid identification credentials collected from the patron to verify their identity:

1. Driver's license;

2. Passport;

3. Non-resident alien identification card;

4. Other reliable government-issued identification credentials; or

5. Other picture identification credential normally acceptable as a means of identification when cashing checks.

(2) Subsequent to accepting a wager in excess of \$10,000 or making a payout in excess of \$10,000 on a winning wager the licensee shall maintain records for five (5) years that include:

(a) The time and date of the wager or payout;

(b) The amount of the wager or payout;

(c) The patron's full legal name;

(d) The ticket writer or other identification of the location where the wager or payout occurred; and

(e) The identification of the employee(s) accepting or approving the wager and payout on the wager.

(3) Licensees shall monitor all wagers and payouts to ensure patrons are not circumventing the recording and reporting requirements of this section.

#### Section 5. Wagering Windows.

(1) Each licensed premises may have one or more wagering windows located in the race and sports book location or other window locations as approved by the racing commission.

(2) A wagering window shall:

(a) Be designed and constructed to provide maximum security for the materials stored and the activities performed therein, in a manner approved by the racing commission;

(b) Include one (1) or more ticket writer stations, each of which shall:

1. Interface with the Sports Wagering System for all sports wagers placed;

2. Contain a permanently affixed number, which shall be visible to the surveillance system;

3. Contain manually triggered silent alarm systems, which shall be connected directly to the surveillance operation room(s); and

4. Contain full enclosures, unless funds are either secured in a drop safe approved by the racing commission or transferred to the vault or cage;

(c) Include manually triggered silent alarm systems, which shall be connected directly to the surveillance operation room(s);

(d) Provide for surveillance equipment capable of accurate visual monitoring and recording of any activities; and

(e) Require any emergency exit door that is not a mantrap to be alarmed.

(3) A wagering window shall have access to a secure location, such as a vault, for the purpose of storing funds issued by a cage to be used in the operation of Sports Wagering. The secure location shall:

(a) Be a fully enclosed room, located in an area not accessible to the public;

(b) Have a metal door with a locking mechanism that shall be maintained and controlled by the wagering manager;

(c) Have an alarm device that signals surveillance personnel if the door to the secure location is opened; and

(d) Have surveillance equipment capable of accurate visual monitoring and recording of all activities in the secure location.

(4) A wagering window shall have an operating balance not to exceed an amount specified in the licensee's internal controls and approved by the racing commission. Funds in excess of the operating balance shall be transferred to the cage in a secured container by an employee of the counter accompanied by a security officer. Prior to transporting the funds, security personnel shall notify surveillance personnel that the transfer will take place. Surveillance personnel shall monitor the transfer. The funds shall be transferred with appropriate documentation as set forth in the internal controls, as approved by the commission.

(5) The assets for which each ticket writer is responsible shall be maintained on an imprest basis. A ticket writer shall not permit any other person to access the ticket writer's imprest inventory.

(6) A ticket writer shall begin a shift with an imprest amount of currency and coin to be known as the "wagering inventory." No funds shall be added to or removed from the wagering inventory during such shift except:

(a) In collection of sports wagers;

(b) In order to make change for a patron placing a wager;

(c) In collection for the issuance of vouchers;

(d) In payment of winning or properly cancelled or refunded wagers;

(e) In payment of vouchers;



(f) To process deposits or withdrawals to or from a sports wagering account, where supported;

(g) In exchanges with the cashier's cage, a satellite cage, or vault supported by proper documentation which documentation shall be sufficient for accounting reconciliation purposes; or

(h) In payment of appeasement payments.

(7) A wagering inventory slip shall be completed and signed by the wagering manager, and the following information shall be recorded thereon at the commencement of a shift:

(a) The date, time, and shift of preparation;

(b) The denomination of currency and coin in the wagering inventory issued to the ticket writer;

(c) The total amount of each denomination of currency and coin in the Wagering inventory issued to the ticket writer;

(d) The ticket writer station to which the ticket writer is assigned; and

(e) The signature of the wagering manager.

(8) A ticket writer assigned to a ticket writer station shall count and verify the wagering inventory at the vault or other approved location and shall reconcile the count to the wagering inventory slip. The ticket writer shall sign the count sheet attesting to the accuracy of the information recorded thereon. The wagering inventory shall be placed in a ticket writer's drawer and transported directly to the appropriate ticket writer station by the ticket writer.

(9) If funds are transferred from the vault to a ticket writer, the wagering manager responsible for the vault shall prepare a two-part Writer Transfer-Out form. Upon completion of the form, the original shall be retained by the vault manager and the duplicate shall be retained by the ticket writer. The form shall include:

(a) Date and time of the transfer;

(b) Designation of the vault location;

(c) Ticket writer station to where the funds are being transferred to;

(d) Amount of each denomination being transferred;

(e) Total amount of the transfer;

(f) Signature of the preparer of the transfer;

(g) Signature of the manager verifying and issuing the funds; and

(h) Signature of the ticket writer verifying and receiving the funds.

(10) If funds are transferred from the ticket writer to a vault, a two-part Writer Transfer-In form shall be prepared. Upon completion of the form, the original shall be retained by the ticket writer and the duplicate shall be immediately returned with the funds to the vault. The form shall include:

(a) Date and time of the transfer;

(b) Designation of the vault location where the funds are being transferred to;

(c) Ticket writer station to where the funds are being transferred from;

(d) Amount of each denomination being transferred;

(e) Total amount of the transfer;

(f) Signature of the ticket writer verifying and sending the funds to the vault; and

(g) Signature of the manager verifying and receiving the funds.

(11) At the conclusion of a ticket writer's shift, the ticket writer's drawer and its contents shall be transported directly to the vault or to a location approved by the racing commission in the wagering window, where the ticket writer shall count the contents of the drawer and record on the Wagering Inventory Slip the following information:

(a) The date, time, and shift of preparation;

(b) The denomination of currency and coupons in the drawer;

(c) The total amount of each denomination of currency and coupons in the drawer;

(d) The total of the Writer Transfer-Out forms;

(e) The total of the Writer Transfer-In forms;

(f) The total amount in the drawer; and

(g) The signature of the ticket writer.

(12) The wagering manager shall compare the ticket writer closing balance to the wagering inventory slip total, record any over or short amount, and sign the wagering inventory slip.

(13) If the wagering inventory slip lists an overage or shortage, the ticket writer and the wagering manager shall attempt to determine the cause of the discrepancy in the count. If the

discrepancy cannot be resolved, such discrepancy shall be reported to surveillance personnel and the wagering manager or supervisor in charge at such time. Any discrepancy in excess of \$500 shall be reported to the racing commission. Such report shall include:

(a) Date on which the discrepancy occurred;

(b) Shift during which the discrepancy occurred;

(c) Name of the ticket writer;

(d) Name of the wagering manager;

(e) Ticket writer station number; and

(f) Amount of the discrepancy.

(14) If funds are transferred from the vault to the cashier's cage, the wagering manager responsible for the vault shall prepare a two (2) part Vault Transfer-Out form. Upon completion of the form, the original shall be retained by the vault manager and the duplicate shall be transferred with the funds to the cashier's cage. The form shall include:

(a) Date and time of the transfer;

(b) Designation of the vault location;

(c) Designation of the cage location;

(d) Amount of each denomination being transferred;

(e) Total amount of the transfer;

(f) Signature of the preparer of the transfer;

(g) Signature of the vault manager verifying and issuing the funds; and

(h) Signature of the cage cashier verifying and receiving the funds.

(15) If funds are transferred from the cashier's cage to a vault, a two-part Vault Transfer-In form shall be prepared. Upon completion of the form, the original shall be retained by the cage cashier and the duplicate shall be transferred with the funds to the vault. The form shall include:

(a) Date and time of the transfer;

(b) Designation of the vault location where the funds are being transferred to;

(c) Cashier location where the funds are being transferred from;

(d) Amount of each denomination being transferred;

(e) Total amount of the transfer;

(f) Signature of the cage cashier verifying and sending the funds to the vault; and

(g) Signature of the vault manager verifying and receiving the funds.

(16) In lieu of separate wagering windows with live tellers, cage personnel may write and cash tickets.

Section 6. Wrong Ticket Claims. Subject to a ticket writer's discretion, any claim by a patron that he or she has been issued a sports wagering ticket other than that requested shall be made before the patron has left the wagering window or before the ticket writer has initiated a transaction with another patron.

Section 7. Sports Wagering Kiosks. A licensee may utilize sports wagering kiosks located in a licensed premises for wagering transactions in conjunction with a sports wagering system in a location approved by the commission. A sports wagering kiosk shall be established and operated as follows:

(1) All aspects of a sports wagering kiosk, including the computer and any related hardware, software, or related devices, shall be submitted to a nationally recognized, independent testing laboratory approved by the racing commission for certification testing and approved by the racing commission prior to use by a licensee. The racing commission may require any additional testing or field inspection of the sports wagering kiosk it deems necessary prior to or after approval;

(2) To obtain a temporary license, a licensee may submit to the racing commission a certification report of an independent testing laboratory of kiosk components in operation in another jurisdiction in the United States where the licensee is currently licensed or permitted. The report must certify the kiosk components to either the GLI-33 Standards or, at the discretion of the racing commission, a standard deemed to be the equivalent of the GLI-33 Standards. This alternative certification report must include a list of all critical files and associated signatures and an appendix which lists the differences of any controlled items or processes required to be certified in Kentucky which were not certified in the jurisdiction in

which the report was issued. Upon review of the certification report, the racing commission will make a determination on whether to accept the certification or require additional information or documentation or testing.

(3) Each sports wagering kiosk shall be configured not to:

(a) Issue a sports wagering ticket with a wager in excess of \$10,000;

(b) Redeem a winning sports wagering ticket with a value in excess of \$10,000 or other limits set by the IRS; or

(c) Issue or redeem a sports wagering voucher with a value in excess of \$10,000 or other limits set by the IRS;

(4) All sports wagering kiosks shall have a sign permanently affixed to the kiosk notifying the public that patrons shall not be Underage Persons, as approved by the commission;

(5) On a schedule approved by the commission, a licensee shall remove the drop boxes in the sports wagering kiosks. The drop boxes shall be monitored and recorded by surveillance. The licensee shall submit the sports wagering kiosk drop schedule to the commission or its designee; and

(6) The licensee shall reconcile the sports wagering kiosks on a schedule approved by the commission pursuant to internal controls. Any variance of \$500 dollars or more shall be documented by the accounting department and reported in writing to the racing commission within five (5) business days after drop and count of sports wagering kiosks. The report shall indicate the cause of the variance and shall contain any documentation required to support the stated explanation.

(7) In locations where sports wagering kiosks do not allow for redemption, the licensee shall display prominently the methods of paying out or cashing out vouchers near each sports wagering kiosk.

#### Section 8. Drop and Count.

(1) A licensed premises shall have a count room whose physical access shall be limited to count team employees, designated staff, commission employees, and other persons authorized by the licensee, and shall remain locked unless entry and exist is required by authorized persons.

(a) Count team employees shall not exit or enter the count room during the count except for emergencies or scheduled breaks.

(b) Surveillance staff shall be notified if count room employees exit or enter the count room during the count.

(c) A licensee shall establish a count team policy that shall address the transportation of extraneous personal items such as personal belongings, toolboxes, beverage containers, into or out of the count room.

(2) Security of the count and the count room shall be ensured to prevent unauthorized access, misappropriation of funds, forgery, theft, or fraud.

(a) All counts shall be performed by at least two (2) employees.

(b) At no time during the count shall there be fewer than two (2) count team employees in the count room until the drop proceeds have been accepted into cage or vault accountability.

(c) Count team employees shall be independent of the department being counted. A cage or vault employee may be used if they are not the sole recorder of the count and do not participate in the transfer of drop proceeds to the cage or vault. An accounting employee may be used if there is an independent audit of all count documentation.

(3) Currency cassettes and drop boxes shall be securely removed from sports wagering kiosks.

(a) Surveillance shall be notified prior to the drop boxes or currency cassettes being accessed in a kiosk.

(b) At least two employees shall be involved in the collection of currency cassettes and drop boxes from kiosks and at least one employee should be independent of kiosk accountability.

(c) Currency cassettes and drop boxes shall be secured in a manner that restricts access to only employees authorized by the licensee.

(d) If applicable, redeemed vouchers collected from the kiosk shall be secured and delivered to the appropriate department (cage or accounting) for reconciliation.

(e) Controls shall be established, and procedures implemented to ensure that currency cassettes contain the correct denominations and have been properly installed.

(f) Access to stored full kiosk drop boxes and currency cassettes shall be restricted to:

1. Employees authorized by the licensee; and

2. In an emergency, additional persons authorized for the resolution of a problem.

(g) The kiosk count shall be performed in a secure area, such as the cage or count room.

(h) If counts from kiosks and any other areas requiring counts occur simultaneously in the count room, procedures shall be in effect that prevent the commingling of funds from the kiosks with any other areas requiring counts.

(i) The kiosk drop boxes and currency cassettes shall be individually emptied and counted so as to prevent the commingling of funds between kiosks until the count of the kiosk contents has been recorded.

(j) Procedures shall be implemented to ensure that any corrections to the count documentation are permanent and identifiable, and that the original, corrected information remains legible. Corrections shall be verified by two (2) employees.

#### Section 9. Winning Wagers and Vouchers.

(1) Payment on valid sports wagering tickets shall be made only if presented and surrendered within one (1) year following the settling of the sporting event, or, in the event of a parlay, the last-in-time sporting event to settle on the ticket. Failure to present a ticket within one (1) year shall constitute a waiver of the right to receive payment on the ticket.

(2) Sports wagering vouchers shall be valid for one (1) year after the date of issuance. Failure to present any voucher for redemption within one (1) year of issuance shall constitute a waiver of the right to receive payment on the voucher.

(3) A mutilated sports wagering ticket or voucher that cannot be identified as a valid ticket or voucher shall not be accepted for payment.

(4) A licensee shall establish a written procedure for granting patrons an opportunity to file a claim on a lost sports wagering ticket or voucher and provide a copy to the racing commission.

#### Section 10. Cashiers, Windows, and Cages.

(1) Each licensed premises shall have on or immediately adjacent to the race and sports book location a physical structure known as a cashiers' cage to house the cashiers, which is located in or within close proximity to the race and sports book location. Each licensed premises may also have one or more satellite cages in or within close proximity to the race and sports book location.

(2) A cage or satellite cage shall be fully enclosed and shall have the following features:

(a) Perform financial transactions related to sports wagering;

(b) Be designed and constructed to provide maximum security for the materials stored and the activities performed therein, in a manner approved by the racing commission;

(c) Include openings at one or more numbered cashier windows through which financial transactions related to sports wagering will be conducted, each of which shall contain a cashier's drawer;

(d) Include manually triggered silent alarm systems, which shall be connected directly to the surveillance and the security operation room(s);

(e) Provide for surveillance equipment capable of accurate visual monitoring and recording of any activities; and

(f) Include a mantrap if the cage or satellite cage secure assets having a value greater than an amount established by the racing commission. The outer door of the mantrap shall be controlled by security personnel and the inner door shall be controlled by accounting personnel. The doors of the mantrap shall have separate and distinct locking mechanisms on each door of the double door entry and exit system. The mantrap shall be subject to continuous surveillance coverage.

(3) Each licensed premises may have one or more service windows to serve as a location in the facility to conduct financial transactions. Such window shall be designed and constructed in accordance with subsection (2)(b) of this section, and access shall be controlled by an accounting supervisor.

(4) If approved paperless systems are not in use, the internal controls shall require that documents regarding the funds stored in

cages shall be transported between cages in a secure manner approved by the racing commission and accompanied by security.

(5) Each licensed premises shall have on hand in the cage, or readily available such as in a restricted bank account or by bond, a reserve of cash to pay winning patrons.

(6) A cashiers' cage and any satellite cage shall be segregated by personnel such that no single person has both control and approval for any aspect of cage operations maintained.

(7) A qualified supervisor may perform the functions of a cashier provided the functions are not incompatible with proper separation of duties. A supervisor shall not operate from another cashier or supervisor's imprest inventory.

(8) The assets for which each cashier is responsible shall be maintained on an imprest basis. A cashier shall not permit any other person to access his or her imprest inventory. Cashier functions shall include the following:

(a) Perform check consolidations, total or partial redemptions, or substitutions for patrons;

(b) Receive cash, authorized cash equivalents and authorized electronic transfers from patrons in exchange for currency or sports wagering vouchers;

(c) Perform deposit and withdrawal transactions for sports wagering accounts, where supported;

(d) Process exchanges with cashiers, supported by documentation with signatures thereon, for the effective segregation of functions in the cashiers' cage;

(e) Receive sports wagering tickets or vouchers from patrons or authorized employees in exchange for cash; and

(f) Exchange and reconcile imprest funds used by attendants, including imprest change/pouch payout funds.

(9) A licensed premises may consolidate the cashier functions, provided that the cashier is qualified to perform all functions and performs no functions incompatible with proper separation of duties.

#### Section 11. Security and Surveillance.

(1) The licensed premises shall have appropriate physical security and surveillance controls that:

(a) Enable a suitable response to any security issue within the licensed premises; and

(b) Prevent any person from tampering with or interfering with the operation of any sports wagering or equipment.

(2) The licensed premises shall establish provisions describing the duties and operation of its security department, which shall include details relative to the design, construction, and location of primary and secondary armored car routes, including provisions for the security of such routes.

(3) Licensed premises shall install, maintain, and operate a surveillance system that has the capability to monitor and record continuous unobstructed views of all sports wagering and financial transactions as well as any dynamic displays of sports wagering information.

(4) The surveillance system shall:

(a) Have the capability to display all camera views on a monitor; and

(b) Record all camera views.

(5) The surveillance system shall be maintained and operated from a surveillance operation room(s) or, when authorized by the racing commission, a secured location, such as a locked cabinet.

