

ADMINISTRATIVE REGISTER OF KENTUCKY

The submission deadline for this edition of the *Administrative Register of Kentucky* was noon October 13, 2023.

MEETING NOTICES

[Administrative Regulation Review Subcommittee](#) - tentatively scheduled to meet on November 9, 2023, at 2:00 p.m. in room 149 Capitol Annex.

ARRS Tentative Agenda - 1009 [Online agenda is updated as needed](#)

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

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

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all of the administrative regulations that may be removed to complete the public comment process or deferred or withdrawn by promulgating agencies.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



Administrative Regulation Review Subcommittee
TENTATIVE Meeting Agenda
Thursday, November 9, 2023 at 2 p.m.
Annex Room 149



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

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016 KAR 005:060. Literacy program requirements for middle school, high school, grades 5-12, and grades P-12.

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031 KAR 004:196E. Consolidation of precepts and precinct election officers. (Filed with Ordinary) ("E" expires 05-11-2024) (Deferred from October)

031 KAR 004:196. Consolidation of precepts and precinct election officers. (Filed with Emergency)

PERSONNEL CABINET

Classified

101 KAR 002:210E. 2023 and 2024 Plan Year Handbooks for the Public Employee Health Insurance Program. (Filed with Ordinary) ("E" expires 06-11-2024)

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104 KAR 001:040. Guidelines for advertising employment or licensing opportunities. (Deferred from September)

104 KAR 001:050. Standards and procedures for providing equal employment opportunities. (Deferred from September)

104 KAR 001:080. Guidelines on fair housing. (Deferred from September)

104 KAR 001:100. Nondiscrimination on the basis of disability by a place of public accommodations, licensing agencies and trade organizations. (Deferred from September)

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201 KAR 002:040. Registration of pharmacist interns.

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201 KAR 016:510. Fees for veterinarians.

201 KAR 016:512. Fees for veterinary technicians.

201 KAR 016:514. Fees for animal control agencies and animal euthanasia specialists.

201 KAR 016:516. Fees – other fees.

Board of Nursing

201 KAR 020:700. Medication aide training programs and credentialing of medication aides. (Amended After Comments) (Deferred from October)

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202 KAR 007:550. Required equipment and vehicle standards. (Deferred from October)

TOURISM, ARTS AND HERITAGE CABINET

Department of Fish and Wildlife Resources

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301 KAR 001:115. Propagation of aquatic organisms. (Deferred from October)

301 KAR 001:125. Transportation of fish. (Deferred from October)

Game

301 KAR 002:083. Holding and intrastate transportation of captive cervids.

301 KAR 002:172. Deer hunting seasons, zone, and requirements. (Deferred from October)

DEPARTMENT OF AGRICULTURE

Livestock, Poultry, and Fish

302 KAR 022:150. Cervids. (Amended After Comments)

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JUSTICE AND PUBLIC SAFETY CABINET

Department of Justice Capital Punishment

501 KAR 016:310. Pre-execution medical actions. (Amended After Comments) (Deferred from October)

Kentucky Law Enforcement Council

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

Department of Juvenile Justice Child Welfare

505 KAR 001:010. Definitions. (Amended After Comments) (Deferred from October)
505 KAR 001:100. Admissions. (Amended After Comments) (Deferred from October)
505 KAR 001:110. Intake and orientation. (Not Amended After Comments)
505 KAR 001:180. Day treatment admissions. (Not Amended After Comments) (Deferred from October)
505 KAR 001:185. Day treatment programs. (Amended After Comments) (Deferred from October)
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505 KAR 001:240. Dietary services. (Not Amended After Comments)
505 KAR 001:250. Drug screening and testing. (Amended After Comments)
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505 KAR 001:290. Juvenile allowance and work detail. (Not Amended After Comments)
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505 KAR 001:310. Leave, releases, and furloughs. (Amended After Comments)
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505 KAR 001:330. Personal property, dress, and clothing and bedding supply. (Amended After Comments)
505 KAR 001:340. Recreation. (Amended After Comments)
505 KAR 001:350. Religious practice. (Amended After Comments)
505 KAR 001:360. Searches. (Amended After Comments)
505 KAR 001:370. Treatment. (Not Amended After Comments)
505 KAR 001:380. Mail, visiting, and telephone use. (Amended After Comments)
505 KAR 001:390. Juvenile Accounts and Youth Activity Fund Account. (Amended After Comments)
505 KAR 001:400. Behavior management and progressive discipline. (Amended After Comments)
505 KAR 001:410. Isolation and protective custody. (Amended After Comments)
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810 KAR 002:070. Thoroughbred and other flat racing associations. (Amended After Comments)

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810 KAR 004:001. Definitions for 810 Chapter 4. (Not Amended After Comments)
810 KAR 004:010. Horses. (Deferred from October)
810 KAR 004:030. Entries, subscriptions, and declarations. (Amended After Comments)
810 KAR 004:040. Running of the race. (Not Amended After Comments)

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900 KAR 005:020. State Health Plan for facilities and services. (Filed with Emergency) (Amended After Comments) (Deferred from August)

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900 KAR 006:075. Certificate of need non-substantive review. (Filed with Emergency) (Amended After Comments) (Deferred from August)

Department for Public Health Food and Cosmetics

902 KAR 045:190E. Hemp-derived cannabinoid products; packaging and labeling requirements. (Emergency only) ("E" expires 04-27-2024) (Emergency Amended After Comments)

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902 KAR 100:019. Standards for protection against radiation. (Amended After Comments)

902 KAR 100:050. General licenses. (Amended After Comments)

902 KAR 100:058. Specific licenses to manufacture, assemble, repair, or distribute products. (Amended After Comments)

902 KAR 100:065. Reciprocal recognition. (Amended After Comments)

902 KAR 100:165. Notices, reports, and instructions to employees. (Amended After Comments)

902 KAR 100:185. Standards for protection against radiation from radioactive materials. (Amended After Comments)

902 KAR 100:195. Licensing of special nuclear material. (Amended After Comments)

902 KAR 100:200. Licenses and radiation safety requirements for irradiators. (Amended After Comments)

Department for Behavioral Health, Developmental and Intellectual Disabilities

Division of Behavioral Health

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908 KAR 002:300E. Kentucky problem gambling assistance account. (Filed with Ordinary) ("E" expires 04-26-2024) (Emergency Amended After Comments)

908 KAR 002:300. Kentucky problem gambling assistance account. (Filed with Emergency)

Department for Community Based Services

Child Support

921 KAR 001:420. Child support distribution.

3. REGULATIONS REMOVED FROM NOVEMBER'S AGENDA

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201 KAR 016:550. Authorization for animal control agencies to apply for a restricted controlled substances certificate from DEA. (Comments Received; SOC ext. due 11-15-2023)

201 KAR 016:552. Responsibilities for certified animal control agencies; limitations on drugs. (Comments Received; SOC ext. due 11-15-2023)

201 KAR 016:560. Certification as an animal euthanasia specialist. (Comments Received; SOC ext. due 11-15-2023)

201 KAR 016:701. Standards for medical records. (Comments Received; SOC ext. due 11-15-2023)

201 KAR 016:702. Standards for veterinary surgery. (Comments Received; SOC ext. due 11-15-2023)

201 KAR 016:750. Licensed veterinary technicians (LVTs) – Scope of practice and supervisory requirements. (Comments Received; SOC ext. due 11-15-2023)

Board of Social Work

201 KAR 023:055. Inactive status of license. (Comments Received; SOC ext. due 11-15-2023)

201 KAR 023:160. Temporary permission to practice. (Filed with Emergency) (Not Amended After Comments) (Deferred from November)

201 KAR 023:170. Telehealth and social work practice. (Comments Received; SOC ext. due 11-15-2023)

PUBLIC PROTECTION CABINET

Kentucky Horse Racing Commission

Sports Wagering

809 KAR 001:002. Service provider licensing. (Filed with Emergency) (Comments Received; SOC ext. due 11-15-2023)

809 KAR 001:003. Occupational licenses. (Filed with Emergency) (Comments Received; SOC ext. due 11-15-2023)

Horse Racing: General

810 KAR 002:100. Self-exclusion. (Amended After Comments) (Deferred from September)

Sports Wagering: Technical Criteria

809 KAR 010:001. General provisions. (Filed with Emergency) (Comments Received; SOC ext. due 11-15-2023)

809 KAR 010:002. Standards for sports wagering. (Filed with Emergency) (Comments Received; SOC ext. due 11-15-2023)

809 KAR 010:003. Technical requirements and oversight. (Filed with Emergency) (Comments Received; SOC ext. due 11-15-2023)

809 KAR 010:004. Sports wagering accounts. (Filed with Emergency) (Comments Received; SOC ext. due 11-15-2023)

809 KAR 010:005. Licensed premises. (Filed with Emergency) (Comments Received; SOC ext. due 11-15-2023)

809 KAR 010:006. Audit and internal control standards. (Filed with Emergency) (Comments Received; SOC ext. due 11-15-2023)

809 KAR 010:007. Responsible gaming and advertising. (Filed with Emergency) (Comments Received; SOC ext. due 11-15-2023)

809 KAR 010:008. Disciplinary actions and hearings. (Filed with Emergency) (Comments Received; SOC ext. due 11-15-2023)

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Horse Racing: Licensing

810 KAR 003:010. Licensing of racing associations. (Filed with Emergency) (Comments Received; SOC ext. due 11-15-2023)

CABINET FOR HEALTH AND FAMILY SERVICES

Department of Medicaid Services

Payment and Services

907 KAR 003:310. Community health worker services and reimbursement. (Comments Received, SOC ext. due 11-15-2023)

Radiology

902 KAR 100:040. General provisions for specific licenses. (Comments Received; SOC ext., due 10-13-2023)(Withdrawn by Agency)

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
105 KAR 1:148E

Pursuant to KRS 13A.190(1)(a)2., this emergency administrative regulation is being promulgated in order to allow the Kentucky Public Pensions Authority (KPPA) to assign actuarially accrued liability contributions for a Kentucky Employees Retirement System (KERS) employer that, on or after March 23, 2021, merges with another employer or entity, forms a new or separate employer or entity, or splits or separates operations into multiple employers or entities. This administrative regulation is being filed on an emergency basis pursuant to KRS 13A.190(1)(a)2. to prevent the loss of state funds. More specifically, this administrative regulation is being filed on an emergency basis to ensure that the actuarially accrued liability contributions are timely paid in the event that a KERS employer with an actuarially accrued liability contribution calculated under KRS 61.565(1)(d) merges with another employer or entity, forms a new or separate employer or entity, or splits or separates operations into multiple employers or entities. KRS 61.565 is attached for support. 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
JOHN CHILTON, Chief Executive Officer

FINANCE AND ADMINISTRATION CABINET
Kentucky Public Pensions Authority
Kentucky Retirement Systems
(New Emergency Administrative Regulation)

105 KAR 1:148E. Merged, split, new, separate, or separated employers or entities.

EFFECTIVE: October 11, 2023

RELATES TO: KRS 61.520, 61.522, 61.565, 61.645, 61.675, 61.685, 212.132

STATUTORY AUTHORITY: KRS 61.645(9)(e)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 61.645(9)(e) authorizes the Board of Trustees of the Kentucky Retirement Systems to promulgate all administrative regulations necessary or proper in order to carry out the provisions of KRS 16.505 to 16.652 and 61.510 to 61.705, and to conform to federal statutes and regulations. As required by KRS 61.565(1)(d)4., this administrative regulation establishes the procedures and requirements for the process of assigning actuarially accrued liability contributions for a Kentucky Employees Retirement System employer that, on or after March 23, 2021, merges with another employer or entity, forms a new or separate employer or entity, or splits or separates operations into multiple employers or entities.

Section 1. Definitions.

(1) "Actuarially accrued liability" means a prorated annual dollar contribution amount for employers with employees that have participated in or are participating in the system on or after July 1, 2021, that is based on the individual employer's percentage of the system's total actuarially accrued liability as of June 30, 2019, and determined pursuant to KRS 61.565(1)(d)1.

(2) "Assign" means the transfer of legal and financial responsibility for paying the actuarially accrued liability to another participating or non-participating employer.

(3) "Inactive employer" means a participating employer that ceases to have any employees in a regular full-time position participating in the system.

(4) "Merged employer" means one or more participating employers with an actuarially accrued liability that have merged or

have plans to merge with one (1) or more participating or non-participating employers into a new single entity or under the name of one (1) of the participating or non-participating employers that are part of the merger.

(5) "New or separate employer" means:

(a) A participating employer with an actuarially accrued liability that forms, becomes, or is bought out by a non-participating employer; or

(b) A participating employer with an actuarially accrued liability that dissolves or becomes an inactive employer and another distinct entity is formed and assumes responsibility for a portion or all of the business.

(6) "Non-participating employer" means an entity that does not participate in the system.

(7) "Participating employer" means an employer that participates in the system.

(8) "Split or separated employer" means a participating employer with an actuarially accrued liability that divides into two (2) or more distinct entities.

(9) "Submit" means an employer 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.

(10) "System" means the Kentucky Employees Retirement System.

Section 2. Retroactive Effective Date of Application. This administrative regulation applies to the actuarially accrued liability of any participating employer that on or after March 23, 2021 pursuant to KRS 61.565(1)(d)4., merges with another employer or entity, forms a new or separate employer or entity, or splits or separates operations into multiple employers or entities.

Section 3. Actuarially Accrued Liability Assignment.

(1)(a) Except as provided in paragraphs (b) and (c) of this subsection, when, on or after March 23, 2021, a participating employer that has an actuarially accrued liability becomes a merged employer, new or separate employer, or split or separated employer, the agency shall have full authority to assign a portion or all of the total actuarially accrued liability of the participating employer to:

1. The merged, new, split, separate, or separated participating employer or the merged non-participating employer; or

2. Another participating employer that voluntarily requests assignment of a portion or all of the total actuarially accrued liability of the participating employer under Section 8(2)(c) of this administrative regulation.

(b) Employers that pay the costs to cease participation in the system as provided by KRS 61.522 are not subject to the provisions of paragraph (a) of this subsection.

(c) In the case of a district health department that ceases to operate or that has a county or counties that withdraw from the district health department, the agency shall assign the total actuarially accrued liability contribution based upon the proportion of taxable property of each county as certified by the Department for Public Health in the Cabinet for Health and Family Services in accordance with KRS 212.132.

(2) The effective date of the new assignment of actuarially accrued liability shall be the latter of:

(a) The first day of the month following the completion of the merger, split, separation, or formation of a new participating employer; or

(b) March 23, 2021.

(3) If a merged, new, split, separate, or separated participating employer or the merged non-participating employer fails to pay in full an actuarially accrued liability assigned to it pursuant to this administrative regulation and KRS 61.565, the agency may pursue all available remedies, including, but not limited to, actions set forth

in KRS 61.675(4), and civil payments, legal fees, and costs in accordance with KRS 61.685(3).

Section 4. Notification of Merge, Split, Separating, or New Entity.

(1)(a) Prior to beginning the formal process or merging, splitting, separating, or becoming a new entity, a participating employer that has an actuarially accrued liability shall submit a written notification of the participating employer's intended merger, split, separation, or formation of a new entity. The written notification shall be on the participating employer's official letterhead.

(b) Following receipt of the notification required by paragraph (a) of this subsection, the agency shall make the relevant determination under Sections 5 through 9 of this administrative regulation.

(2) If the agency becomes aware, through any means, that a participating employer that has an actuarially accrued liability has merged, split, separated, or become a new or separate entity, and the participating employer failed to submit a written notification in compliance with subsection (1)(a) of this section, the agency shall make the relevant determination under Sections 5 through 9 of this administrative regulation.

Section 5. Merged Employers.

(1) The agency shall determine whether two (2) or more participating employers, or one (1) or more participating employer and one (1) or more non-participating employer, have become a merged employer on or after March 23, 2021.

(2) When two (2) or more participating employers with an actuarially accrued liability combine into a new single merged employer, then:

(a) The merged employer shall take the necessary steps to participate in the system in accordance with KRS 61.520; and

(b) The entire actuarially accrued liability shall be assigned to the merged employer.

(3)(a) When one (1) or more participating employers with an actuarially accrued liability combines with one (1) or more non-participating employer into a new single merged employer, then:

1. The merged employer may be required to take the necessary steps to participate in the system in accordance with KRS 61.520, as determined by the agency; and

2. The entire actuarially accrued liability shall be assigned to the merged employer.

(b) The agency shall have the authority to determine whether a merged employer as described in paragraph (a) of this subsection shall be required to take the necessary steps to participate in the system in accordance with KRS 61.520.

Section 6. New or Separate Employers.

(1) The agency shall determine whether a new or separate employer has been created on or after March 23, 2021.

(2) The entire actuarially accrued liability of the original participating employer that becomes the new or separate employer shall be assigned to the new or separate employer.

(3) The agency shall have the authority to determine whether a new or separate employer as described in subsection (1) of this section shall be required to or may take the necessary steps to participate in the system in accordance with KRS 61.520.

Section 7. Split or Separated Employers.

(1) The agency shall determine whether split or separated employers have been created on or after March 23, 2021.

(2) Split or separated employers shall be required to take the necessary steps to participate in the system in accordance with KRS 61.520.

(3) The actuarially accrued liability calculated for the original participating employer shall be split between the split or separated employers based on the percentage of participating employees with each split or separated employer.

Section 8. Inactive Employers.

(1) The agency shall determine whether a participating employer is an inactive employer.

(2) Except as provided in paragraphs (a) through (c) of this subsection, the actuarially accrued liability calculated for the inactive

employer shall remain assigned to the inactive employer.

(a) If the inactive employer becomes part of a merged employer on or after March 23, 2021, the actuarially accrued liability of the inactive employer shall be assigned as described in Section 5 of this administrative regulation.

(b) If, relevant to the inactive employer, a new or separate employer is created on or after March 23, 2021, the actuarially accrued liability of the inactive employer shall be assigned as described in Section 6 of this administrative regulation.

(c) If any other participating employer with an actuarially accrued liability voluntarily requests that the agency assign it the actuarially accrued liability of the inactive employer, the actuarially accrued liability of the inactive employer shall be assigned by the agency to the other participating employer with an actuarially accrued liability.

Section 9. Other Similar Circumstances. Employers whose circumstances do not fit exactly into merged, new, split, separate, or separated participating employer, or merged non-participating employer as identified in Sections (5) through (8) of this administrative regulation, but have similar circumstances, shall be individually evaluated by the agency. The agency shall determine which section of this administrative regulation closest matches the employer circumstances and shall administer in accordance with the identified section.

JOHN CHILTON, CHIEF EXECUTIVE OFFICER

APPROVED BY AGENCY: September 29, 2023

FILED WITH LRC: October 11, 2023 at 3:05 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing to allow for public comment on this administrative regulation shall be held on November 21, 2023, at 11:00 a.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 November 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.

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 the process of assigning actuarially accrued liability contributions for a Kentucky Employees Retirement System employer that, on or after March 23, 2021, merges with another employer or entity, forms a new or separate employer or entity, or splits or separates operations into multiple employers or entities.

(b) The necessity of this administrative regulation: To establish the procedures and requirements for the process of assigning actuarially accrued liability contributions for a Kentucky Employees Retirement System employer that, on or after March 23, 2021, merges with another employer or entity, forms a new or separate employer or entity, or splits or separates operations into multiple employers or entities.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 61.565(1)(d)4. requires the establishment of administrative regulation outlining the assignment of the actuarially accrued liability contribution for a Kentucky Employees Retirement System employer that, on or after March 23, 2021, merges with another employer or entity, forms a new or separate employer or entity, or splits or separates operations into multiple employers or entities. KRS 61.645(9)(e) authorizes the Board of Trustees of the Kentucky Retirement Systems to promulgate all administrative regulations necessary or proper in order to carry out the provisions of KRS 16.505 to 16.652 and 61.510 to 61.705, including KRS 61.565(1)(d)4.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the procedures and requirements for the process of assigning actuarially accrued liability contributions for a Kentucky Employees Retirement System employer that, on or after March 23, 2021, merges with another employer or entity, forms a new or separate employer or entity, or splits or separates operations into multiple employers or entities.

(2) If 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: 325 employers that participate in the Kentucky Employees Retirement System. These employers include county attorney offices, health departments, master commissioners, Non-P1 state agencies, other retirement systems, P1 state agencies, regional mental health boards, and universities. In addition, an unknown number of non-participating employers may be impacted in the event of a split, separated, newly formed, or merged employer as described in the administrative regulation. Finally, the Kentucky Public Pensions Authority is tasked with administering 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: Regulated entities will be required to notify the Kentucky Public Pensions Authority via written statement on official letterhead of its intended merger, split, separation, or formation of a new entity. Regulated entities will be required to pay the actuarially accrued liability contribution as described in the administrative regulation. Finally, regulated entities may be required to comply with the participation determinations and requirements as described in the administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Unknown

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): There are no additional benefits for those identified entities.

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

(a) Initially: Unknown

(b) On a continuing basis: Unknown

(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 related to this administrative regulation.

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

(9) TIERING: Is tiering applied? Tiering is not applied. All 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? 325 county attorney offices, health departments, master commissioners, Non-P1 state agencies, other retirement systems, P1 state agencies, regional mental health boards, and universities that participate in the Kentucky Employees Retirement System. In addition, non-participating employers may be impacted in the event of a split, separated, newly formed, or merged employer as described in the administrative regulation. Finally, the Kentucky Public Pensions Authority is tasked with administering 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 61.565(1)(d)4. and 61.645(9)(e)

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

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

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

(c) How much will it cost to administer this program for the first year? Unknown

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: The cost of administration of this administrative regulation depends on whether impacted entities that participate in the Kentucky Employees Retirement System split, separate, form a new entity, or merge as described in 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? This administrative regulation will not generate a 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 a cost savings.

(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 (+/-):

Expenditures (+/-):

Other Explanation: The fiscal impact of this administrative regulation depends on whether impacted entities that participate in the Kentucky Employees Retirement System split, separate, form a

new entity, or merge as described in 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 is not expected to have an overall "negative or adverse" economic impact on the regulated entities.

**STATEMENT OF EMERGENCY
907 KAR 9:010E**

This emergency administrative regulation is being promulgated to increase Medicaid reimbursement for psychiatric residential treatment facilities. The department is ensuring a stable and sustainable option for child Medicaid recipients who need enhanced mental health services. This emergency administrative regulation will establish a higher reimbursement in order to encourage providers to begin providing these services or to expand current offerings. This emergency administrative regulation is needed pursuant to KRS 13A.190(1)(a)2. to preserve state and federal funding and ensure the most efficient use of funds. In addition, the Department for Medicaid Services (DMS) needs this administrative regulation pursuant to KRS 13A.190(1)(a)1. as the amendments will act to preserve the welfare of child Medicaid recipients. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.

ANDY BESHEAR, Governor
ERIC C. FRIEDLANDER, Secretary

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

907 KAR 9:010E. Reimbursement for non-outpatient Level I and II psychiatric residential treatment facility services.

EFFECTIVE: October 4, 2023

RELATES TO: KRS 205.520, 216B.450, 216B.455, 42 U.S.C. 1395u[216B.459]

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 42 C.F.R. 440.160, 42 U.S.C. 1396a-d

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services has responsibility to administer the Medicaid Program. KRS 205.520(3) empowers the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds. This administrative regulation establishes Medicaid reimbursement policies for non-outpatient Level I and Level II psychiatric residential treatment facility services provided to a Medicaid recipient who is not enrolled in a managed care organization.

Section 1. Definition (1) "Department" means the Department for Medicaid Services or its designee.

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

(3) "Level I PRTF" means a psychiatric residential treatment facility that meets the criteria established in KRS 216B.450(5)(a).

(4) "Level II PRTF" means a psychiatric residential treatment facility that meets the criteria established in KRS 216B.450(5)(b).

(5) "Managed care organization" means an entity for which the department has contracted to serve as a managed care organization as defined in 42 C.F.R. 438.2.

(6) "Medicare Economic Index" or "MEI" means the economic index referred to in 42 U.S.C. 1395u(b)(3)(L).

(7) "Percentage increase in the MEI" is defined in 42 U.S.C.

1395u(i)(3).

(8) "Per diem rate" means a Level I or II PRTF's total daily reimbursement as calculated by the department.

(9)[(7)] "Recipient" is defined by KRS 205.8451(9).

Section 2. Reimbursement for Level I PRTF Services and Costs.

(1) To be reimbursable under the Medicaid Program, Level I PRTF services and associated costs, respectively, shall be provided to or associated with a recipient receiving Level I PRTF services in accordance with 907 KAR 9:005.

(2) The department shall reimburse for Level I PRTF services and costs referenced in subsection (4) of this section for a recipient not enrolled in a managed care organization:

(a) At the lesser of:

1. A per diem rate of \$500[\$274.04]; or

2. The usual and customary charge; and

(b) An amount not to exceed the prevailing charges, in the locality where the Level I PRTF is located, for comparable services provided under comparable circumstances.