(a) The surveillance operation room(s) shall be secured to prevent unauthorized entry.

(b) The location of the surveillance operation room or rooms shall ensure the interior is not visible to the public and employees who do not work in the surveillance room or rooms.

(c) Access to the surveillance operation room(s) shall be limited to surveillance personnel, the racing commission, and other persons authorized by the licensee.

(d) Surveillance operation room(s) access logs shall be maintained, recording all entries and exits.

(e) No personal recording devices of any kind are permitted in the surveillance operation room. This includes devices such as cameras, video recorders, and mobile phones.

(f) Surveillance operation room equipment shall have total override capability over all other satellite surveillance equipment.

(6) If a power loss to the surveillance system occurs, alternative

security procedures, such as additional supervisory or security employees, shall be implemented immediately.

(7) The surveillance system shall record an accurate date and time stamp on recorded events. The displayed date and time shall not significantly obstruct the recorded view.

(8) All surveillance employees shall be trained in the use of the equipment and wagering rules.

(9) A periodic inspection of the surveillance systems shall be conducted. When a dedicated camera stops providing coverage in the racing and sports book or to sports wagering kiosks, the coverage failure and necessary repairs shall be documented, and repairs initiated within seventy-two (72) hours.

(a) If a dedicated camera stops providing coverage, alternative security procedures, such as additional supervisory or security personnel, shall be implemented immediately.

(b) The racing commission shall be notified of any coverage failure for more than twenty-four (24) hours and the alternative security measures being implemented.

(10) Surveillance coverage shall be provided for the following areas as follows:

(a) For public entrances to the licensed facility for sports wagering:

1. Each entrance shall have sufficient coverage of at least two (2) cameras that shall be able to positively identify each person entering; and

2. Each security check-in point at the entrances shall have a dedicated camera to capture an unobstructed facial view of all persons entering the licensed premises.

(b) For non-public entrances to the licensed facility for sports wagering, including loading docks and emergency exits:

1. Each entrance shall have sufficient camera coverage, of at least two cameras with sufficient image quality to be able to positively identify each person entering;

2. Employee entrances shall be secured either via the use of digitally controlled access systems or by in-person verification conducted by security; and

3. Policies shall be in place requiring that employees entering the licensed facility for sports wagering be identifiable and of sufficient quality to positively identify each person entering.

(c) For restricted areas of the licensed facility for sports wagering:

1. All restricted areas shall have surveillance coverage sufficient that all persons in the area can be clearly identified;

2. All restricted areas shall have sufficient coverage and resolution that all cash-handling and gaming equipment and currency and currency equivalents are identifiable;

3. All restricted areas shall have additional camera coverage sufficient to provide asset protection as approved by the racing commission; and

4. Access to coverage of the surveillance operation room is limited to senior management and the racing commission.

(d) For all race and sports book locations:

1. The surveillance system shall monitor and record general activities, to include the ticket writer and cashier areas, with sufficient clarity to identify the personnel performing the different functions; and

2. All race and sports book locations shall have sufficient coverage that a patron can be tracked throughout the entirety of the race and sports book location.

(e) For ticket writer stations:

1. All ticket writer stations shall have sufficient coverage to identify currency amounts;

2. Any ticket writer stations that can be utilized for placing wagers shall have surveillance coverage sufficient to identify the patron and employee involved in the transaction; and

3. Surveillance personnel shall have access to the ticket writer stations to access transaction amounts.

(f) For sports wagering kiosks, the surveillance system shall monitor and record activities occurring at each sports wagering kiosk with:

1. Sufficient clarity to identify the activity and the individuals performing it, including maintenance, drops or fills, and redemption of sports wagering tickets or vouchers; and

2. Accurate time stamps.

(g) For the cage and vault:

1. The surveillance system shall monitor and record activities occurring in each cage and vault area with:

a. Sufficient clarity to identify individuals within the cage and patrons and staff members at the window areas, and to confirm the amount of each cash transaction; and

b. Accurate time stamps.

2. Each cashier station shall be equipped with one (1) dedicated overhead camera covering the transaction area; and

3. The cage or vault area in which exchange and transfer transactions occur shall be monitored and recorded by a dedicated camera or motion activated dedicated camera that provides coverage with sufficient clarity to identify the amounts on the exchange and transfer documentation. Controls provided by a computerized exchange and transfer system constitute an adequate alternative to viewing the amounts on the exchange and transfer documentation.

(h) For count rooms, the surveillance system shall:

1. Monitor and record with sufficient clarity a general overview of all areas where cash or cash equivalents may be stored or counted; and

2. Provide coverage of count equipment with sufficient clarity to view any attempted manipulation of the recorded data.

(i) All machines capable of dispensing cash shall have sufficient coverage to view the transaction and the currency amount being dispensed and the individuals at the machine.

(11) The licensed premises shall utilize an incident reporting system to document incidents and activities, as set forth in paragraph (a) of this subsection.

(a) Security and surveillance procedures approved by the racing commission shall be implemented for reporting:

1. An individual engaged in, attempting to engage in, or suspected of cheating, theft, embezzlement, or other illegal activities;

2. An individual possessing a firearm, electronic control device, dangerous weapon, or other device or object prohibited KAR Title 809;

3. An individual in the race and sports book location who is a prohibited person, the subject of a law enforcement contact by the licensee, or a potential victim of human trafficking.

4. All camera, system, or recording outages;

5. Any routine tasks accomplished by security or surveillance personnel at the request of another team; and

6. Any suspicious incidents observed.

(b) Any violation of the Act or KAR Title 809 shall be identified as such in the incident reporting system.

(c) The racing commission shall have real-time, read-only access to the incident reporting system.

(d) The incident reporting system shall be capable of generating reports that detail all incident types and such reports shall be delivered to the racing commission upon request.

(e) The incident reporting system shall be in an electronic format equipped with software that prevents modification of an entry after it has been initially entered into the system.

(f) The incident reporting system shall document the following:

1. Assignment number of the incident;

2. Date and time;

3. Name and identification license of the individual covering the incident;

4. Nature of the incident; and

5. Resolution of the incident.

(g) All recordings required by this section shall be retained for a minimum retention period of ninety (90) calendar days. Suspected crimes, illegal activity, or detentions by security personnel discovered within the initial retention period shall be copied and retained for a time period not less than five (5) years.

JONATHAN RABINOWITZ, Commission Chair

RAY PERRY, Secretary

APPROVED BY AGENCY: July 10, 2023

FILED WITH LRC: July 10, 2023 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 22, 2023 at 9:00 a.m., at the Kentucky Horse Racing Commission,

4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511. 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 September 30, 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: Jennifer Wolsing, General Counsel, Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859) 246-2039, email jennifer.wolsing@ky.gov.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jennifer Wolsing

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes controls for sports wagering on Licensed Premises.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide specific rules and controls for sports wagering on Licensed Premises, including the floor plan, security, surveillance, sports wagering windows, sports wagering kiosks, sports wagers and vouchers, drop and count, and incident reporting.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.260 requires the commission to "promulgate administrative regulations to establish standards for the conduct of sports wagering." KRS 230.361 states the "racing commission shall promulgate administrative regulations to establish a fully functioning sports wagering system...." KRS 230.805 permits sports wagering at a licensed facility for sports wagering on Licensed Premises. This regulation establishes controls for sports wagering on Licensed Premises.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will assist in the effective administration of the statutes by establishing clear and specific controls related to sports wagering on Licensed Premises. This protects the wagering public and the citizens of the Commonwealth and assists Licensees in properly conducting sports wagering on Licensed Premises.

(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 regulation.

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation affects the licensed tracks that apply for and receive a license to conduct sports wagering in the Commonwealth. There are currently nine (9) licensed tracks operating in the Commonwealth. Each track is allowed to contract with up to three (3) service providers. Therefore, up to 27 service providers may be affected this regulation. An unknown number of sports wagering license holders and sports wagering patrons also will be affected 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: Licensees and sports wagering license holders must observe the regulatory requirements when offering

sports wagering on Licensed Premises.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Compliance costs are uncertain. Licensees likely will incur costs to administer sports wagering on Licensed Premises in accordance with the regulations.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Licensees and license holders will have clear controls for sports wagering on Licensed Premises. Sports wagering patrons will benefit from properly operated sports wagering on Licensed Premises.

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

(a) Initially: It is estimated that the commission will spend approximately \$2.4 million to implement sports wagering in Kentucky in the first year.

(b) On a continuing basis: It is further estimated that the commission will spend approximately \$1.2 million annually to continue regulating sports wagering in Kentucky on a yearly basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The funding to implement and enforce sports wagering in Kentucky will come from the sports wagering administrative fund, as established in KRS 230.817.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied, because this amended regulation will apply similarly to all similarly situated entities in an equal manner.

#### FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Horse Racing Commission 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 230.260(16), KRS 230.361, KRS 230.805

(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 during the first year.

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

(c) How much will it cost to administer this program for the first year? It is estimated that the commission will spend approximately \$2.4 million in the first year to implement sports wagering in Kentucky.

(d) How much will it cost to administer this program for subsequent years? It is further estimated that the commission will spend approximately \$1.2 million annually to continue regulating sports wagering in Kentucky in subsequent years.

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

Revenues (+/-): Neutral.

Expenditures (+/-): See answers to (c) and (d) above.

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 expected to generate 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 is not expected to generate cost savings for subsequent years.

(c) How much will it cost the regulated entities for the first year? Compliance costs are uncertain. Licensees likely will incur costs to administer sports wagering on Licensed Premises in accordance with the regulations.

(d) How much will it cost the regulated entities for subsequent years? Compliance costs are uncertain. Licensees likely will incur costs to administer sports wagering on Licensed Premises in accordance with the regulations.

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

Cost Savings (+/-): None.

Expenditures (+/-): Compliance costs are uncertain. Licensees likely will incur costs to administer sports wagering on Licensed Premises in accordance with the regulations.

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 regulation is not anticipated to have a major economic impact on Kentucky for the reasons stated above.

#### PUBLIC PROTECTION CABINET Kentucky Horse Racing Commission (New Administrative Regulation)

##### 809 KAR 10:006. Audit and internal control standards.

RELATES TO: KRS Chapter 230

STATUTORY AUTHORITY: KRS 230.260(16), 230.811(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.260(16)(a) requires the racing commission to promulgate regulations to establish standards related to sports wagering, including standards for "maintaining and auditing books and financial records, securely maintaining records of bets and wagers, integrity requirements for sports wagering and related data surveillance and monitoring systems, and other reasonable technical criteria related to conducting sports wagering." KRS 230.811(2) requires tracks and service providers to "comply with the standards established by the racing commission. .. to ensure the integrity of the system of sports wagering." This administrative regulation establishes internal control standards, including administration and accounting controls, and specifies certain duties to permit access to the racing commission of information and records, record retention, and reporting requirements.

Section 1. Internal Controls. Before beginning operations, a licensee shall submit its administrative and accounting controls, in detail, in a system of internal controls for racing commission review and approval. The racing commission or its designee may perform any inspection necessary in order to determine conformance with the approved internal controls.

(1) Amendments to any portion of the internal controls shall be submitted to the racing commission for approval. If, within thirty (30) calendar days the racing commission has not approved, denied, or otherwise provided written notice, a licensee may implement the amended internal controls as submitted with the racing commission retaining its authority to require further amendment, approval, or denial.

(a) The racing commission may approve, deny, or require a revision to the amendment to the internal controls. If the licensee is notified of a required revision, the licensee shall address the revision within fifteen (15) calendar days, unless otherwise required by the commission.

(b) If the racing commission requests additional information, clarification, or revision of an amendment to the internal controls and the licensee fails to satisfy the request within thirty (30) calendar days after the racing commission submits the request, the racing commission shall consider the amendment denied and it cannot be implemented or, if previously implemented, the licensee shall cease implementation of that amendment within fifteen (15) calendar days. If the licensee subsequently wants to pursue the amendment, it shall resubmit the request along with the additional information previously requested by the racing commission.

(2) In an emergency, the licensee may temporarily amend their internal controls. The racing commission or its designee shall be notified immediately that an emergency exists before the licensee temporarily amends its internal controls due to an emergency. The licensee shall submit the temporary emergency amendment of the internal controls to the racing commission or its designee within twenty-four (24) hours of the amendment. The submission shall include the detailed emergency procedures that will be implemented and the time period the emergency procedures will be temporarily in place. Any concerns the racing commission has with the submission shall be addressed with the licensee promptly.

(3) The internal controls shall include a detailed narrative description of the administrative and accounting procedures designed to satisfy the requirements of KAR Title 809, including the following:

(a) Reliable accounting controls, including the standardization of forms and definition of terms to be used in the sports wagering operations;

(b) Reporting controls which shall include policies and procedures for the timely reporting of standard financial and statistical information in accordance with this regulation;

(c) Access controls which include, as their primary objective, the safeguarding of company assets;

(d) Tables of organization, which shall provide for:

1. A system of personnel and chain of command which permits management and supervisory personnel to be held accountable for actions or omissions within their areas of responsibility;

2. The segregation of functions that are incompatible with separation of duties, so that no employee is in a position both to commit an error or to perpetrate a fraud and to conceal the error or fraud in the normal course of their duties;

3. Supervisory positions which permit the authorization or supervision of necessary transactions at all relevant times; and

4. Areas of responsibility which are not so extensive as to be impractical for one (1) person to monitor.

(e) A jobs compendium detailing job descriptions, chains of command, and lines of authority for all personnel engaged in the operation of sports wagering. The licensee shall maintain and update the jobs compendium on a regular basis, but at least annually;

(f) An infrastructure and information security program; and

(g) All wagering procedures and practices specified within the GLI-33 Standards.

(4) To the extent a service provider is involved in or provides any of the internal controls required in this Chapter, the licensee's internal controls shall document the roles and responsibilities of the service provider and shall include procedures to evaluate the adequacy of and monitor compliance with the service provider's internal controls.

(5) The licensee shall stamp or otherwise mark each page of the internal controls submitted to the racing commission with the word "CONFIDENTIAL" if the licensee does not believe the material submitted should be subject to public disclosure.

(6) If a licensee intends to utilize any new technology not identified in its initial proposal, it shall submit the changes to its internal controls to incorporate the use of any such new technology to the racing commission for approval.

(7) If the racing commission determines that the internal controls of the licensee do not comply with the requirements of KAR Title

809, the racing commission shall notify the licensee in writing. Within fifteen (15) calendar days after receiving the notification, the licensee shall amend its internal controls accordingly and shall submit, for racing commission approval, a copy of the written internal controls, as amended, and a description of any other remedial measure taken.

Section 2. Information Security Responsibilities. The internal controls shall ensure that an information security program is effectively implemented, and information security function responsibilities are effectively allocated.

(1) The licensee shall implement, maintain, and comply with a comprehensive information security program, the purpose of which shall be to take reasonable steps to protect the confidentiality, integrity, and availability of personally identifiable information of individuals who place a sports wager with the licensee.

(2) The licensee's information security program shall contain administrative, technical, and physical safeguards appropriate to the size, complexity, nature, and scope of the operations, and the sensitivity of the personally identifiable information owned, licensed, maintained, handled, or otherwise in the possession of the licensee.

(3) A licensee's information security forum, data privacy committee, or other similar organizational structure comprised of senior managers shall be formally established to monitor and review the information security program to ensure its continuing suitability, adequacy, and effectiveness, maintain formal minutes of meetings, and convene at least every six months.

(4) A licensee's information security department shall exist that is responsible for developing a security strategy in accordance with the overall operation. The information security department will subsequently work with the other departments to implement the associated action plans. It shall be involved in reviewing all tasks and processes that are necessary from the security perspective for the licensee, including the protection of information and data, communications, physical, virtual, personnel, and overall business operational security.

(5) The licensee's information security department shall report to no lower than executive level management and shall be independent of the IT department with regard to the management of security risk.

(6) The licensee's information security department shall have the competencies and be sufficiently empowered and shall have access to all necessary resources to enable the adequate assessment, management, and reduction of risk.

(7) The licensee's chief security officer or equivalent head of the information security department shall be a full member of the information security forum and be responsible for recommending information security policies and changes.

Section 3. Accounting Records. Licensees shall maintain complete, accurate, and legible records of all financial transactions for five (5) years, including transactions pertaining to revenues, expenses, assets, liabilities, and equity in conformance with generally accepted accounting principles. The licensee's financial transaction reports shall be in compliance with GLI-33 Standards, unless otherwise permitted by the commission.

(1) The accounting records shall be maintained according to GLI-33 Standards, unless otherwise permitted by the commission. The detailed subsidiary records shall include:

(a) Detailed general ledger accounts identifying all revenue, expenses, assets, liabilities, and equity;

(b) A record of all investments, advances, loans, and accounts receivable balances due the establishment;

(c) A record of all loans and other accounts payable;

(d) A record of all accounts receivable written off as uncollectible;

(e) Journal entries prepared;

(f) Tax work papers used in preparation of any state or federal tax return if applicable;

(g) Records supporting the accumulation of the costs for complimentary services and items. A complimentary service or item provided to individuals in the normal course of a sports wagering business shall be recorded in an amount based upon the full retail price normally charged for the service or item or as is otherwise

consistent with generally accepted accounting principles; and

(h) Records required by the internal controls.

(2) The licensee shall maintain all records supporting the adjusted gross revenue for five (5) years.

(3) If a licensee fails to maintain the records used by it to calculate the adjusted gross revenue, the racing commission may compute and determine the amount upon the basis of an audit conducted by the racing commission using available information.

Section 4. Financial Audits. Upon application, and annually thereafter, each licensee shall submit to the racing commission, within ninety (90) calendar days of the licensee's fiscal year end, its financial audit for that fiscal year.

(1) The licensee shall operate in conformity with financial audit conditions established in the license conditions issued by the racing commission pursuant to KRS 230.290(3).

(2) Upon request by the commission, the licensee shall submit pro forma statements that present projected or estimated financial performance, assets, and liabilities. These pro forma statements shall include:

(a) Pro forma balance sheet: A projected or estimated balance sheet outlining the entity's assets, liabilities, and equity at a specific point in time;

(b) Pro forma income statement: A projected or estimated income statement presenting the entity's anticipated revenues, expenses, and net income for a specific period;

(c) Pro forma cash flow statement: A projected or estimated cash flow statement demonstrating the expected cash inflows and outflows of the entity over a specific period;

(d) Pro forma statement of retained earnings: A projected or estimated statement reflecting changes in the entity's retained earnings over a specific period, considering projected net income, dividends, and other adjustments; and

(e) Notes for financial statements: Explanatory notes providing additional information and disclosures related to the pro forma statements, including significant assumptions, methodologies used, and any other relevant details.

(3) If audited financial statements are not available, the licensee shall provide audited financial statements of its parent company and the licensee's unaudited financial statements, which document the licensee's financial performance, assets, and liabilities, including:

(a) A balance sheet;

(b) An income statement;

(c) A cash flow statement;

(d) A statement of retained earnings; and

(e) Notes for financial statements.

(4) The pro forma statements shall be clearly labeled as unaudited and based on management's estimates and assumptions. These statements may serve as temporary financial documentation until audited financial statements become available.

(5) The financial audit shall be performed in accordance with generally accepted accounting principles by an independent certified public accountant currently authorized to practice in Kentucky, and shall contain the opinion of the independent certified public accountant as to its fair preparation and presentation in accordance with generally accepted accounting principles.

(6) The racing commission shall determine the number of copies of audits or reports required under this procedure. The audits or reports shall be received by the racing commission or postmarked no later than the required filing date.

(7) The reporting year-end of the licensee is December 31 of each year, unless otherwise approved by the racing commission.

Section 5. Retention, Storage, and Destruction of Records. The internal controls shall include a records retention schedule, and provisions related to the storage and destruction of records that incorporates the following provisions, without limitation:

(1) Each licensee shall maintain, in a place secure from theft, loss, or destruction, adequate records of its business and accounting operations.

(2) A licensee shall make the records available to the racing commission, upon request, within a time provided for by the racing commission. A licensee shall retain the records for not less than five (5) years.

(3) A licensee shall keep and maintain, in a manner and form approved by the racing commission, accurate, complete, and legible records of any books, records, or documents pertaining to, prepared in, or generated by, the licensee.

(4) A licensee shall organize and index all required records in a manner that enables the racing commission to locate, inspect, review, and analyze the records with reasonable ease and efficiency.

(5) A licensee shall notify the racing commission in writing at least sixty (60) calendar days prior to the scheduled destruction of any record required to be retained in accordance with this section, if within the five (5) year record retention requirement. Such notice shall list each type of record scheduled for destruction, including a description sufficient to identify the records included; the retention period; and the date of destruction. If documents are to be destroyed in the normal course of business in accordance with document retention policies previously set forth in the internal controls approved by the racing commission, no notice to the racing commission shall be required.

(6) The racing commission may prohibit the destruction of any record required to be retained in accordance with this section by so notifying the licensee in writing within forty-five (45) calendar days of receipt of the notice of destruction pursuant to subsection 0 or within the specified retention period. Such original record may thereafter be destroyed only upon notice from the racing commission, or by order of the racing commission upon the petition of the licensee, or by the racing commission on its own initiative.

(7) The licensee may use the services of a disposal company for the destruction of any records required to be retained in accordance with this section.

#### Section 6. Reserve Requirement.

(1) The internal controls shall include a plan to maintain and protect sufficient funds to conduct sports wagering at all times through a reserve in the amount necessary to ensure the security of funds held in sports wagering accounts and the ability to cover the outstanding sports wagering liability.

(a) The reserve shall be in the form of cash, cash equivalents, payment processor receivables, payment processor reserves, an irrevocable letter of credit, a bond, or a combination thereof.

(b) The reserve shall be not less than the greater of \$25,000 or the sum of the following amounts:

1. The daily ending cashable balance of all sports wagering accounts;

2. Pending withdrawals;

3. Amounts accepted by the licensee on sports wagers whose outcomes have not been determined; and

4. Amounts owed but unpaid on winning sports wagers.

(c) Amounts available to patrons for wagering that are not redeemable for cash may be excluded from the reserve computation.

(2) A licensee shall have access to all sports wagering account and transaction data to ensure the amount of its reserve is sufficient. Unless otherwise directed by the racing commission, a licensee shall file a monthly attestation with the racing commission, which states that funds have been safeguarded under this procedure.

(3) The racing commission may audit a licensee's reserve at any time and may direct a licensee to take any action necessary to ensure the requirements of this section are met.

Section 7. Risk Management Framework. A licensee shall implement a risk management framework. This framework may be provided in-house by a unit capable of performing this function with appropriate segregation of functions and reporting duties, or by a third-party entity.

(1) The internal controls shall contain a description of the risk management framework, including:

(a) Automated and manual risk management procedures;

(b) Employee management, including access controls and segregation of duties;

(c) Information regarding identifying and reporting fraud and suspicious conduct;

(d) Controls ensuring regulatory compliance;

(e) Description of Anti-Money Laundering (AML) compliance

standards;

(f) Controls for accepting wagers and issuing pay outs in excess of \$10,000;

(g) Controls for accepting multiple wagers from one patron in a 24-hour cycle, including a process to identify patron structuring of wagers to circumvent recording and reporting requirements;

(h) Description of all software applications that comprise the sports wagering system;

(i) Description of all types of sports wagers available to be offered by the licensee;

(j) Description of the procedures to prevent past posting of wagers;

(k) Description of the procedures to prevent individuals from placing wagers as agents or proxies for other individuals; and

(l) Description of all integrated third-party platforms.

(2) A licensee shall file with the racing commission a report of any error that occurs in offering an event or wager or if an unapproved sporting event or type of wager is offered to the public.

#### Section 8. Taxation Requirements.

(1) The internal controls shall ensure compliance with all Internal Revenue Service (IRS) requirements and the licensee shall provide for the withholding or reporting of income tax of patrons as required by applicable state or federal law.

(2) The licensee shall disclose potential tax liabilities to patrons at the time of award of any sports wagering payouts in excess of limits set by the IRS. Such disclosures will include a statement that the obligation to pay applicable taxes on payouts is the responsibility of the patron and that failure to pay applicable tax liabilities may result in civil penalties or criminal liability. Upon written request, the licensee shall provide patrons with summarized tax information on sports wagering activities.

#### Section 9. Reports of Suspicious Transactions.

(1) A transaction requires reporting under the terms of this section if it is conducted or attempted, by, at, or through a licensee, and involves or aggregates to at least \$5,000 in funds or other assets, and the licensee knows, suspects, or has reason to suspect that the transaction or a pattern of transactions of which the transaction is a part:

(a) Involves funds derived from illegal activity or is intended or conducted in order to hide or disguise funds or assets derived from illegal activity (including, without limitation, the ownership, nature, source, location, or control of such funds or assets) as part of a plan to violate or evade any federal law or regulation or to avoid any transaction reporting requirement under federal law or regulation or of the racing commission.

(b) Is designed, whether through structuring or other means, to evade any requirements of these regulations or of any other regulations promulgated under the Bank Secrecy Act;

(c) Has no business or apparent lawful purpose or is not the sort in which the particular patron would normally be expected to engage, and the licensee knows of no reasonable explanation for the transaction after examining the available facts, including the background and possible purpose of the transaction; or

(d) Involves use of the licensee to facilitate criminal activity.

(2) A licensee may also file a report of any suspicious transaction that it believes is relevant to the possible violation of any law or regulation but whose reporting is not required by this section.

(3) The report shall be filed no later than thirty (30) calendar days after the initial detection by the licensee of facts that may constitute a basis for filing such a report. In situations involving violations that require immediate attention, the licensee shall immediately notify the racing commission in addition to timely filing a report.

(4) A licensee shall maintain a copy of any report filed and the original or business record equivalent of any supporting documentation for a period of five (5) years from the date of filing the report. Supporting documentation shall be identified, and maintained by the licensee as such, and shall be deemed to have been filed with the report. A licensee shall make all supporting documentation available to the racing commission and any appropriate law enforcement agencies upon request.

(5) Unless otherwise required by this Chapter, other law, or court order, licensee and its directors, officers, employees, or agents who

file a report pursuant to this regulation shall not notify any person involved in the transaction that the transaction has been reported. Any report filed with the racing commission is confidential and may be disclosed by the racing commission in the necessary administration of their duties and responsibilities under the Act or as otherwise required by law or court order.

Section 10. Anti-Money Laundering (AML) Monitoring. The internal controls shall implement AML procedures and policies that adequately address the risks posed by sports wagering for the potential of money laundering and terrorist financing. The AML procedures and policies shall provide for the following:

(1) Up to date training of employees in the identification of unusual or suspicious transactions;

(2) Assigning an individual or individuals to be responsible for all areas of AML by the licensee including reporting unusual or suspicious transactions;

(3) Use of any automated data processing systems to aid in assuring compliance; and

(4) Periodic independent tests for compliance with a scope and frequency as required by the racing commission. Logs of all tests shall be maintained for five (5) years.

Section 11. Integrity Monitoring and Suspicious Behavior. A licensee shall implement an integrity monitoring system. This solution may be provided in-house by a unit capable of performing this function with appropriate segregation of functions and reporting duties, or by a third-party entity.

(1) The internal controls shall include provisions for a licensee to report to the racing commission as soon as practicable, but in no event longer than forty-eight (48) hours after discovery:

(a) Any information regarding irregularities in volume or changes in odds that could signal suspicious activities which were identified;

(b) Any information relating to criminal or disciplinary proceedings commenced against the licensee in connection with its operations;

(c) Any information relating to the following, which shall also be reported to the relevant sports governing body or equivalent:

1. Abnormal wagering activity or patterns that may indicate a concern with the integrity of a sporting event or events;

2. Any potential breach of the internal rules and codes of conduct pertaining to sports wagering of a relevant sports governing body or equivalent, to the extent the licensee has actual knowledge of the potential breach; and

3. Any other conduct that corrupts a sports wagering outcome of a sporting event or events for purposes of financial gain, including match-fixing; or

(d) Any information relating to suspicious or illegal wagering activities, including the use of funds derived from illegal activity, the placement of wagers to conceal or launder funds derived from illegal activity, the use of agents to place wagers, and the use of false identification in placing wagers.

(2) A licensee shall maintain the confidentiality of information provided by a sports governing body or equivalent for purposes of investigating or preventing the conduct described in subsection 00, unless disclosure is required by the Act, the racing commission, or other law or court order, or unless the sports governing body or equivalent consents to its disclosure in writing.

(3) A licensee receiving a report of suspicious or illegal wagering activity shall be permitted to suspend wagering on sporting events or types of wager related to the report, and may place a hold on suspicious wagers while investigating, but may only cancel or void sports wagers related to the report after receiving written approval from the racing commission or its designee.

(4) Upon request by the racing commission or its designee, a licensee shall provide remote, read-only access and the necessary software and hardware for the racing commission to evaluate or monitor the sports wagering system. If requested, the licensee shall provide the racing commission with remote access or other approved mechanism, which shall provide:

(a) All reports of abnormal wagering activity;

(b) Whether the abnormal wagering activity was subsequently determined to be suspicious or illegal wagering activity;

(c) All reports deemed suspicious or illegal wagering activity at



the outset; and

(d) The actions taken by the licensee according to its integrity monitoring system.

(5) Nothing in this section shall require a licensee to provide any information in violation of federal, state or local law or regulation, including laws and regulations relating to privacy and personally identifiable information.

(6) A licensee shall maintain records of all integrity monitoring services and activities, including all reports and suspicious or illegal wagering activity and any supporting documentation, for a minimum of five (5) years after a sporting event occurs. The licensee shall disclose these records to the racing commission upon request.

(7) The racing commission may require a licensee to provide any hardware or software necessary to the racing commission, or to an independent testing laboratory approved by the racing commission, for evaluation of the licensee's sports wagering offering or to conduct further monitoring of sports wagering data.

#### Section 12. Personally Identifiable Information Security.

(1) Any information obtained in respect to a patron, including confidential information, personally identifiable information and authentication credentials for a sports wagering account, shall be collected in compliance with the licensee's privacy policies set forth in its internal controls. Both personally identifiable information and the sports wagering account funds shall be considered as critical assets for the purposes of risk assessment.

(2) No employee or agent of the licensee shall divulge any confidential information or personally identifiable information related to a patron, the placing of any wager, or any other sensitive information related to the operation of the licensee without the consent of the patron, except as required by this section, the racing commission, and as otherwise required by state or federal law.

(3) The internal controls shall include procedures for the security and sharing of confidential information, personally identifiable information, funds in a sports wagering account, and other sensitive information as required by the racing commission, including:

(a) The designation and identification of one or more employees having primary responsibility for the design, implementation, and ongoing evaluation of such procedures and practices;

(b) The procedures to be used to determine the nature and scope of all information collected, the locations in which such information is stored, and the storage devices on which such information may be recorded for purposes of storage or transfer;

(c) The measures to be utilized to protect information from unauthorized access; and

(d) The procedures to be used if a breach of data security has occurred, including required notification to the racing commission.

Section 13. Complaints Pertaining to Sports Wagering. The internal controls shall provide procedures for receiving, investigating, responding to, and reporting on complaints by patrons.

(1) When a patron makes a complaint, the licensee shall promptly issue a complaint report, setting out:

(a) The name of the complainant;

(b) The nature of the complaint;

(c) The name of the persons, if any against whom the complaint was made;

(d) The date of the complaint; and

(e) The action taken or proposed to be taken, if any, by the licensee.

(2) All complaints received by a licensee from a patron and the licensee's responses to complaints shall be retained for at least five (5) years and made available to the racing commission within ten (10) business days of any request by the racing commission.

(3) A licensee shall investigate and attempt to resolve all complaints with the patron.

Section 14. Prohibition of Credit Extension. The internal controls shall include controls relating to not allowing the acceptance of a sports wager or deposit of funds into a sports wagering account that is derived from the extension of credit by affiliates or agents of the licensee. For purposes of this section, credit shall not be deemed to have been extended where, although funds have been deposited into a sports wagering account, the licensee is awaiting actual

receipt of such funds in the ordinary course of business.

(1) Credit providers such as small amount credit contracts shall not be advertised or marketed to patrons.

(2) A patron shall not be referred to a credit provider to finance their sports wagering activity.

(3) Personally identifiable information related to a patron shall not be provided to any credit provider.

Section 15. Prohibited Patrons. The internal controls shall include commercially and technologically reasonable measures to prevent access to sports wagering by any prohibited patrons at a licensed premises and online via website or mobile application.

(1) If a licensee detects, or is notified of, an individual suspected of being a prohibited patron who had engaged or is engaging in prohibited sports wagering, the licensee shall use reasonable measures to verify whether the individual is prohibited or not.

(2) If the licensee is able to establish, by reasonable measures, that the individual is prohibited, the licensee shall cancel a sports wager.

Section 16. Layoff Wagers. The internal controls shall include procedures for a licensee to accept layoff wagers placed by other licensees and place layoff wagers with other licensees for the purpose of offsetting sports wagers.

(1) The licensee placing a layoff wager shall inform the licensee accepting the wager that the wager is being placed by a licensee and shall disclose their identity.

(2) A licensee may decline to accept a layoff wager in its sole discretion.

(3) Layoff wagers shall be reported to the racing commission promptly.

Section 17. Reports of Licensees. The internal controls shall detail the licensee's ability to prepare reports considered necessary by the racing commission including reports supporting adjusted gross revenue, wagering liability, and payouts. The licensee shall timely file with the commission any additional reports required by the Act or by any regulation prescribed by the racing commission. Any information provided under this section is confidential and proprietary and is exempt from disclosure unless disclosure is required by this Chapter, by other law, or by court order.

Section 18. Racing Commission Access to Sports Wagering Data. The internal controls shall detail the controls to assure that all sports wagering data the racing commission requires to be maintained under the Act or KAR Title 809 is appropriately segregated and controlled to prevent unauthorized access.

(1) Licensees shall provide the racing commission with access to all such data, upon request and with reasonable notice.

(2) Licensees shall retain such data for a minimum of five (5) years.

Section 19. Independent Audit of Internal Controls. Licensees shall have their internal controls independently audited at least once every two (2) years with the results documented in a written report. This includes internal controls conducted by an affiliate on behalf of the licensee. Reports shall be maintained and available to the racing commission for five (5) years.

(1) Such independent audits may be conducted by the racing commission, or a third-party contractor approved by the racing commission. The racing commission may, in its discretion, approve the licensee to complete an internal audit, if the licensee uses an independent auditing team to serve as a third-party contractor for use in completing this audit.

(2) The racing commission or third-party contractor shall be responsible for auditing the licensee's compliance with the Act and KAR Title 809, the Wagering Procedures and Practices specified within the GLI-33 Standards, and the internal controls.

(3) Documentation shall be prepared to evidence all independent audit work performed as it relates to the requirements of this section, including all instances of noncompliance.

(4) Independent audit reports shall include objectives, procedures and scope, findings and conclusions, and recommendations.

(5) Independent audit findings shall be reported to management. Management shall be required to respond to the independent audit findings and the stated corrective measures to be taken to avoid recurrence of the audit exception. Such management responses shall be included in the final independent audit report.

(6) Follow-up observation and examinations shall be performed to verify that corrective action has been taken regarding all instances of noncompliance cited by the independent audits. The verification shall be performed within six (6) months following the date of notification.

(7) It is acceptable to reuse the results of prior audits conducted within the audit period by the same third-party contractor in another sports wagering jurisdiction. Such reuse shall be noted in the audit report. This reuse option does not include any internal controls unique to the Commonwealth, which will require new audits.