(3) The per diem rate referenced in subsection (2) of this section shall be increased annually[~~each biennium~~] by the percentage increase in the MEI[~~2.22 percent~~].

(4) The reimbursement referenced in subsection (2) of this section shall represent the total Medicaid reimbursement for Level I PRTF services and costs:

(a) Including all care and treatment costs;

(b) Including costs for all ancillary services;

(c) Including capital costs;

(d) Including room and board costs; and

(e) Excluding the costs of drugs as drugs shall be:

1. Covered in accordance with 907 KAR 23:010; and

2. Reimbursed via the department's pharmacy program in accordance with 907 KAR 23:020.

Section 3. Reimbursement for Level II PRTF Services and Costs. (1) To be reimbursable under the Medicaid program, Level II PRTF services and associated costs, respectively, shall be provided to or associated with a recipient receiving Level II PRTF services in accordance with 907 KAR 9:005.

(2) The department shall reimburse at the lesser of the usual and customary charge or a per diem rate of \$600[~~as follows~~] for Level II PRTF services and costs for a recipient not enrolled in a managed care organization[~~]:~~

(a) ~~\$345 for Level II PRTF services to a recipient who meets the rate group one (1) criteria established in subsection (3)(a) of this section;~~

(b) ~~\$365 for Level II PRTF services to a recipient who meets the rate group two (2) criteria established in subsection (3)(b) of this section;~~

(c) ~~\$385 for Level II PRTF services to a recipient who meets the rate group three (3) criteria established in subsection (3)(c) of this section; or~~

(d) ~~\$405 for Level II PRTF services to a recipient who meets the rate group four (4) criteria established in subsection (3)(d) or (e) of this section.~~

(3)(a) Rate group one (1) criteria shall be for a recipient who:

1. Is twelve (12) years of age or younger; and

2.a. Is sexually reactive; or

b.(i) Has a severe and persistent aggressive behavior;

(ii) Does not have an intellectual or a developmental disability;

and

(iii) Has an intelligence quotient higher than seventy (70);

(b) Rate group two (2) criteria shall be for a recipient who:

1. Is twelve (12) years of age or younger; and

2.a. Is sexually reactive; and

b.(i) Has a severe and persistent aggressive behavior;

(ii) Does not have an intellectual or a developmental disability;

and

(iii) Has an intelligence quotient higher than seventy (70);

(c) Rate group three (3) criteria shall be for a recipient who:

1. Is thirteen (13) years of age or older; and

2.a. Is sexually reactive; or

b.(i) Has a severe and persistent aggressive behavior;

(ii) Does not have an intellectual or a developmental disability;
and

(iii) Has an intelligence quotient higher than seventy (70).

(d) Rate group four (4) criteria shall be for a recipient who:

1. Is thirteen (13) years of age or older; and

2. a. Is sexually reactive; and

b. (i) Has a severe and persistent aggressive behavior;

(ii) Does not have an intellectual or a developmental disability;
and

(iii) Has an intelligence quotient higher than seventy (70).

(e) Rate group four (4) criteria shall be for a recipient who:

1. Is under twenty-two (22) years of age; and

2. a. Is sexually reactive; or

b. (i) Has a severe and persistent aggressive behavior;

(ii) Has an intellectual or a developmental disability; and

(iii) Has an intelligence quotient lower than seventy (70)].

(3)[(4)] The per diem rate[rates] referenced in subsection (2) of this section, or the usual and customary charge if less than the per diem rate, shall represent the total Medicaid reimbursement for Level II PRTF services and costs:

(a) Including all care and treatment costs;

(b) Including costs for all ancillary services;

(c) Including capital costs;

(d) Including room and board costs; and

(e) Excluding the costs of drugs as drugs shall be:

1. Covered in accordance with 907 KAR 23:010; and

2. Reimbursed via the department's pharmacy program in accordance with 907 KAR 23:020.

(4)[(5)(a)] The per diem rate referenced in subsection (2) of this section shall be increased annually by the percentage increase in the MEI. ~~The department shall annually evaluate each per diem rate for Level II PRTF services and costs by reviewing the most recent, reliable claims data and cost report data to analyze treatment patterns, technology, and other factors that may alter the cost of efficiently providing Level II PRTF services.~~

~~(b) The department shall use the evaluation, review, and analysis referenced in paragraph (a) of this subsection to determine if an adjustment to the Level II PRTF reimbursement would be appropriate].~~

Section 4. Cost Reports and Audits. (1)(a) A Level I or II PRTF shall annually submit to the department, within ninety (90) days of the closing date of the facility's fiscal year end, a legible and completed Form CMS 2552-96.

(b) The department shall grant a thirty (30) day extension for submitting a legible and completed Form CMS 2552-96 to the department if an extension is requested by a Level I or II PRTF.

(2)(a) A Form CMS 2552-96 shall be subject to review and audit by the department.

(b) The review and audit referenced in paragraph (a) of this subsection shall be to determine if the information provided is accurate.

Section 5. Access to Level I and II PRTF Fiscal and Services Records. A Level I or II PRTF shall provide, upon request, all fiscal and service records relating to services provided to a Kentucky recipient, to the:

(1) Department;

(2) Cabinet for Health and Family Services, Office of Inspector General;

(3) Commonwealth of Kentucky, Office of the Attorney General;

(4) Commonwealth of Kentucky, Auditor of Public Accounts;

(5) Secretary of the United States Department of Health and Human Services; or

(6) United States Office of the Attorney General.

Section 6. Bed Reserve and Therapeutic Pass Reimbursement. (1) The department's reimbursement for a bed reserve day which qualifies as a bed reserve day pursuant to 907 KAR 9:005 for a recipient not enrolled in a managed care organization shall be:

(a) Seventy-five (75) percent of the rate established in Section 2 or 3 of this administrative regulation if the Level I or II PRTF's occupancy percent is at least eighty-five (85) percent; or

(b) Fifty (50) percent of the rate established in Section 2 or 3 of this administrative regulation if the Level I or II PRTF's occupancy percent is less than eighty-five (85) percent.

(2) The department's reimbursement for a therapeutic pass day which qualifies as a therapeutic pass day pursuant to 907 KAR 9:005 for a recipient not enrolled in a managed care organization shall be:

(a) 100 percent of the rate established in Section 2 or 3 of this administrative regulation if the Level I or II PRTF's occupancy percent is at least fifty (50) percent; or

(b) Fifty (50) percent of the rate established in Section 2 or 3 of this administrative regulation if the Level I or II PRTF's occupancy percent is below fifty (50) percent.

(3)(a) A Level I or II PRTF's occupancy percent shall be based on a midnight census.

(b) An absence from a Level I or II PRTF that is due to a bed reserve day for an acute hospital admission, a state mental hospital admission, a private psychiatric hospital admission, or an admission to a psychiatric bed in an acute care hospital shall count as an absence for census purposes.

(c) An absence from a Level I or II PRTF that is due to a therapeutic pass day shall not count as an absence for census purposes.

Section 7. Outpatient Services Reimbursement Established in 907 KAR 9:020. The department's reimbursement provisions and requirements regarding outpatient behavioral health services provided by a Level I or II PRTF shall be as established in 907 KAR 9:020.

Section 8. Federal Financial Participation. The department's reimbursement for services pursuant to this administrative regulation shall be contingent upon:

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

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

Section 9. Appeals. A provider may appeal a decision by the department regarding the application of this administrative regulation in accordance with 907 KAR 1:671.

Section 10. Not Applicable to Managed Care Organizations. A managed care organization shall not be required to reimburse in accordance with this administrative regulation for a service covered pursuant to:

(1) This administrative regulation; or

(2) 907 KAR 9:005.

Section 11. Incorporation by Reference. (1) "Form CMS 2552-96", August 2010 edition, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8:00 a.m. to 4:30 p.m.

LISA D. LEE, Commissioner
ERIC FRIEDLANDER, Secretary

APPROVED BY AGENCY: September 22, 2023

FILED WITH LRC: October 4, 2023 at 2:45 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on November 27, 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 November 16, 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 November 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.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the Department for Medicaid Services' (DMS's) reimbursement provisions and requirements regarding non-outpatient Level I and II psychiatric residential treatment facility services.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish DMS's reimbursement provisions and requirements regarding non-outpatient Level I and II psychiatric residential treatment facility services.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing DMS's reimbursement provisions and requirements regarding non-outpatient Level I and II psychiatric residential treatment facility services.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the authorizing statutes by establishing DMS's reimbursement provisions and requirements regarding non-outpatient Level I and II psychiatric residential treatment facility services.

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

(a) How the amendment will change this existing administrative regulation: The amendments to the administrative regulation establish new per diem rates of \$500 for Level I and \$600 for Level II PRTF services. In addition, the administrative regulation removes a stratified reimbursement structure for Level II PRTF services and implements a uniform daily rate. Finally, future inflation increases will be linked to the Medicare economic index and calculated annually instead of once each biennium.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation is needed to implement improved reimbursement for PRTFs and to implement an approved state plan amendment.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment implements a federal approval concerning enhanced PRTF rates.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will allow for continued operation and sustainability for PRTFs.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Level I and II PRTFs will be affected by the amendment. Currently, there are eighteen (18) Level I PRTFs enrolled in the Medicaid Program and one (1) Level II PRTF enrolled in the Medicaid Program.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No action is required.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in

question (3): There will be no additional costs experienced by affected providers.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): A sustainable provider reimbursement structure will be in place for PRTFs.

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

(a) Initially: The department shall meet its budget obligations pursuant to HB 1 of the 2022 Regular Session.

(b) On a continuing basis: The department shall meet its budget obligations pursuant to HB 1 of the 2022 Regular Session.

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

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

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

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

FISCAL NOTE

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

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

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

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

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

(c) How much will it cost to administer this program for the first year? The department shall meet its budget obligations pursuant to HB 1 of the 2022 Regular Session.

(d) How much will it cost to administer this program for subsequent years? The department shall meet its budget obligations pursuant to HB 1 of the 2022 Regular Session.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? DMS anticipates that the increased revenue created by these amendments will allow

for PRTFs to be sustainable.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? DMS anticipates that the increased revenue created by these amendments will allow for PRTFs to be sustainable in subsequent years.

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

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

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] The administrative regulation will not have a major economic impact – as defined by KRS 13A.010 – on regulated entities.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 42 U.S.C. 1396a(a)(30)(A).

(2) State compliance standards. To qualify as a Level I or II PRTF, a facility must meet the criteria established in KRS 216B.450 through 457.

(3) Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 1396a(a)(30)(A) requires Medicaid state plans to: "...provide such methods and procedures relating to the utilization of, and the payment for, care and services available under the plan (including but not limited to utilization review plans as provided for in section 1903(i)(4)) as may be necessary to safeguard against unnecessary utilization of such care and services and to assure that payments are consistent with efficiency, economy, and quality of care and are sufficient to enlist enough providers so that care and services are available under the plan at least to the extent that such care and services are available to the general population in the geographic area."

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

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

AMENDED IN-PROCESS EMERGENCY ADMINISTRATIVE REGULATIONS

NOTE: Pursuant to KRS 13A.190, emergency regulations expire after 270 days (or 270 days plus the number of days an accompanying ordinary is extended) or upon replacement by an ordinary regulation, whichever occurs first. This index reflects the KRS Chapter 13A-established expiration dates. Other statutes or legislation may affect a regulation's actual end date.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Public Health Protection and Safety
(Emergency Amended After Comments)

902 KAR 45:190E. Hemp-derived cannabinoid products; packaging and labeling requirements.

EFFECTIVE: October 13, 2023

Prior versions: 50 Ky.R. 584

RELATES TO: KRS Chapter 13B, 217.015, 217.025, 217.035, 217.037, 217.039, [217.155,] 260.850, 438.305(4), 2023 Ky Acts ch. 78

STATUTORY AUTHORITY: KRS 217.125, 217.127, 217.135, 217.155

NECESSITY, FUNCTION, AND CONFORMITY: KRS 217.125(1) authorizes the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations for the efficient administration and enforcement of the Kentucky Food, Drug and Cosmetic Act, KRS 217.005 through 217.215. KRS 217.125(2) requires the secretary to provide by administrative regulation a schedule of fees for permits to operate and for inspection activities carried out by the cabinet pursuant to KRS 217.025 through 217.390. KRS 217.135 authorizes the secretary to establish food standards by administrative regulation including a reasonable definition, standard of identity, and designation of optional ingredients that shall be named on the label. KRS 217.155 allows the cabinet or its duly authorized agent free access at reasonable times for the purpose of inspection any factory, warehouse, or establishment where foods, drugs, devices, or cosmetics are manufactured or held for sale. This administrative regulation establishes the registration, processing, and manufacturing procedures[process] to utilize hemp-derived cannabinoid products in foods and cosmetics, the labeling and packaging requirements for products containing hemp-derived cannabinoids, the requirements for retail sale of hemp-derived cannabinoid products[cannabinoid], and methods for use of hemp-derived cannabinoid as an additive to food products.

Section 1. Definitions. (1) "Adult-use cannabinoid" means a product with intoxicating properties that changes the function of the nervous system and results in alterations of perception, cognition, or behavior.[tetrahydrocannabinols, tetrahydrocannabinolic acids that are artificially or naturally derived, delta-8 tetrahydrocannabinol, delta-9 tetrahydrocannabinol, the optical isomers of delta-8 tetrahydrocannabinol or delta-9 tetrahydrocannabinol, and any artificially derived cannabinoid that is reasonably determined to have an intoxicating effect.

(2) "Artificially derived cannabinoid" means a chemical substance that is created by a chemical reaction that changes the molecular structure of any chemical substance derived from a plant of the genus Cannabis.]

(2) [(3)] "Approved source" means:

(a) A Kentucky hemp grower[, processor,] or handler licensed by the Kentucky Department of Agriculture, or an out-of-state hemp grower[, processor,] or handler who is duly authorized to produce hemp under the laws of the applicable jurisdiction. [or]

(b) A hemp product manufacturer or processor permitted by the Kentucky Department for Public Health or

(c) A manufacturer or processor permitted by another state regulatory authority for hemp-derived cannabinoid products if that state has been approved by the department as having equivalent state standards for processing, laboratory testing, and labeling requirements.

(3) [(4)] [(2)] "Cabinet" is defined by KRS 217.015(3).

(4) [(5)] "Cannabidiol" or "CBD" is defined by KRS 217.039(1)(a).

(5) [(6)] [(3)] "Cannabinoid" means a [non-intoxicating] compound found in the hemp plant Cannabis sativa L from a United States Department of Agriculture sanctioned domestic hemp production program and does not include cannabinoids derived from any other substance.

(6) [(7)] "Child-resistant" means packaging that is:

(a) Designed or constructed to be significantly difficult for children under five (5) years of age to open and not difficult for adults to use properly; and

(b) Resealable to maintain this effectiveness for children through multiple openings for any product intended for more than a single use or containing multiple servings.

(7) [(8)] [(4)] "Cosmetic" is defined by KRS 217.015(7).

(8) [(9)] [(5)] "Department" means the Kentucky Department for Public Health.

(6) "Food service establishment" is defined by KRS 217.015(21).

(9) [(10)] [(7)] "Hemp" is defined by KRS 260.850(5).

(10) "Hemp-derived cannabinoid" means an ingestible, inhalable, or cosmetic product that is processed or derived from hemp.

(11) [(8)] "Home-based processor" is defined by KRS 217.015(56).

(12) "Hydrogenation" means the chemical reaction between molecular hydrogen (H₂) and another compound or element.

(13) "Imminent health hazard" is defined by KRS 217.015(24).

(14) "Infused" means adding a cannabinoid concentrate ingredient to an ingestible cannabinoid product.

(15) "Non-intoxicating cannabinoid" means a product with non-psychoactive properties that does not change the function of the nervous system and does not result in alteration of perception, cognition, or behavior.

(16) [(13)] [(9)] "Person" is defined by KRS 217.015(32).

(17) [(14)] "Proof of age" is defined by KRS 438.305(4).

(18) [(15)] "Revocation" means the permit to operate is cancelled by the department.

(19) "Serious adverse event" means a medical occurrence associated with the use of a cannabinoid product that results in one or more of the following:

(a) Death;

(b) A life-threatening event;

(c) Inpatient hospitalization, or prolongation of an existing hospitalization;

(d) A persistent or significant incapacity, or substantial disruption in the ability to conduct normal life functions; or

(e) A congenital anomaly or birth defect.

(20) [(16)] "Tentatively identified compounds" or "TIC" means compounds detected in a sample [using gas chromatography mass spectrometry.] that are not among the target analytes [for the residual solvent analysis].

[(17)] "Topical" means a hemp-derived cannabinoid product intended to be applied to the skin or hair.]

Section 2. Permit and Product Registration[Processing, Manufacture, Storage, or Distribution of Hemp-derived Cannabinoid Products][Permits].

(1) In-state permit.

(a) A person located in Kentucky seeking to process, manufacture, store, or distribute hemp-derived cannabinoid products[cannabinoids] shall be permitted by the cabinet [a hemp-derived ingestible or cosmetic cannabinoid product shall submit an Application for Permit to Operate a Food Plant or Cosmetic Manufacturing Plant, DFS-260, incorporated by reference in 902 KAR 45:160, to the department].

(b) [(2)] The permit shall be:

1. [(a)] Nontransferable in regard[regards] to person or address; [and]

2. [(b)] Posted in a conspicuous place in the facility; and
3. [(e)] Renewed annually.
4. [(3)] Include the fee [shall be] paid in accordance with:
a. [(a)] 902 KAR 45:180, for a food processing establishment;
b. [(b)] 902 KAR 45:180, for a cosmetic manufacturer; and
c. [(c)] 902 KAR 45:110, Section 1(3) and (6), for a food service establishment; and

5. Include the product registration fee required by subsection (4) of this section.

(2)(a) [(4)] Effective January 1, 2024, all out-of-state processors and manufacturers of hemp-derived cannabinoid products available for distribution in Kentucky shall submit an annual registration to the department.

(b) The registration for an out-of-state processor or manufacturer shall:

1. Be renewed annually by December 31 each year; and

2. Include:

a. A copy of the current, valid permit to process or manufacture hemp-derived cannabinoids issued from the state regulatory authority;

b. A copy of the state regulation pertaining to the production of hemp-derived cannabinoid products; and

c. The product registration fee required by subsection (4) of this section.

(3) Cannabinoids requiring registration:

(a) Adult-use cannabinoids shall include:

1. Delta-10-tetrahydrocannabinol (Delta-10-THC);

2. Delta-9-tetrahydrocannabinol (THC) with less than three tenths of one percent (0.3%) Total THC;

3. Delta-8-tetrahydrocannabinol (Delta-8-THC);

4. Delta-9-tetrahydrocannabinolic acid A (THCA-A) with less than three tenths of one percent (0.3%) Total THC;

5. Delta-9-tetrahydrocannabivarin (THCV);

6. Delta-9-tetrahydrocannabivarinic acid (THCVA);

7. Delta-6-tetrahydrocannabinol (Delta 6);

8. Hexahydrocannabinol (HHC)-;

9. Tetrahydrocannabiphorol (THCp); and

10. Tetrahydrocannabinol (THCM);

(b) Non-intoxicating cannabinoids shall include:

1. Cannabidiol (CBD);

2. Cannabidiolic acid (CBDA);

3. Cannabidivarin (CBDV);

4. Cannabidivarinic acid (CBDVA);

5. Cannabichromene (CBC);

6. Cannabichromenic acid (CBCA);

7. Cannabigerolic acid (CBGA);

8. Cannabigerol (CBG);

9. Cannabinol (CBN); and

10. Cannabitrilol (CBT); and

(c) All other cannabinoids are prohibited for sale in Kentucky unless pre-approved by the cabinet.

(4) An annual registration fee of \$200 per adult-use cannabinoid product shall be paid to the cabinet by check or money order made payable to the Kentucky State Treasurer.

(5) All in-state processors and manufacturers permitted by the cabinet, and all out-of-state processors and manufacturers registering with the cabinet shall submit:

(a) The name and address of the applicant;

(b) The name and address of the brand or company whose name shall appear on the label, if other than the applicant's;

(c) The name of the product;

(d) The name and address of the origin of the adult-use cannabinoid product with which the final product was manufactured;

(e) A complete copy of the front and back of the label that will appear on the product; and

(f) A certificate of analysis from an accredited third-party laboratory for the lot for each product.

(6) A new registration shall be required for changes:

(a) In the chemical composition or formula of the cannabinoid product;

(b) To the serving size or directions for use; or

(c) In ownership.

Section 3. Processing, Manufacture, Storage, or Distribution of Hemp-derived Cannabinoid Products.

(1) All processors and manufacturers shall meet:

(a) The applicable requirements of 902 KAR 45:160 Section 2(1)(u); and

(b) The requirements of 902 KAR 45:160, Sections 4, 5, 6, 7, 8, 9, 10, 11, and 14.

(2) [(5)] [Ingestible-]Hemp-derived cannabinoid products shall not be manufactured, marketed, sold, or distributed by a home-based processor.

(3) A business that processes, manufactures, warehouses, distributes, sells, or serves adult-use hemp-derived cannabinoid products shall not employ any person who is under twenty-one (21) years of age, unless the person employed is at least eighteen (18) years of age and under the supervision of a person twenty-one (21) years of age or older.

(4) Non-intoxicating cannabinoid products shall:

(a) Have at least a twenty-five (25) non-intoxicating cannabinoid to one (1) adult-use cannabinoid ratio; and

(b) Contain two and five-tenths (2.5) milligrams or less of adult-use cannabinoid per serving.

(5) The serving size of an ingestible cannabinoid product shall be:

(a) As a whole unit where one (1) unit equals one (1) serving;

(b) Equal the maximum amount recommended, as appropriate, on the label for consumption per occasion in whole units; and

(c) Based on the amount typically consumed.

(6) [An adult-use hemp-derived cannabinoid processing or manufacturing facility, or distributor, shall not employ anyone under twenty-one (21) years of age.

(7) A hemp-derived cannabinoid processing or manufacturing facility shall not treat or otherwise adulterate a cannabinoid product, [concentrate, cannabinoid extract, or edible product] with:

(a) Any non-cannabinoid additive that increases toxicity or addictive potential, excluding caffeine;

(b) Alcohol [Caffeine];

(c) Nicotine; or

(d) Other chemicals that may increase carcinogenicity or cardiac effects.

(7) [(8)] All [edible-]products shall be homogenized to ensure uniform distribution [disbursement] of cannabinoids throughout the product.

(8) [(9)] Only permitted hemp-derived cannabinoid processing facilities shall perform cannabinoid extraction, conversion, catalyzation, [or-]distillation, hydrogenation, or other refinement processes.

(9) [(10)] A hemp-derived cannabinoid processor or manufacturer shall only use the following solvents: water, [vegetable-]glycerin, vegetable oils, animal fats, butane, propane, carbon dioxide, ethanol, isopropanol, acetone, heptane, ethyl acetate, and pentane. The use of any other solvent is expressly prohibited unless pre-approved [approved] by the cabinet.

(10) [(11)] A hemp-derived cannabinoid processor using hydrocarbon-based solvents shall use only such solvents of ninety-nine (99) percent or better purity. Nonhydrocarbon-based solvents shall be food grade.

(11) [(12)] (a) A current copy of safety data sheets and a receipt of purchase for all solvents used or to be used in an extraction process shall be kept on file;

(b) The processor shall retain in its facility a certificate of analysis (COA) from the original manufacturer with purity and impurity limits and results for all solvents used; and

(c) Certificates shall be retained for two (2) years.

(12) [(13)] (a) Solvents shall be collected and stored in food [medical]-grade containers when practical to maintain purity; and

(b) Solvent containers shall be replaced or safely purged, cleaned, and sanitized periodically.

(13) [(14)] Extraction processes shall take place in an environment properly ventilated to control all sources of ignition

where a flammable atmosphere is, or could be, present.

(14)(15) Cannabinoid processing facilities shall not use pressurized canned flammable fuel, such as butane intended for use in outdoor activities, handheld torch devices, and refillable cigarette lighters.

(15)(16) Cannabinoid processing facilities using carbon dioxide shall have equipment and facilities approved by local fire code officials, if applicable.

(16)(17) Processes using flammable gas or flammable liquid shall have leak or gas detection measures, or both.

(17)(18) A permittee shall not use dimethylsulfoxide (DMSO) in the manufacture of hemp-derived cannabinoid products, and possession upon the permitted premises is prohibited.

(18)(19)(a) A hemp-derived cannabinoid manufacturer **may use terpenes or other hemp essential oil but** shall not use non-cannabinoid derived inactive ingredients not listed in the federal Food and Drug Administration inactive ingredient database at <https://www.accessdata.fda.gov/scripts/cder/iig/index.cfm> in the manufacture of **inhalable** hemp-derived cannabinoid product and concentrate intended for use through a vaporizer delivery device or pressurized metered dose inhaler; and

(b) Any non-cannabinoid derived inactive ingredients used shall be less than or equal to the concentration listed in the database.

(19)(20) The following substances shall be prohibited in hemp-derived cannabinoid extraction intended for inhalation:

(a) **Acetates[Vitamin E acetate (VEA)];**

(b) Medium-chain triglycerides (MCT);

(c) Polyethylene glycol (PEG);

(d) Propylene glycol (PG or PPG);

(e) **Diketones;**

1. 2,3-butanedione (Diacetyl);

2. 2,3-pentanedione (acetylpropionyl); and

3. 3-hydroxybutanone (acetoin);

(f) Myclobutanil;

(g) **Artificial food coloring; and**

(h) **Benzoic acid.**

Section 4.[Section 3.] Product Sampling and Testing Requirements. (1) Sampling and testing for all hemp-derived cannabinoid products shall be:

(a) Done for each batch or process lot; and

(b) Conducted with representative samples to ensure all batches or process lots are adequately assessed for contaminants, and that the hemp-derived cannabinoid profile is consistent throughout.

(2) Testing shall only be performed on the final product equivalent to what will be consumed.

(3) Samples shall be collected using appropriate aseptic techniques.

(4) A hemp-derived cannabinoid processing or manufacturing facility shall assign each batch or process lot a unique batch or lot number that shall be:

(a) Documented and maintained in the processing and manufacturing facility for at least two (2) years and available to the department upon request;

(b) Provided to the individual responsible for taking samples; and

(c) Included on the product label.

(5) Sample size, handling, storage, and disposal.

(a) **[For]Hemp-derived cannabinoid products[concentrates, extracts, and edible products,]** samples shall consist of enough **material[samples]** from the batch or process lot to ensure that the required attributes in the products are homogenous and consistent with the testing facility's accredited sampling policies and procedures.

(b) A hemp-derived cannabinoid processing or manufacturing permittee shall prepare sampling policies and procedures that contain the information necessary for collecting and transporting samples from hemp-derived cannabinoid **[concentrates, extracts, and edible-]products** in a manner that does not endanger the integrity of the sample for any analysis required by this administrative regulation.

(6) Reserve samples.

(a) Processors and manufacturers shall collect and hold

reserve samples of each batch or process lot of packaged and labeled product.

(b) The reserve samples shall:

1. **Be held using the same container-closure system that the packaged and labeled product is distributed, or if distributing to be packaged and labeled, using a container-closure system that provides the same characteristics to protect against contamination or deterioration;**

2. **Be identified with the batch or process number;**

3. **Be retained for the shelf-life date, as applicable, or for two (2) years from the date of distribution of the last batch or process lot of the product associated with the reserve sample; and**

4. **Consist of at least twice the quantity necessary for all tests or examinations to determine if the product meets specifications.**

(7) Laboratory requirements.

(a) Testing facilities used by the hemp-derived cannabinoid processing or manufacturing facility shall be **an independent third-party**, fully accredited to the standard established by International Organization for Standardization (ISO) 17025 by an International Laboratory Accreditation Cooperation recognized accreditation body.

(b) The testing facility shall:

1. Maintain ISO 17025 accreditation; and

2. Comply with all required analytes standards for the relevant test methods of:

a. Cannabinoids;

b. Microbial impurities;

c. Mycotoxins;

d. Residual pesticides;

e. Heavy metals; and

f. Residual solvents[**and processing chemicals**], if applicable.

(c) Hemp-derived cannabinoid processing or manufacturing facilities shall maintain on file proof of a valid certificate of accreditation for the laboratory completing product testing that:

1. Is issued by an accreditation organization; and

2. Attests to the laboratory's competence to perform testing, including all the required analytes for the relevant test methods required.

(8)(7) Testing requirements.

(a) A processing or manufacturing facility shall test every batch or process lot of hemp-derived cannabinoid **product[concentrate, extract, or edible products]** for sale or distribution prior to sell or transfer.

(b) **Test shall be performed using a cannabinoid quantification technique with a high enough specificity and sensitivity to differentiate between cannabinoids and isomers of cannabinoids.**

(c) Hemp-derived cannabinoid **[concentrate, extract, or edible]products** shall be tested for:

1. Cannabinoids;

2. Microbial impurities;

3. Mycotoxins;

4. Residual pesticides;

5. Heavy metals; and

6. Residual solvents[**and processing chemicals**], if applicable.

(d)(e) Infused hemp-derived cannabinoid products may not require additional testing for microbial impurities, mycotoxins, residual pesticides, heavy metals, or **residual solvents[processing chemicals]**, as applicable, if the cannabinoid concentrate used to make an infused product was:

1. Tested for microbial impurities, mycotoxins, residual pesticides, heavy metals, or **residual solvents[processing chemicals]** in compliance with this administrative regulation; and

2. Test results indicate the batch or process lot was within established limits.

(e)(d) An infused hemp-derived cannabinoid product shall be tested if the addition of ingredients or processing practice create a reasonable or foreseeable microbial impurity, mycotoxin, residual pesticide, heavy metals, or **residual solvents[processing chemicals]** hazard.

(f)(e) All vaporizer delivery device or pressurized metered dose inhaler cartridge batches or process lots shall be tested for **Acetates[Vitamin E Acetate]**.

(g)(f) In accordance with KRS 217.039, all applicable certificates of analysis shall accompany the final product.

(9)(8) Standards for hemp-derived cannabinoid testing.

(a) A testing facility shall establish a limit of quantitation of one (1) milligram per gram (mg/g) or lower for all adult-use hemp-derived cannabinoids analyzed and reported.

(b) A testing facility shall report the result of the hemp-derived cannabinoid testing on the certificate of analysis, that includes at minimum:

1. Total tetrahydrocannabinol concentration, calculated in accordance with paragraph (c) of this subsection and reported in percentages;

2. Tetrahydrocannabinol-A concentration;

3. **Total CBD concentration, calculated in accordance with paragraph (d) of this subsection and reported in percentages;**

4. **CBD-A concentration;**

5. **Milligrams per serving for total tetrahydrocannabinol and the primary cannabinoid marketed, excluding cosmetics[total CBD], as applicable;**

4. **6. Milligrams per package for total tetrahydrocannabinol and the primary cannabinoid marketed, excluding cosmetics[total CBD], as applicable; and**

5. **7. The results of all other hemp-derived cannabinoids analyzed on the COA both as a percentage and [in either] milligrams per gram (mg/g) [if by weight or milligrams per milliliter (mg/mL) if by volume].**

(c) The following calculation shall be used for calculating total tetrahydrocannabinol[**;**

1. **For** concentration expressed in weight: Total cannabinoid concentration (mg/g) = (cannabinoid acid form concentration (mg/g) x 0.877) + cannabinoid concentration (mg/g); **or**

2. **For concentration expressed in volume: Total cannabinoid concentration (mg/mL) = (cannabinoid acid form concentration (mg/mL) x 0.877) + cannabinoid concentration (mg/mL).**

(d) For hemp-derived cannabinoid infused products, **excluding cosmetics**, potency shall be reported as milligrams of total tetrahydrocannabinol and **the primary cannabinoid marketed, excluding cosmetics[total CBD]** per gram.

(e) **[Adult-use hemp-derived]** Cannabinoid products shall not contain a delta-9 tetrahydrocannabinol concentration of more than three-tenths of one percent (0.3) on a dry weigh basis.

(f) The serving size from a vaporizer delivery device or pressurized metered dose inhaler shall not exceed one (1) inhalation lasting two (2) seconds per serving.

(10)(9) Standards for microbial impurities.

(a) Hemp-derived cannabinoid **[concentrate, extract, or edible]** products shall be tested by a testing facility for the presence of microbial impurities.

(b) The sample of inhalable hemp-derived cannabinoid products shall be deemed to have passed the microbial impurities testing if the following conditions are met:

1. Total Escherichia coli is not detected above 100 colony forming units/gram;

2. Shiga toxin-producing Escherichia coli is not detected in one (1) gram;

3. Salmonella spp. is not detected in one (1) gram; **[and]**

4. Pathogenic Aspergillus species A. fumigatus, A. flavus, A. niger, and A. terreus are not detected in one (1) gram;

5. **Listeria Spp. is not detected in one (1) gram; and**

6. **A total combined yeast and mold not to exceed 100,000 colony forming units per gram.**

(c) The sample of **ingestible or cosmetic[non-inhalable hemp-derived]** cannabinoid products shall be deemed to have passed the microbial impurities testing if the following conditions are met:

1. Total Escherichia coli is not detected above 100 colony forming units/gram;

2. Shiga toxin-producing Escherichia coli is not detected in one (1) gram; **[and]**

3. Salmonella spp. is not detected in one (1) gram;

4. **Listeria Spp. is not detected in one (1) gram; and**

5. **A total combined yeast and mold not to exceed 100,000 colony forming units per gram.**

(d) If the sample fails microbial impurities testing, the batch or process lot from which the sample was collected shall not be released for retail sale.

(e) If a sample from a batch or process lot of a hemp-derived cannabinoid **product[concentrate or extract]** fails microbiological contaminant testing, the batch may be further processed, if the processing method effectively sterilizes the batch.

(f) A batch or process lot that is sterilized in accordance with paragraph (e) of this subsection shall be sampled and tested in accordance with this administrative regulation, if not otherwise required for that product, for microbiological contaminants, **and residual solvents[, and processing chemicals].**

(g) A batch or process lot that fails microbiological contaminant testing after undergoing a sterilization process in accordance with paragraph (e) of this subsection shall be destroyed in a manner that renders the batch or process lot denatured and unusable.

(11)(10) Standards for mycotoxin testing.

(a) Hemp-derived cannabinoid **[concentrate, extract, or edible]** products shall be tested by a testing facility for the following mycotoxins: aflatoxin B1, B2, G1, and G2 ochratoxin A.

(b) A batch or process lot shall be deemed to have passed mycotoxin testing if the following conditions are met:

1. Total of aflatoxin B1, B2, G1, and G2 does not exceed twenty (20) microgram per kilogram (µg/kg) of substance; and

2. Ochratoxin A does not exceed twenty (20) µg/kg of substance.

(c) A batch or process lot that fails mycotoxin testing in accordance with this subsection shall be destroyed in a manner that renders the batch or process lot denatured and unusable.

(12)(11) Standards for testing residual pesticides.

(a) Hemp-derived cannabinoid **[concentrate, extract, or edible]** products shall be tested by a testing facility for the following residual pesticides and shall not exceed the maximum allowable concentration for each:

Residual pesticide	Chemical Abstract Service (CAS) assigned number	Maximum allowable concentration stated in parts per million (ppm)
Abamectin	71751-41-2	0.5 ppm
Acephate	30560-19-1	0.4 ppm
Acequinocyl	57960-19-7	2.0 ppm
Acetamiprid	135410-20-7	0.2 ppm
Aldicarb	116-06-3	0.4 ppm
Azoxystrobin	131860-33-8	0.2 ppm
Bifenazate	149877-41-8	0.2 ppm
Bifenthrin	82657-04-3	0.2 ppm
Boscalid	188425-85-6	0.4 ppm
Carbaryl	63-25-2	0.2 ppm
Carbofuran	1563-66-2	0.2 ppm
Chlorantraniliprole	500008-45-7	0.2 ppm
Chlorfenapyr	122453-73-0	1.0 ppm
Chlormequat chloride	7003-89-6	0.2 ppm
Chlorpyrifos	2921-88-2	0.2 ppm
Clofentezine	74115-24-5	0.2 ppm
Cyfluthrin	68359-37-5	1.0 ppm
Cypermethrin	52315-07-8	1.0 ppm
Daminozide	1596-84-5	1.0 ppm
DDVP (Dichlorvos)	62-73-7	0.1 ppm
Diazinon	333-41-5	0.2 ppm
Dimethoate	60-51-5	0.2 ppm
Ethoprophos	13194-48-4	0.2 ppm
Etofenprox	80844-07-1	0.4 ppm
Etoxazole	153233-91-1	0.2 ppm
Fenoxycarb	72490-01-8	0.2 ppm
Fenpyroximate	134098-61-6	0.4 ppm
Fipronil	120068-37-3	0.4 ppm

Flonicamid	158062-67-0	1.0 ppm
Fludioxonil	131341-86-1	0.4 ppm
Hexythiazox	78587-05-0	1.0 ppm
Imazalil	35554-44-0	0.2 ppm
Imidacloprid	138261-41-3	0.4 ppm
Kresoxim-methy	143390-89-0	0.4 ppm
Malathion	121-75-5	0.2 ppm
Metalaxyl	57837-19-1	0.2 ppm
Methiocarb	2032-65-7	0.2 ppm
Methomyl	16752-77-5	0.4 ppm
Methyl parathion	298-00-0	0.2 ppm
Myclobutanil	88671-89-0	0.2 ppm (prohibited at any concentration for inhalation)
Naled	300-76-5	0.5 ppm
Oxamyl	23135-22-0	1.0 ppm
Paclobutrazol	76738-62-0	0.4 ppm
Permethrins (measured as the cumulative residue of cis- and trans-isomers)	52645-531 (54774-45-7 and 51877-74- 8)	0.2 ppm
Phosmet	732-11-6	0.2 ppm
Piperonyl butoxide	51-03-6	2.0 ppm
Prallethrin	23031-36-9	0.2 ppm
Propiconazole	60207-90-1	0.4 ppm
Propoxur	114-26-1	0.2 ppm
Pyrethrins (measured as the cumulative residue of pyrethrin 1, cinerin 1 and jasmolin 1)	8003-34-7(121- 21-1,25402-06- 6 and 4466-14- 2)	1.0 ppm
Pyridaben	96489-71-3	0.2 ppm
Spinosad	168316-95-8	0.2 ppm
Spiromesifen	283594-90-1	0.2 ppm
Spirotetramat	203313-25-1	0.2 ppm
Spiroxamine	118134-30-8	0.4 ppm
Tebuconazole	107534-96-3	0.4 ppm
Thiacloprid	111988-49-9	0.2 ppm
Thiamethoxam	153719-23-4	0.2 ppm
Trifloxystrobin	141517-21-7	0.2 ppm

(b) A batch or process lot that fails residual pesticide testing in accordance with paragraph (a) of this subsection shall be destroyed in a manner that renders the batch or process lot denatured and unusable.

(13)(12) Standards for testing for heavy metals.

(a) Hemp-derived cannabinoid [~~concentrate, extract, or edible~~] products shall be tested by a testing facility for the following metals and shall not exceed the maximum allowable concentration for each:

1. Arsenic, maximum allowable concentration: **one and five-tenths (1.5)[zero and four-tenths (0.4)] ppm;**
2. Cadmium, maximum allowable concentration: zero and four-tenths (0.4) ppm;
3. Lead, maximum allowable concentration: one (1) ppm; and
4. Mercury, maximum allowable concentration: one and two-tenths (1.2) ppm.

(b) Hemp-derived cannabinoid concentrate intended for inhalable products shall be tested by a testing facility for the following metals and shall not exceed the maximum allowable concentration for each:

1. Arsenic, maximum allowable concentration: zero and two-tenths (0.2) ppm;
2. Cadmium, maximum allowable concentration: zero and two-tenths (0.2) ppm;
3. Lead, maximum allowable concentration: zero and five-tenths (0.5) ppm; and
4. Mercury, maximum allowable concentration: zero and one-tenths (0.1) ppm.

(c) A batch or process lot that fails heavy metals testing in accordance with paragraph (a) of this subsection shall be destroyed in a manner that renders the batch or process lot denatured and

unusable.

(14)(13) Standards for testing residual solvents[~~—and processing chemicals~~].

(a) Hemp-derived cannabinoid [~~concentrate, extract, or edible~~] products shall be tested by a testing facility for residual solvents[~~and processing chemicals~~], as appropriate, and shall not exceed the maximum allowable concentration for each solvent used according to the table below:

Solvent[—or processing chemical]	CAS assigned number	Maximum allowable concentration stated in parts per million (ppm)
Acetone	67-64-1	1,000 ppm
Benzene*	71-43-2	2 ppm
Butanes, (measured as the cumulative residue of n-butane and iso-butane),	106-97-8 and 75-28-5	1,000 ppm
Ethanol	64-17-5	5,000[1,000] ppm
Ethyl Acetate	141-78-6	1,000 ppm
Heptanes	142-82-5	1,000 ppm
Hexanes* (measured as the cumulative residue of n-hexane, 2-methylpentane, 3-methylpentane, 2,2-dimethylbutane, and 2,3-dimethylbutane)	110-54-3, 107-83-5 and 79-29-8	60 ppm
Methanol*	67-56-1	600 ppm
Pentanes (measured as the cumulative residue of n-pentane, iso-pentane, and neopentane)	109-66-0, 78-78-4 and 463-82-1	1,000 ppm
2-Propanol (IPA)	67-63-0	1,000 ppm
Propane	74-98-6	1,000 ppm
Toluene*	108-88-3	180 ppm
Total Xylenes* (measured as the cumulative residue of 1,2-dimethylbenzene, 1,3-dimethylbenzene, and 1,4-dimethylbenzene, and the non-xylene, ethylbenzene),	1330-20-7 (95-47-6, 108-38-3 and 106-42-3 and 100-41-4)	430 ppm
Any other solvent not permitted for use pursuant to this regulation		1 ppm[None Detected]

*Note: These solvents are not approved for use. Due to their possible presence in the solvents approved for use, limits have been listed here accordingly.

(b) A processing or manufacturing facility shall be exempt from testing for solvents if the facility:

1. Did not use any solvent listed in paragraph (a) of this subsection;
2. Used a mechanical extraction process to separate cannabinoids; or
3. Used only water, animal fat, or vegetable oil as a solvent to separate the cannabinoids.

(c) If a sample from a batch or process lot fails solvent testing, the batch or process lot may be remediated using procedures that would reduce the concentration of solvents to less than the action level.

(d) A batch or process lot that is remediated in accordance with this subsection shall be:

1. Sampled and tested in accordance with this administrative regulation; and
2. Tested for solvents if not otherwise required for that product under this administrative regulation.

(e) A batch or process lot that fails solvent testing that is not remediated or that if remediated fails testing shall be destroyed in a manner that renders the batch or process lot denatured and unusable.

(15)(14) Plant material, such as flower, shake, and plant trim, used to process and manufacture hemp-derived cannabinoid products shall have:

(a) A water activity (Aw) rate of less than 0.65; and

(b) A total combined yeast and mold not to exceed 100,000 colony forming units per gram.

(16)(15) Failed testing and remediation.

(a) A sample that fails any initial testing may be reanalyzed by the testing facility.

(b) If the reanalyzed sample passes, the processing or manufacturing facility shall resample the batch or process lot using another accredited testing facility to confirm the result in order for the batch or process lot to pass testing.

(c) A batch or process lot shall fail testing if the testing facility detects the presence of a contaminant in a sample above any limit of detection (LOD) established in this administrative regulation:

1. During an initial test where no reanalysis is requested; or

2. Upon reanalysis as described in this subsection.

(d) If a sample fails a test or a reanalysis, the batch or process lot:

1. May be remediated or sterilized in accordance with this administrative regulation; or

2. If it cannot be remediated or sterilized in accordance with this administrative regulation, it shall be destroyed in a manner that renders the batch or process lot denatured and unusable.

(e) A hemp-derived cannabinoid product batch or process lot shall only be remediated twice. If the batch or process lot fails after a second remediation attempt and the second retesting, the entire batch or process lot shall be destroyed in a manner approved by the cabinet.

(f) A hemp-derived cannabinoid ~~[concentrate, extract, or edible]~~ product from a batch or process lot that failed testing shall not be combined with another batch or process lot. Mixed products shall be considered adulterated, regardless of the LOD or defect level of the final product.

(17)(16) A processing or manufacturing facility shall:

(a) Have detailed procedures for:

1. Sterilization processes to remove microbiological contaminants; and

2. Reducing the concentration of solvents; and

(b) Document all sampling, testing, sterilization, remediation, and destruction that result from a failed test in accordance with this administrative regulation.

(18) Hazard analysis and risk-based preventive controls.

(a) Processing facilities shall conduct a hazard analysis in accordance with 902 KAR 45:160 Section 2(1)(u) to identify and evaluate, based on experience, illness data, scientific report, and other information known, or reasonably foreseeable hazards associated with each type of cannabinoid product produced by extraction, conversion, catalyzation, or distillation, hydrogenation, or other refinement processes, and shall include:

1. Processing reagents or catalysts;

2. Processing by-products or compounds; and

3. Tentatively identified compounds.

(b) The hazard analysis shall include an evaluation of the hazards identified to assess the severity of illness or injury from the hazard and the probability that the hazard will occur in the absence of preventive controls.

(c) A processing facility shall identify and implement preventive controls to provide assurances that any hazards requiring a preventive control shall be significantly minimized or prevented, and the hemp-derived cannabinoid product not adulterated.

(d)(17) Tentative identification of compounds (TICs).

(a) The testing facility shall provide the processing or manufacturing facility with a complete report of any TICs identified.

(b) The processing or manufacturing facility shall conduct

a hazard analysis in accordance with the requirements of 902 KAR 45:160 Section 2(1)(u) to identify and evaluate based on experience, illness data, scientific reports, and other information known or reasonably foreseeable hazards associated with any reported TICs.

(c) The hazard analysis shall include an evaluation of the hazards identified to assess the severity of illness or injury from the hazard and the probability that the hazard will occur in the absence of a preventive control.

(d) A processing or manufacturing facility shall identify and implement preventive controls to provide assurances that any hazards requiring a preventive control shall be significantly minimized or prevented and the hemp-derived cannabinoid product will not be adulterated.

(e) The cabinet may initiate an investigation of a processing ~~[or manufacturing]~~ facility as a result of a **by-product or compound with no toxicity study** or a TICs report from a testing facility and may require a processing or manufacturing facility to submit samples for additional testing, including testing for analytes that are not required by this administrative regulation, at the processing or manufacturing facility's expense.

(19)(18) Certificate of analysis.

(a) The testing facility shall:

1. Generate a certificate of analysis (COA) for each representative sample that the testing facility analyzes; and

2. Ensure the COA contains the results of all required analyses performed for the representative sample.

(b) The COA shall contain, at minimum:

1. The testing facility's name, premises address, and license number, processor's or manufacturer's name, **and** premises address~~], and permit number]~~.

2. Batch or lot number of the batch or process lot from which the sample was obtained. For products that are already packaged at the time of sampling, the labeled batch or lot number on the packaged hemp-derived cannabinoid products shall match the batch or lot number on the COA;

3. Sample identifying information, including matrix type and unique sample identifiers;

4. Sample history, including the date collected, the date received by the testing facility, and the date of all sample analyses and corresponding testing results;

5. The analytical methods, analytical instrumentation used, and corresponding LOD and limits of quantitation (LOQ); **and**

6. [An attestation from the testing facility supervisory or management employee that all LOQ samples required by this administrative regulation were performed and met the acceptance criteria; and

7.] Analytes detected during the analyses of the sample that are unknown, unidentified, or injurious to human health if consumed, if any.

(c) The testing facility shall report test results for each representative sample on the COA as an overall "pass" or "fail" for the entire batch:

1. When reporting qualitative results for each analyte, the testing facility shall indicate "pass" or "fail";

2. When reporting quantitative results for each analyte, the testing facility shall use the appropriate units of measurement as required in accordance with this administrative regulation;

3. When reporting results for each test method, the testing facility shall indicate "pass" or "fail";

4. When reporting results for any analytes that were detected below the analytical method LOQ, indicate "<LOQ", notwithstanding cannabinoid results;

5. When reporting results for any analytes that were not detected or detected below the LOD, indicate "ND"; and

6. Indicate "NT" for any test that the testing facility did not perform.

(d) The testing facility shall retain the reserve sample, consisting of any portion of a sample that was not used in the testing process. The reserve sample shall be kept at minimum, for forty-five (45) business days after the analyses, after which time it may be destroyed and denatured to the point the material is rendered unrecognizable and unusable.

(e) The testing facility shall securely store the reserve sample in a manner that prohibits sample degradation, contamination, and tampering.

[(f) The testing facility shall provide the reserve sample to the cabinet upon request.]

(20)[(19)](a) In accordance with 2023 Ky. Acts ch. 78, a cannabinoid manufacturer or processor that ships adult-use products out of state for use or sale outside the Commonwealth of Kentucky:

1. Shall abide by the testing and labeling requirements of this administrative regulation if the receiving state or jurisdiction does not have testing and labeling requirements; or

2. May defer to the receiving state's testing requirements if that state has equivalent testing requirements.

3. Products intended for out-of-state sale shall be stored separately from in-state products and shall have signage indicating the products are for out-of-state sale.

(b) Batch number of the batch from which the sample was obtained shall be on the COA for all products shipped out of state.

Section 5.[Section 4.] Record Keeping. (1) A master formulation record shall be prepared and maintained for each unique hemp-derived cannabinoid product.