JONATHAN RABINOWITZ, Commission Chair  
RAY PERRY, Secretary

APPROVED BY AGENCY: July 10, 2023

FILED WITH LRC: July 10, 2023 at 4 p.m.

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:** A public hearing on this administrative regulation shall be held on September 22, 2023, at 9:00 a.m. at the Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511. 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 September 30, 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:** Jennifer Wolsing, General Counsel, Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859) 246-2039, email jennifer.wolsing@ky.gov.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jennifer Wolsing

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative action establishes auditing and internal control standards for sports wagering operators and service providers.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish standards to ensure that sports wagering operators and service providers have internal protocols in place to ensure the integrity of their sports wagering systems.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.260(16)(a) requires the racing commission to promulgate regulations to establish standards related to sports wagering, including standards for "maintaining and auditing books and financial records, securely maintaining records of bets and wagers, integrity requirements for sports wagering and related data,...surveillance and monitoring systems, and other reasonable technical criteria related to conducting sports wagering." KRS 230.811(2) requires tracks and service providers to "comply with the standards established by the racing commission. ... to ensure the integrity of the system of sports wagering." KRS 230.260(16) requires the commission to "promulgate administrative regulations to establish. ... integrity requirements for sports wagering and related data."

(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 the statutes by establishing clear, objective auditing and internal control standards for sports wagering systems providers 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: N/A. This is a new regulation.

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation affects the licensed tracks that apply for and receive a license to conduct sports wagering in the Commonwealth. There are currently nine (9) licensed tracks operating in the Commonwealth. Each track is allowed to contract with up to three (3) service providers. Therefore, up to 27 service providers may be affected by this regulation. Independent testing labs that certify these systems will be impacted by this regulation. Additionally, there is an unknown number of patrons who will choose to engage in sports wagering. Sports Governing Bodies also may be affected 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: Operators and service providers offering sports wagering must observe the regulatory requirements for audit and internal control. Sports Governing Bodies will receive information from Licensees based on the licensees' compliance with these standards.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Compliance costs are uncertain, but licensed tracks and service providers offering sports wagering are likely to incur costs to comply with the regulations, including the cost of paying independent labs to certify their systems. Sports Governing Bodies may incur costs to comply with this regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Licensees will benefit from having clear standards for internal control and auditing related to sports wagering. Kentuckians will benefit from the effective administration of sports wagering and the assurance that sports wagering system providers are required to have internal measures to ensure the functionality and integrity of their systems. Sports Governing Bodies will receive knowledge of suspicious wagers and can react to ensure the integrity of their respective sports.

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

(a) Initially: It is estimated that the commission will spend approximately \$2.4 million to implement sports wagering in Kentucky in the first year.

(b) On a continuing basis: It is further estimated that the commission will spend approximately \$1.2 million annually to continue regulating sports wagering in Kentucky on a yearly basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The funding to implement and enforce sports wagering in Kentucky will come from the sports wagering administrative fund, as established in KRS 230.817. The service providers will be required to pay the laboratories to test and certify their systems.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied, because this amended regulation will apply similarly to all similarly situated entities in an equal manner.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Horse Racing Commission 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 230.260(16), KRS 230.811(2), and KRS 230.260(16) authorize the actions taken by this regulation.

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

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

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

(c) How much will it cost to administer this program for the first year? It is estimated that the commission will spend approximately \$2.4 million in the first year to implement sports wagering in Kentucky.

(d) How much will it cost to administer this program for subsequent years? It is further estimated that the commission will spend approximately \$1.2 million annually to continue regulating sports wagering in Kentucky in subsequent years.

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

Revenues (+/-): Neutral  
Expenditures (+/-): Neutral  
Other Explanation: N/A

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

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

(c) How much will it cost the regulated entities for the first year? Licensees will likely incur costs to have their systems tested and certified by independent labs.

(d) How much will it cost the regulated entities for subsequent years? Licensees will likely incur costs to have their systems tested and certified by independent labs.

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

Cost Savings (+/-): \$0.00  
Expenditures (+/-): Please see the answers to (c) and (d) above.  
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 is not anticipated to have a major economic impact on Kentucky for the reasons stated above.

**PUBLIC PROTECTION CABINET  
Kentucky Horse Racing Commission  
(New Administrative Regulation)**

**809 KAR 10:007. Responsible gaming and advertising.**

RELATES TO: KRS Chapter 230

STATUTORY AUTHORITY: KRS 230.260(15), (16)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.260(15) requires the commission to "promulgate administrative regulations establishing a self-exclusion list for individuals who self-identify as being problem or compulsive gamblers." KRS 230.260(16) requires the commission to "promulgate administrative regulations to establish standards for the conduct of sports wagering." This administrative regulation establishes a self-exclusion list and responsible gaming programs for sports wagering participants.

**Section 1. Self-Exclusion List.**

(1) Each operator licensee shall develop a commission-approved self-exclusion list for individuals who self-identify as problem or compulsive gamblers.

(2) The commission shall consider at least the following factors in approving a self-exclusion list:

(a) The list shall include the names and other identifying information of the individuals who have self-excluded from sports wagering at a licensed premises and online via a licensee-specific Web site, mobile application, or by phone.

(b) Each licensee shall display a notice to the public of the existence of the self-exclusion list and the method or methods individuals may use to self-identify at the licensed premises, online, or by phone.

(c) The notice shall be displayed at public entrances to the race and sports book location, and on the licensee's Web site or mobile application.

(d) The notice shall include information about the consequences of self-exclusion.

(3) The notice and its placement locations shall be approved by the racing commission. In approving the notice, the commission shall consider the notice's visibility and any other relevant factors.

(4) Each licensee shall collect self-exclusion information from individuals who self-identify as problem or compulsive gamblers.

(5) The self-exclusion information collected shall include the individual's name, address, date of birth, and other identifying information as prescribed by the racing commission.

(6) The licensee shall provide any newly-collected self-exclusion information to the racing commission on a monthly basis and in a manner approved by the racing commission.

(7) The commission shall compile and maintain a comprehensive list of all voluntarily self-excluded persons.

(8) The comprehensive list shall include the self-exclusion information provided by each licensee.

(9) The comprehensive list shall be provided to all licensees and updated on an as-needed basis, but at least monthly.

(10) Pursuant to KRS 61.878(1)(a) and KRS 230.260, information collected under this Section shall be exempt from disclosure under the Kentucky Open Records Act, KRS 61.870 to 61.884.

(11) Self-exclusion information shall be kept confidential and shall not be disclosed except as necessary to enforce these administrative regulations or as required by law.

(12) Each licensee shall establish its own self-exclusion policy. Each policy shall be approved by the racing commission to ensure the best interests of sports wagering and compliance with KRS 230.260.

(13) The policy may cover how the licensee chooses to exclude individuals on the self-exclusion list. The policy may include identification and verification, forfeiture of prizes by voluntarily excluded persons, security personnel, technology, employee training, contractual obligations, or collaboration with other licensees.

(14) Each licensee shall review its self-exclusion policy at least once every two (2) years and amend it as necessary to ensure compliance with racing commission regulations and its effectiveness.

in achieving the purpose for which it is established.

#### Section 2. Responsible Gaming Program.

(1) A licensee shall develop and maintain a responsible gaming program that shall be approved by the racing commission pursuant to this section. The responsible gaming program shall require:

(a) Posting in a conspicuous place on the licensee's Web site or mobile application and in every licensed premises a sign that bears a toll-free number for a commission-approved organization that provides assistance to problem or compulsive gamblers;

(b) Providing commission-approved disclosures on the licensee's Web site or mobile application and informational leaflets or other similar materials at the licensed premises containing information on the dangers associated with problem gambling;

(c) Providing patrons expressing concern with a gambling problem with information on commission-approved organizations that provide assistance to problem or compulsive gamblers;

(d) Providing notification that underage gambling is a criminal offense and that anyone who facilitates an underage person to place a sports wager has committed a criminal offense; and

(e) Ensuring that any request by a patron who wishes to self-exclude from sports wagering is honored by the licensee.

(2) In approving the organizations and disclosures listed in the previous subsection, the commission shall consider industry standards for responsible gambling and any other relevant factors.

(3) At least every (5) years, the licensee shall ensure that the licensee's responsible gaming program is independently reviewed by a third party, pursuant to industry standards and performed by a third party approved by the racing commission. The racing commission may require the licensee to pay for the independent review.

#### Section 3. Advertising and Marketing.

(1) A licensee shall not allow, conduct, or participate in any false or misleading advertising or marketing concerning the licensee's sports wagering operations.

(2) A licensee shall only make representations concerning winnings that are accurate, not misleading, and capable of substantiation at the time of the representation. For purposes of this subsection, an advertisement shall be misleading if the advertisement makes representations about average winnings without equally prominently representing the average net winnings of all patrons.

(3) A licensee shall not advertise or market at elementary, middle, or high school activities. The prohibition in this subsection shall exclude an advertisement distributed via mass media, such as television, radio, print media, or the Internet, if the advertisement is not specifically directed toward (but may be incidentally received by) elementary, middle, or high schools.

JONATHAN RABINOWITZ, Commission Chair

RAY PERRY, Secretary

APPROVED BY AGENCY: July 10, 2023

FILED WITH LRC: July 10, 2023 at 4 p.m.

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:** A public hearing on this administrative regulation shall be held on September 22, 2023, at 9:00 a.m. at the Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511. 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 September 30, 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:** Jennifer Wolsing, General Counsel, Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859) 246-2039, email jennifer.wolsing@ky.gov.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jennifer Wolsing

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes and maintains a voluntary self-exclusion list, requires tracks and/or their service providers to provide a commission-approved responsible gaming program, and precludes false or misleading advertising.

(b) The necessity of this administrative regulation: This regulation is necessary to provide specific rules concerning responsible gaming and advertising.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.260(15) requires the commission to "promulgate administrative regulations establishing a self-exclusion list for individuals who self-identify as being problem or compulsive gamers." KRS 230.260(16) requires the commission to "promulgate administrative regulations to establish standards for the conduct of sports wagering."

(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 statutes by ensuring that sports wagering providers establish a voluntary self-exclusion list for problem or compulsive gamblers. It also ensures that providers maintain a responsible gaming program. Finally, this regulation ensures that sports wagering providers avoid engaging in false or misleading advertising practices.

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation affects the licensed tracks that apply for and receive a license to conduct sports wagering in the Commonwealth. There are currently nine (9) licensed tracks operating in the Commonwealth. Each track is allowed to contract with up to three (3) service providers. Therefore, up to 27 service providers may be affected by the definitions in this regulation. Additionally, there are an unknown number of patrons who will be impacted by the voluntary self-exclusion list and responsible gaming program. Finally, there is an unknown number of Kentuckians who will be impacted by the ban on false or misleading sports wagering advertising.

(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 tracks offering sports wagering and service providers must establish a self-exclusion program and a commission-approved responsible gaming program.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Costs are unknown, but should be minimal. Kentucky's licensed tracks already have individualized self-exclusion programs. They will simply report those names to the Commission for inclusion in a confidential state database shared by other tracks, pursuant to KRS 230.260(15). The costs of establishing a responsible gaming program to the commission's specifications will also be minimal, as it will primarily consist of conspicuous postings and disclosures regarding assistance programs for problem or compulsive gamblers.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Tracks will benefit from having clear standards for their voluntary self-exclusion and responsible gaming programs. Patrons will benefit from being able to take advantage of self-exclusion and responsible gaming programs.

Kentuckians will benefit from the avoidance of false or misleading advertising.

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

(a) Initially: It is estimated that the commission will spend approximately \$2.4 million to implement sports wagering in Kentucky in the first year.

(b) On a continuing basis: It is further estimated that the commission will spend approximately \$1.2 million annually to continue regulating sports wagering in Kentucky on a yearly basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The funding to implement and enforce sports wagering in Kentucky will come from the sports wagering administrative fund, as established in KRS 230.817. No additional funding is required 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: No increase in fees or funding will be necessary to implement this administrative regulation.

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

(9) TIERING: Is tiering applied? Tiering is not applied, because this amended regulation will apply similarly to all similarly situated entities in an equal manner.

#### FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Horse Racing Commission 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 230.260(15) and (16) require or authorize the actions taken by this regulation.

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

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

(c) How much will it cost to administer this program for the first year? It is estimated that the commission will spend approximately \$2.4 million in the first year to implement sports wagering in Kentucky.

(d) How much will it cost to administer this program for subsequent years? It is further estimated that the commission will spend approximately \$1.2 million annually to continue regulating sports wagering in Kentucky in subsequent years.

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

Revenues (+/-): Neutral.

Expenditures (+/-): Neutral.

Other Explanation: None.

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

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

(c) How much will it cost the regulated entities for the first year? Costs for the first year are unknown, but should be minimal. Kentucky's licensed tracks already have individualized self-exclusion programs. They will simply report those names to the Commission for inclusion in a confidential state database shared by other tracks, pursuant to KRS 230.260(15). The costs of establishing a responsible gaming program to the commission's specifications will also be minimal, as it will primarily consist of conspicuous postings and disclosures regarding assistance programs for problem or compulsive gamblers.

(d) How much will it cost the regulated entities for subsequent years? Costs for subsequent years are unknown, but should be minimal. Kentucky's licensed tracks already have individualized self-exclusion programs. They will simply report those names to the Commission for inclusion in a confidential state database shared by other tracks, pursuant to KRS 230.260(15). The costs of establishing a responsible gaming program to the commission's specifications will also be minimal, as it will primarily consist of conspicuous postings and disclosures regarding assistance programs for problem or compulsive gamblers.

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 (+/-): Minimal, as set forth above in (4)(c) and (d).

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 regulation is not anticipated to have a major economic impact on Kentucky for the reasons stated above.

#### PUBLIC PROTECTION CABINET Kentucky Horse Racing Commission (New Administrative Regulation)

#### 809 KAR 10:008. Disciplinary actions and hearings.

RELATES TO: KRS Chapter 230

STATUTORY AUTHORITY: KRS 230.260(16), 230.361, Chapter 13B

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.260 requires the commission to "promulgate administrative regulations to establish standards for the conduct of sports wagering." KRS 230.361 states the "racing commission shall promulgate administrative regulations to establish a fully functioning sports wagering system...." This administrative regulation establishes procedures and articulate grounds for disciplinary actions, imposing sanctions, investigating suspected violations, providing notice of disciplinary actions, and requesting and conducting an administrative hearing.

#### Section 1. Grounds for Disciplinary Actions.

(1) The racing commission may take disciplinary action against any person holding a license for a violation of any of the provisions of KRS Chapter 230, or any of the regulations promulgated thereunder, by the Licensee or its employees or agents.

(2) Acceptance or renewal of a license by a Licensee constitutes an agreement on the part of the license-holder to be bound by all the racing commission statutes and regulations.

#### Section 2. Violations.

(1) It shall be a violation of this administrative regulation if an applicant or licensee:

(a) Provides the racing commission, any advisory committee, or any racing commission employee with incorrect, false, or misleading information;

(b) Fails to furnish information requested by the racing commission, any advisory committee, or any racing commission employee;

(c) Is charged or convicted of a crime involving moral turpitude, a felony, sports wagering, cruelty, mistreatment, abuse, or neglect of a horse, or if the crime discredits or tends to discredit the Commonwealth of Kentucky, sports wagering, or the gaming industry;

(d) Engages in conduct that is against the best interests of horse racing, pari-mutuel wagering, or sports wagering; or

(e) Violates any provision of KRS Chapter 230, KAR Title 810, or KAR Title 809.

(2) For any violation established in subsection (1) of this section, the racing commission may:

(a) Deny a license application;

(b) Suspend or revoke a license;

(c) Issue a fine or monetary penalty;

(d) Issue licensure conditions, such as restitution of money, restitution of property, or making periodic reports to the racing commission or designee as required; or

(e) Issue a written reprimand or admonishment.

### Section 3. Disciplinary Process Investigations.

(1) The racing commission shall investigate suspected violations of KRS Chapter 230 and KAR Titles 809 and 810 of the Kentucky Administrative Regulations.

(2) Upon the completion of the investigation, the person or persons completing the investigation shall submit a written report to the commission containing a statement of facts revealed by the investigation.

(3) Based on consideration of the investigative report, the commission shall determine whether there is probable cause to believe that a violation has been committed.

### Section 4. Notice of Disciplinary Action and Appeals.

(1) Upon determination that probable cause exists, the commission shall issue written notice of disciplinary action. The notice shall establish:

(a) The statutory or regulatory violation;

(b) The factual basis on which the disciplinary action is based;

(c) The penalty imposed; and

(d) A statement that the notice may be appealed in accordance with KRS Chapter 13B by written notice sent to the racing commission within twenty (20) calendar days.

(2) Notice of a disciplinary action under this section may be appealed to an administrative hearing.

(3) A written request for an administrative hearing shall be filed with the racing commission within twenty (20) calendar days of the date of the notice. The request shall identify the specific issues in dispute and the legal basis on which the racing commission's or designee's decision on each issue is believed to be erroneous.

(4) An administrative hearing under this section shall be conducted in accordance with KRS Chapter 13B.

(5) If the request for an administrative hearing is not timely filed, the penalty laid out in the notice of disciplinary action shall be effective upon the expiration of the time to request an administrative hearing.

(6) Denial of an application for licensure may also be appealed in accordance with KRS Chapter 13B, by submitting a written request for an administrative hearing to the racing commission within twenty (20) calendar days of the date of the notice of denial.

JONATHAN RABINOWITZ, Commission Chair

RAY PERRY, Secretary

APPROVED BY AGENCY: July 10, 2023

FILED WITH LRC: July 10, 2023 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 22, 2023, at 9:00 a.m., at the Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511. 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 September 30, 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: Jennifer Wolsing, General Counsel, Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859) 246-2039, email jennifer.wolsing@ky.gov.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jennifer Wolsing

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes procedures and articulates grounds for disciplinary actions, imposing sanctions, investigating suspected violations, providing notice of disciplinary actions, and requesting and conducting an administrative hearing.

(b) The necessity of this administrative regulation: This regulation is necessary to provide specific rules related to disciplinary action taken by the commission against a license holder.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.260 requires the commission to "promulgate administrative regulations to establish standards for the conduct of sports wagering." KRS 230.361 states the "racing commission shall promulgate administrative regulations to establish a fully functioning sports wagering system...." This regulation establishes standards related to disciplinary action taken by the commission against a license holder.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will assist in the effective administration of the statutes by establishing clear and specific standards related to disciplinary action against license holders. This protects the wagering public and promotes integrity in sports wagering.

(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 regulation.

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation affects all sports wagering license holders.

(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: License holders must observe and adhere to the regulations related to violations and disciplinary actions.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): License holders may incur costs as part of a disciplinary action.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): License holders will benefit from the protection of the wagering public and the promotion of integrity in sports wagering.

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

(a) Initially: It is estimated that the commission will spend

approximately \$2.4 million to implement sports wagering in Kentucky in the first year.

(b) On a continuing basis: It is further estimated that the commission will spend approximately \$1.2 million annually to continue regulating sports wagering in Kentucky on a yearly basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The funding to implement and enforce sports wagering in Kentucky will come from the sports wagering administrative fund, as established in KRS 230.817.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied, because this amended regulation will apply similarly to all similarly situated entities in an equal manner.

#### FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Horse Racing Commission 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 230.260(16), KRS 230.361, KRS Chapter 13B

(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 during the first year.

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

(c) How much will it cost to administer this program for the first year? It is estimated that the commission will spend approximately \$2.4 million in the first year to implement sports wagering in Kentucky.

(d) How much will it cost to administer this program for subsequent years? It is further estimated that the commission will spend approximately \$1.2 million annually to continue regulating sports wagering in Kentucky in subsequent years.

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

Revenues (+/-): Neutral.

Expenditures (+/-): See answers to (c) and (d) above.

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 regulation is not expected to generate cost savings for the first year.

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

(c) How much will it cost the regulated entities for the first year? License holders may incur costs related to disciplinary action taken by the commission.

(d) How much will it cost the regulated entities for subsequent years? License holders may incur costs related to disciplinary action

taken by the commission.

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

Cost Savings (+/-): \$0.00

Expenditures (+/-): License holders may incur costs related to disciplinary action taken by the commission.

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 regulation is not anticipated to have a major economic impact on Kentucky for the reasons stated above.

#### CABINET FOR HEALTH AND FAMILY SERVICES

##### Department for Medicaid Services

##### Division of Health Policy

##### (New Administrative Regulation)

#### 907 KAR 3:310. Community health worker services and reimbursement.

RELATES TO: KRS 309.460, 309.462, 309.464

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.648

NECESSITY, FUNCTION, AND CONFORMITY: In accordance with KRS 194A.030(2), the Cabinet for Health and Family Services, Department for Medicaid Services, has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds. KRS 205.648 requires DMS to seek a state plan amendment and implement covered services on behalf of community health workers. This administrative regulation establishes community health worker services and reimbursement.

#### Section 1. Definitions.

(1) "Certified community health worker" has the same meaning as in KRS 309.460(2).

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

(3)(a) "Medical intervention" means a treatment, procedure or other action taken to prevent or treat disease, or improve health in other ways.

(b) "Medical intervention" includes, but does not require the direct application of medical care.

(4) "Ordering provider" means a provider that is employed by or contracted with a sponsoring provider and who is:

(a) A physician;

(b) A physician assistant;

(c) An advanced practice registered nurse, including a certified nurse midwife; or

(d) A dentist.

(5) "Sponsoring provider" means a provider listed or permitted to employ a certified community health worker pursuant to 205.648(2).

Section 2. Certified Community Health Worker Qualifications. In order to be eligible for reimbursement, a certified community health worker shall:

(1) Be a legal United States resident;

(2) Be employed as a certified community health worker in the state of Kentucky;

(3) Be at least eighteen (18) years of age; and

(4) Meet and maintain the certification or recertification requirements of 902 KAR 21:040.

(5) Provide services as approved by an ordering provider who is associated with a sponsoring provider.

(6)(a) Provide services on behalf of a sponsoring provider.

## VOLUME 50, NUMBER 2– AUGUST 1, 2023

(b) For the purposes of this administrative regulation, a sponsoring provider of a certified community health worker shall include a behavioral health multi-specialty group.

**Section 3. Community Health Worker Services.** (1) A community health worker service shall be related to a medical intervention that is outlined in the individual's care plan.

(2) Community health worker services shall include all services established within KRS 205.648(3)(a)-(d).

(3) Consistent with federal approval, the following services may be conducted by a certified community health worker. Any services provided shall be consistent with established or recognized healthcare standards:

(a) Health system navigation and resource coordination, which may include:

1. Helping a recipient find Medicaid providers to receive a covered service;
2. Helping a recipient make an appointment for a Medicaid covered service;
3. Arranging transportation to a medical appointment;
4. Attending an appointment with the recipient for a covered service; or
5. Helping a recipient find other relevant community resources such as support groups.

(b) Health promotion and coaching, which may include providing information or training to recipients that make positive contributions to their health status, such as:

1. Cessation of tobacco use;
2. Reduction in the misuse of alcohol or drugs;
3. Improvement in nutrition;
4. Improvement of physical fitness;
5. Family planning;
6. Control of stress; or
7. Pregnancy and infant care, including prevention of fetal alcohol syndrome.

(c). Health education and training to train or promote to recipients methods and measures that have been proven effective in avoiding illness or lessening its effects, including:

1. Immunizations;
2. Control of high blood pressure;
3. Control of sexually transmittable disease;
4. Prevention and control of diabetes;
5. Control of toxic agents;
6. Occupational safety and health; or
7. Accident prevention.

**Section 4. Ordering and Delivery of Community Health Worker Services.** Community health worker services shall be:

- (1) Ordered or approved by an ordering provider; and
- (2) Delivered according to a care plan approved by the ordering provider.

**Section 5. Documentation of Community Health Worker Services.** Community health worker services shall be:

- (1) Signed and documented by the certified community health worker;
- (2) Approved by the billing supervisor of the connected provider; and
- (3) Recorded and kept in the patient medical record.

**Section 6. Reimbursement for Community Health Worker Services.** Reimbursement for community health worker services shall be as established on the Community Health Worker Reimbursement Table, available at: <https://www.chfs.ky.gov/agencies/dms/Pages/feesrates.aspx>.

**Section 7.** There shall be no reimbursement under this administrative regulation available for a certified community health worker that is directly:

- (1) Funded by a federal grant; or
- (2) Employed by a managed care organization.

**Section 8.** A community health worker service, by itself, shall not generate a wrap payment, including wrap payments for the following

provider types:

- (1) Federally qualified health center (FQHC);
- (2) Rural health clinic (RHC); or
- (3) Certified community behavioral health clinic (CCBHC).

**Section 9. Use of Electronic Signatures.** 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.

**Section 10. Auditing Authority.** The department or the managed care organization in which an enrollee is enrolled shall have the authority to audit any:

- (1) Claim;
- (2) Medical record; or
- (3) Documentation associated with any claim or medical record.

**Section 11. Federal Approval and Federal Financial Participation.** The coverage provisions and requirements established in 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 of the coverage.

**Section 12. Appeal Rights.** An appeal of a department decision or adverse action 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.

LISA D. LEE, Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: July 11, 2023

FILED WITH LRC: July 13, 2023 at 11:45 a.m.

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:** A public hearing on this administrative regulation shall, if requested, be held on September 25, 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 September 18, 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 September 30, 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](mailto: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 Department for Medicaid Services (DMS) policies relating to the provision and reimbursement of community health worker services.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish, clarify, and enhance DMS policies relating to certified community health worker 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 implementing a statutory requirement and federal approval to provide community health worker services.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The administrative regulation implements a federal approval required to be sought by recent state legislation.

(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 Department for Medicaid Services, managed care organizations (MCOs), individuals who may seek to become certified community health workers, providers employing community health workers, and Medicaid recipients.

(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: Providers and community health workers will need to comply with existing law and this administrative regulation in order to be eligible for reimbursement.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). DMS does not anticipate providers will incur costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). Certified community health worker services will be eligible for reimbursement.

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

(a) Initially: The department anticipates that it will incur no additional expenses in the implementation of this administrative regulation.

(b) On a continuing basis: The department anticipates that it will incur no additional expenses in implementing this administrative regulation on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of revenue to be used for implementation and enforcement of this administrative regulation are federal funds authorized under the Social Security Act, Title XIX and matching funds of general fund appropriations.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Neither an increase in fees nor funding will be necessary to implement this administrative regulation.

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

(9) TIERING: Is tiering applied? Tiering is not applied within this administrative regulation as all individuals are eligible for community health worker services.

regulation. KRS 194A.030(2), 194A.050(1), 205.520(3), 205.648

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

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

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

(c) How much will it cost to administer this program for the first year? DMS does not anticipate additional costs in administering this program in the first year.

(d) How much will it cost to administer this program for subsequent years? DMS does not anticipate 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 this administrative regulation in the first year.

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

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

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

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.

#### FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Medicaid Services (DMS) will be affected by the amendment to this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative

**VOLUME 50, NUMBER 2– AUGUST 1, 2023**

**ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE  
Minutes of July 14, 2023**

**N/A; July meeting cancelled.**

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 TRANSPORTATION**  
**Meeting of July 18, 2023**

The Interim Joint Committee on Transportation met on July 18, 2023 and a quorum was present. The following administrative regulations were available for consideration having been referred to the Committee on June 7, 2023, pursuant to KRS 13A.290(6):

601 KAR 014:050

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 July 18, 2023 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

**INTERIM JOINT COMMITTEE ON NATURAL RESOURCES & ENERGY**  
**Meeting of July 20, 2023**

The Interim Joint Committee on Natural Resources and Energy met on July 20, 2023, and a quorum was present. The following administrative regulations were available for consideration having been referred to the Committee on July 5, 2023, pursuant to KRS 13A.290(6):

401 KAR 058:040  
301 KAR 002:222  
301 KAR 001:001

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 July 20, 2023, meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

**INTERIM JOINT COMMITTEE ON HEALTH SERVICES**  
**Meeting of July 24, 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 July 24, 2023, having been referred to the Committee on June 7, 2023 and July 5, 2023, pursuant to KRS 13A.290(6):

**June 7, 2023**

040 KAR 009:010 Proposed  
040 KAR 009:010 Emergency  
040 KAR 009:020 Proposed  
040 KAR 009:020 Emergency  
201 KAR 008:533 Proposed  
201 KAR 008:563 Proposed  
201 KAR 020:360 Proposed  
201 KAR 020:390 Proposed

**July 5, 2023**

201 KAR 005:055 Proposed  
201 KAR 020:478 Proposed  
900 KAR 005:020 Emergency  
900 KAR 006:075 Emergency  
900 KAR 014:010 Emergency  
902 KAR 055:015 Emergency

Committee activity in regards to review of the above-referenced administrative regulations is reflected in the minutes of the July 24, 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 50<sup>th</sup> year of the *Administrative Register of Kentucky*, from July 2022 through June 2023.

### Locator Index - Effective Dates

**B - 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 “49 Ky.R.” notation are regulations that were originally published in the previous year’s issues of the *Administrative Register of Kentucky* but had not yet gone into effect by the end of the *Register* year.

### KRS Index

**B - 8**

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

**B - 12**

A list of administrative regulations for which certification letters have been filed pursuant to KRS 13A.3104 during this *Register* year.

### Technical Amendment Index

**B - 13**

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

**B - 14**

A general index of administrative regulations published during this *Register* year, and is primarily broken down by agency.

## LOCATOR INDEX - EFFECTIVE DATES

Administrative regulations published in previous Register years may appear in this index if a regulation had not completed the KRS Chapter 13A review process by the beginning of *Register* year 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 002:240E	50 Ky.R. 302	6-29-2023
016 KAR 009:080E	49 Ky.R. 2200	4-26-2023
016 KAR 009:100E	49 Ky.R. 2205	4-26-2023
030 KAR 010:010E	50 Ky.R. 303	6-29-2023
030 KAR 010:020E	50 Ky.R. 305	6-29-2023
030 KAR 010:030E	50 Ky.R. 307	6-29-2023
030 KAR 010:040E	50 Ky.R. 309	6-29-2023
030 KAR 010:050E	50 Ky.R. 311	6-29-2023
030 KAR 010:060E	50 Ky.R. 312	6-29-2023
030 KAR 010:070E	50 Ky.R. 314	6-29-2023
030 KAR 010:080E	50 Ky.R. 315	6-29-2023
030 KAR 010:090E	50 Ky.R. 317	6-29-2023
030 KAR 010:100E	50 Ky.R. 318	6-29-2023
030 KAR 010:110E	50 Ky.R. 320	6-29-2023
030 KAR 010:120E	50 Ky.R. 321	6-29-2023
040 KAR 009:010E	49 Ky.R. 1563	1-6-2023
Replaced	2272	7-24-2023
040 KAR 009:020E	49 Ky.R. 1565	1-6-2023
Replaced	2273	7-24-2023
101 KAR 001:365E	50 Ky.R. 324	7-11-2023
201 KAR 023:016E	49 Ky.R. 976	10-3-2022
Withdrawn		6-28-2023
201 KAR 023:160E	50 Ky.R. 326	6-28-2023
201 KAR 023:051E	49 Ky.R. 1239	11-15-2022
Replaced	1803	7-5-2023
202 KAR 002:020E	50 Ky.R. 329	7-5-2023
202 KAR 007:555E	50 Ky.R. 5	5-22-2023
503 KAR 001:140E	50 Ky.R. 331	6-27-2023
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
Am Comments	50 Ky.R. 385	7-14-2023
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
Replaced	1924	7-5-2023
701 KAR 008:020E	49 Ky.R. 989	10-13-2022
Replaced	1928	7-5-2023
701 KAR 008:030E	49 Ky.R. 998	10-13-2022
Replaced	1167	7-5-2023
701 KAR 008:040E	49 Ky.R. 1001	10-13-2022
Replaced	1935	7-5-2023
701 KAR 008:050E	49 Ky.R. 1005	10-13-2022

Regulation Number	Ky.R. Page No.	Effective Date
Replaced	1216	7-5-2023
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
809 KAR 001:002E	50 Ky.R. 339	7-10-2023
809 KAR 001:003E	50 Ky.R. 341	7-10-2023
809 KAR 010:001E	50 Ky.R. 346	7-10-2023
809 KAR 010:002E	50 Ky.R. 349	7-10-2023
809 KAR 010:003E	50 Ky.R. 354	7-10-2023
809 KAR 010:004E	50 Ky.R. 358	7-10-2023
809 KAR 010:005E	50 Ky.R. 362	7-10-2023
809 KAR 010:006E	50 Ky.R. 369	7-10-2023
809 KAR 010:007E	50 Ky.R. 375	7-10-2023
809 KAR 010:008E	50 Ky.R. 377	7-10-2023
810 KAR 001:030E	50 Ky.R. 379	7-10-2023
807 KAR 005:001E	49 Ky.R. 734	9-14-2022
810 KAR 004:010E	49 Ky.R. 2048	3-29-2023
Withdrawn by agency		7-11-2023
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	6-13-2023
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
Am Comments	50 Ky.R. 387	7-13-2023

### 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	
013 KAR 005:010	50 Ky.R. 486	
013 KAR 005:020	50 Ky.R. 488	
016 KAR 002:240	50 Ky.R. 490	
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
030 KAR 006:012	50 Ky.R. 492	
030 KAR 010:010	50 Ky.R. 493	
030 KAR 010:020	50 Ky.R. 494	

# LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	46 Ky.R. Page No.	Effective Date	Regulation Number	46 Ky.R. Page No.	Effective Date
030 KAR 010:030	50 Ky.R. 496		As Amended	50 Ky.R. 19	
030 KAR 010:040	50 Ky.R. 498		201 KAR 001:050		
030 KAR 010:050	50 Ky.R. 500		Amended	49 Ky.R. 2347	
030 KAR 010:060	50 Ky.R. 501		201 KAR 001:190		
030 KAR 010:070	50 Ky.R. 502		Amended	49 Ky.R. 1639	
030 KAR 010:080	50 Ky.R. 504		As Amended	2076	6-22-2023
030 KAR 010:090	50 Ky.R. 505		As Amended IJC	50 Ky.R. 19	
030 KAR 010:100	50 Ky.R. 506		201 KAR 002:020		
030 KAR 010:110	50 Ky.R. 508		Amended	50 Ky.R. 88	
030 KAR 010:120	50 Ky.R. 509		201 KAR 002:050		
032 KAR 001:020			Amended	50 Ky.R. 90	
Amended	50 Ky.R. 73		201 KAR 002:076		
032 KAR 001:030			Amended	50 Ky.R. 91	
Amended	50 Ky.R. 74		201 KAR 002:105		
032 KAR 001:046	50 Ky.R. 231		Amended	50 Ky.R. 95	
032 KAR 001:050			201 KAR 002:205		
Amended	50 Ky.R. 76		Amended	50 Ky.R. 99	
032 KAR 004:020	50 Ky.R. 232		201 KAR 002:225		
032 KAR 002:020			Amended	50 Ky.R. 101	
Amendment	50 Ky.R. 401		201 KAR 002:240		
032 KAR 002:030			Amended	50 Ky.R. 103	
Amendment	50 Ky.R. 403		201 KAR 002:320		
032 KAR 002:040			Amended	50 Ky.R. 104	
Amendment	50 Ky.R. 405		201 KAR 002:340		
032 KAR 002:050			Amended	50 Ky.R. 108	
Amendment	50 Ky.R. 407		201 KAR 002:380		
032 KAR 002:060			Amended	49 Ky.R. 625	
Amendment	50 Ky.R. 409		Am Comments	1451	
032 KAR 002:221(r)	50 Ky.R. 511		As Amended	1755	
032 KAR 002:230	50 Ky.R. 512		As Amended	2078	6-21-2023
040 KAR 009:010	49 Ky.R. 1707		201 KAR 002:390		
As Amended	2272	7-24-2023	Amended	50 Ky.R. 110	
040 KAR 009:020	49 Ky.R. 1709		201 KAR 005:002	49 Ky.R. 1371	
As Amended	2273	7-24-2023	Am Comments	1943	
045 KAR 001:030			As Amended	2080	6-21-2023
Amended	49 Ky.R. 1473	7-5-2023	201 KAR 005:055		
045 KAR 001:040			Amended	49 Ky.R. 1974	
Amended	49 Ky.R. 1958		As Amended	50 Ky.R. 22	7-24-2023
As Amended	50 Ky.R. 19		201 KAR 006:060		
101 KAR 001:365			Amended	48 Ky.R. 3029	
Amendment	50 Ky.R. 411		201 KAR 008:533	49 Ky.R. 1859	
101 KAR 002:034			As Amended	2273	7-24-2023
Amended	49 Ky.R. 1960		201 KAR 008:563	49 Ky.R. 1863	
101 KAR 002:095			As Amended	2276	7-24-2023
Amended	49 Ky.R. 1966		201 KAR 016:550		
101 KAR 002:181	49 Ky.R. 2030		Amended	49 Ky.R. 1473	
101 KAR 003:045			As Amended	1903	7-5-2023
Amended	49 Ky.R. 1968		Amendment	50 Ky.R. 413	
104 KAR 001:010			201 KAR 016:552	49 Ky.R. 1540	
Amended	50 Ky.R. 78		As Amended	1905	7-5-2023
104 KAR 001:040			Amendment	50 Ky.R. 416	
Amended	50 Ky.R. 80		201 KAR 016:560		
104 KAR 001:050			Amended	49 Ky.R. 1475	
Amended	50 Ky.R. 82		As Amended	1907	7-5-2023
104 KAR 001:080			Amendment	50 Ky.R. 419	
Amended	50 Ky.R. 84		201 KAR 016:562	49 Ky.R. 1543	
104 KAR 001:100			As Amended	1908	7-5-2023
Amended	50 Ky.R. 86		201 KAR 016:610		
105 KAR 001:001			Amended	49 Ky.R. 1480	7-5-2023
Amended	49 Ky.R. 1535		201 KAR 016:701	50 Ky.R. 518	
As Amended	1899	7-5-2023	201 KAR 016:702	50 Ky.R. 520	
105 KAR 001:220			201 KAR 016:750	50 Ky.R. 522	
Amended	49 Ky.R. 2342		201 KAR 016:572		
105 KAR 001:365			Amended	49 Ky.R. 1478	
Amended	49 Ky.R. 1537		As Amended	1909	7-5-2023
As Amended	1900	7-5-2023	201 KAR 016:610		
105 KAR 001:390			Amended	49 Ky.R. 1480	
As Amended	49 Ky.R. 317		201 KAR 019:225		
105 KAR 001:457	50 Ky.R. 514		Amended	49 Ky.R. 2349	
109 KAR 017:010	49 Ky.R. 2031		201 KAR 020:240		

# LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	46 Ky.R. Page No.	Effective Date	Regulation Number	46 Ky.R. Page No.	Effective Date
Amended	49 Ky.R. 2351		As Amended	1916	6-21-2023
201 KAR 020:360			202 KAR 007:401		
Amended	49 Ky.R. 1812		Amended	49 Ky.R. 1497	6-21-2023
As Amended	2280	7-24-2023	202 KAR 007:510		
201 KAR 020:390			Amended	49 Ky.R. 2355	
Amended	49 Ky.R. 1815		202 KAR 007:550		
As Amended	2282	7-24-2023	Amendment	50 Ky.R. 426	
201 KAR 020:411			202 KAR 007:555		
Amended	49 Ky.R. 1642		Amended	50 Ky.R. 135	
As Amended	2082	6-21-2023	202 KAR 007:601		
201 KAR 020:472			Amended	49 Ky.R. 1506	6-21-2023
Amended	49 Ky.R. 1645		301 KAR 001:001	49 Ky.R. 2034	
As Amended	2084	6-21-2023	As Amended	50 Ky.R. 25	7-20-2023
201 KAR 020:476			301 KAR 001:115		
Amended	49 Ky.R. 1649		Amendment	50 Ky.R. 433	
As Amended	2087	6-21-2023	301 KAR 001:122		
201 KAR 020:478			Amended	50 Ky.R. 140	
Amended	49 Ky.R. 1652		301 KAR 001:125		
Am Comments	2316		Amendment	50 Ky.R. 436	
As Amended	50 Ky.R. 23	7-24-2023	301 KAR 001:201		
201 KAR 020:620			Amended	50 Ky.R. 142	
Amendment	50 Ky.R. 419		301 KAR 001:410		
201 KAR 020:700	49 Ky.R. 2424		Amended	50 Ky.R. 147	
201 KAR 021:025			301 KAR 002:015		
Amended	49 Ky.R. 1976		Amended	49 Ky.R. 1818	
201 KAR 021:041			As Amended	2284	6-8-2023
Amended	49 Ky.R. 1978		301 KAR 002:090		
Am Comments	50 Ky.R. 50		Amended	1819	6-8-2023
201 KAR 021:042			301 KAR 002:144		
Amended	49 Ky.R. 1981		Amended	49 Ky.R. 1654	
Am Comments	50 Ky.R. 52		As Amended	2089	6-8-2023
201 KAR 021:075			301 KAR 002:172		
Amended	49 Ky.R. 1983		Amendment	50 Ky.R. 438	
201 KAR 021:095			301 KAR 002:222		
Amended	49 Ky.R. 1985		Amended	49 Ky.R. 1987	
201 KAR 021:105	49 Ky.R. 2032		As Amended	50 Ky.R. 27	7-20-2023
201 KAR 022:045			301 KAR 002:245	49 Ky.R. 1545	
Amended	49 Ky.R. 2353		As Amended	1919	6-8-2023
201 KAR 022:170			301 KAR 002:300		
Amended	49 Ky.R. 1483		Amended	49 Ky.R. 1656	
As Amended	1910	6-21-2023	As Amended	2090	6-8-2023
Amendment	50 Ky.R. 423		301 KAR 003:120		
201 KAR 023:016	49 Ky.R. 1214		Amended	49 Ky.R. 1516	
Withdrawn		6-28-2023	As Amended	1920	6-8-2023
201 KAR 023:051	49 Ky.R. 1374		301 KAR 004:110		
Am Comments	1803		Amended	49 Ky.R. 1822	
As Amended	1910		As Amended	2284	6-8-2023
201 KAR 023:055			301 KAR 005:001		
Amendment	50 Ky.R. 424		Amended	49 Ky.R. 1659	6-8-2023
201 KAR 023:160	50 Ky.R. 524		301 KAR 005:010		
201 KAR 023:170	50 Ky.R. 527		Amended	49 Ky.R. 1661	
201 KAR 027:005			As Amended	2092	6-8-2023
Amended	50 Ky.R. 113		301 KAR 005:020		
201 KAR 027:008			Amended	49 Ky.R. 1662	
Amended	50 Ky.R. 115		As Amended	2093	6-8-2023
201 KAR 027:011			301 KAR 005:022		
Amended	50 Ky.R. 119		Amended	49 Ky.R. 1664	
201 KAR 027:012			As Amended	2094	6-8-2023
Amended	50 Ky.R. 126		301 KAR 006:001		
201 KAR 027:016			Amended	49 Ky.R. 2128	
Amended	50 Ky.R. 128		301 KAR 006:020		
202 KAR 002:020	50 Ky.R. 529		Amended	49 Ky.R. 2130	
202 KAR 007:201			301 KAR 011:020	49 Ky.R. 2427	
Amended	49 Ky.R. 1484		302 KAR 016:010		
As Amended	1911	6-21-2023	Amended	50 Ky.R. 151	
202 KAR 007:301			302 KAR 016:020		
Amended	49 Ky.R. 1488		Amended	50 Ky.R. 153	
As Amended	1913	6-21-2023	302 KAR 016:030		
202 KAR 007:330			Amended	50 Ky.R. 154	
Amended	49 Ky.R. 1492		302 KAR 016:071	50 Ky.R. 235	



# LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	46 Ky.R. Page No.	Effective Date	Regulation Number	46 Ky.R. Page No.	Effective Date
302 KAR 016:072	50 Ky.R. 236		Amended	49 Ky.R. 1826	7-18-2023
302 KAR 016:111			701 KAR 008:010		
Amended	50 Ky.R. 156		Amended	49 Ky.R. 1153	
302 KAR 022:150			As Amended	1924	7-5-2023
Amended	50 Ky.R. 158		701 KAR 008:020		
302 KAR 033:010	50 Ky.R. 238		Amended	49 Ky.R. 1158	
401 KAR 051:010			As Amended	1928	7-5-2023
Amended	50 Ky.R. 166		701 KAR 008:030		
401 KAR 058:040			Amended	49 Ky.R. 1167	7-5-2023
Amended	49 Ky.R. 1996		701 KAR 008:040		
As Amended	50 Ky.R. 34	7-20-2023	Amended	49 Ky.R. 1170	
500 KAR 002:020			As Amended	1935	7-5-2023
Amended	49 Ky.R. 2002		701 KAR 008:050	49 Ky.R. 1216	7-5-2023
Am Comments	50 Ky.R. 54		702 KAR 007:065		
500 KAR 003:010			Amended	50 Ky.R. 173	
Amended	49 Ky.R. 2132		703 KAR 005:270		
500 KAR 003:020			Amended	49 Ky.R. 1832	
Amended	49 Ky.R. 2134		Am Comments	50 Ky.R. 61	
501 KAR 006:040			704 KAR 003:303		
Amended	49 Ky.R. 1353		Amended	49 Ky.R. 1521	7-5-2023
Am Comments	1805		704 KAR 008:060		
As Amended	1923		Amended	49 Ky.R. 1523	
501 KAR 006:150			704 KAR 008:120	49 Ky.R. 1547	
Amended	49 Ky.R. 1824		As Amended	1938	7-5-2023
Am Comments	50 Ky.R. 59		707 KAR 001:002		
501 KAR 016:310			Amended	49 Ky.R. 1525	
Amended	49 Ky.R. 2363		As Amended	1938	7-5-2023
503 KAR 001:140			739 KAR 002:060		
Amendment	50 Ky.R. 442		Amended	49 Ky.R. 2007	
505 KAR 001:010			As Amended	50 Ky.R. 41	
Amended	49 Ky.R. 2365		787 KAR 001:090		
505 KAR 001:100			Amended	49 Ky.R. 1672	
Amended	49 Ky.R. 2370		As Amended	2096	
505 KAR 001:110			787 KAR 001:100		
Amended	50 Ky.R. 170		Amended	49 Ky.R. 1675	
505 KAR 001:120			As Amended	2097	
Amended	49 Ky.R. 1668		803 KAR 030:010		
Am Comments	2318		Amended	49 Ky.R. 1836	
As Amended	50 Ky.R. 40		As Amended	2285	
505 KAR 001:140			806 KAR 003:250	49 Ky.R. 1549	
Amended	49 Ky.R. 1670		As Amended	1942	7-5-2023
Am Comments	2320		806 KAR 006:072	49 Ky.R. 1710	
As Amended	50 Ky.R. 40		As Amended	2098	
505 KAR 001:180			As Amended	50 Ky.R. 43	
Amended	49 Ky.R. 2373		806 KAR 009:400	50 Ky.R. 531	
505 KAR 001:185	49 Ky.R. 2429		806 KAR 017:270		
505 KAR 001:200	49 Ky.R. 2432		Amendment	50 Ky.R. 449	
505 KAR 001:210	49 Ky.R. 2434		808 KAR 001:170		
505 KAR 001:220	49 Ky.R. 2436		Amended	49 Ky.R. 1184	
505 KAR 001:230	49 Ky.R. 2438		As Amended	2291	
505 KAR 001:240	50 Ky.R. 240		808 KAR 010:440		
505 KAR 001:250	50 Ky.R. 241		Amended	49 Ky.R. 1676	
505 KAR 001:260	50 Ky.R. 243		As Amended	2100	
505 KAR 001:270	50 Ky.R. 245		808 KAR 010:450		
505 KAR 001:280	50 Ky.R. 248		Amended	49 Ky.R. 1679	
505 KAR 001:290	50 Ky.R. 250		As Amended	2102	
505 KAR 001:300	50 Ky.R. 251		808 KAR 016:010	49 Ky.R. 1713	
505 KAR 001:310	50 Ky.R. 253		As Amended	2104	
505 KAR 001:320	50 Ky.R. 256		808 KAR 016:020	49 Ky.R. 1716	
505 KAR 001:330	50 Ky.R. 257		As Amended	2105	
505 KAR 001:340	50 Ky.R. 259		809 KAR 001:002	50 Ky.R. 533	
505 KAR 001:350	50 Ky.R. 261		809 KAR 001:003	50 Ky.R. 535	
505 KAR 001:360	50 Ky.R. 263		809 KAR 010:001	50 Ky.R. 540	
505 KAR 001:370	50 Ky.R. 265		809 KAR 010:002	50 Ky.R. 543	
505 KAR 001:380	50 Ky.R. 268		809 KAR 010:003	50 Ky.R. 547	
505 KAR 001:390	50 Ky.R. 270		809 KAR 010:004	50 Ky.R. 551	
505 KAR 001:400	50 Ky.R. 272		809 KAR 010:005	50 Ky.R. 555	
505 KAR 001:410	50 Ky.R. 276		809 KAR 010:006	50 Ky.R. 561	
505 KAR 001:420	50 Ky.R. 278		809 KAR 010:007	50 Ky.R. 567	
601 KAR 014:050			809 KAR 010:008	50 Ky.R. 569	

# LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	46 Ky.R. Page No.	Effective Date	Regulation Number	46 Ky.R. Page No.	Effective Date
810 KAR 002:020 Amendment	50 Ky.R. 455		902 KAR 020:500	50 Ky.R. 280	
810 KAR 002:070 Amendment	50 Ky.R. 458		902 KAR 055:015 Amended	49 Ky.R. 2171	
810 KAR 002:100	49 Ky.R. 2439		902 KAR 055:110 Amended	49 Ky.R. 1357	
810 KAR 003:010 Amendment	50 Ky.R. 462		As Amended	2111	6-21-2023
810 KAR 004:001 Amendment	50 Ky.R. 467		902 KAR 020:300 Amended	50 Ky.R. 179	
810 KAR 004:010 Amendment	50 Ky.R. 470		902 KAR 100:019 Amended	50 Ky.R. 182	
810 KAR 004:030 Amendment	50 Ky.R. 473		902 KAR 100:040 Amended	50 Ky.R. 194	
810 KAR 004:040 Amendment	50 Ky.R. 477		902 KAR 100:050 Amended	50 Ky.R. 199	
810 KAR 004:090 Amended	49 Ky.R. 2375		902 KAR 100:058 Amended	50 Ky.R. 205	
810 KAR 007:030 Amended	49 Ky.R. 2377		902 KAR 100:065 Amended	50 Ky.R. 212	
810 KAR 007:040 Amended	49 Ky.R. 2011		902 KAR 100:165 Amended	50 Ky.R. 215	
As Amended	50 Ky.R. 45		902 KAR 100:185	50 Ky.R. 282	
810 KAR 007:060 Amended	49 Ky.R. 2381		902 KAR 100:195	50 Ky.R. 284	
815 KAR 007:130	49 Ky.R. 2153		902 KAR 100:200	50 Ky.R. 286	
810 KAR 008:020 Amended	49 Ky.R. 2016		906 KAR 001:210 Amended	49 Ky.R. 2385	
815 KAR 004:030 Amended	49 Ky.R. 2138		907 KAR 001:025 Amended	50 Ky.R. 220	
815 KAR 008:010 Amended	49 Ky.R. 2141		907 KAR 001:038 Amended	49 Ky.R. 2174	
815 KAR 010:060 Amended	49 Ky.R. 2145		907 KAR 001:082 Amended	48 Ky.R. 3092	
815 KAR 020:030 Amended	49 Ky.R. 2148		Am Comments	49 Ky.R. 838	6-21-2023
815 KAR 025:020 Amended	49 Ky.R. 2151		As Amended	2113	
815 KAR 025:060 Amended	49 Ky.R. 2156		907 KAR 001:126	49 Ky.R. 2185	
815 KAR 035:060 Amended	49 Ky.R. 2160		907 KAR 001:632 Amended	49 Ky.R. 2178	
820 KAR 001:005 Amended	49 Ky.R. 1683		907 KAR 003:190	49 Ky.R. 1868	
As Amended	2107		907 KAR 003:310	50 Ky.R. 571	
820 KAR 001:025 Amended	49 Ky.R. 1686		907 KAR 020:010 Amended	49 Ky.R. 2388	
As Amended	2109		907 KAR 020:045 Amended	49 Ky.R. 2391	
820 KAR 001:130 Amended	49 Ky.R. 1689		907 KAR 020:075 Amended	49 Ky.R. 2393	
As Amended	2110		907 KAR 020:100 Amended	49 Ky.R. 2396	
900 KAR 005:020 Amended	49 Ky.R. 2024		910 KAR 001:180 Amended	49 Ky.R. 1841	6-21-2023
Am Comments	50 Ky.R. 395		As Amended	2309	
900 KAR 006:075 Amended	49 Ky.R. 2026		910 KAR 003:030 Amended	49 Ky.R. 2401	
Am Comments	50 Ky.R. 396		911 KAR 001:090 As Amended	49 Ky.R. 1391	
900 KAR 006:080 Amended	50 Ky.R. 177		As Amended	1801	
900 KAR 014:010 Amended	49 Ky.R. 2164		921 KAR 001:400 Amended	49 Ky.R. 2408	
902 KAR 020:018 Amended	49 Ky.R. 2166		921 KAR 003:020 Amended	50 Ky.R. 226	
902 KAR 020:470 Am Comments	49 Ky.R. 1219	6-21-2023	921 KAR 003:095	50 Ky.R. 288	
902 KAR 020:480 Am Comments	49 Ky.R. 1380		922 KAR 001:100 Amended	49 Ky.R. 1847	
As Amended	1946		Am Comments	2322	
902 KAR 020:490 Am Comments	49 Ky.R. 1719		922 KAR 001:330 Amended	49 Ky.R. 1851	
As Amended	2125	6-21-2023	Am Comments	2326	
	2307		922 KAR 001:360 Amended	49 Ky.R. 2411	
			922 KAR 001:580 Amendment	50 Ky.R. 481	
			922 KAR 002:180 Amended	49 Ky.R. 2417	

## LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	46 Ky.R. Page No.	Effective Date	Regulation Number	46 Ky.R. Page No.	Effective Date
922 KAR 002:245	49 Ky.R. 2441				
922 KAR 002:255	49 Ky.R. 2444				

---

### SYMBOL KEY:

- \* Statement of Consideration not filed by deadline
- \*\* Withdrawn, deferred more than twelve months (KRS 13A.300(2)(e) and 13A.315(1)(d))
- \*\*\* Withdrawn before being printed in Register
- IJC Interim Joint Committee
- (r) Repealer regulation: KRS 13A.310(3)-on the effective date of an administrative regulation that repeals another, the regulations compiler shall delete the repealed administrative regulation and the repealing administrative regulation.