(2) The master formulation record shall include at least the following information:

(a) Name of the hemp-derived cannabinoid product;

(b) Ingredient identities and amounts;

(c) Specifications on the delivery device (if applicable);

(d) Complete instructions for preparing the hemp-derived cannabinoid product, including equipment, supplies, and description of the manufacturing steps;

(e) Process controls and procedures; and

(f) Any other information needed to describe the production and ensure its repeatability.

(3) A batch or process lot manufacturing record shall be created for each production batch of hemp-derived cannabinoid product.

(4) The batch manufacturing record shall include at the least the following information:

(a) Name of the hemp-derived cannabinoid product;

(b) Master formulation record reference for the hemp-derived cannabinoid product;

(c) Date and time of preparation of the hemp-derived cannabinoid product;

(d) Production batch number;

(e) Signature or initials of individuals involved in each manufacturing step;

(f) Name, vendor, or manufacturer, production batch number, and expiration date of each ingredient;

(g) Weight or measurement of each ingredient;

(h) Documentation of process controls;

(i) Any deviations from the master formulation record, and any problems or errors experienced during the manufacture, and corrective actions; and

(j) Total quantity of the hemp-derived cannabinoid product manufactured.

Section 6.[Section 5.][Section 3.] Product Packaging and Labeling. (1) Each hemp-derived cannabinoid product manufactured, marketed, sold, or distributed in the commonwealth shall be packaged and labeled in accordance with KRS 217.037, 2023 Ky. Acts ch. 78, and this administrative regulation.

(2) Each container of **adult-use[ingestible or cosmetic hemp-derived]** cannabinoid product shall:

(a) Have a tamper-evident seal; and

(b) Be in child-resistant packaging.

(3) Each container of non-intoxicating cannabinoid product or cosmetic shall have a tamper-evident seal.

(4) [Ingestible hemp-derived.]Cannabinoid product packaging shall not include:

(a) Any cartoon images;

(b) Likeness to images, characters, or phrases that are popularly used to advertise to children;

(c) Likeness to or imitation of any commercially available candy,

snack, baked good, or beverage packaging or labeling;

(d) The terms "candy" or "candies", or any variation in the spelling of these words; or

(e) The logo of the department or cabinet, or any seal, flag, crest, coat of arms, or other insignia that could reasonably mislead any person to believe the product has been endorsed, manufactured, or used by any state, county, or municipality or any agency thereof, **excluding the use of seals associated with state or federal programs used in accordance with state or federal law and regulations.**

(5)[(4)] The total amount of hemp-derived cannabinoid per serving and the total amount per container shall accurately reflect testing results and shall not contain less than eighty (80) percent or more than 120% of the concentration of total cannabinoid content as listed on the product label[as reported by the testing facility].

(a) For hemp-derived cannabinoid ingestible and inhalable[infused edible] products, potency shall be labeled as milligrams per serving for total tetrahydrocannabinol and the primary cannabinoid marketed[total CBD], as applicable; and milligrams per package for total tetrahydrocannabinol and the primary cannabinoids marketed; and[total CBD, as applicable;]

(b) ~~For hemp-derived cannabinoid concentrates total tetrahydrocannabinol and total CBD, as applicable shall be labeled in percentages; and~~

~~(c) The results of all [Other hemp-derived cannabinoids labeled as a percentage, in either] milligrams per gram (mg/g) per serving, excluding cosmetics, and milligrams per package, if listed on the label.~~

(6) All cannabinoid products shall include the common cannabinoid description in the product name, such as "Delta-8 THC gummies" or "Full-spectrum CBD extract" using the same or larger font than the product name.[if by weight, or milligrams per milliliter (mg/mL) if by volume, as applicable.

(5) The name of the hemp-derived cannabinoid product that includes a product modifier such as "Delta-8 THC product," or "CBD product" using the same or larger font than the product name.]

(7)[(6)] Adult-use hemp-derived cannabinoid [ingestible] products shall include the following warning label statements:

(a) "This product is intended for use by adults 21 years and older. Keep out of reach of children."

(b) "There may be health risks associated with the consumption of this product."

(c) "There may be additional health risks associated with the consumption of this product for those[women] who are pregnant, nursing[breastfeeding], or plan to become pregnant."

(d) "The intoxicating effects of this product may be delayed by two or more hours."

(e) " **May cause drowsiness or impairment.** Do not drive a motor vehicle or operate machinery while using this product."

(f) "Use of this product may result in a positive drug screen".

(8) A quick response or QR code may be used as a link to the warning statements required by subsection (7) of this section. The QR code shall be labeled as "Warning Statements" directly above or below the code and shall be large enough to be smart-phone readable.

Section 7.[Section 6.] Retail Sale of Hemp-derived Cannabinoid Products. (1) All hemp-derived cannabinoid products sold in a retail establishment shall:

(a) Be from an approved source;

(b) Be packaged and labeled in accordance with this administrative regulation; and

(c) Have a valid certificate of analysis available upon request.

(2) Retail establishments and food service establishments offering adult-use hemp-derived cannabinoid products shall register with the cabinet at <https://redcap.chfs.ky.gov/surveys/?s=C8AHC9AYMP74REEM> within ninety (90) days of the effective date of this emergency administrative regulation.

(3) Only cannabinoid products registered in accordance with Section 2 of this administrative regulation may be offered

at retail establishments and food service establishments.

(4) Cannabinoid retailers shall maintain records of cannabinoid product purchase, including the name and address of the cannabinoid processor or manufacturer, and the wholesaler or distributor.

(5) Only non-intoxicating and cosmetic cannabinoid [cannabidiol] products may be sold to persons under the age of twenty-one (21).

(6)[(4)] All adult-use hemp-derived cannabinoid products shall:

(a) Be secured in the retail setting to prevent theft or other access to persons under the age of twenty-one (21); and

(b) Not be sold, gifted, or otherwise transferred to any person under the age of twenty-one (21).

(7)[(5)](a) Any person who sells adult-use hemp-derived cannabinoid products at retail shall require proof of age of the buyer to verify the buyer is age twenty-one (21) years or older; and

(b) May deliver or ship adult-use hemp-derived cannabinoid products to consumers over twenty-one (21) years of age in packages clearly marked "Adult-use only" [adult signature 21 years of age or over] required" and request adult signature only service from the carrier.

(6) The cabinet or its duly authorized agent shall inspect retail establishments for compliance with this administrative regulation.

(7) A retail establishment not in compliance with this administrative regulation shall be provided notice of the violation.

(8) All products not in compliance with this administrative regulation may be seized and destroyed by the cabinet or its duly authorized agent.]

Section 8.[Section 7.] Ingestible Hemp-derived Cannabinoid Products at Food Service Establishments. (1) Only registered, pre-packaged adult-use ingestible cannabinoid products may be offered as ready-to-consume or for direct consumption at food service establishments.

(2) Adult-use cannabinoids shall not be added to an ingestible food product at a food service establishment.

(3) Non-intoxicating cannabinoids[Except as established in subsection (3) of this section, an ingestible or cosmetic product label shall include, in a print no less than six (6) point font, the following information:

(a) A statement of identity or common product name that shall be stated upon the principal display panel of the label;

(b) The net quantity of contents expressed in both standard English and metric units of measurement located in the lower thirty (30) percent of the principal display panel of the label parallel to the base of the container;

(c) The ingredients of the hemp-derived cannabinoid product, in descending order of predominance by weight;

(d) The name of the manufacturer or distributor;

(e) A statement that the hemp-derived cannabinoid product is within the federal legal limit of zero and three-tenths (0.3) percent delta-9 tetrahydrocannabinol;

(f) The total amount of cannabinoid per serving for ingestible products, or the total amount per container for cosmetic products;

(g) Suggested use instructions or directions, including serving sizes; and

(h) An expiration date, if any.

(3) An ingestible or cosmetic product that has a total area of twelve (12) square inches or less available to bear labeling shall be labeled in accordance with subsection (2) of this section, except the print may be smaller than six (6) point font but shall not measure less than 1/32 of an inch in height.

(4) Each container of ingestible or cosmetic hemp-derived cannabinoid product shall have a tamper evident seal.

(5) Product packaging, labeling or advertising material for any hemp-derived cannabinoid product shall not bear any implicit or explicit health claims stating that the product can diagnose, treat, cure, or prevent any disease.

Section 4. Hemp-derived Ingestible Cannabinoid Products.]

[(1) Only cannabidiol or CBD.] [hemp-derived cannabinoid]

may be added to an ingestible product [during the manufacturing process or] prior to retail sale at a food service establishment.

(4)[(2)] The non-intoxicating[hemp-derived] cannabinoid shall be obtained from an approved source.

(5)[(3)] The [food processor or] food service establishment shall obtain a valid certificate of analysis from the approved source and provide a copy upon inspection.

(6)[(4)] [Food or ingestible product shall not contain a total delta-9 tetrahydrocannabinol concentration of more than zero and three-tenths (0.3) percent on a dry weight basis or contain tetrahydrocannabinol as the primary cannabinoid.

(5)] A food service establishment offering non-intoxicating cannabinoid [cannabidiol or CBD] [hemp-derived cannabinoid] products in a finished food product shall provide to consumers upon request:

(a) The common name of the product; and

(b) The manufacturer or distributor of the product.

(7)[(5)] A food service establishment shall notify the cabinet within one (1) business day of becoming aware or within one (1) business day of when the food service establishment should have been aware of any serious adverse event[adverse reactions] to a hemp-derived cannabinoid product sold by the establishment[; and

(c) A statement that the hemp-derived cannabinoid product is within the federal legal limit of zero and three-tenths (0.3) percent delta-9 tetrahydrocannabinol].

Section 9.[Section 8.] Inspection and Enforcement. (1) The cabinet or its duly authorized agent shall conduct an onsite inspection of all hemp-derived cannabinoid processing and manufacturing establishments, storage warehouses, and distribution centers[, and retail establishments].

(2) (a) Retail establishments offering adult-use cannabinoid products shall be inspected by the cabinet or its duly authorized agent; and

(b) Retail establishments offering only non-intoxicating cannabinoid products may be inspected by the cabinet or its duly authorized agent upon complaint, receipt of a report of a serious adverse event, or at the discretion of the cabinet.

(3) The location of the permitted or registered establishment, all general business records, including employee records, and vehicles utilized to transport products are subject to reasonable inspection.

(4)[(3)] Permitted or registered establishments shall cooperate with the cabinet or its duly authorized agent during any inspections, complaint investigation, requests for information or data, in order to verify compliance with this administrative regulation.

(5)[(4)] The permit holder shall take immediate steps to correct conditions that have caused an imminent health hazard.

(6)[(5)](a) The permit holder shall notify the cabinet within twenty-four (24) hours of the knowledge of an imminent health hazard that cannot be controlled by immediate corrective action or if product, product packaging, cosmetic, or cosmetic packaging has become contaminated because of an imminent health hazard.

(b) Notification to the cabinet shall be made by:

1. Email to food.safety@ky.gov; or

2. Phone to (502)564-7181.

(7)[(6)] If the cabinet has evidence that a processing or manufacturing facility has failed to act to correct an imminent health hazard, the following enforcement provisions shall be initiated:

(a) Suspend the permit without an administrative hearing; or

(b) Suspend that portion of the processing or manufacturing operation affected by the imminent health hazard without an administrative hearing.

(8)[(7)] If a permit suspension is due to an imminent health hazard, the permit holder may request an administrative hearing.

(9)[(8)] A permit holder shall notify the cabinet within one (1) business day of becoming aware of any serious adverse event[adverse reactions] to a hemp-derived cannabinoid product sold or transferred by the permit holder.

(10)[(9)] In all other instances of violation of this administrative regulation, the cabinet shall serve the permit holder with a written notice specifying the violation and afford the holder an opportunity to correct.

(11)[(10)] If a permit holder has failed to comply with the written

notice within the timeframe granted, the cabinet shall issue a notice of intent to suspend the permit.

(12)(41) The notice in subsection (10) of this section shall include notification that the permit shall be suspended at the end of ten (10) days following service of the notice, unless a written request for an administrative hearing is filed with the cabinet by the permit holder within the ten (10) day period.

(13)(42) Any person whose permit has been suspended may request a reinspection for the purpose of reinstatement of the permit. Within seven (7) days following receipt of a written request, including a statement signed by the applicant that in his or her opinion the condition causing suspension of the permit has been corrected, the cabinet shall make an inspection, and if the inspection reveals that the condition causing suspension of the permit has been corrected, the permit shall be reinstated.

(14)(43) For a permitted facility that has had a suspended permit two (2) or more times within a five (5) year period, the cabinet shall initiate permit revocation proceedings. Prior to this action, the cabinet shall notify the permit holder in writing, stating the reasons for which the permit revocation is being sought and advising that the permit shall be permanently revoked at the end of ten (10) days following service of the notice, unless a request for an administrative hearing is filed with the cabinet pursuant to KRS Chapter 13B by the permit holder within the ten (10) day period.

WESLEY W. DUKE, General Counsel

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: October 13, 2023

FILED WITH LRC: October 13, 2023 at 11:30 a.m.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Julie Brooks and Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This emergency administrative regulation establishes the registration, processing, and manufacturing procedures to utilize hemp-derived cannabinoid products in foods and cosmetics, the labeling and packaging requirements for products containing hemp-derived cannabinoids, and methods for use of hemp-derived cannabinoids as an additive to food products.

(b) The necessity of this administrative regulation: Many hemp-derived cannabinoid products sold in Kentucky are currently unregulated. This emergency administrative regulation is necessary to ensure that all hemp-derived cannabinoid products produced and sold in the state are safe for human consumption.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 217.125(1) authorizes the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations for the efficient administration and enforcement of the Kentucky Food, Drug and Cosmetic Act, KRS 217.005 through 217.215. KRS 217.125(2) requires the secretary to provide by administrative regulation a schedule of fees for permits to operate and for inspection activities carried out by the cabinet or its duly authorized agents pursuant to KRS 217.025 through 217.390. KRS 217.135 authorizes the secretary to establish food standards by administrative regulation including a reasonable definition, standard of identity, and designation of optional ingredients that shall be named on the label.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This emergency administrative regulation ensures all hemp-derived cannabinoid products manufactured, processed, distributed, or sold are safe for human consumption, are labeled in a manner that allows the end user to understand the effects of the products, and prohibits the sale of products to a person under the age of twenty-one (21).

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

(a) How the amendment will change this existing administrative

regulation: The amendment to this emergency administrative regulation clearly defines hemp-derived cannabinoid products that are for adult-use only and separates these from nonintoxicating hemp-derived cannabinoid products, adds requirements for processing facilities, revises the requirements for manufacturing facilities, adds product testing requirements to incorporate the federal Food and Drug Administration standards for product safety, adds the requirement for a retail store to register with the department, and adds enforcement actions should a processing or manufacturing facility violate the provisions of this administrative regulation. The amended after comments version revises the defined terms to distinguish adult-use products from non-intoxicating products, adds a registration for out-of-state processors and manufacturers, revises the retail establishment and food service establishment requirements, revises the testing requirements, and revises the labeling requirements.

(b) The necessity of the amendment to this administrative regulation: The amendment to this emergency administrative regulation is necessary because many hemp-derived cannabinoid products sold in Kentucky are currently unregulated by both the state and the federal Food and Drug Administration. Some products containing hemp-derived cannabinoids have concentrations that produce a psychoactive effect and are unsafe if consumed in large quantities. The labels of some products make it difficult to determine the amount of hemp-derived cannabinoid per serving, and other products are packaged to mimic candies or other items that may appeal to children and young adults. The amendment to this emergency administrative regulation is necessary to ensure that all hemp-derived cannabinoid products produced and sold in the state are safe for human consumption, are properly label, and are not targeted for sale to persons under the age of twenty-one (21).

(c) How the amendment conforms to the content of the authorizing statutes: House Bill 544 from the 2023 legislative session requires the cabinet to immediately begin the process of regulating delta-8 tetrahydrocannabinol and any other hemp-derived substances, revises the labeling and testing requirements for all hemp-derived cannabinoid products, and prohibits the possession of covered products by a person under the age of twenty-one (21). The bill contained an emergency clause.

(d) How the amendment will assist in the effective administration of the statutes: The amendment to this emergency administrative regulation will ensure products manufactured, processed, marketed, and sold in the commonwealth are safe for human consumption.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are currently forty-seven (47) manufacturers of cannabidiol (CBD) products registered with the department. Retail stores that sell CBD or other hemp-derived cannabinoid products, including those that contain delta-8, are not registered with the department at this time.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Current manufacturers permitted by the department will need to ensure their products meet the manufacturing and testing requirements established by this emergency administrative regulation. Retail stores will need to register with the department, allow for inspection by the cabinet or its duly authorized agent, and ensure all products sold meet the requirements of this emergency administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This emergency administrative regulation will not impact the cost of the currently registered processing and manufacturing facilities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Producers and manufacturers will be able to ensure the products offered are of the highest quality and do not unintentionally target the sale to persons under the age of twenty-one (21). Retail stores will be able to sell products that meet

the highest manufacturing standards.

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

(a) Initially: The current budget for the food manufacturing permitting and inspection program is \$1,080,900. The increase in required permitting and inspection processes to implement this emergency administrative regulation will cost the department an additional \$500,800 in the first year.

(b) On a continuing basis: The department will continue to need an additional \$500,800, at a minimum, in subsequent years. An increase in permitted facilities will result in increased costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Funding to implement and enforce this emergency administrative regulation will be from a mix of fees paid to the department and state general fund dollars.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This emergency administrative regulation does not establish any new fees and does not increase the existing fees. Currently manufacturers and processors pay the fee in accordance with 902 KAR 45:180.

(9) TIERING: Is tiering applied? Tiering is applied. Testing for solvents is only required if the products listed in this emergency administrative regulation are used in the manufacturing or processing 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 amendment to this emergency administrative regulation will impact the Food Safety Branch in the Department for Public Health.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 217.125, 217.127, and 217.135.

(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? Current estimates indicate this emergency administrative regulation will generate between \$5,875 and \$47,000 in the first year. This figure was determined using the current fee structure in 902 KAR 45:180 multiplied by the number of currently permitted facilities. The minimum fee is \$125, and the maximum is \$1,000.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This emergency administrative regulation will generate between \$5,875 and \$47,000 in subsequent years. This figure is subject to change based on changes in the number of permitted facilities.

(c) How much will it cost to administer this program for the first year? Cost to the department to implement this emergency administrative regulation will be approximately \$500,800 in the first year. This figure was determined using the fiscal year 2020 salary and fringe rates for a minimum of four additional environmental health inspection program staff (\$125,200X4).

(d) How much will it cost to administer this program for subsequent years? Ongoing cost to the department to implement this emergency administrative regulation will be approximately \$500,800 in subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? The amendment to this emergency administrative regulation will not generate cost savings for the regulated entities.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? The amendment to this emergency administrative regulation will not generate cost savings for the regulated entities.

(c) How much will it cost the regulated entities for the first year? The costs to the regulated entities will be the required permitting fees (\$125 up to \$1,000), and any costs associated with the testing and labeling requirements.

(d) How much will it cost the regulated entities for subsequent years? The regulated entities will continue to pay the annual permit fee (\$125 up to \$1,000) and costs associated with the testing and labeling requirements 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 emergency administrative regulation could have a major economic impact to the Cabinet for Health and Family Services. It is estimated that an additional \$500,800 is needed to cover the costs for increased staff. While some of these costs will be offset by the required permitting fees, the total revenue received will not completely cover the anticipated costs.

CABINET FOR HEALTH AND FAMILY SERVICES Department for Behavioral Health, Developmental and Intellectual Disabilities Division of Behavioral Health (Emergency Amended After Comments)

908 KAR 2:300E. Kentucky problem gambling assistance account.

EFFECTIVE: October 12, 2023

Prior Versions: 50 Ky.R. 592

RELATES TO: KRS 194A.005(1), (3), Chapter 210, KRS 210.410(2), 211.185, 309.080(2), 309.130(2), 311.571, 311.840 to 311.862, 314.042, 319.050, 319.056, 319.064, 319C.010(6), 335.080, 335.100, 335.300, 335.500.

STATUTORY AUTHORITY: KRS 230.826

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.826 requires the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations to establish criteria for the expenditure of funds from the Kentucky problem gambling assistance account to provide support to agencies, groups, organizations, and persons that provide education, assistance, and counseling to persons and families experiencing difficulty as a result of problem gambling, or substance use disorder. These funds may also be used to promote public awareness and assistance of education and programs to reduce the consequences of problem gambling and pay for the costs and expenses associated with treatment of and recovery from problem gambling. This administrative regulation establishes the standards for the types of agencies, groups, organizations, and persons eligible to receive

funding, types of eligible activities, required documentation, and the development of performance measures and evidence of successful expenditures of awarded funds. KRS 230.826 also requires the establishment of procedures for the submission, evaluation, and review of applications for funding; the awarding of funds; and the cabinet's monitoring of fund expenditures.

Section 1. Definitions.

(1) "Behavioral health professional" means:

(a) A psychiatrist licensed under the laws of Kentucky to practice medicine or osteopathy, or a medical officer of the government of the United States while engaged in the performance of official duties, who is certified or eligible to apply for certification by the American Board of Psychiatry and Neurology, Inc. or the American Osteopathic Board of Neurology and Psychiatry;

(b) A physician licensed in Kentucky to practice medicine or osteopathy in accordance with KRS 311.571;

(c) A psychologist licensed and practicing in accordance with KRS 319.050;

(d) A certified psychologist with autonomous functioning or licensed psychological practitioner practicing in accordance with KRS 319.056;

(e) A clinical social worker licensed and practicing in accordance with KRS 335.100;

(f) An advanced practice registered nurse licensed and practicing in accordance with KRS 314.042;

(g) A physician assistant licensed under KRS 311.840 to 311.862;

(h) A licensed marriage and family therapist as defined by KRS 335.300;

(i) A licensed professional clinical counselor as defined by KRS 335.500;

(j) A licensed professional art therapist as defined by KRS 309.130(2); ~~or~~

(k) A licensed behavior analyst as defined by KRS 319C.010(6); ~~or~~

(l) A licensed clinical alcohol and drug counselor as defined by KRS 309.0832.

(2) "Behavioral health professional under clinical supervision" means a:

(a) Psychologist certified and practicing in accordance with KRS 319.056;

(b) Licensed psychological associate licensed and practicing in accordance with KRS 319.064;

(c) Marriage and family therapist associate as defined by KRS 335.300(3);

(d) Social worker certified and practicing in accordance with KRS 335.080;

(e) Licensed professional counselor associate as defined by KRS 335.500(4);

(f) Licensed professional art therapist associate as defined by KRS 309.130(3); ~~or~~

(g) Registered behavior technician under the supervision of a licensed behavior analyst; ~~or~~

(h) A certified alcohol and drug counselor as defined by KRS 309.083.

(3) "Behavioral Health Services Organization" or "BHSO" means a program licensed in accordance with 902 KAR 20:430.

(4) ~~"Certified alcohol and drug counselor" is defined by KRS 309.080(2).~~

(5) "Client" means an individual described by KRS 210.410(2).

(5)(6) "Community mental health center" or "CMHC" or "center" means a program established pursuant to KRS Chapter 210.

(6)(7) "Department" means the Department for Behavioral Health, Developmental and Intellectual Disabilities, Cabinet for Health and Family Services, 275 East Main Street, Frankfort, Kentucky 40621.

Section 2. Eligibility. (1) The following organizations and individuals are eligible to apply for funding, to the extent funds are available, from the Kentucky problem gambling assistance account:

(a) A CMHC licensed in accordance with 902 KAR 20:091;

(b) A BHSO licensed in accordance with 902 KAR 20:430;

(c) A Behavioral health professional;

(d) **A behavioral health professional under clinical supervision;**

(e) A health department established pursuant to KRS 211.185; or

(f)(e) A federally designated 501(c)(3) organization.

(2) Applications for funding must be for at least one (1) of the following activities:

(a) Providing support to agencies, groups, organizations, and persons that provide education, assistance, and counseling to persons and families who experience difficulty as a result of substance use disorder, or problem or compulsive gambling;

(b) Promoting public awareness of, and providing education about, problem gambling;

(c) Establishing and funding programs to certify problem gambling counselors; or

(d) Promoting public awareness of assistance programs for those experiencing consequences of problem gambling.

Section 3. Application for Funding. Entities that meet the eligibility requirements established in Section 2(1) of this administrative regulation shall submit a "Kentucky Gambling Assistance Application" with the required supporting documentation to the Department for Behavioral Health, Developmental, and Intellectual Disabilities, attention: Problem Gambling Assistance Account:

(1) In writing to 275 East Main Street, mail-stop 4W-G, Frankfort, Kentucky 40621; or

(2) Via electronic mail to kyproblemgamblingassistance@ky.gov.