# KRS INDEX

KRS SECTION	REGULATION	KRS SECTION	REGULATION
13B	101 KAR 001:365		505 KAR 001:350
	202 KAR 007:550		505 KAR 001:360
	503 KAR 001:140		505 KAR 001:370
	922 KAR 001:580		505 KAR 001:390
13B.100 – 13B.070	105 KAR 001:457		505 KAR 001:400
15.330	503 KAR 001:140		505 KAR 001:420
15.380	503 KAR 001:140	15A.160	505 KAR 001:200
15.382	503 KAR 001:140	15A.305	505 KAR 001:200
15.384	503 KAR 001:140	16.587	105 KAR 001:457
15.392	503 KAR 001:140	16.601	105 KAR 001:457
15.394	503 KAR 001:140	17.165	922 KAR 001:580
15.396	503 KAR 001:140	18A.075	101 KAR 001:365
15.3971	503 KAR 001:140	18A.0751	101 KAR 001:365
15.400	503 KAR 001:140	18A.095	101 KAR 001:365
15.408	503 KAR 001:140	36.390	106 KAR 004:020
15.440	503 KAR 001:140	36.392	106 KAR 004:020
15.540	503 KAR 001:140	36.394	106 KAR 004:020
15.565	503 KAR 001:140	36.396	106 KAR 004:020
15.580	503 KAR 001:140	39A.020	902 KAR 020:500
15A.065	505 KAR 001:110	39A.350	902 KAR 020:500
	505 KAR 001:200	39A.356	902 KAR 020:500
	505 KAR 001:240	39A.358	902 KAR 020:500
	505 KAR 001:250	61.505	105 KAR 001:457
	505 KAR 001:260	61.615	105 KAR 001:457
	505 KAR 001:270	61.665	105 KAR 001:457
	505 KAR 001:280	61.691	105 KAR 001:457
	505 KAR 001:290	61.805-61.850	702 KAR 007:065
	505 KAR 001:300	78.545	105 KAR 001:457
	505 KAR 001:310	78.5518	105 KAR 001:457
	505 KAR 001:320	78.5528	105 KAR 001:457
	505 KAR 001:330	78.5532	105 KAR 001:457
	505 KAR 001:340	78.5534	105 KAR 001:457
	505 KAR 001:350	121.015	032 KAR 001:050
	505 KAR 001:360		032 KAR 002:221
	505 KAR 001:370	121.120	032 KAR 002:020
	505 KAR 001:380		032 KAR 002:221
	505 KAR 001:390	121.135	032 KAR 002:060
	505 KAR 001:400		032 KAR 002:230
	505 KAR 001:410	121.140	032 KAR 002:020
	505 KAR 001:420		032 KAR 002:030
15A.0652	505 KAR 001:110		032 KAR 002:040
	505 KAR 001:200		032 KAR 002:050
	505 KAR 001:240	121.160	032 KAR 001:020
	505 KAR 001:250	121.170	032 KAR 001:050
	505 KAR 001:260	121.172	032 KAR 001:046
	505 KAR 001:270	121.180	032 KAR 001:020
	505 KAR 001:280		032 KAR 001:030
	505 KAR 001:290		032 KAR 001:046
	505 KAR 001:300		032 KAR 002:221
	505 KAR 001:310	142.363	907 KAR 001:025
	505 KAR 001:320	150.010	301 KAR 001:201
	505 KAR 001:330		301 KAR 001:125
	505 KAR 001:340		301 KAR 001:410
	505 KAR 001:350		301 KAR 002:172
	505 KAR 001:360	150.170	301 KAR 001:125
	505 KAR 001:370		301 KAR 001:201
	505 KAR 001:380		301 KAR 001:410
	505 KAR 001:390	150.175	301 KAR 001:201
	505 KAR 001:400		301 KAR 001:410
	505 KAR 001:410	150.177	301 KAR 002:172
	505 KAR 001:420	150.180	301 KAR 001:122
15A.067	505 KAR 001:110		301 KAR 002:172
	505 KAR 001:250	150.235	301 KAR 001:125
	505 KAR 001:260		301 KAR 001:410
	505 KAR 001:270	150.290	301 KAR 001:115
	505 KAR 001:280	150.340	301 KAR 001:201
	505 KAR 001:300	150.411	301 KAR 002:172
	505 KAR 001:310	150.445	301 KAR 001:410
	505 KAR 001:320	150.485	301 KAR 001:115
	505 KAR 001:330		301 KAR 001:125
	505 KAR 001:340	150.620	301 KAR 001:201

KRS SECTION	REGULATION	KRS SECTION	REGULATION
150.990	301 KAR 001:410		902 KAR 100:058
	301 KAR 001:201		902 KAR 100:065
	301 KAR 001:410		902 KAR 100:165
150.730-150.735	301 KAR 002:172		902 KAR 100:185
	302 KAR 022:150		902 KAR 100:195
156.070	702 KAR 007:065		902 KAR 100:200
158.281	505 KAR 001:260	216.510-216.525	902 KAR 020:300
160.380	702 KAR 007:065	216.532	902 KAR 020:300
160.445	702 KAR 007:065	216.535	902 KAR 020:300
161.020	016 KAR 002:240	216.540	902 KAR 020:300
164.0401	013 KAR 005:010	216.543	902 KAR 020:300
	013 KAR 005:020	216.545	902 KAR 020:300
164.0402	013 KAR 005:010	216.547	902 KAR 020:300
	013 KAR 005:020	216.785-216.793	902 KAR 020:300
164.0403	013 KAR 005:010	216B.010	900 KAR 006:075
164.0404	013 KAR 005:020	216B.010 – 216B.130	900 KAR 006:020
164.740-164.785	011 KAR 005:001	216B.015	900 KAR 006:075
164.7871-164.7885	011 KAR 015:110		900 KAR 006:080
164.7881	011 KAR 015:040		902 KAR 100:185
194.540	201 KAR 020:620	216B.020	900 KAR 006:080
194.705	902 KAR 020:300	216B.040	900 KAR 006:075
194A.005	902 KAR 100:040	216B.061	900 KAR 006:080
	902 KAR 100:050	216B.062	900 KAR 006:075
	902 KAR 100:058	216B.090	900 KAR 006:075
	902 KAR 100:065	216B.095	900 KAR 006:075
	902 KAR 100:185	216B.115	900 KAR 006:075
	902 KAR 100:195	216B.178	900 KAR 006:020
	902 KAR 100:200	216B.455	900 KAR 006:075
196.280	505 KAR 001:420	216B.990	900 KAR 006:075
197.045	505 KAR 001:420		900 KAR 006:080
198A.740 – 198A.750	202 KAR 002:020	217.015	201 KAR 002:225
199.011	922 KAR 001:360	217.055	201 KAR 002:076
199.640 – 199.680	922 KAR 001:360	217.065	201 KAR 002:076
199.801	922 KAR 001:360	217.177	201 KAR 016:550
200.080-200.120	505 KAR 001:110	218A.205	201 KAR 002:020
	505 KAR 001:200		201 KAR 002:050
	505 KAR 001:240	224.20-100	401 KAR 051:010
	505 KAR 001:250	224.20-110	401 KAR 051:010
	505 KAR 001:260	224.20-120	401 KAR 051:010
	505 KAR 001:270	229.011	201 KAR 027:005
	505 KAR 001:280	229.021	201 KAR 027:012
	505 KAR 001:290	229.025	201 KAR 027:008
	505 KAR 001:300		201 KAR 027:011
	505 KAR 001:310		201 KAR 027:016
	505 KAR 001:320	229.031	201 KAR 027:005
	505 KAR 001:330		201 KAR 027:011
	505 KAR 001:340		201 KAR 027:012
	505 KAR 001:350		201 KAR 027:016
	505 KAR 001:360	229.035	201 KAR 027:008
	505 KAR 001:370	229.055	201 KAR 027:011
	505 KAR 001:380		201 KAR 027:016
	505 KAR 001:390	229.065	201 KAR 027:008
	505 KAR 001:400	229.071	201 KAR 027:012
	505 KAR 001:410	229.081	201 KAR 027:012
	505 KAR 001:420	229.091	201 KAR 027:012
202B.010	907 KAR 001:025	229.111	201 KAR 027:005
205.200	921 KAR 003:020		201 KAR 027:011
209.030	902 KAR 020:300		201 KAR 027:016
209.032	902 KAR 020:300	229.131	201 KAR 027:005
211.180	902 KAR 100:185		201 KAR 027:011
	902 KAR 100:195		201 KAR 027:016
211.842-211.852	902 KAR 100:200	229.155	201 KAR 027:005
	902 KAR 100:019		201 KAR 027:011
	902 KAR 100:040		201 KAR 027:016
	902 KAR 100:050	229.171	201 KAR 027:005
	902 KAR 100:058		201 KAR 027:008
	902 KAR 100:065		201 KAR 027:011
	902 KAR 100:165		201 KAR 027:012
	902 KAR 100:185		201 KAR 027:016
	902 KAR 100:195	230	809 KAR 001:002
	902 KAR 100:200		809 KAR 001:003
211.990	902 KAR 100:019		809 KAR 010:001
	902 KAR 100:040		809 KAR 010:002
	902 KAR 100:050		809 KAR 010:003

KRS SECTION	REGULATION	KRS SECTION	REGULATION
	809 KAR 010:004	309.460	907 KAR 003:310
	809 KAR 010:005	309.462	907 KAR 003:310
	809 KAR 010:006	309.464	907 KAR 003:310
	809 KAR 010:007	311	201 KAR 027:008
	809 KAR 010:008	311A.030	202 KAR 007:550
230.215	810 KAR 004:001		202 KAR 007:555
	810 KAR 002:020	311A.180	202 KAR 007:550
	810 KAR 002:070	311A.190	202 KAR 007:550
	810 KAR 003:010		202 KAR 007:555
	810 KAR 004:010	314.400 – 314.414	201 KAR 020:620
	810 KAR 004:030	315.010	201 KAR 002:105
	810 KAR 004:040		201 KAR 002:225
230.240	810 KAR 002:020		201 KAR 002:320
	810 KAR 004:030		201 KAR 002:340
230.260	810 KAR 002:020	315.020	201 KAR 002:076
	810 KAR 002:070		201 KAR 002:205
	810 KAR 003:010		201 KAR 002:225
	810 KAR 004:030		201 KAR 002:320
	810 KAR 004:040		201 KAR 002:340
230.280	810 KAR 003:010	315.035	201 KAR 002:050
230.290	810 KAR 003:010		201 KAR 002:076
	810 KAR 004:030		201 KAR 002:225
230.300	810 KAR 003:010		201 KAR 002:240
230.310	810 KAR 004:030		201 KAR 002:340
230.320	810 KAR 004:030	315.036	201 KAR 002:320
230.811	810 KAR 003:010	315.0351	201 KAR 002:050
230.817	810 KAR 003:010		201 KAR 002:076
237.110	301 KAR 002:172		201 KAR 002:205
246.030	302 KAR 022:150	315.036	201 KAR 002:050
247.232	302 KAR 016:020	315.050	201 KAR 002:020
	302 KAR 016:030		201 KAR 002:050
247.233	302 KAR 016:072	315.060	201 KAR 002:050
	302 KAR 016:111	315.110	201 KAR 002:050
247.234	301 KAR 001:410	315.120	201 KAR 002:050
	302 KAR 016:020	315.121	201 KAR 002:105
	302 KAR 016:030	315.191	201 KAR 002:050
247.236	302 KAR 016:020		201 KAR 002:076
	302 KAR 016:030		201 KAR 002:205
251.355	302 KAR 033:010		201 KAR 002:225
251.375	302 KAR 033:010		201 KAR 002:320
251.380	302 KAR 033:010		201 KAR 002:340
251.470	302 KAR 033:010		201 KAR 002:390
251.990	302 KAR 033:010	315.300	201 KAR 002:205
257.020	302 KAR 022:150	315.335	201 KAR 002:205
257.030	302 KAR 022:150	315.350	201 KAR 002:105
257.080	201 KAR 016:701	315.400	201 KAR 002:105
	302 KAR 022:150		201 KAR 002:320
257.160	201 KAR 016:560		201 KAR 002:390
257.990	302 KAR 022:150	315.402	201 KAR 002:050
258	201 KAR 016:550		201 KAR 002:105
258.043	201 KAR 016:701	315.404	201 KAR 002:105
258.065	201 KAR 016:701		201 KAR 002:320
273	922 KAR 001:580	315.406	201 KAR 002:105
273.2	921 KAR 003:095	315.408	201 KAR 002:105
273.10	921 KAR 003:095	315.410	201 KAR 002:105
301	201 KAR 016:550	315.4102	201 KAR 002:390
304.1-050	806 KAR 017:290	315.4104	201 KAR 002:390
304.2-100	806 KAR 017:290	315.4106	201 KAR 002:390
304.2-230	806 KAR 017:290	315.4108	201 KAR 002:390
304.2-310	806 KAR 017:290	315.4110	201 KAR 002:390
304.9-020	806 KAR 009:400	315.412	201 KAR 002:105
304.9-430	806 KAR 009:400	321	302 KAR 022:150
304.9-433	806 KAR 009:400	321.175	201 KAR 016:701
304.9-435	806 KAR 009:400		201 KAR 016:702
304.9-440	806 KAR 009:400		201 KAR 016:750
304.17A-005	806 KAR 017:290	321.181	201 KAR 016:701
304.17A-1631	806 KAR 017:290		201 KAR 016:552
304.17A-168	806 KAR 017:290	321.185	201 KAR 016:701
304.17A-505	806 KAR 017:290	321.187	201 KAR 016:701
304.17A-535	806 KAR 017:290	321.188	201 KAR 016:701
304.17A-600	806 KAR 017:290	321.190	201 KAR 016:702
304.17A-607	806 KAR 017:290		201 KAR 016:750
304.17A-617	806 KAR 017:290	321.193	201 KAR 016:702
304.17A-621 – 304.17A-631	806 KAR 017:290	321.200	201 KAR 016:701

KRS SECTION	REGULATION	KRS SECTION	REGULATION
321.207	201 KAR 016:550		902 KAR 100:165
	201 KAR 016:552		902 KAR 100:185
	201 KAR 016:560		902 KAR 100:195
321.235	201 KAR 016:552		902 KAR 100:200
321.351	201 KAR 016:550	16 C.F.R.	302 KAR 016:071
	201 KAR 016:552	28 C.F.R.	104 KAR 001:100
	201 KAR 016:560	29 C.F.R.	104 KAR 001:040
321.441	201 KAR 016:702		104 KAR 001:050
	201 KAR 016:750		202 KAR 007:550
321.443	201 KAR 016:702		202 KAR 007:555
	201 KAR 016:750	40 C.F.R.	302 KAR 016:071
327.300	201 KAR 022:170		401 KAR 051:010
335B	201 KAR 016:560	42 C.F.R.	902 KAR 020:300
335.070	201 KAR 023:055		907 KAR 001:025
335.080	201 KAR 023:160	7 U.S.C.	921 KAR 003:020
335.090	201 KAR 023:160	10 U.S.C.	106 KAR 004:020
335.100	201 KAR 023:160	15 U.S.C.	201 KAR 027:008
335.158	201 KAR 023:170		201 KAR 027:011
342.640	902 KAR 020:500	20 U.S.C.	702 KAR 007:065
344.010	104 KAR 001:080	21 U.S.C.	201 KAR 002:076
344.010-344.500	104 KAR 001:050	29 U.S.C.	921 KAR 003:020
344.030	101 KAR 001:365	38 U.S.C.	921 KAR 003:020
344.040	104 KAR 001:040	42 U.S.C.	104 KAR 001:040
344.050	104 KAR 001:040		401 KAR 051:010
	104 KAR 001:100		902 KAR 100:040
344.060	104 KAR 001:040		902 KAR 100:050
	104 KAR 001:100		902 KAR 100:065
344.070	104 KAR 001:040		902 KAR 100:185
344.120	104 KAR 001:100		902 KAR 100:195
344.130	104 KAR 001:100		902 KAR 100:200
344.190	104 KAR 001:010		907 KAR 001:025
344.360-344.385	104 KAR 001:080		921 KAR 003:020
344.500	104 KAR 001:100		922 KAR 001:360
344.600-344.680	104 KAR 001:080	Ky Acts ch. 172	030 KAR 010:010
344.990	104 KAR 001:050		030 KAR 010:020
363.900-363.908	302 KAR 016:071		030 KAR 010:030
439.265	505 KAR 001:420		030 KAR 010:040
439.267	505 KAR 001:420		030 KAR 010:050
439.600	505 KAR 001:310		030 KAR 010:060
600-645	505 KAR 001:110		030 KAR 010:070
	505 KAR 001:200		030 KAR 010:080
	505 KAR 001:240		030 KAR 010:090
	505 KAR 001:250		030 KAR 010:100
	505 KAR 001:260		030 KAR 010:110
	505 KAR 001:270		030 KAR 010:120
	505 KAR 001:280		
	505 KAR 001:290		
	505 KAR 001:300		
	505 KAR 001:310		
	505 KAR 001:320		
	505 KAR 001:330		
	505 KAR 001:340		
	505 KAR 001:350		
	505 KAR 001:360		
	505 KAR 001:370		
	505 KAR 001:380		
	505 KAR 001:390		
	505 KAR 001:400		
	505 KAR 001:410		
	505 KAR 001:420		
600.020	922 KAR 001:580		
	922 KAR 001:360		
605.110	505 KAR 001:260		
620.020	201 KAR 020:620		
	922 KAR 001:580		
620.045	922 KAR 001:580		
620.050	922 KAR 001:580		
7 C.F.R.	921 KAR 003:020		
	921 KAR 003:095		
9 C.F.R.	302 KAR 022:150		
10 C.F.R.	902 KAR 100:040		
	902 KAR 100:050		
	902 KAR 100:058		
	902 KAR 100:065		

## CERTIFICATION LETTER SUMMARIES

The certification process is established in KRS 13A.3104. If the certification letter states the regulation shall be amended, the administrative body shall file an amendment to the regulation within 18 months of the date the certification letter was filed. If the certification letter states that the regulation shall remain in effect without amendment, the last effective date of the regulation is changed to the date the regulations compiler received the letter.