Section 4. Monitoring. Recipients of funds from the Kentucky problem gambling assistance account shall:

(1) Establish and conduct evaluation measures that assess the efficacy of services provided;

(2) Collect and report the following data:

(a) The number of individuals served;

(b) Types of services provided to individuals served; and

(c) Detailed costs for the number of individuals served and the services provided during the reporting period.

(3) Submit quarterly reports meeting the requirements established in this section of the administrative regulation:

(a) To the Department for Behavioral Health, Developmental, and Intellectual Disabilities, attention: Problem Gambling Assistance Account, 275 East Main Street, mail-stop 4W-G, Frankfort, Kentucky 40621; or

(b) Via electronic mail to kyproblemgamblingassistance@ky.gov.

Section 5. Treatment Professional Certification. (1) Qualified behavioral health providers seeking certification from a cabinet-approved, nationally or internationally recognized certifying organization shall:

(a) Have at a minimum a bachelor's degree or equivalent in a behavioral health field;

(b) Have current Kentucky licensure in substance use disorder counseling, or mental health counseling or equivalent work experience;

(c) Complete ~~thirty (30)~~**fifteen (15)** hours of training on ~~problem gambling~~**problematic and disordered gaming** prevention, assessment, and co-occurring issues for individuals and families by an approved trainer;

(d) Complete ~~100~~**fifty (50)** direct contact hours addressing the issues, prevention and early intervention, co-occurring and when to refer for individuals and families **who experience problem gambling**~~[with a gaming disorder];~~

(e) Complete a minimum of four (4) consultation hours with an approved consultant from the certifying organizations board;

(f) Complete all application materials, ethical statement, and directory authorization forms required by the certifying organization;

(g) Pass any examination required by the cabinet-approved certifying organization; and

(h) Pay fees associated for the completion of certification to the certifying organization.

(2) To the extent funds are available, individuals may apply for reimbursement for any fees paid after successful completion of certification from a cabinet-approved certifying organization by submitting an application to the department for reimbursement.

Section 6. Department Responsibilities. The department shall publish on the department Web site:

(1) Certified treatment providers for individuals experiencing the consequences of problem gambling; and

(2) Problem gambling treatment and recovery services and resources.

Section 7. Incorporation by Reference. (1) "Kentucky Gambling Assistance Application", 07/23, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Community Based Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m. This material may also be viewed on the departments Web site at <https://www.chfs.ky.gov/agencies/dbhdid/Pages/default.aspx>.

KATHERINE R. MARKS, Ph. D., Commissioner
ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: October 11, 2023

FILED WITH LRC: October 12, 2023 at 9:30 a.m.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Rachael Ratliff and Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This amended administrative regulation establishes the requirements and standards for the administration of the Kentucky problem gambling assistance fund.

(b) The necessity of this administrative regulation: The amended administrative regulation is needed to establish the requirements and standards for the administration of the Kentucky problem gambling assistance fund.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This amended administrative regulation conforms to the authorizing statutes through fulfilling the requirements in KRS 230.285 establishing the standards and requirements for the administration of the Kentucky problem gambling assistance fund.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This amended administrative regulation conforms to the authorizing statutes through fulfilling the requirements in KRS. 230.826 by establishing the standards and requirements for the administration of the Kentucky problem gambling assistance fund.

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

(a) How the amendment will change this existing administrative regulation: This amended administrative regulation expands the definitions of behavioral health profession and behavioral health professional under clinical supervision to include licensed clinical and certified alcohol and drug counselors. This inclusion allows them included as eligible entities for the application for funds from the Kentucky Problem Gambling account.

(b) The necessity of the amendment to this administrative regulation: This amended administrative regulation was necessary to expand the definitions of behavioral health profession and behavioral health professional under clinical supervision to include licensed clinical and certified alcohol and drug counselors. This inclusion allows them included as eligible entities for the application for funds from the Kentucky Problem Gambling account.

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

(d) How the amendment will assist in the effective administration of the statutes: This amended administrative regulation will ensure effective administration of the statutes through the inclusion of statutorily defined professions as eligible entities for the application of funds from the Kentucky Problem Gambling account.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: According to the Kentucky Council on Problem Gambling, over 100,000 Kentucky adults exhibit problem gambling traits, and more than 45,000 Kentucky adults struggle with addiction to gambling. Currently, there are seven practicing mental health professionals certified to treat gambling disorder 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 regulated entities will need to meet the criteria established in the statute and submit the required application and supporting documentation for an opportunity to receive funding.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are no costs associated with the application for funding opportunities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The regulated entities will experience certification and an increased opportunity for funding for programming designed to address and treat behaviors associated with problem gambling.

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

(a) Initially: The Department for Behavioral Health, Developmental, and Intellectual Disabilities has been allocated up to \$50,000 annually from the problem gambling assistance account for the administration of the fund and associated activities. This amount would provide for approximately .5 FTE costs.

(b) On a continuing basis: The Department for Behavioral Health, Developmental, and Intellectual Disabilities has been allocated up to \$50,000 annually from the problem gambling assistance account for the administration of the fund and associated activities. This amount would provide for approximately .5 FTE costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This administrative regulation will be implemented with funds from the Kentucky problem gambling assistance account and state general funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The new administrative regulation may result in an increased need for funding dependent upon the request from the impacted entities. This impact is unknown at this time.

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

(9) TIERING: Is tiering applied? Tiering is not applied 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, Department for Behavioral Health, Developmental and Intellectual Disabilities.

(2) Identify each state or federal statute or federal regulation that

requires or authorizes the action taken by the administrative regulation. 2023 Ky. Acts ch.147, sec. 2.

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

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

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

(c) How much will it cost to administer this program for the first year? The Department for Behavioral Health, Developmental, and Intellectual Disabilities has been allocated up to \$50,000 annually from the problem gambling assistance account for the administration of the fund and associated activities. This amount would provide for approximately .5 FTE costs.

(d) How much will it cost to administer this program for subsequent years? The Department for Behavioral Health, Developmental, and Intellectual Disabilities has been allocated up to \$50,000 annually from the problem gambling assistance account for the administration of the fund and associated activities. This amount would provide for approximately .5 FTE costs.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? This amended administrative regulation will not generate 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? This amended administrative regulation will not generate cost saving for the regulated entities in subsequent years.

(c) How much will it cost the regulated entities for the first year? This amended administrative regulation should not cost regulated entities in the first year for the provision of already established services. Any other related costs through the development of programming, certification, or services would be eligible for reimbursement through the Kentucky problem gambling assistance fund.

(d) How much will it cost the regulated entities for subsequent years? This amended administrative regulation should not cost regulated entities in subsequent years for the provision of already established services. Any other related costs through the development of programming, certification, or services would be eligible for reimbursement through the Kentucky problem gambling assistance fund.

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 amended administrative regulation should not have a major economic impact.

ADMINISTRATIVE REGULATIONS AS AMENDED BY PROMULGATING AGENCY
AND REVIEWING SUBCOMMITTEE

ARRS = Administrative Regulation Review Subcommittee
IJC = Interim Joint Committee

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY
Division of Student and Administrative Services
(As Amended at ARRS, October 10, 2023)

11 KAR 5:001. Definitions pertaining to 11 KAR Chapter 5.

RELATES TO: KRS 164.740-164.785

STATUTORY AUTHORITY: KRS 164.748(4), 164.753(4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.748(4) requires the authority to promulgate administrative regulations pertaining to the awarding of grants, scholarships, and honorary scholarships as provided in KRS 164.740 to 164.7891. KRS 164.753(4) requires the authority to promulgate administrative regulations pertaining to grants. This administrative regulation defines terms used in 11 KAR Chapter 5 pertaining to the Kentucky Tuition Grant Program and the College Access Program.

Section 1. Definitions.

(1) "Academic term" means the fall or spring semester or their equivalence under a trimester or quarter system at a postsecondary education institution.

(2) "Academic year" means a period of time, usually eight (8) or nine (9) months, during which a full-time student would normally be expected to complete the equivalent of two (2) semesters, two (2) trimesters, three (3) quarters, 900 clock hours, twenty-four (24) semester hours, or thirty-six (36) quarter hours of instruction.

(3) "Authority" is defined by KRS 164.740(1).

(4) "College Access Program" or "CAP" means the program of student financial assistance grants authorized under KRS 164.7535 to assist financially needy part-time and full-time undergraduate students attending an educational institution.

(5) "Correspondence course" means a home study course that:

(a) Is provided by an educational institution under which the institution provides instructional materials, including examinations on the materials, to students who are not physically attending classes at the institution; and

(b) Meets the following requirements:

1. When a student completes a portion of the instructional materials, the student takes the examinations that relate to that portion of the materials, and returns the examinations to the institution for grading;

2. The institution provides instruction through the use of video cassettes or video discs in an academic year, unless the institution also delivers the instruction on the cassette or disc to students physically attending classes at an institution during the same academic year; and

3. If a course is part correspondence and part residential training, the course shall be considered to be a correspondence course.

(6) "Educational expenses" means tuition and fees, books and supplies, room and board or reasonable living expenses, reasonable miscellaneous personal expenses, and reasonable transportation costs for the academic period of the grant application.

(7) "Educational institution" means a participating institution located in Kentucky which:

(a) Offers an eligible program of study;

(b) As a condition of enrollment as a regular student, requires that the person:

1. Have a certificate of graduation from a school providing secondary education, or the equivalent of a certificate; or

2. a. Be beyond the age of compulsory attendance in Kentucky; and

b. Have the ability to benefit from the training offered by the institution;

(c) Either:

1. Has its headquarters or main campus in Kentucky; or

2. If based outside of Kentucky, offers no more than forty-nine

(49) percent of the courses offered in Kentucky as online courses; and

(d) 1. For purposes of the College Access Program, is a public or private participating institution; or

2. For purposes of the Kentucky Tuition Grant Program, is a private independent college or university, accredited by a regional accrediting association recognized by the United States Department of Education, that is a participating institution whose institutional programs are not comprised solely of sectarian instruction.

(8) "Eligible institution" is defined by KRS 164.740(4).

(9) "Eligible noncitizen" means an individual who is:

(a) Either:

1. A U.S. national;

2. A U.S. permanent resident with an Alien Registration Receipt Card (1-151 or 1-551);

or

3. A person with a Departure Record (I-94) from the U.S. Immigration and Naturalization Service showing any one (1) of the following designations:

a. "Refugee";

b. "Asylum granted";

c. "Indefinite parole" or "humanitarian parole"; or

d. "Cuban-Haitian entrant"; or

4. A citizen of:

a. The Freely Associated States;

b. The Federated States of Micronesia;

c. The Republic of Palau; or

d. The Republic of the Marshall Islands; and

(b) Not in the United States on a:

1. F1 or F2 student visa;

2. J1 or J2 exchange visa;

3. L2 series labels; ~~or~~ ~~or~~]

4. Deferred Action for Childhood Arrivals (DACA) status.

(10) "Eligible program of study" means an undergraduate program, of a least two (2) academic years' duration, offered by an educational institution which:

(a) For purposes of the KTG or CAP Grant Programs, leads to a degree; or

(b) For purposes of only the CAP Grant Program:

1. Leads to a certificate or diploma while attending a publicly operated vocational-technical institution; ~~or~~]

2. Is designated as an equivalent undergraduate program of study by the Council on Postsecondary Education; ~~or~~ ~~or~~]

3. Is a comprehensive transition and postsecondary program as defined in KRS 164.740(3).

(11) "Expected family contribution" means the amount that a student and his family are expected to contribute toward the cost of the student's education determined by applying the federal methodology established in 20 U.S.C. 1087kk through 1087vv to the information that the student and his family provided on the application.

(12) "Federal act" is defined by KRS 164.740(8) and means 20 U.S.C. 1001 through 1146a.

(13) "Full-time student" means an enrolled student who is carrying a full-time academic workload:

(a) That may include any combination of courses, work, research, or special studies that the institution considers sufficient to classify the student as a full-time student, except that correspondence courses shall not be counted in determining the student's full-time status; and

(b) As determined by the institution under a standard applicable to all students enrolled in a particular educational program, except that for an undergraduate student, an institution's minimum standard shall equal or exceed one (1) of the following minimum requirements:

1. Twelve (12) semester hours or eighteen (18) quarter hours per academic term in an educational program using a semester, trimester, or quarter system;

2. Twenty-four (24) semester hours or thirty-six (36) quarter hours per academic year for an educational program using credit hours, but not using a semester, trimester, or quarter system, or the prorated equivalent for a program of less than one (1) academic year;

3. Twenty-four (24) clock hours per week for an educational program using clock hours;

4. In an educational program using both credit and clock hours, any combination of credit and clock hours if the sum of the following fractions is equal to or greater than one (1):

a. For a program using a semester, trimester, or quarter system, the number of credit hours per term divided by twelve (12) and the number of clock hours per week divided by twenty-four (24); or

b. For a program not using a semester, trimester, or quarter system, the number of semester or trimester hours per academic year divided by twenty-four (24), the number of quarter hours per academic year divided by thirty-six (36), and the number of clock hours per week divided by twenty-four (24);

5. A series of courses or seminars that equals twelve (12) semester hours or twenty-four (24) quarter hours in a maximum of eighteen (18) weeks; or

6. The work portion of a cooperative education program in which the amount of work performed is equivalent to the academic workload of a full-time student.

(14) "Grant" is defined by KRS 164.740(9).

(15) "Kentucky Tuition Grant" or "KTG" means the program of student financial assistance grants authorized by KRS 164.780 and 164.785 for residents of Kentucky who bear the major costs of attending an educational institution and who demonstrate financial need.

(16) "KHEAA grant" means an award of a student financial assistance grant under the College Access Program or the Kentucky Tuition Grant Program or a combination of the two (2).

(17) "KHEAA grant limit" means an aggregate limitation on KHEAA grant awards:

(a) That are made to an individual for all academic years of the eligible program of study in which the student receives a KHEAA grant (including any KHEAA grant limit previously used in a different eligible program of study or at a different educational institution); and

(b) That shall be:

1. Measured in terms of the applicable percentage of the maximum KHEAA grant that would have been disbursed for the academic year to a full-time student and not fully refunded;

2. Depleted each academic term by subtracting, from the applicable percentage, the percentage used for the academic term, derived by dividing the net amount of KHEAA grant disbursed for the academic term by the maximum KHEAA grant award for the academic year that would have been disbursed to a full-time student, using the then current maximum KHEAA grant; and

3. Based upon the following applicable percentages representing the aggregate limitation of KHEAA grant awards:

a. 200 percent for a student enrolled in a two (2) year eligible program of study; or

b. 400 percent for a student enrolled in a four (4) year eligible program of study.

(18) "KHEAA grant program officer" or "KGPO" means the official designated on the administrative agreement, pursuant to KRS 164.748(6), to serve as the educational institution's on-campus agent to certify all institutional transactions and activities with respect to the authority's grant programs.

(19) "On-ground course" means a course that meets the following criteria:

(a) Instruction is delivered face-to-face, typically in a lecture-style format, in a setting in which the student and the instructor are in the same physical location on the educational institution's campus; and

(b) Is not an online course.

(20) "Online course" means a course for which any portion of the instruction is transmitted electronically over telecommunication lines or the Internet.

(21) "Overaward" means receipt of financial assistance from all sources in excess of a student's need determined in accordance with 11 KAR 5:130 through 5:145.

(22) "Participating institution" is defined in KRS 164.740(14).

(23) "Part-time student" means an enrolled student who is carrying an academic workload:

(a) That may include any combination of courses, work, research, or special studies that the institution considers sufficient to classify the student as at least a half-time student, except that correspondence courses shall not be counted in determining the student's part-time status; and

(b) As determined by the institution under a standard applicable to all students enrolled in a particular educational program, except that for an undergraduate student, an institution's minimum standard shall equal or exceed one (1) of the following minimum requirements:

1. At least six (6) semester hours per semester;

2. Six (6) quarter hours per quarter; or

3. Half of the academic workload of a full-time student as determined by the educational institution.

(24) "Pell Grant" means an award under the federal Pell Grant Program operated by the secretary under the provisions of 20 U.S.C. 1070a.

(25) "Resident of Kentucky" or "resident" means a person who is determined by the participating institution to be a resident of Kentucky in accordance with the criteria established in 13 KAR 2:045.

(26) "Total cost of education" means an amount determined for an academic year for each applicant by the following formula: normal tuition and fees charged by the institution chosen by the applicant, plus maximum board contract amount, plus minimum room contract amount.

CONTACT PERSON: Miles F. Justice, General Counsel, Kentucky Higher Education Assistance Authority, P.O. Box 798, Frankfort, Kentucky 40602-0798, phone (502) 696-7298, fax (502) 696-7309, email mjustice@kheaa.com.

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY Division of Student and Administrative Services (As Amended at ARRS, October 10, 2023)

11 KAR 15:110. Scholarships for Registered Apprenticeship and Qualified Workforce Training programs.

RELATES TO: KRS 164.7871-164.7885

STATUTORY AUTHORITY: KRS 164.744(2), 164.748(4), 164.753(3), 164.7884, 164.7894

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.7884(5) requires the authority to promulgate administrative regulations establishing the procedures for making awards to KEES-eligible students participating in a registered apprenticeship or qualified workforce training program.

Section 1. Eligibility.

(1) A student who has earned a KEES award and who is enrolled in a registered apprenticeship program shall be/is eligible to request reimbursement for post-secondary expenses beginning with the 2018-2019 academic year.

(2) A student who has earned a KEES award and who is enrolled in a qualified workforce training program shall be/is eligible to request reimbursement for post-secondary expenses for the academic year beginning July 1, 2020.

(3) Reimbursement shall be made only for approved expenses as provided in KRS 164.7884(3)(a).

Section 2. Election Process.

(1) By August 1 prior to the start of the academic year, a student enrolled in a registered apprenticeship or qualified workforce training program shall submit to KHEAA their funding pathway choice, either traditional or reimbursement, for postsecondary KEES use.

(2) If a student chooses the traditional KEES funding pathway,

funds shall be paid to the student's postsecondary institution upon KHEAA's receipt of enrollment verification from the institution. Funds shall not be paid directly to the student by KHEAA.

(3) If a student chooses the registered apprenticeship or qualified workforce training reimbursement pathway, funds shall be paid directly to the student upon KHEAA's receipt of both a reimbursement request and proof of purchase by the student.

(4) Any student who fails to make an election by August 1 shall automatically be placed in the traditional KEES funding pathway.

Section 3. Reimbursement Process.

(1) Upon receipt of a student's election to participate in the registered apprenticeship or qualified workforce training reimbursement pathway, KHEAA shall provide written confirmation to the student detailing the reimbursement process.

(2) ~~[In order]~~ To be eligible for reimbursement, the student shall/must:

(a) Purchase items required for participation in the registered apprenticeship or qualified workforce training program;

(b) Complete and submit to KHEAA a reimbursement request; and

(c) Submit to KHEAA supporting documentation, including an itemized dated receipt.

(3) Upon receipt of the required documentation and approval of the reimbursement request, KHEAA shall provide reimbursement of the approved expenses directly to the student in the form of a paper check.

(4) In addition to reimbursable purchases, a student may request a travel allowance of up to \$250 per semester to cover commuting costs incurred during participation in the registered apprenticeship or qualified workforce training program.

(5) The total reimbursement amount per year shall not exceed the student's KEES award maximum.

(6) Eligibility for reimbursement ends the earlier of:

(a) Five (5) years following the student's date of high school graduation or GED receipt;

(b) The student's successful completion of a registered apprenticeship or qualified workforce training program; or

(c) Receipt of reimbursement for four (4) academic years.

Section 4. Conversion of Funding Pathway. A student may elect to change their funding

pathway one (1) time after making their initial election.

(1) The change request shall/must be submitted to KHEAA in writing.

(2) The change shall become effective at the beginning of the next academic year following KHEAA's receipt and approval of the request.

(3) The KEES award maximum for a student transitioning from the traditional KEES pathway to the registered apprenticeship or qualified workforce training pathway shall be based on the student's postsecondary renewal amount for the last academic year completed in the traditional pathway.

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COUNCIL ON POSTSECONDARY EDUCATION (As Amended at ARRS, October 10, 2023)

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 entity" means an entity that offers a healthcare program."**~~"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 **criterion/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 entity and that completion of the program meets eligibility requirements for certification or license in Kentucky~~[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 the amount of 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 monies~~[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.

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COUNCIL ON POSTSECONDARY EDUCATION
(As Amended at ARRS, October 10, 2023)

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 entity" means an entity that offers a healthcare program.**~~["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(4).

(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).

(10)(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 entity and that completion of the program meets eligibility requirements for certification or license in Kentucky~~[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 monies[moneys] deposited by the healthcare partner and the matching funds appropriated by the General Assembly to the healthcare program.

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EDUCATION AND LABOR CABINET
Education Professional Standards Board
(As Amended at ARRS, October 10, 2023)

16 KAR 2:240. Interim certificate.

RELATES TO: KRS 161.020

STATUTORY AUTHORITY: [HB-319-RS-]2023 Ky. Acts ch. 164 sec. 8

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 Ky. Acts ch. 164 sec. 8 creates an interim certificate and requires[authorizes] the EPSB to promulgate administrative regulations as may be needed to issue the interim certificate. This

administrative regulation establishes the requirements for issuance of 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; and

(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 and[,] 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.

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SECRETARY OF STATE
(As Amended at ARRS, October 10, 2023)

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

RELATES TO: KRS 14.302[Ky Acts ch. 172]

STATUTORY AUTHORITY: KRS 14.318[Ky Acts ch. 172]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 14.318[Ky Acts ch. 172] authorizes the Secretary of State to promulgate administrative regulations implementing the Safe at Home Program[Ky Acts ch. 172]. This administrative regulation establishes definitions for the Safe at Home Program[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 KRS 14.300(1)[Ky Acts ch. 172].

(3) "Applicant" is defined by KRS 14.300(2)[Ky Acts ch. 172].

(4) "Designated address" means[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 KRS 14.300(7)[Ky Acts ch. 172].

(7) "Safe at Home verification card" means[is] the card provided to each program participant[,] that contains[must contain] the participant's name, designated[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.

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**SECRETARY OF STATE
(As Amended at ARRS, October 10, 2023)**

30 KAR 010:020. Application and certification.

RELATES TO: KRS 14.302[Ky Acts ch. 172]

STATUTORY AUTHORITY: KRS 14.304, 14.318[Ky Acts ch. 172]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 14.318[Ky Acts ch. 172] authorizes the Secretary of State to promulgate administrative regulations implementing the Safe at Home Program. This administrative regulation establishes the application and certification requirements for the Safe at Home Programimplements 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 shall contain[contains]:

- (a) The applicant's full legal name;
- (b) The applicant's date of birth;
- (c) Any other names that may appear on the applicant's mail;
- (d) The applicant's county of residence;
- (e) The applicant's residential address;
- (f) The applicant's phone number;
- (g) The applicant's email address; and
- (h) The applicant's dependent's legal names and identifying information (if applicable).

(2) The application shall[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 I 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 the Safe at Home Program[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 the Safe at Home Program to 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 the Secretary of StateSafe 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 the Safe at Home Program may be cancelled if 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 of State accepts service of process on my behalf[,] and I do not acknowledge it[such], or

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 Program 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 mailing[mail] address may include an apartment number and that without this apartment number[,] my mail may be delayed or may never reach me. I understand that the Safe at Home Program shall[will] forward only first-class, legal, and certified mail, as well as packages of prescriptions;

(h) I understand that I am enrolled in the Safe at Home Program for a four (4) year term. At the end of this term, I realize that I am required[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 may[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 shall[will] appear on public records;

(k) I understand that I am required to[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 shall[will] be confidential unless an agency has a bona fide statutory or administrative requirement for use of my address; and

(m) I understand that my children under the age of eighteen (18) may be enrolled with me as dependents and that individuals over the age of eighteen (18) are required to[must] enroll separately. I realize that minors who turn eighteen (18) during participation in the program shall complete[are responsible for completing] a renewal form at that time to continue Safe at Home Program 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 KRS 14.304[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; and

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

4. Provide a general letter from the Secretary of State that 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.

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.

SECRETARY OF STATE
(As Amended at ARRS, October 10, 2023)

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

RELATES TO: KRS 14.302[Ky Acts ch. 172]

STATUTORY AUTHORITY: KRS 14.304, 14.318[Ky Acts ch. 172]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 14.318[Ky Acts ch. 172] authorizes the Secretary of State to promulgate administrative regulations to implement the Safe at Home Program[Ky Acts ch. 172]. This administrative regulation establishes the requirements for notification of expiration and recertification in the Safe at Home Program[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 to 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 KRS 14.304[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.

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.

SECRETARY OF STATE
(As Amended at ARRS, October 10, 2023)

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

RELATES TO: KRS 14.302[Ky Acts ch. 172]

STATUTORY AUTHORITY: KRS 14.306, 14.318[Ky Acts ch. 172]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 14.318[Ky Acts ch. 172] authorizes the Secretary of State to promulgate administrative regulations implementing the Safe at Home Program[Ky Acts ch. 172]. This administrative regulation establishes the cancellation, appeal, and withdrawal procedures for the Safe at Home Program[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, which shall[and] include:

- (a) The reasons for the cancellation;
- (b) A copy of the Appeal from Cancellation of Certification in Safe at Home Program; and
- (c) Notification that an appeal shall[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 KRS 14.306[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 KRS 14.306[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 KRS 14.306[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.

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.

SECRETARY OF STATE
(As Amended at ARRS, October 10, 2023)

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

RELATES TO: KRS 14.302[Ky Acts ch. 172]

STATUTORY AUTHORITY: KRS 14.310, 14.318[Ky Acts ch. 172]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 14.318[Ky Acts ch. 172] authorizes the Secretary of State to promulgate administrative regulations to implement the Safe at Home Program[Ky Acts ch. 172]. This administrative regulation establishes the application assistant training and designation procedures for the Safe at Home Program[implements Ky Acts ch. 172].

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

(1) Completing an in-person or online training ~~that~~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 ~~shall be~~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 ~~shall~~must provide the Safe at Home Program with current employer and contact information.;

(2) Application Assistants who change employment may retain their designation if~~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 ~~or~~ [/] Cancellation.

(1) The Safe at Home Program ~~shall~~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 ~~shall~~will expire if the Application Assistant fails to submit a new Application Assistant Agreement before the end of his ~~or~~ [/] 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.

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VOLUME 50, NUMBER 5— NOVEMBER 1, 2023

SECRETARY OF STATE
(As Amended at ARRS, October 10, 2023)

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

RELATES TO: KRS 14.302[Ky Acts ch. 172]

STATUTORY AUTHORITY: KRS 14.308, 14.318[Ky Acts Ch. 172]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 14.318[Ky Acts Ch. 172] authorizes the Secretary of State to promulgate administrative regulations implementing the Safe at Home Program[Ky Acts Ch. 172]. This administrative regulation establishes the release of participant information to criminal justice officials or agencies[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 shall[must] be on agency letterhead and signed by the employee of the criminal justice agency requesting the[such] information and his or her direct supervisor or acting supervisor if the employee's direct supervisor is unavailable.

Section 2. If a[the] participant indicates on his or her[their] application that he or 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 shall[must] be accompanied by a court order for release of records in the program participant's file.

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.

SECRETARY OF STATE
(As Amended at ARRS, October 10, 2023)

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

RELATES TO: KRS 14.302[Ky Acts ch. 172]

STATUTORY AUTHORITY: KRS 14.318[Ky Acts ch. 172]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 14.318[Ky Acts ch. 172] authorizes the Secretary of State to promulgate administrative regulations implementing the Safe at Home Program[Ky Acts ch. 172]. This administrative regulation establishes the procedures for school enrollment and record transfers[implements Ky Acts ch. 172].

Section 1. At the request of an enrolling school, the Safe at Home Program shall[will] determine a[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 shall[will] notify the enrolling school of district eligibility in writing. The Safe at Home Program shall[will] request a student's records for the purpose of transferring the[such] records from one (1) school to another upon receiving the written request and authorization from the student's parent or legal guardian.

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SECRETARY OF STATE
(As Amended at ARRS, October 10, 2023)

30 KAR 010:080. Substitute address.

RELATES TO: KRS 14.302[Ky Acts ch. 172]

STATUTORY AUTHORITY: KRS 14.318[Ky Acts ch. 172]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 14.318[Ky Acts ch. 172] authorizes the Secretary of State to promulgate administrative regulations implementing the Safe at Home Program[Ky Acts ch. 172]. This administrative regulation establishes that Safe at Home Program participants may use a substitute address provided by the Secretary of State[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 shall not be[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 shall[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 shall be[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 shall[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 shall[is] not be 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 (3) weeks if the participant provides a Mail Hold Request. The Secretary of State shall[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.

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SECRETARY OF STATE
(As Amended at ARRS, October 10, 2023)

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

RELATES TO: KRS 14.302[Ky Acts ch. 172]

STATUTORY AUTHORITY: KRS 14.318[Ky Acts ch. 172]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 14.318[Ky Acts ch. 172] authorizes the Secretary of State to promulgate administrative regulations implementing the Safe at Home Program[Ky Acts ch. 172]. This administrative regulation

establishes that a program participant may use a substitute address provided by the Secretary of State for updating official records for his or her residence, work, or school address[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, or [and/or] school address.

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

(3) A program participant shall show his or [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.

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.

SECRETARY OF STATE
(As Amended at ARRS, October 10, 2023)

30 KAR 010:100. Attaining age of majority.

RELATES TO: KRS 14.302[Ky Acts ch. 172]

STATUTORY AUTHORITY: KRS 14.318[Ky Acts ch. 172]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 14.318[Ky Acts ch. 172] authorizes the Secretary of State to promulgate administrative regulations implementing the Safe at Home Program[Ky Acts ch. 172]. This administrative regulation establishes the procedures for a minor child participant who has reached the age of majority[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 shall[will] inform the minor child participant of options related to continued participation in the Safe at Home Program. These options shall include leaving the program and reapplying on their own behalf.

(1) In anticipation of a[the] minor child participant's 18th birthday, the Secretary of State shall[will] send an application packet via first class mail to the participant's address. The packet shall[will] include an application form and instructions on actions to be taken by age eighteen (18). The packet shall[will] include notice that if the participant does not respond within thirty (30) days he or she shall[they will] be removed from the program, and mail forwarding shall[will] stop. If thirty (30) days pass without contact from the participant, the Secretary of State shall[will] mail a final notice that the participant's certification shall[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.

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

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

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.

SECRETARY OF STATE
(As Amended at ARRS, October 10, 2023)

30 KAR 010:110. Service of process.

RELATES TO: KRS 14.302[Ky Acts ch. 172]

STATUTORY AUTHORITY: KRS 14.304, 14.318[Ky Acts ch. 172]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 14.318[Ky Acts ch. 172] authorizes the Secretary of State to promulgate administrative regulations implementing the Safe at Home Program[Ky Acts ch. 172]. This administrative regulation establishes that the Secretary of State shall be an agent for service of process for program participants[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 or [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 of the summons, writ, notice, demand, or process to[at] the participant's mailing address shown on the program 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.

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SECRETARY OF STATE
(As Amended at ARRS, October 10, 2023)

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

RELATES TO: KRS 14.302[Ky Acts ch. 172]

STATUTORY AUTHORITY: KRS 14.304, 14.318[Ky Acts ch. 172]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 14.318[Ky Acts ch. 172] authorizes the Secretary of State to promulgate administrative regulations implementing the Safe at Home Program[Ky Acts ch. 172]. This administrative regulation establishes the reciprocity processes for a participant of a similar program in another state[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 shall contain[contains]:

- (a) The applicant's full legal name;
- (b) The applicant's date of birth;
- (c) Any other names that may appear on the applicant's mail;
- (d) The applicant's county of residence;
- (e) The applicant's residential address;
- (f) The applicant's phone number;
- (g) The applicant's email address;[-and]
- (h) The applicant's dependent's legal names and identifying information (if applicable);[-]
- (i) The state where the applicant is currently enrolled;[-]
- (j) Contact information for the other State's administrator of the

similar program; ~~and~~;

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

(2) The application shall~~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 ~~or~~ ~~/~~ 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 the Safe at Home Program ~~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 the Safe at Home Program 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 the Secretary of State 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 the Safe at Home Program may be cancelled ~~if 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 ~~I~~ am unavailable for delivery of service of process; ~~;~~

4. ~~If~~ My application contains false information; ~~or~~;

5. I become ineligible for the similar program~~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 Program 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 mailing~~mail~~ address could include an apartment~~apt.~~ number ~~and~~ ~~/~~ without this apartment~~apt.~~ number, my mail may be delayed or may never reach me. ~~I understand the~~ Safe at Home Program shall~~will~~ forward only first-class, legal, and certified mail, as well as packages of prescriptions;

(h) I understand that my approval in the Safe at Home Program is for a one (1) [one]-year term. At the end of this term, I realize that I am required~~will have~~ to renew my enrollment or be cancelled from the program;

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

(j) I understand that I am required to~~must~~ notify the Safe at Home Program if any of the information on my original Safe at Home Program application changes;

(k) I understand that once I am enrolled in the Safe at Home Program, my actual address shall~~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 may~~will~~ aid in responding to an emergency situation, criminal complaint, or an ongoing investigation; and

(l) I understand that my children under the age of eighteen (18) may be enrolled with me as dependents ~~and that~~ individuals over the age of eighteen (18) are required to~~must~~ enroll separately. ~~I realize that~~ minors who turn eighteen (18) during participation in the program shall before responsible for completing a renewal form at that time to continue Safe at Home Program 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 KRS 14.304~~[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; ~~and~~;

4. Provide a general letter from the Secretary of State that 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.

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GENERAL GOVERNMENT CABINET Kentucky Registry of Election Finance (As Amended at ARRS, October 10, 2023)

32 KAR 2:020. General provisions.

RELATES TO: KRS 121.120, 121.140, 446.030

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 and enforce the~~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 32 KAR~~this~~ Chapter 2 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 421.140.]~~

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. ~~If~~~~[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.

~~[(1)]~~ 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.]~~

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.

GENERAL GOVERNMENT CABINET Kentucky Registry of Election Finance (As Amended at ARRS, October 10, 2023)

32 KAR 2:030. Complaints; internally-generated matters.

RELATES TO: KRS 121.140, **121.180**

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 KRS Chapter 121.~~[The purpose of]~~ This administrative regulation ~~establishes~~~~[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 2:010, 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 ~~one (1)~~~~[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)]~~~~[(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, Section 4(4)(f), if the respondent has retained counsel.

(2) The registry shall ~~not take~~~~[take no]~~ action ~~or~~~~[nor]~~ make any finding against a respondent other than action dismissing the complaint unless it has considered the response or unless ~~a~~~~[no]~~ response has ~~not~~ 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 ~~if~~~~[whether]~~ there is reason to believe that a respondent may have violated or is about to violate campaign finance law~~[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, Section 1.

(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, Section 1.

(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 ~~if~~~~[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.

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.

GENERAL GOVERNMENT CABINET
Kentucky Registry of Election Finance
(As Amended at ARRS, October 10, 2023)

32 KAR 2:040. Investigatory procedures.~~[Preconciliation procedures.]~~

RELATES TO: KRS ~~[121.120,]~~121.140, 121.180

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 KRS Chapter 121.~~[The purpose of]~~This administrative regulation ~~establishes~~~~[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 4.] [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 ~~if~~~~[in any case in which]~~ the general counsel finds reason to believe that a violation of a campaign finance ~~law~~~~[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 2~~[3]~~ to 5~~[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 shall~~[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) ~~[If/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. ~~Another~~~~[Any other]~~ method ~~if~~~~[whereby]~~ actual notice is given.

(b) ~~[If/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. ~~Another~~~~[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 therefor. 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~~or her~~ position on the alleged factual and legal issues of the case.

(c) The registry may ~~false~~ request the respondent to appear to present additional information, or the respondent may request he~~or she~~~~that he~~ be allowed to present additional evidence.

(d) The decision as to whether the respondent may present additional evidence shall be within the determination~~[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) **Prima facie evidence that probable cause to believe that a violation has occurred exists and the general counsel and executive director may immediately enter into conciliation negotiations with a respondent if:**

(a) Any person subject to the provisions of KRS 121.180 fails to comply with any reporting requirement contained in that section; or

(b) Any 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).

(2) A candidate or slate of candidates shall be deemed to have not revoked a request for exemption in a timely manner for purposes of subsection (1)(b) of this section if:

(a) The candidate or slate of candidates electronically files an amended Statement of Spending Intent beyond the deadlines established in KRS 121.180; or

(b) Reports 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.

(3) The notice required by KRS 121.140(2) shall be issued when the registry's staff concludes any applicable deadlines related to the filing of required reports or revocation of a request for exemption made under KRS 121.180(1)(b) have passed. [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.]~~

~~[(4)](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.~~

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.

**GENERAL GOVERNMENT CABINET
Kentucky Registry of Election Finance
(As Amended at ARRS, October 10, 2023)**

32 KAR 2:060. Advisory opinions.

RELATES TO: KRS 121.135

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 KRS Chapter 121. KRS 121.135 requires the Registry of Election Finance to issue advisory opinions concerning the application of campaign finance ~~law[laws or administrative regulations promulgated by the registry pursuant to statutory authority]. [These provisions became effective July 14, 1992, and]~~This administrative regulation ~~establishes theis 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 ~~law[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)(a) The written advisory opinion request shall describe a specific transaction or activity that the requesting person:

1. Plans to ~~undertake;~~[undertake or]
2. Is presently ~~undertaking;~~ or[undertaking and]
3. Intends to undertake in the future.

(b) 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:

(a) Mail to the Office of the General Counsel, Registry of Election Finance, 140 Walnut Street, Frankfort, Kentucky 40601; or ~~by]~~

(b) 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.

(2) A register shall be:

(a) Maintained by the registry containing a list of requests for advisory opinions; and ~~shall be]~~

(b) 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:

(a) To the Office of General Counsel, Registry of Election Finance, 140 Walnut Street, Frankfort, Kentucky ~~;~~] 40601; or

(b) By email to KREFRequests@ky.gov.

(4) [(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.]

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.

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GENERAL GOVERNMENT CABINET
Kentucky Registry of Election Finance
(As Amended at ARRS, October 10, 2023)

32 KAR 2:230. Processing of records requests.

RELATES TO: KRS ~~61.870-61.884~~, 121.120

STATUTORY AUTHORITY: KRS ~~61.876~~, 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 requires[mandates that]~~ each public agency ~~to~~ adopt rules and regulations in conformity with Kentucky open records law in KRS 61.870 to 61.884. This administrative regulation ~~establishes[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 ~~Web site[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 KRERequests@ky.gov.

(3) Requested records ~~shall[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. ~~The~~ requestor shall view the records on the registry's searchable public database to the extent ~~these[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 ~~as~~ provided in ~~subsection~~ (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, ~~Section 3~~. Upon receipt of a response or the expiration of the fifteen (15) day period, the complaint, response, and ~~related~~ 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.

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.

GENERAL GOVERNMENT CABINET
Personnel Board
(As Amended at ARRS, October, 10, 2023)

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 ~~requires[provides that]~~ requires the Personnel Board ~~to[shall][to]~~ promulgate comprehensive administrative regulations consistent with the provisions of KRS 18A.005 ~~to[through]~~ 18A.200. KRS 18A.0751 ~~requires[provides that]~~ requires the Personnel Board ~~to[shall][to]~~ 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 shall have[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 shall have[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.

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.

**FINANCE AND ADMINISTRATION CABINET
Kentucky Public Pensions Authority
(As Amended at ARRS, October 10, 2023)**

105 KAR 1:457. In-line-of-duty survivor benefits.

RELATES TO: KRS 13B.010-13B.170, 16.505-16.582[16.578], 16.601, 61.505, 61.592, 61.615, 61.640, 61.665, 61.691, 78.510-78.852[78.545, 78.5518, 78.5528, 78.5532, 78.5534]

STATUTORY AUTHORITY: KRS 61.505(1)(g), (3)(d)

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, 61.505, 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) KRS 61.505(3)(d) authorizes the agency to[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~~vender 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 (1) 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, ~~a~~no beneficiary shall not 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, ~~for a Spouse~~or Alternate Payee Regarding 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 (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.

(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 ~~by~~, ~~in the following way~~:

1. ~~Filing~~~~File~~ a valid Form 6130, Authorization for Deposit of Retirement Payment; and

2. ~~Providing~~~~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 ~~Web site~~~~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 ~~7~~~~8~~ of this administrative regulation ~~and this section~~, 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.

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(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.

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.

BOARD AND COMMISSIONS Board of Pharmacy (As Amended at ARRS, October 10, 2023)

201 KAR 2:020. Examination.

RELATES TO: KRS 218A.205(7)(8), 315.050

STATUTORY AUTHORITY: KRS 218A.205(8), 315.050(2), 315.191(1), (2), (4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 315.050(2) and 315.191(1)(c) authorize the board to promulgate administrative regulations to prescribe the time, place, method, manner, scope, and subjects of examinations. KRS 218A.205(8) requires the board to establish requirements for background checks for licensees. This administrative regulation establishes the examination and application requirements for obtaining a license to practice pharmacy in Kentucky.

Section 1. The examination for licensure shall include:

(1) The North American Pharmacist Licensure Examination (NAPLEX); and

(2) The Multistate Pharmacy Jurisprudence Examination (MPJE).

Section 2. Both the NAPLEX and the MPJE examinations are graded as pass or fail.

Section 3. If an applicant fails an examination described in Section 2 of this administrative regulation, the applicant may upon proper application retake the examination. An applicant is limited to three (3) attempts for each examination without further board approval. An applicant is limited to a lifetime limit of five (5) attempts on each examination.

Section 4. If after three (3) examination attempts, the applicant has not passed, to qualify for two (2) additional attempts, the applicant shall:

(1) For the NAPLEX, complete a refresher course and submit to the Board of Pharmacy a certificate of completion; and

(2) For the MPJE, submit to the Board of Pharmacy:

(a) Proof of (5) five hours of ACPE or board approved continuing education in the topic of pharmacy law; or

(b) A certificate of completion of a refresher course.

Section 5. All results of examinations shall be preserved according to the Board of Pharmacy Record Retention Schedule.

Section 6. Prior to approval for examination, an applicant shall:

(1) Submit to a nation-wide criminal background investigation by means of fingerprint check by the Department of Kentucky State Police and the Federal Bureau of Investigation;

(2) Submit to a query to the National Practitioner Data Bank of the United States Department of Health and Human Services;

(3) Submit an Initial Application for Pharmacist Licensure that reports:

(a) Name, maiden, and other names used currently or previously;

(b) Address and telephone number;

(c) Date of birth;

(d) Social Security number;

(e) Citizenship;

(f) Sex;

(g) Name of pharmacy school;

(h) Intern Registration Number;

(i) Record of any conviction for any felony or misdemeanor offense;

(j) Record of any state licensing agency refusal of licensure, failure of examination, or refusal of examination; and

(k) Certificate of moral standing.

(4) Submit as part of the Initial Application for Pharmacist Licensure a Certification of College Graduation completed by the Dean of the College of Pharmacy where the applicant graduated pharmacy school; and

(5) Submit as part of the Initial Application for Pharmacist Licensure a Certification of Intern Hours completed by the College of Pharmacy where the applicant graduated, or the State Board of Pharmacy if the hours are outside of Kentucky.

Section 7. Each applicant for renewal shall submit the Pharmacist License Renewal Application along with the fee as required by Section 8 of this administrative regulation.

Section 8. Fee. An applicant shall submit the fee established by 201 KAR 2:050, Section 1(1).

Section 9. ~~Section 8.~~ Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Initial Application for Pharmacist Licensure", [Form 4, June 2023/3/2022]; and

(b) "Pharmacist License Renewal Application" / ~~for Pharmacist Licensure~~, June 2023["Certification of College Graduation", Form 2, 03/2022; and]

[(c)] ["Certification of Intern Hours", Form 3, 03/2022].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Pharmacy, State Office Building Annex, Suite 300, 125 Holmes Street, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m. This material is also available on the board's Web site at <https://pharmacy.ky.gov/Forms/Pages/default.aspx>.

CONTACT PERSON: Christopher Harlow, Executive Director, Kentucky Board of Pharmacy, 125 Holmes Street, Suite 300, State Office Building Annex, Frankfort, Kentucky 40601, phone (502) 564-7910, fax (502) 696-3806, email Christopher.harlow@ky.gov.

BOARDS AND COMMISSIONS
Board of Pharmacy
(As Amended at ARRS, October 10, 2023)

201 KAR 2:050. Licenses and permits; fees.

RELATES TO: KRS 218A.205(3)(g), 315.035(1), (2), (4), 315.0351(1), 315.036(1), 315.050(5), 315.060, 315.110, 315.120, 315.191, 315.402

STATUTORY AUTHORITY: KRS 218A.205(3)(g), 315.035(1), (2), (4), 315.036(1), 315.050(5), 315.060, 315.110(1), 315.120(4), 315.191(1)(i), 315.402(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 315.191(1)(i) authorizes the board to assess reasonable fees for services rendered to perform its duties and responsibilities. This administrative regulation establishes reasonable fees for the board to perform all the functions for which it is responsible.

Section 1. The following fees shall be paid in connection with pharmacist examinations and licenses, pharmacy permits, intern certificates, and the issuance and renewal of licenses and permits:

- (1) Application for initial pharmacist license - \$150;
- (2) Application and initial license for a pharmacist license by license transfer - \$250;
- (3) Annual renewal of a pharmacist license - ninety-five (95) dollars;
- (4) Delinquent renewal penalty for a pharmacist license - ninety-five (95) dollars;
- (5) Annual renewal of an inactive pharmacist license - ten (10) dollars;
- (6) Pharmacy intern certificate valid six (6) years - twenty-five (25) dollars;
- (7) Duplicate of original pharmacist license wall certificate - seventy-five (75) dollars;
- (8) Application for a permit to operate a pharmacy - ~~\$150~~[\$425];
- (9) Renewal of a permit to operate a pharmacy - ~~\$150~~[\$425];
- (10) Delinquent renewal penalty for a permit to operate a pharmacy - ~~\$150~~[\$400] dollars;
- (11) Change of location or change of ownership of a pharmacy or manufacturer permit - ~~\$150~~[seventy-five (75) dollars];
- (12) Application for a permit to operate as a manufacturer - ~~\$150~~[\$425];
- (13) Renewal of a permit to operate as a manufacturer - ~~\$150~~[\$425];
- (14) Delinquent renewal penalty for a permit to operate as a manufacturer - ~~\$150~~[\$425];
- (15) Change of location or change of ownership of a wholesale distributor license - ~~\$150~~[seventy-five (75) dollars];
- (16) Application for a license to operate as a wholesale distributor - ~~\$150~~[\$425];
- (17) Renewal of a license to operate as a wholesale distributor - ~~\$150~~[\$425];
- (18) Delinquent renewal penalty for a license to operate as a wholesale distributor - ~~\$150~~[\$425]; and
- (19) Query to the National Practitioner Data Bank of the United States Department of Health and Human Services - twenty-five (25) dollars.~~;~~

Section 2. An applicant shall submit:

(1) An initial or renewal application for a pharmacy permit

on either the:

(a)1. Application for Permit to Operate a Pharmacy in Kentucky; or

2. Application for Resident Pharmacy Permit Renewal; or

(b)1. Application for Non-Resident Pharmacy Permit; or

2. Application for Non-Resident Pharmacy Permit Renewal;

and

(2) As appropriate, the:

(a) Initial application fee established by Section 1(8) of this administrative regulation; or

(b) Renewal fee established by Section 1(9) of this administrative regulation.

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

(a) "Application for Non-Resident Pharmacy Permit", Form 3, 9/2023;[6/2023]

(b) "Application for Non-Resident Pharmacy Permit Renewal", Form 4, 9/2023;[6/2023]

(c) "Application for Permit to Operate a Pharmacy in Kentucky", Form 1, 6/2023; and

(d) "Application for Resident Pharmacy Permit Renewal", Form 2, 6/2023.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Pharmacy, State Office Building Annex, Suite 300, 125 Holmes Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available on the board's Web site at <https://pharmacy.ky.gov/Businesses/Pages/Pharmacy.aspx>.

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BOARDS AND COMMISSIONS
Board of Pharmacy
(As Amended at ARRS, October 10, 2023)

201 KAR 2:105. Requirements for wholesalers, medical gas wholesalers, wholesale distributors, and virtual wholesale distributors.

RELATES TO: KRS ~~217.182~~, 315.010, ~~315.0351~~, 315.121, 315.350, 315.400, 315.402, 315.404, 315.406, 315.408, 315.410, 315.412, ~~21 U.S.C. 360eee-eee-4~~

STATUTORY AUTHORITY: KRS 315.010, 315.191(1)(a), 315.350, 315.402, 315.406

NECESSITY, FUNCTION, AND CONFORMITY: KRS 315.191(1)(a) authorizes the board to promulgate administrative regulations to regulate and control all matters set forth in KRS Chapter 315. KRS 315.350, 315.402 and 315.406 require the board to promulgate administrative regulations to regulate wholesalers, medical gas wholesalers, wholesale distributors, and virtual wholesale distributors of prescription drugs and drug-related devices. This administrative regulation establishes the requirements for the regulation of wholesalers, medical gas wholesalers, wholesale distributors, and virtual wholesale distributors.

Section 1. Definitions.

- (1) "Component" means any raw material, ingredient, or article intended for use in the manufacture of a drug and drug-related device.
- (2) "Distribution" or "distribute" is defined by KRS 315.400(5).
- (3) "Drug sample" means a unit of a prescription drug that is not intended to be sold and is intended to promote the sale of the drug.
- (4) "Illegitimate Product" is defined by KRS 315.400(11).
- (5) "Medical gas wholesaler" is defined by KRS 315.400(13).
- (6) "Product" means a prescription drug in a finished dosage form for administration to a patient without substantial further manufacturing, such as capsules, tablets, and lyophilized products before reconstitution.