\* KRS 13A.010(6) - "Effective" or "eff." means that an administrative regulation has completed the legislative review process established by KRS 13A.290, 13A.330, and 13A.331.

Regulation Number	Letter Filed Date	Action
002 KAR 002:010	06-27-2023	Remain in Effect without Amendment
002 KAR 002:020	06-27-2023	Remain in Effect without Amendment
002 KAR 002:040	06-27-2023	Remain in Effect without Amendment
002 KAR 002:050	06-27-2023	Remain in Effect without Amendment
002 KAR 002:060	06-27-2023	Remain in Effect without Amendment
002 KAR 002:070	06-27-2023	Remain in Effect without Amendment
201 KAR 020:520	07-17-2023	Remain in Effect without Amendment
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



## TECHNICAL AMENDMENT INDEX

The Technical Amendment Index is a list of administrative regulations that have had technical, nonsubstantive amendments made during the 50<sup>th</sup> year of the *Administrative Register of Kentucky*. These technical changes have been made by the Regulations Compiler pursuant to KRS 13A.040(9) and (10), 13A.2255(2), 13A.312(2), or 13A.320(1)(d). Since these changes were not substantive in nature, administrative regulations appearing in this index will NOT be published to show the technical corrections in the *Register*. NOTE: Technical amendments may be available online for a short period of time. To view regulations on the Legislative Research Commission Web site, go to <https://apps.legislature.ky.gov/law/kar/titles.htm>.

‡ - A technical change was made to this administrative regulation during the promulgation process, pursuant to KRS 13A.320(1)(e).

† - A nonsubstantive change was made by the Compiler pursuant to KRS 13A.040(9).

Regulation Number	Date Corrected	Regulation Number	Date Corrected
----------------------	-------------------	----------------------	-------------------

## SUBJECT INDEX

### ACCOUNTANCY

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

### AIR QUALITY

National Ambient Air Quality Standards

Attainment status designations; 401 KAR 051:010

### AGRICULTURE

Amusement Rides

Business registration and permit; 302 KAR 016:010

Inspection; 302 KAR 016:020

Notification of occurrence; 302 KAR 016:072

Operation; 302 KAR 016:020

Permits; violations, civil penalties, revocations; 302 KAR 016:111

Repeal of 302 KAR 016:070; 302 KAR 016:071

Section stop order; 302 KAR 016:030

Violations not immediately correctable; 302 KAR 016:030

Grain

Dealers; 302 KAR 033:010

Warehouse operators; 302 KAR 033:010

Livestock, Fish, and Poultry

Cervids; 302 KAR 022:150

### ATHLETICS

*See also headings for specific sports*

School Terms, Attendance and Operation

Agent designation to manage middle and high school interscholastic athletics; 702 KAR 007:065

### BOARDS AND COMMISSIONS

*See also Occupations and Professions*

*See listing below for other possible, specific subject headings:*

Accountancy; 201 KAR Chapter 001

Alcohol and Drug Counselors; 201 KAR Chapter 022

Applied Behavior Analysis; 201 KAR Chapter 043

Architects; 201 KAR Chapter 019

Barbering; 201 KAR Chapter 014

Chiropractic Examiners; 201 KAR Chapter 021

Dentistry; 201 KAR Chapter 008

Dietitians and Nutritionists; 201 KAR Chapter 033

Durable Medical Equipment; 201 KAR Chapter 047

Embalmers and Funeral Directors; 201 KAR Chapter 015

Examiners of Psychology; 201 KAR Chapter 026

Geologists, Professional; 201 KAR Chapter 031

Long-Term Care Administrators; 201 KAR Chapter 006

Massage Therapy; 201 KAR Chapter 042

Medical Imaging and Radiation Therapy; 201 KAR Chapter 046

Medical Licensure; 201 KAR Chapter 009

Nursing; 201 KAR Chapter 020

Optometric Examiners; 201 KAR Chapter 005

Pharmacy; 201 KAR Chapter 002

Physical Therapy; 201 KAR Chapter 022

Real Estate Commission; 201 KAR Chapter 011

Speech-Language Pathology and Audiology; 201 KAR Chapter 017

Social Work; 201 KAR Chapter 023

Veterinary Examiners; 201 KAR Chapter 016

### BOXING AND WRESTLING

Definitions; 201 KAR 027:005

Fees; 201 KAR 027:008

License requirements; 201 KAR 027:008

Shows, exhibitions:

Boxing; 201 KAR 027:011

Kickboxing; 201 KAR 027:011

Mixed martial arts; 201 KAR 027:016

Wrestling; 201 KAR 027:012

### CERTIFICATE OF NEED

Emergency circumstances; 900 KAR 006:080

Nonsubstantive review; 900 KAR 006:075

### CHILD WELFARE

Advocacy centers; standards; 922 KAR 001:580

Child care; private placement; 922 KAR 001:360

### COMMUNITY BASED SERVICES

Aging Services (

Child Welfare (922 KAR Chapter 001)

Child Support (922 KAR Chapter 001)

Daycare (922 KAR Chapter 002)

K-TAP, Kentucky Works, Welfare to Work, State Supplementation (921 KAR Chapter 002)

Supplemental Nutrition Assistance Program (921 KAR Chapter 003)

### EDUCATION

*See also: Athletics*

*Higher Education Assistance Authority (KAR Title 011)*

*Postsecondary Education (KAR Title 013)*

### EDUCATION PROFESSIONAL STANDARDS

Teaching Certificates

Interim certificate; 016 KAR 002:240

### ELECTIONS

*See also: Election Finance (032 KAR Chapter 001)*

### ELECTION FINANCE

Practice and Procedure

Advisory opinions; 032 KAR 002:060

Complaints; internally-generated matters; 032 KAR 002:020

Conciliation; 032 KAR 002:050

General provisions; 032 KAR 002:020

Investigatory procedures; 032 KAR 002:040

Records requests; 032 KAR 002:230

Repeal of 032 KAR 002:220; 032 KAR 002:221

Reports and Forms

Campaign finance statements; 032 KAR 1:030

Campaign treasurer; 032 KAR 1:020

Political organization registration; 032 KAR 1:050

Repeal of 032 KAR 001:045 & 070; 032 KAR 001:046

Spending intent; 032 KAR 1:020

### EMERGENCY MEDICAL SERVICES

Equipment standards; 202 KAR 007:550

Ground agencies; 202 KAR 007:555

Vehicle standards; 202 KAR 007:550

### FISH AND WILDLIFE RESOURCES

Fish

Aquatic species, prohibited; 301 KAR 001:122

Aquatic organisms; propagation; 301 KAR 001:115

Definitions; 301 KAR 001:001

Fishing methods

Non-traditional; 301 KAR 001:410

Traditional; 301 KAR 001:201

Transportation of fish; 301 KAR 001:125

Game

Deer hunting seasons, zones, requirements; 301 KAR 002:172

Waterfowl hunting requirements on public lands; 301 KAR 002:222

### FOOD STAMPS

*See Supplemental Nutritional Assistance Program, 921 KAR Chapter 003*

### HEALTH AND FAMILY SERVICES

Certificate of Need; 900 KAR Chapter 6

Medicaid Services; KAR Title 907

State Health Plan; 900 KAR Chapter 5

### HIGHER EDUCATION ASSISTANCE AUTHORITY

Grant Programs

Definitions for 011 KAR Chapter 005; 011 KAR 005:001

Kentucky Educational Excellence Scholarship Program

## SUBJECT INDEX

Award determination procedure; 11 KAR 015:040  
Qualified workforce training program; 11 KAR 015:110  
Registered apprenticeship program; 11 KAR 015:110

### **HORSE RACING COMMISSION**

*See also: Sports Wagering (KAR Title 809)*

#### Flat and Steeplechase Racing

Declarations; 810 KAR 004:030  
Definitions; 810 KAR 004:001  
Entries; 810 KAR 004:030  
Horses; 810 KAR 004:010  
Running of the race; 810 KAR 004:040  
Subscriptions; 810 KAR 004:030

#### General

Thoroughbred and flat racing:  
Associations; 810 KAR 002:070  
Officials; 810 KAR 002:020

#### Licensing

Racing associations; 810 KAR 003:010

### **HOUSING**

#### Housing Corporation

Rural Housing Trust Fund; 202 KAR 002:020

### **HUMAN RIGHTS**

Advertising employment opportunities; 104 KAR 001:040  
Advertising licensing opportunities; 104 KAR 001:040  
Equal employment opportunities; 104 KAR 001:050  
Fair housing; 104 KAR 001:080  
Nondiscrimination on the basis of disability; 104 KAR 001:100  
Notices and pamphlets; 104 KAR 001:010

### **INSPECTOR GENERAL (CHFS)**

#### Health Services and Facilities

Nursing facilities:  
Operation and services; 902 KAR 20:300

### **INSURANCE**

#### Agents, Consultants, Solicitors and Adjusters

Public adjuster filings; 806 KAR 009:400

#### Health Insurance Contracts

Independent External Review Program; 806 KAR 017:290

### **JUSTICE AND PUBLIC SAFETY**

Juvenile Justice; 505 KAR Chapter 001

### **JUVENILE JUSTICE**

#### Child Welfare

Activity fund account; 505 KAR 001:390  
Allowance; 505 KAR 001:290  
Behavior management; 505 KAR 001:400  
Cell entry teams; 505 KAR 001:200  
Dietary services; 505 KAR 001:240  
Drug screening and testing; 505 KAR 001:250  
Emergency response teams; training; 505 KAR 001:200  
Furloughs; 505 KAR 001:310  
Grievances; 505 KAR 001:270  
Grooming; 505 KAR 1:280  
Hair; 505 KAR 1:280  
Intake and orientation; 505 KAR 001:110  
Isolation; 505 KAR 001:410  
Leave; 505 KAR 001:310  
Library services; 505 KAR 001:320  
Mail; 505 KAR 001:380  
Personal property; 505 KAR 001:330  
Policies and Procedures Manual:  
Detention Services; 505 KAR 001:140  
Health and Safety Services; 505 KAR 001:120  
Progressive discipline; 505 KAR 001:400  
Protective custody; 505 KAR 001:410  
Records and information; 505 KAR 001:300  
Recreation; 505 KAR 001:340  
Religious practice; 505 KAR 001:350  
Releases; 505 KAR 001:310

Searches; 505 KAR 001:360  
Telephone use; 505 KAR 001:380  
Treatment; 505 KAR 001:370  
Visiting; 505 KAR 001:380  
Work detail; 505 KAR 001:290  
Youthful offenders; 505 KAR 001:420

### **KENTUCKY**

All administrative regulations in this publication relate to Kentucky. If an agency has "Kentucky" at the beginning of its proper name, please skip over "Kentucky" and go to the second word of the proper name for that agency's heading.

### **LAW ENFORCEMENT**

#### Law Enforcement Council

Court security officer professional standards; 503 KAR 001:140  
Peace officer professional standards; 503 KAR 001:140  
Telecommunicator professional standards; 503 KAR 001:140

### **MEDICAID SERVICES**

#### Medicaid Services

Payments for services provided by various facilities; 907 KAR 001:025

#### Payments and Services

Community Health Worker services and reimbursement; 907 KAR 003:310

### **MIDWIVES**

*See Nursing (201 KAR Chapter 020)*

### **MILITARY AFFAIRS**

#### Military Burial Honors Program

Honor Guard and trust fund; 106 KAR 004:020

### **NURSING**

Midwives; licensing requirements; 201 KAR 20:620

### **OPTOMETRIC EXAMINERS**

Telehealth; 201 KAR 005:055

### **PERSONNEL**

#### Board

Appeal and hearing procedures; 101 KAR 001:365

### **PHARMACY**

Compounding; 201 KAR 002:076  
Examination; 201 KAR 002:020  
Fees; licenses and permits; 201 KAR 002:050  
Manufacturers requirements for various; 201 KAR 002:320  
Pharmacist-in-charge; 201 KAR 002:205  
Special limited pharmacy permit:  
Charitable; 201 KAR 002:240  
Clinical practice; 201 KAR 002:340  
Medical gas; 201 KAR 002:225  
Third-party logistics providers; requirements; 201 KAR 002:390  
Wholesalers; requirements for various; 201 KAR 002:105

### **PHYSICAL THERAPY**

Compact Commission; 201 KAR 022:170

### **POSTSECONDARY EDUCATION**

#### Healthcare

Program incentives; 013 KAR 005:020  
Training scholarships; 013 KAR 005:010

### **PUBLIC HEALTH**

Radiology (*902 KAR Chapter 100*)

### **PUBLIC PENSIONS**

#### General Rules

In-Line-of-Duty Survivor Benefits; 105 KAR 001:457

### **RADIOLOGY**

## SUBJECT INDEX

Employees; notices, reports, instructions; 902 KAR 100:165  
Irradiators; licensing and radiation safety requirements; 902  
KAR 100:200

### Licenses:

General; 902 KAR 100:050  
Special nuclear material; 902 KAR 100:195  
Specific products; 902 KAR 100:058  
Specific; 902 KAR 100:040  
Reciprocal recognition; 902 KAR 100:065  
Protection from radioactive materials standards; 902 KAR  
100:185  
Protection standards; 902 KAR 100:019

Technicians, licensed; 201 KAR 016:750

### WRESTLING

*See Boxing and Wrestling*

### RETIREMENT

*See Public Pensions (KAR Title 105)*  
*Teachers' Retirement System (KAR Title 102)*

### SECRETARY OF STATE

Address Confidentiality Program  
Repeal of 030 KAR 006:011; 030 KAR 006:012  
Safe at Home Program  
Age of majority; 030 KAR 010:100  
Appeal; 030 KAR 010:040  
Application; 030 KAR 010:020  
Application assistant training, designation; 030 KAR 010:050  
Cancellation; 030 KAR 010:040  
Certification; 030 KAR 010:020  
Definitions; 030 KAR 010:010  
Notification:  
Expiration; 030 KAR 010:030  
Recertification; 030 KAR 010:030  
Participant privileges; 030 KAR 010:090  
Recognition of certification in other state; 030 KAR 010:120  
Release of information to:  
Criminal justice officials or agencies; 030 KAR 010:060  
Schools (enrollment and records); 030 KAR 010:070  
Service of process; 030 KAR 010:110  
Substitute address; 030 KAR 010:080  
Withdrawal; 030 KAR 010:040

### SOCIAL WORK

Inactive status; 201 KAR 23:055  
Telehealth; 201 KAR 023:170  
Temporary permission to practice; 201 KAR 023:160

### SPORTS WAGERING

Licensing  
Occupational licenses; 809 KAR 001:003  
Service provider licensing; 809 KAR 001:002  
Technical Criteria  
Accounts; 809 KAR 010:004  
Advertising; responsible; 809 KAR 010:007  
Audit and internal control standards; 809 KAR 010:006  
Disciplinary actions; hearings; 809 KAR 010:008  
Gaming; responsible; 809 KAR 010:007  
General provisions; 809 KAR 010:001  
Licensed premises; 809 KAR 010:005  
Standards; 809 KAR 010:002  
Technical requirements and oversight; 809 KAR 010:003

### SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM (SNAP)

Elderly Simplified Application Project (ESAP); 921 KAR 003:095  
Financial requirements; 921 KAR 003:020

### STATE HEALTH PLAN

Facilities and services, 900 KAR 005:020

### VETERINARY EXAMINERS

Animal control agencies:  
Drug limitations; 201 KAR 016:552  
Restricted controlled substances certificate; 201 KAR 016:550  
Euthanasia specialist certification; 201 KAR 16:560  
Medical records standards; 201 KAR 016:701  
Surgery standards; 201 KAR 016:702