(7) "Suspect product" means a component, prescription drug, or drug-related device for which there is reason to believe that the[such] component, prescription drug, or drug-related device:

- (a) Is potentially counterfeit, diverted, or stolen;
- (b) Is potentially intentionally adulterated so[such] that the component, prescription drug, or drug-related device may[would] result in serious adverse health consequences or death to humans or animals;
- (c) Is potentially the subject of a fraudulent transaction; or
- (d) Appears otherwise unfit for distribution so[such] that the component, prescription drug, or drug-related device may[would] result in serious adverse health consequences or death to humans or animals.

(8) "Wholesale distribution" is defined by KRS 315.400(20).

(9) "Wholesale distributor" is defined by KRS 315.400(21).

(10) "Wholesaler" is defined by KRS 315.010(28), and includes medical gas wholesalers, wholesale distributors, and virtual wholesale distributors.

(11) "Virtual wholesale distributor" has the same meaning given in KRS 315.400(21).

Section 2. Requirements.

(1) A wholesaler engaged in wholesale distribution in the Commonwealth shall apply for a license from the Board of Pharmacy in accordance with KRS 315.350, 315.402, 315.406, and this administrative regulation.

(2) A surety bond is required of not less than \$25,000, or other equivalent means of security acceptable to the Board of Pharmacy or a third party recognized by the Board of Pharmacy such as insurance, an irrevocable letter of credit, or funds deposited in a trust account or financial institution. This shall be used to secure payment of any administrative penalties imposed by the Board of Pharmacy and any fees or costs incurred by the Board of Pharmacy regarding that licensee if those penalties, fees, or costs are authorized under state law, and the licensee fails to pay thirty (30) days after the penalty, fee, or costs becomes final. A separate surety bond or other equivalent means of security is not required for each company's separate locations or for affiliated companies or groups[orgroups] if separate locations or affiliated companies or groups[orgroups] are required to apply for or renew their wholesaler license with the Board of Pharmacy. The Board of Pharmacy may make a claim against the bond or other equivalent means of security until one (1) year after the wholesaler's license closes, lapses or expires, or until sixty (60) days after any administrative or legal proceeding before or on behalf of the Board of Pharmacy that involves the wholesaler is concluded, including any appeal, whichever occurs later. The Board of Pharmacy may waive the bond requirement, if the wholesaler:

(a) Has previously obtained a comparable surety bond or other equivalent means of security for the purpose of licensure in another state, where the wholesaler possesses a valid license in good standing;

(b) Is a publicly held company;

(c) Is a medical gas wholesaler; or

(d) Has a license for the sole purpose of distribution within a health care entity under common ownership.

(3) A separate license shall be required for each wholesaler's facility that engages in wholesale distribution within the Commonwealth regardless of whether joint ownership or control exists.

(4) An agent or employee of a licensee shall not be required to obtain a license under this section if the agent or employee is acting in the usual course of business or employment.

(5) A license shall not be issued or renewed unless the applicant demonstrates or continues to demonstrate acceptable operational procedures, including:

(a) Adequate operational, maintenance, and storage conditions to ensure proper lighting, ventilation, temperature and humidity control, sanitation, space, and security as per label requirements or official United States Pharmacopoeia (USP) compendium requirements, USP Chapter 659, Packaging and Storage Requirements. Appropriate manual, electromechanical or electronic temperature and humidity recording equipment, devices, or logs shall be utilized to document proper storage of prescription drugs

and drug-related devices;

(b) Separation and quarantine of deteriorated, damaged, outdated, misbranded, adulterated or otherwise recalled prescription drugs and drug-related devices until they are destroyed or returned;

(c) Providing accurate and precise records of all prescription drugs and drug-related devices sold, purchased, traded, delivered, handled, stored, or received and any other information pertinent to the distribution or disposition; and

(d) Providing proof of registration with the U.S. Drug Enforcement Administration (DEA) and shall comply with all DEA regulations, if applicable.

(6) Wholesale distributors and virtual wholesale distributors shall comply with all requirements outlined in the Drug Supply Chain Security Act (DSCSA), 21 U.S.C. 360eee-360eee-4.

(7) Wholesalers shall establish a system to:

(a) Quarantine and investigate suspect product to determine if it is illegitimate; and

(b) Notify U.S. Food and Drug Administration (FDA), if applicable, the Board of Pharmacy and the recipient or recipients[recipient(s)] of illegitimate product, if illegitimate product is found.

(8) A virtual wholesale distributor shall be exempt from the following, subsection [2](5)(a) and (b) of this section, and Section 5(1)(a) and (b), and (2)(a) and (b) of this administrative regulation.

Section 3. Qualifications for License.

(1) The Board of Pharmacy shall consider, at a minimum, the following factors in reviewing the qualifications of persons who engage in wholesale distribution of prescription drugs and drug-related devices within the Commonwealth:

(a) Any convictions of the applicant under any federal, state, or local laws relating to drugs, including drug samples and controlled substances;

(b) Any felony convictions of the applicant under federal, state, or local laws;

(c) The applicant's past experience in the distribution of prescription drugs and drug-related devices, including drug samples and controlled substances;

(d) The furnishing by the applicant of false or fraudulent material in any application made in connection with the distribution of prescription drugs and drug-related devices;

(e) Suspension or revocation by federal, state, or local government of any license or permit currently or previously held by the applicant for distribution of any prescription drugs and drug-related devices, including drug samples and controlled substances;

(f) Compliance with the requirements under any previously granted license or permit, if any; and

(g) Compliance with requirements to maintain or make available to the Board of Pharmacy or to federal, state, or local law enforcement officials those records required under this administrative regulation.

(2) The Board of Pharmacy may[shall have the right to] deny a license to an applicant if it determines that the granting of that license would not be in the public interest based on health and safety considerations.

(3) A license shall not be issued pursuant to this administrative regulation unless the applicant has furnished proof satisfactory to the Board of Pharmacy:

(a) That the applicant is in compliance with all applicable federal, state, and local laws and regulations relating to drugs; and

(b) That the applicant is equipped as to land, buildings, and security to properly carry on the business described in the application.

(4) A license issued pursuant to this administrative regulation failing to comply with the provisions of KRS 315.350, 315.400, 315.402, 315.404, 315.406, 315.408, 315.410, 315.412, or this administrative regulation may result in action under KRS 315.121.

Section 4. Application, Fees, Renewals.

(1) An application for a license shall be submitted to the Board of Pharmacy on the Application for a License to Operate as a Wholesaler.

(2) An application shall be accompanied by the annual fee set

forth in 201 KAR 2:050.

(3) An application shall include:

(a) The name, full business address, and telephone number of the licensee;

(b) All trade or business names used by the licensee;

(c) Addresses, telephone numbers, and the names of **contact[contract]** persons for all facilities used by the licensee for the storage, handling, and distribution of prescription drugs and drug-related devices;

(d) The type of ownership or operation (i.e. partnership, corporation, or sole proprietorship);

(e) The **name or names[name(s)]** of the owner and operator of the licensee, including:

1. If a person, the name and Social Security number of the person;

2. If a partnership, the name and Social Security number of each partner, and the name of the partnership;

3. If a corporation, the name, Social Security number and title of each corporate officer and director, the corporate names, and the name of the state of incorporation; and

4. If a sole proprietorship, the full name and Social Security number of the sole proprietor and the name of the business entity;

(f) A list of all licenses and permits issued to the applicant by any other state that authorizes the applicant to purchase or possess prescription drugs and drug-related devices; and

(g) Proof of surety bond or equivalent.

(4) All licenses shall:

(a) Expire on September 30 following date of issuance; and

(b) Be renewable annually thereafter upon submission of the Renewal Application to Operate as a Wholesaler accompanied by the renewal fee set forth in 201 KAR 2:050 and shall be nontransferable.

Section 5. Standards.

(1) Facilities.

(a) All facilities in which prescription drugs and drug-related devices are held for wholesale distribution, stored, sold, offered for sale, exposed for sale, or kept for sale shall be of suitable size, construction, and location to facilitate cleaning, maintenance, and proper operations.

(b) All facilities shall meet all applicable federal, state, and local standards. The facility shall quarantine prescription drugs and drug-related devices that are outdated, damaged, deteriorated, misbranded, recalled, or adulterated, or that are in immediate or sealed secondary containers that have been opened.

(c) A facility shall not be located in a residence.

(d) A facility shall be located apart and separate from a pharmacy permitted by the Board of Pharmacy, with the exception of a medical gas wholesaler.

(2) Security.

(a) A wholesaler shall be equipped with an alarm system to detect entry after hours.

(b) A wholesaler shall ensure that access from outside **wholesaler's[their]** premises is well controlled and reduced to a minimum. This includes the installation of adequate lighting at the outside perimeter of the premises.

(c) Internal security policies shall be developed to provide reasonable protection against theft and diversion by limiting access to areas where prescription drugs and drug-related devices are held to authorized personnel. These policies shall provide protection against tampering with computers or electronic records.

(d) A licensee shall employ adequate personnel with the education and experience necessary to safely and lawfully engage in the wholesale distribution of prescription drugs and drug-related devices.

(3) Recordkeeping requirements for companies handling prescription drugs and drug-related devices exempt from the DSCSA.

(a) Inventories and other records regarding the receipt and distribution or disposition of prescription drugs and drug-related devices shall be maintained and readily available for inspection or photocopying by the Board of Pharmacy and authorized law enforcement officials for a period of six (6) years**[f]**. These records

shall include:

1. The proprietary and established name of the prescription drug and related device, if applicable;

2. The dosage, if applicable;

3. The size of the container, if applicable;

4. The number of containers;

5. The lot number or control number of the prescription drug and related device, if applicable;

6. The business name and address of all parties involved in each receipt and distribution or disposition of the prescription drug and related device, starting with the manufacturer; and

7. The date of each receipt and distribution or disposition of the prescription drug and related device.

(b) Records described in this section that are kept at the inspection site or that can be readily retrievable within forty-eight (48) hours by computer or other electronic means shall be readily available for authorized inspection during the retention period. Records kept at a central location apart from the inspection site and not electronically retrievable shall be made available for inspection within two (2) working days of a request by the Board of Pharmacy or an authorized official of a federal, state, or local law enforcement agency.

(c) Wholesalers shall maintain an ongoing list of verified persons or businesses with whom they do business.

(d) A wholesaler may sell or distribute prescription drugs and drug-related devices only to the following, except as provided in KRS 315.0351(2) and 315.404:

1. A currently licensed wholesaler;

2. A currently licensed third party logistics provider;

3. A currently permitted pharmacy;

4. A currently licensed outsourcing facility;

5. A currently licensed practitioner;

6. A currently permitted repackager;

7. A currently licensed hospital, but only for use by or in that hospital pursuant to KRS 217.182(1);

8. A person in charge of a laboratory, but only for use in that laboratory for scientific and medical research purposes pursuant to KRS 217.182(1); or

9. Any other appropriately licensed or permitted facility in the jurisdiction in which it is located.

(e) A wholesaler may acquire prescription drugs and drug-related devices only from the following, except as provided in KRS 315.404:

1. A currently permitted manufacturer;

2. A currently permitted repackager;

3. A currently licensed wholesaler; or

4. A currently licensed third-party logistics provider.

(f) Wholesalers shall maintain a system for the mandatory reporting of any theft, suspected theft, diversion, or other significant loss of any prescription drug and related device to the Board of Pharmacy, and if applicable, the FDA and DEA.

(4) Written policies and procedures, requirements for companies handling prescription drugs and drug-related devices exempt from the DSCSA.

(a) A wholesaler shall establish, maintain, and adhere to written policies and procedures, which shall be followed for the receipt, security, storage, inventory, distribution, and disposition of prescription drugs and drug-related devices

(b) There shall be written policies and procedures for identifying, recording, and reporting losses or thefts.

(c) There shall be written policies and procedures to assure that the wholesaler prepares for, protects against, and handles crisis situations that affect the security or operation of the facility. These crises shall include fires, floods, or other natural disasters, and situations of local, state, or national emergency.

(d) There shall be written policies and procedures for managing and correcting all errors or inaccuracies in inventories.

(e) There shall be written policies and procedures to assure that any outdated stock or any stock with an expiration date that, in the wholesaler's view, does not allow sufficient time for repackaging or resale shall be segregated from other stock and shall be prepared for return to the manufacturer or otherwise destroyed, and this shall be documented.

(f) There shall be written policies and procedures by which the wholesaler exercises control over the shipping and receiving of all stock within the operation.

(g) There shall be written policies and procedures for investigating suspect product and reporting illegitimate product to the Board of Pharmacy and the FDA pursuant to the DSCSA, if applicable.

(5) Returned, damaged, and outdated prescription drugs and drug-related devices. A wholesaler shall maintain and follow a written policy and procedure to assure the proper handling and disposal of returned goods. If conditions under which a prescription drug or related device has been returned cast doubt on the drug's safety, identity, strength, quality, or purity, then the drug or related device shall be destroyed, or returned, unless examination, testing, or other investigation proves that the drug or drug-related device meets appropriate standards of safety, identity, strength, quality, and purity. In determining whether the conditions under which a prescription drug or related device has been returned cast doubt on the drug's or related device's safety, identity, strength, quality, or purity, the wholesaler shall consider, among other things, the conditions under which the drug or related device has been held, stored, or shipped before or during its return and the condition of the drug or related device and its container, carton, or labeling, as a result of storage or shipping.

(6) Handling recalls. A wholesaler shall establish, maintain, and adhere to a written policy and procedure for handling recalls and withdrawals of prescription drugs and drug-related devices. The policy and procedure shall cover all recalls and withdrawals of drugs and drug-related devices due to:

- (a) Any voluntary action on the part of the manufacturer;
 - (b) The direction of the FDA, or any other federal, state, or local government agency; and
 - (c) Replacement of existing.
- (7) Procedures

(a) A visual examination of all materials received or shipped shall be made to guarantee product identity and to reasonably guard against acceptance or delivery of damaged, contaminated, tampered, or otherwise unfit stock.

(b) Procedures for distribution of approved stock shall provide for a rotation whereby the expiration date is taken into consideration when distributing inventory.

(c) A wholesaler shall be subject to the provisions of any applicable federal, state, or local laws or regulations that relate to prescription drug and related device salvaging or reprocessing.

Section 6. Violations.

(1) A wholesaler shall not distribute prescription drugs and drug-related devices directly to a consumer or a patient, except as provided in KRS 315.0351(2).

(2) A wholesaler shall not operate in a manner that endangers the public health.

(3) Violations of any of these provisions shall be grounds for action under KRS 315.121.

Section 7. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Application for a License to Operate as a Wholesaler", June 2023[May 2020];

(b) "Renewal Application to Operate as a Wholesaler", June 2023[May 2020]; and

(c) "USP Chapter 659 Packaging and Storage Requirements", April 1, 2021[November 1, 2020].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Pharmacy, State Office Building Annex, Suite 300, 125 Holmes Street, Frankfort, Kentucky 40601-8024. Monday through Friday, 8 a.m. to 4:30 p.m. or on the Board's Web site[website] at https://pharmacy.ky.gov/Businesses/Pages/Wholesale-Distributors.aspx.

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7910, fax (502) 696-3806, email Christopher.harlow@ky.gov.

BOARDS AND COMMISSIONS

Board of Pharmacy

(As Amended at ARRS, October 10, 2023)

201 KAR 2:205. Pharmacist-in-charge.

RELATES TO: KRS 315.020, 315.035, [~~315.035~~], 315.0351, 315.191, 315.300, 315.335, 21 C.F.R. 1301.76(b)

STATUTORY AUTHORITY: KRS 315.020(1), 315.0351, 315.191(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 315.191(1) authorizes the board to promulgate administrative regulations pursuant to KRS Chapter 13A necessary to regulate and control all matters relating to pharmacists, pharmacist interns, pharmacy technicians, pharmacies, wholesale distributors, and manufacturers. KRS 315.020(1) and 315.0351(1)(g) require applicants for pharmacy permits to place a pharmacist in charge as a prerequisite to compounding and dispensing privileges granted by the Kentucky Board of Pharmacy. This administrative regulation establishes the requirements relating to a pharmacist-in-charge.

Section 1. Definition. "Pharmacist-in-charge" means a pharmacist licensed in the Commonwealth of Kentucky, who accepts responsibility for the operation of a pharmacy in conformance with all laws and administrative regulations pertinent to the practice of pharmacy and the distribution of prescription drugs and who is personally in full and actual charge of the pharmacy.

Section 2. Duties and Responsibilities.

(1) The pharmacist-in-charge shall be so designated in the Application for Permit to Operate a Pharmacy in Kentucky and in the Application for Non-Resident Pharmacy Permit, and in each Application for Resident Pharmacy Renewal and Application for Non-Resident Pharmacy Permit Renewal, as incorporated by reference in 201 KAR 2:050, and submitted for the renewal of that permit thereafter.

(2) A pharmacist shall not serve as a pharmacist-in-charge:

(a) For more than one (1) pharmacy at a time, except upon written approval from the Kentucky Board of Pharmacy; and

(b) Unless he or she is physically present in that pharmacy for a minimum of ten (10) hours per week or the amount of time appropriate to provide supervision and control.

(3) The pharmacist-in-charge shall be responsible for:

(a) Quality assurance programs for pharmacy services designed to objectively and systematically monitor care, pursue opportunities for improvement, resolve identified problems as may exist, and detect and prevent drug diversion;

(b) The procurement, storage, security, and disposition of drugs and the provision of pharmacy services;

(c) Assuring that all pharmacists and interns employed by the pharmacy are currently licensed;

(d) Providing notification in writing to the Board of Pharmacy within fourteen (14) calendar days of any change in the:

1. Employment of the pharmacist-in-charge;

2. Employment of staff pharmacists; or

3. Schedule of hours for the pharmacy;

(e) Making or filing of any reports required by state or federal laws and regulations;

(f) Responding to the Kentucky Board of Pharmacy regarding identified violations or deficiencies; and

(g) Filing of any report of a theft or loss to:

1. The U. S. Department of Justice Drug Enforcement Administration[Agency] as required by 21 C.F.R. 1301.76(b);

2. The Department of the Kentucky State Police as required by KRS 315.335; [~~and~~]

3. The board by providing a copy to the board of each report submitted; and

4. The Cabinet for Health and Family Services.

[Section 3. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Application for Permit to Operate a Pharmacy in Kentucky" Form 1, 5/2020;

(b) "Application for Non-Resident Pharmacy Permit", Form 3, 5/2020;

(c) "Application for Resident Pharmacy Renewal", Form 2, 5/2020; and

(d) "Application for Non-Resident Pharmacy Permit Renewal", Form 4, 5/2020.

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BOARDS AND COMMISSIONS

Board of Pharmacy

(As Amended at ARRS, October 10, 2023)

201 KAR 2:225. Special limited pharmacy permit – Medical gas.

RELATES TO: KRS 217.015(11), 315.010(9), 315.020, 315.035, 315.191(1)(a)

STATUTORY AUTHORITY: KRS 315.020, 315.035, 315.191(1)(a)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 315.191(1)(a) authorizes the board to promulgate administrative regulations to regulate and control all matters set forth in KRS Chapter 315 relating to pharmacists and pharmacies. This administrative regulation establishes, consistent with the requirements of KRS 315.191(1)(a), minimum requirements for the permitting of those entities that distribute medical gases.

Section 1. Definitions.

(1) "Medical gases" means gases (including liquefied gases) classified by FDA as drugs or devices that are used for medical applications and which may be stored and administered through the use of Medical Gas Related Equipment, which may or may not be required under Federal or State law for the immediate container to bear the label, "Rx only" or "Caution: Federal or State law prohibits dispensing without a prescription."

(2) "Special limited pharmacy permit" means a permit issued to a pharmacy that provides miscellaneous specialized pharmacy service and functions.

Section 2. General Requirements.

(1)(a) An applicant for a special limited pharmacy permit for medical gases shall comply with the requirements of 201 KAR 2:180, except Section 5 and 201 KAR 2:205, except that the pharmacist-in-charge designated on the special permit shall be exempt from the requirements of 201 KAR 2:205, Section 2(2).

(b) The pharmacist-in-charge shall review the records and do an onsite visit of the special limited pharmacy permit [applicant] for medical gases not less than once each quarter.

(2) An applicant for a special limited pharmacy permit for medical gases shall prepare and adopt a policy and procedures manual that sets forth a detailed description of how the:

(a) Operation will comply with applicable federal, state, or local laws or administrative regulations; and

(b) Licensee will maintain the premises so that the medical gas remains secure and complies with applicable compendial monographs of official pharmacopoeias.

(3) An applicant for a special limited pharmacy permit for medical ~~gases~~~~[gas]~~~~[gases]~~ shall be inspected by the board prior to the issuance of the license.

Section 3. Qualifications for License.

(1) The board shall consider the following in reviewing the qualifications of an applicant for a special limited pharmacy permit for medical gases:

(a) The applicant's experience in the sale or distribution of prescription drugs, including controlled substances;

(b) A felony conviction of the applicant under federal, state, or local laws;

(c) The furnishing by the applicant of false or fraudulent material in a previous application for:

1. A special limited pharmacy permit for medical gases; or

2. A federal or state medical assistance program;

(d) Suspension or revocation of an applicant's license or permit by federal, state, or local government; and

(e) Compliance with requirements under a previously granted license or permit.

(2) The board shall deny an application for a special limited pharmacy permit for medical gases, if an applicant has:

(a) Been convicted for a violation of federal, state, or local laws relating to:

1. The practice of pharmacy;

2. Drugs; or

3. Federal or state medical assistance programs.

(b) Furnished false or fraudulent material in the application for a special limited pharmacy permit for medical gases;

(c) Failed to maintain or make available required records to the:

1. Board; or

2. Federal, state, or local law enforcement officials;

(d) Failed to comply with applicable federal, state, and local laws and regulations relating to medical gas; or

(e) Failed to provide appropriate land, buildings, and security necessary to properly carry on the business described in his or her application.

Section 4. License Fees; Renewals. An applicant shall submit:

(1) An initial or renewal application for a special limited pharmacy permit for medical gases on either the:

(a) 1. Application for Special Limited Pharmacy Permit – Medical Gas; or [the]

2. Application for Special Limited Pharmacy Permit – Medical Gas Renewal; or

(b) 1. Application for Nonresident Special Limited Pharmacy Permit – Medical Gas; or

2. Application for Nonresident Special Limited Pharmacy Permit – Medical Gas Renewal; and

(2) As appropriate, the:

(a) Initial application fee established by 201 KAR 2:050, Section 1(8); or

(b) Renewal fee established by 201 KAR 2:050, Section 1(9).

Section 5. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Application for Special Limited Pharmacy Permit – Medical Gas", ~~June 2023~~~~[March 2022]~~; and

(b) "Application for Special Limited Pharmacy Permit – Medical Gas Renewal", ~~June 2023~~;

(c) "Application for Nonresident Special Limited Pharmacy Permit – Medical Gas", September~~[June]~~ ~~2023~~; and

(d) "Application for Nonresident Special Limited Pharmacy Permit – Medical Gas Renewal", September~~[June]~~ ~~2023~~~~[March 2022]~~.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Pharmacy, 125 Holmes Street, Suite 300, Frankfort, Kentucky 40601-8204, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available on the board's Web site at <https://pharmacy.ky.gov/Businesses/Pages/Pharmacy.aspx>~~[https://pharmacy.ky.gov/Forms/Pages/default.aspx]~~.

CONTACT PERSON: Christopher Harlow, Executive Director, Kentucky Board of Pharmacy, 125 Holmes Street, Suite 300, State Office Building Annex, Frankfort, Kentucky 40601, phone (502) 564-7910, fax (502) 696-3806, email Christopher.harlow@ky.gov.

BOARDS AND COMMISSIONS

**Board of Pharmacy
(As Amended at ARRS, October 10, 2023)**

201 KAR 2:240. Special limited pharmacy permit – Charitable.

RELATES TO: KRS 315.035

STATUTORY AUTHORITY: KRS 315.020, 315.030, 315.035, 315.191(1)(a)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 315.191(1)(a) authorizes the board to promulgate administrative regulations to prescribe the criteria for obtaining a pharmacy permit to dispense legend drugs and the procedures for the safe dispensing of legend drugs to citizens of the Commonwealth. This administrative regulation identifies the manner and procedure by which a charitable organization may obtain a pharmacy permit and dispense legend drugs in the Commonwealth.

Section 1. Definitions.

(1) "Charitable organization" means an organization qualified as a charitable organization pursuant to Section 501(c)(3) of the Internal Revenue Code, 26 U.S.C. 501(c)(3).

(2) "Legend drug sample" means an unopened package of a manufacturer's legend drug product that has been distributed to either a practitioner or the charitable pharmacy in accordance with the provisions of the Prescription Drug Marketing Act of 1987, 21 C.F.R. Part 203.

(3) "Qualified indigent patient" means a patient of the charitable pharmacy that has been screened and approved by the charitable organization as meeting the organization's mission of providing pharmaceutical care to those who are without sufficient funds to obtain needed legend drugs.

(4) "Special limited pharmacy permit" means a permit issued to a pharmacy that provides specialized pharmacy services, such as dispensing legend drugs, and counseling patients.

Section 2.

(1) A charitable pharmacy:

(a) Shall comply with all pharmacy permit requirements except those specifically exempted by the board pursuant to paragraph (b) of this subsection; and

(b) May petition the board in writing to be exempted from those pharmacy permit requirements that do not pertain to the operation of that charitable pharmacy.

(2) The charitable pharmacy only shall dispense prescription legend drug samples or prescription legend drugs to qualified indigent patients of the pharmacy.

(3) The charitable pharmacy shall not charge any fee for the dispensing of prescription legend drug samples or prescription legend drugs to qualified indigent patients of the pharmacy.

(4) A charitable pharmacy may accept prescription legend drugs in their unbroken original packaging from pharmacies, wholesalers, or manufacturers, provided appropriate records of receipt and dispensing are maintained.

(5) A charitable pharmacy shall not:

(a) Accept controlled substances from pharmacies, wholesalers, or manufacturers; or

(b) Dispense controlled substances.

(6) A pharmacy that requests a special limited pharmacy permit - charitable shall submit to the board for prior approval, a plan describing the method by which the charitable pharmacy and the pharmacy shall maintain a separate and distinct prescription drug stock. The failure of either pharmacy to follow the plan shall result in revocation of the special limited pharmacy permit - charitable and the pharmacy permit.

Section 3. License Fees; Renewals. An applicant shall submit:

(1) An initial or renewal application for a special limited pharmacy permit - charitable pharmacy on either the:

(a)1. Application for **Resident** Special Limited Pharmacy Permit – Charitable Pharmacy; or

2. [the] Application for **Resident** Special Limited Pharmacy Permit – Charitable Pharmacy Renewal; or

(b)1. Application for **Non-Resident Special Limited Pharmacy Permit – Charitable Pharmacy; or**
2. Application for **Non-Resident Special Limited Pharmacy Permit – Charitable Pharmacy Renewal;** and

(2) As appropriate, the:

(a) Initial application fee established by 201 KAR 2:050, Section 1(8); or

(b) Renewal fee established by 201 KAR 2:050, Section 1(9) and (10).

Section 4. Incorporation By Reference.

(1) The following material is incorporated by reference:

(a) "Application for **Resident** Special Limited Pharmacy Permit – Charitable Pharmacy", June 2023[May 2020];[and]

(b) "Application for **Resident** Special Limited Pharmacy Permit – Charitable Pharmacy Renewal", June 2023[May 2020].

(c) "Application for **Non-Resident Special Limited Pharmacy Permit – Charitable Pharmacy**", September[June] 2023; and

(d) "Application for **Non-Resident Special Limited Pharmacy Permit—Charitable Pharmacy **Renewal****", September[June] 2023.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Pharmacy, 125 Holmes Street, Suite 300, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available on the board's Web site at <https://pharmacy.ky.gov/Businesses/Pages/Pharmacy.aspx>.

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BOARDS AND COMMISSIONS

**Board of Pharmacy
(As Amended at ARRS, October 10, 2023)**

201 KAR 2:320. Requirements for manufacturers and virtual manufacturers.

RELATES TO: KRS 217.182, 315.010, 315.020(2), 315.036, 315.191(1)(a), 315.400, 315.404, 21 U.S.C. 360eee-eee-4

STATUTORY AUTHORITY: KRS 315.020(2), 315.036, 315.191(1), 315.400

NECESSITY, FUNCTION, AND CONFORMITY: KRS 315.020, 315.036 and 315.191(1)(a) authorize the board to promulgate administrative regulations to regulate the manufacturers and virtual manufacturers of drugs and drug-related devices. This administrative regulation establishes the requirements for the regulation of manufacturers and virtual manufacturers.

Section 1. Definitions.

(1) "Component" means any raw material, ingredient, or article intended for use in the manufacture of a drug and drug-related device.

(2) "Drug sample" means a unit of a prescription drug that is not intended to be sold and is intended to promote the sale of the drug.

(3) "Illegitimate Product" is defined by KRS 315.400(11).

(4) "Manufacturer or virtual manufacturer" is defined by KRS 315.010(13).

(5) "Product" means a prescription drug in a finished dosage form for administration to a patient without substantial further manufacturing, such as capsules, tablets, and lyophilized products before reconstitution.

(6) "Relabeler" means:

(a) Any person who owns or operates an establishment that changes the content of the labeling from that supplied from the original manufacturer for distribution under the establishment's own name; and

(b) Does not include establishments that do not change the original labeling, but merely add their own name.

(7) "Repackager" is defined by KRS 315.400(16).

(8) "Suspect product" means a component, prescription drug, or drug-related device for which there is reason to believe that the[such] component, prescription drug, or drug-related device:

(a) Is potentially counterfeit, diverted, or stolen;

(b) Is potentially intentionally adulterated so[such] that the component, prescription drug, or drug-related device may[would] result in serious adverse health consequences or death to humans or animals;

(c) Is potentially the subject of a fraudulent transaction; or

(d) Appears otherwise unfit for distribution so[such] that the component, prescription drug, or drug-related device may[would] result in serious adverse health consequences or death to humans or animals.

Section 2. Requirements.

(1) A manufacturer or virtual manufacturer engaging in manufacturing in the Commonwealth shall apply for a permit from the Board of Pharmacy in accordance with KRS 315.036 and this administrative regulation.

(2) A separate permit shall be required for each facility within the Commonwealth regardless of whether joint ownership or control exists.

(3) An agent or employee of a permit holder shall not be required to obtain a permit under this section if[when] the agent or employee is acting in the usual course of business or employment.

(4) A permit shall not be issued or renewed unless the applicant demonstrates or continues to demonstrate acceptable operational procedures, including:

(a) Adequate operation, maintenance, and storage conditions to ensure proper lighting, ventilation, temperature and humidity control, sanitation, space, and security as per label requirements or official United States Pharmacopoeia (USP) compendium requirements, USP Chapter 659, Packaging and Storage Requirements as incorporated by reference in 201 KAR 2:105. Appropriate manual, electromechanical, or electronic temperature and humidity recording equipment, devices, or logs shall be utilized to document proper storage of components and drugs and drug-related devices;

(b) Separation and quarantine of deteriorated, damaged, outdated, misbranded, adulterated, or otherwise recalled components and drugs and drug-related devices until they are destroyed or returned;

(c) Providing accurate and precise records of all components and drugs and drug-related devices shipped or received including source and recipient, date, quantity, itemized description, and any other information pertinent to the receipt and distribution or disposition; and

(d) Providing proof of registration with the U.S. Food and Drug Administration (FDA), the U.S. Drug Enforcement Administration (DEA), and compliance with all federal, state, and local laws and regulations.

(5) Manufacturers and virtual manufacturers shall comply with all requirements as outlined in the Drug Supply Chain Security Act (DSCSA), 21 U.S.C. 360eee-360eee-4., if applicable.

(6) Manufacturers and virtual manufacturers shall establish a system to:

(a) Quarantine and investigate suspect product to determine if it is illegitimate; and

(b) Notify FDA, the Board of Pharmacy, and the recipient or recipients[recipient(s)] of illegitimate product, if illegitimate product is found.

(7) All virtual manufacturers shall be exempt from the requirements of subsection [2](4)(a) and (b) of this Section, and Section 5(1)(a) and (b) and (2)(a) and (b) of this administrative regulation.

Section 3. Qualifications for Permit.

(1) The Board of Pharmacy shall consider, at a minimum, the following factors in reviewing the qualifications of persons who engage in manufacture or virtual manufacture of drugs and drug-related devices within the Commonwealth:

(a) Any convictions of the officers of the applicant under any federal, state, or local laws relating to drugs, including drug samples and controlled substances;

(b) Any felony convictions of the applicant or its officers under federal, state, or local laws;

(c) The applicant's and its officers' past experience in the manufacture or virtual manufacture of drugs and drug-related devices, including drug samples and controlled substances;

(d) The furnishing by the applicant of false or fraudulent material in any application made in connection with drug manufacturing or virtual drug manufacturing;

(e) Suspension or revocation by federal, state, or local government of any license or permit currently or previously held by the applicant or its officers for the manufacture or virtual manufacture of any drugs and drug-related devices, including drug samples and controlled substances;

(f) Compliance with the requirements under any previously granted license or permit, if any; and

(g) Compliance with requirements to maintain or make available to the Board of Pharmacy or to federal, state, or local law enforcement officials those records required under this administrative regulation.

(2) The Board of Pharmacy may[shall have the right to] deny a permit to an applicant if it determines that the granting of that permit would not be in the public interest based on health and safety considerations.

(3) A permit shall not be issued pursuant to this administrative regulation unless the applicant has furnished proof satisfactory to the Board of Pharmacy:

(a) That the applicant is in compliance with all applicable federal, state, and local laws and regulations relating to drugs and drug-related devices; and

(b) That the applicant is equipped as to land, buildings, and security to properly carry on the business described in the application.

(4) A permit issued pursuant to this administrative regulation may be disciplined, suspended, or revoked for failure to comply with the provisions of KRS 315.020, 315.036, 315.400, or this administrative regulation.

(5) No permit shall fail to designate a pharmacist-in-charge.

Section 4. Application, Fees, Renewals.

(1) An application for a permit shall be submitted to the Board of Pharmacy on the Application for a Permit to Operate as a Manufacturer or Virtual Manufacturer.

(2) An application shall be accompanied by the annual fee set forth in 201 KAR 2:050.

(3) An application shall include:

(a) The name, full business address, and telephone number of the applicant;

(b) All trade or business names used by the applicant;

(c) Addresses, telephone numbers, and the names of the persons for the facility used by the permit holder for the storage, handling, and manufacturing or virtual manufacturing of drugs and drug-related devices;

(d) The type of ownership or operation (i.e. partnership, corporation, or sole proprietorship);

(e) The name or names[name(s)] of the owner and operator of the permit holder, including:

1. If a person, the name and Social Security number of the person;

2. If a partnership, the name and Social Security number of each partner, and the name of the partnership;

3. If a corporation, the name, Social Security number and title of each corporate officer and director, the corporate names, and the name of the state of incorporation; and

4. If a sole proprietorship, the full name and social security number of the sole proprietor and the name of the business entity;

and

(f) A list of all licenses and permits issued to the applicant by any other state that authorizes the applicant to manufacture, virtual manufacture or possess drugs and drug-related devices.

(4) All permits shall:

(a) Expire on September 30 following the date of issuance; and
(b) Be:

1. Renewable annually thereafter upon completion of the Renewal Application to Operate as a Manufacturer or Virtual Manufacturer that is accompanied by the renewal fee set forth in 201 KAR 2:050; and
2. Nontransferable.

Section 5. Standards.

(1) Facilities.

(a) All facilities in which components and drugs and drug-related devices are labeled, relabeled, packaged, repackaged, stored, held, sold, offered for sale, exposed for sale, or kept for sale shall be of suitable size, construction, and location to facilitate cleaning, maintenance, and proper operations.

(b) All facilities shall meet all applicable federal, state, and local standards. The facility shall quarantine components and drugs and drug-related devices that are outdated, damaged, deteriorated, misbranded, recalled, or adulterated.

(c) A facility shall not be located in a residence.

(2) Security.

(a) A manufacturer shall be equipped with an alarm system to detect entry after hours.

(b) A manufacturer shall ensure that access from outside the manufacturer's[their] premises is well-controlled and reduced to a minimum. This includes the installation of adequate lighting at the outside perimeter of the premises.

(c) Internal security policies shall be developed to provide reasonable protection against theft and diversion by limiting access to areas where components and drugs and drug-related devices are held to authorized personnel. These policies shall provide protection against tampering with computers or electronic records.

(d) A permit holder shall employ adequate personnel with the education and experience necessary to safely and lawfully engage in the manufacture or virtual manufacture of drugs and drug-related devices.

(e) Lists of officers, directors, managers and other persons in charge of manufacture or virtual manufacture, distribution or disposition, storage, and handling of components and drugs and drug-related devices, including a description of their duties and summary of their qualifications, shall be maintained for purpose of review.

(3) Recordkeeping requirements for companies handling prescription drugs and drug-related devices exempt from the DSCSA.

(a) Inventories and other records regarding the receipt and distribution or disposition of components and drugs and drug-related devices shall be maintained and readily available for inspection or photocopying by the Board of Pharmacy and authorized law enforcement officials for a period six (6) years. These records shall include:

1. The business name and address of the source of the components and drugs and drug-related devices including the seller or transferor and the address of the location from which the components and drugs and drug-related devices were shipped;

2. The business name and address to whom components and drugs and drug-related devices were shipped including the purchaser and the address of the location where the components and drugs and drug-related devices were shipped;

3. The identity and quantity of the components and drugs and drug-related devices received and distributed or disposed of; and

4. The dates of receipt and distribution or disposition of the components and drugs and drug-related devices.

(b) The manufacturer or virtual manufacturer shall keep production and process control records for a period of six (6) years following completion of manufacturing.

(c) Records described in this section that are kept at the inspection site or that can be readily retrievable within forty-eight

(48) hours by computer or other electronic means shall be readily available for authorized inspection during the retention period. Records kept at a central location apart from the inspection site and not electronically retrievable shall be made available for inspection within two (2) working days of a request by the Board of Pharmacy or an authorized official of a federal, state, or local law enforcement agency.

(d) Manufacturers and virtual manufacturers shall maintain an ongoing list of verified persons and businesses with whom they do business.

(e) A permitted manufacturer and virtual manufacturer may sell or distribute drugs and drug-related devices only to the following:

1. A currently permitted manufacturer or virtual manufacturer;
2. A currently licensed third-party logistics provider;
3. A currently licensed wholesaler;
4. A currently permitted pharmacy;
5. A currently licensed outsourcing facility;
6. A currently licensed practitioner;
7. A currently permitted repackager or relabeler;
8. A currently licensed hospital, but only for use by or in that

hospital pursuant to KRS 217.182(1);

9. A person in charge of a laboratory, but only for use in that laboratory for scientific and medical research purposes pursuant to KRS 217.182(1); or

10. Any other appropriately licensed or permitted facility in the jurisdiction in which it is located.

(f) Manufacturers and virtual manufacturers shall maintain a system for the mandatory reporting of any theft, suspected theft, diversion, or other significant loss of any component or drug or drug-related device to the Board of Pharmacy and if applicable the FDA and DEA.

(4) Written policies and procedures, requirements for companies handling prescription drugs and drug-related devices exempt from the DSCSA.

(a) A manufacturer or virtual manufacturer shall establish, maintain, and adhere to written policies and procedures for all operations including production, process controls, receipt, security, storage, inventory, and distribution or disposition of components and drugs and drug-related devices.

(b) There shall be written policies and procedures for identifying, recording, and reporting losses or thefts.

(c) There shall be written policies and procedures to assure that the manufacturer and virtual manufacturer prepares for, protects against, and handles crisis situations that affect the security, operation, and records of the permit holder. These crises shall include fires, floods, or other natural disasters, and situations of local, state, or national emergency.

(d) There shall be written policies and procedures for managing and correcting all errors or inaccuracies in inventories.

(e) There shall be written policies and procedures to assure that any outdated components or drugs or drug-related devices or any components or drugs or drug-related devices with an expiration date that, in the manufacturer's or virtual manufacturer's view, does not allow sufficient time for repacking or resale shall be segregated and shall be prepared for return or otherwise destroyed, and this shall be documented.

(f) There shall be written policies and procedures by which the manufacturer or virtual manufacturer exercises control over the shipping and receiving of all components and drugs and drug-related devices within the operation.

(g) There shall be written policies and procedures for investigating suspect product and reporting illegitimate product to the Board of Pharmacy, FDA, and recipient or recipients[recipient(s)] of illegitimate product.

(5) Returned, damaged, and outdated drugs and drug-related devices. A manufacturer or virtual manufacturer shall maintain and follow a written procedure to assure the proper handling and disposal of returned components or drugs or drug-related devices. If conditions under which a drug or drug-related device has been returned cast doubt on the drug or drug-related device's safety, identity, strength, quality, or purity, then the drug or drug-related device shall be destroyed, or returned to the supplier, unless examination, testing, or other investigation proves that the drug or

drug-related device meets appropriate standards of safety, identity, strength, quality, and purity. In determining whether the conditions under which a drug or drug-related device has been returned cast doubt on the drug or drug-related device's safety, identity, strength, quality, or purity, the manufacturer or virtual manufacturer shall consider, among other things, the conditions under which the drug or drug-related device has been held, stored, or shipped before or during its return and the condition of the drug or drug-related device and its container, carton, or labeling, as a result of storage or shipping.

(6) Handling recalls. A manufacturer or virtual manufacturer shall adopt, maintain, and follow a written policy and procedure for handling recalls and withdrawals of components or drugs or drug-related devices. The policy shall cover all recalls and withdrawals due to:

(a) Any voluntary action on the part of the manufacturer or virtual manufacturer;

(b) The direction of the FDA, or any other federal, state, or local government agency; and

(c) Replacement, relabeling, or repackaging of existing component or drug or drug-related devices.

(7) Procedures.

(a) A visual examination of all materials received or shipped shall be made to guarantee product identity and to reasonably guard against acceptance or delivery of damaged, contaminated, tampered, or otherwise unfit stock.

(b) A manufacturer or virtual manufacturer shall be subject to the provisions of any applicable federal, state, or local laws or regulations that relate to drug product and drug-related devices salvaging or reprocessing.

Section 6. Pharmacist-in-charge. A manufacturer or virtual manufacturer shall designate a pharmacist-in-charge of the facility. The pharmacist-in-charge shall review security and records by conducting and documenting an on-site inspection not less than quarterly.

Section 7. Violations.

(1) A drug manufacturer or virtual manufacturer shall not distribute prescription drugs and drug-related devices directly to a consumer or a patient.

(2) A manufacturer or virtual manufacturer shall not operate in a manner that endangers the public health.

(3) Violation of any of these provisions shall be grounds for the discipline, suspension, or revocation of the permit.

Section 8. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Application for a Permit to Operate as a Manufacturer or Virtual Manufacturer", June 2023~~[May 2020]~~; and

(b) "Renewal Application to Operate as a Manufacturer or Virtual Manufacturer", June 2023~~[May 2020]~~.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Pharmacy, State Office Building Annex, Suite 300, 125 Holmes Street, Frankfort, Kentucky 40601-8024, Monday through Friday, 8 a.m. through 4:30 p.m. This material is also available on the board's Web site at <https://pharmacy.ky.gov/Businesses/Pages/Manufacturers.aspx>.

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BOARDS AND COMMISSIONS

Board of Pharmacy

(As Amended at ARRS, October 10, 2023)

201 KAR 2:340. Special limited pharmacy permit - clinical practice.

RELATES TO: KRS 315.010(9), 315.020, 315.035, 315.191(1)(a)

STATUTORY AUTHORITY: KRS 315.035, 315.191(1)(a)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 315.035 authorizes the Board of Pharmacy issue a permit to a pharmacy. KRS 315.191(1)(a) authorizes the Board of Pharmacy to promulgate administrative regulations with minimum requirements for the permitting of those entities that provide non-dispensing pharmacy services. This administrative regulation establishes the requirements for the Special limited pharmacy permit - Clinical practice.

Section 1. Definitions.

(1) "Special limited pharmacy permit" means a permit issued to a pharmacy that provides miscellaneous specialized pharmacy service and functions.

(2) "Special limited pharmacy permit - clinical practice" means a permit issued to a pharmacy that maintains patient records and other information for the purpose of engaging in the practice of pharmacy and does not dispense prescription drug orders.

Section 2. General Requirements.

(1) An applicant for a special limited pharmacy permit - clinical practice shall:

(a) Prepare and adopt a policy and procedure manual that is updated annually;

(b) Maintain pharmacy references as outlined in 201 KAR 2:090;

(c) Maintain a physical pharmacy address;

(d) Designate a Pharmacist-in-Charge (PIC) without a required minimum number of hours of physical presence;

(e) 1. Maintain patient records for five (5) years in a manner that shall provide adequate safeguards~~[safeguard]~~ against improper manipulation or alteration of the records; and

2. Abide by the standard that a computer malfunction or data processing services' negligence is not a defense against the charges of improper recordkeeping; and

(f) Maintain patient records by establishing:

1. A patient record system to be maintained for patients for whom non-dispensing pharmacy services and functions are being performed;

2. A procedure for obtaining, recording, and maintaining information required for a patient record by a pharmacist, pharmacist intern, or pharmacy technician; and

3. A procedure for a patient record to be readily retrievable by manual or electronic means.

(2) An applicant for a special limited pharmacy permit - clinical practice shall be exempt from the following:

(a) Prescription equipment requirements of 201 KAR 2:090, Section 1;

(b) Pharmacy sanitation requirements of 201 KAR 2:180; and

(c) Security and control of drugs and prescriptions requirements of 201 KAR 2:100, Sections 1, 2, 3, and 4.

Section 3. Pharmacy Closure. The permit holder shall provide notification to the board fifteen (15) days prior to permanent pharmacy closure.

Section 4. License Fees; Renewals. An applicant shall submit:

(1) An initial or renewal application for a special limited pharmacy permit - clinical practice on either the;

(a) 1. Application for Special Limited Pharmacy Permit - Clinical Practice; or

2. [the] Application for Special Limited Pharmacy Permit - Clinical Practice Renewal; or

(b) 1. Non-Resident Application for Special Limited Pharmacy Permit – Clinical Practice; or

2. Non-Resident Application for Special Limited Pharmacy Permit – Clinical Practice Renewal; and

- (2) As appropriate, the:
 (a) Initial application fee established by 201 KAR 2:050, Section 1(9); or
 (b) Renewal application fee established by 201 KAR 2:050, Section 1(10).

Section 5. Incorporation by Reference.

- (1) The following material is incorporated by reference:
 (a) "Application for Special Limited Pharmacy Permit - Clinical Practice", June 2023[May 2019];[and]
 (b) "Application for Special Limited Pharmacy Permit - Clinical Practice Renewal", June 2023[May 2019].
 (c) "Non-Resident[Nonresident] Application for Special Limited Pharmacy Permit – Clinical Practice", September[June] 2023; and
 (d) "Non-Resident[Nonresident] Application for Special Limited Pharmacy Permit – Clinical Practice Renewal", September[June] 2023.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Pharmacy, State Office Building Annex, Suite 300, 125 Holmes Street, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m. This material is also available on the board's Web site at <https://pharmacy.ky.gov/Businesses/Pages/Pharmacy.aspx>.

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BOARDS AND COMMISSIONS

Board of Pharmacy

(As Amended at ARRS, October 10, 2023)

201 KAR 2:390. Requirements for third-party logistics providers.

RELATES TO: KRS 315.0351, 315.121, 315.191(1)(a), 315.400, 315.4102, 315.4104, 315.4106, 315.4108, 315.4110, **21 U.S.C. 360eee-eee-4**, 21 U.S.C. 360eee-360eee-4]

STATUTORY AUTHORITY: KRS 315.191(1)(a), 315.4102, 315.4104, 315.4106, 315.4108, 315.4110

NECESSITY, FUNCTION AND CONFORMITY: KRS 315.191(1)(a), 315.4102, 315.4104, 315.4106, 315.4108, and 315.4110 authorizes the board to promulgate administrative regulations to regulate third-party logistics providers. This administrative regulation establishes requirements for the regulation of third-party logistics providers

Section 1. Definitions.

- (1) "Board" means the Board of Pharmacy.
 (2) "Component" means any raw material, ingredient, or article intended for use in the manufacture of a drug and drug-related device.
 (3) "Distribution" or "distribute" is defined by KRS 315.400(5).
 (4) "Drug sample" means a unit of a prescription drug that is not intended to be sold and is intended to promote the sale of the drug.
 (5) "Illegitimate product" is defined by KRS 315.400(11).
 (6) "Product" means a prescription drug in a finished dosage form for administration to a patient without substantial further manufacturing, such as capsules, tablets, and lyophilized products before reconstitution.
 (7) "Suspect product" means a component, prescription drug, or drug-related device for which there is a reason to believe that the component, prescription drug, or drug-related device:
 (a) Is potentially counterfeit, diverted, or stolen;
 (b) Is potentially intentionally adulterated so that the component, prescription drug, or drug-related device may result in serious adverse health consequences or death to humans or animals;
 (c) Is potentially the subject of a fraudulent transaction; or

(d) Appears otherwise unfit for distribution so that the component, prescription drug, or drug-related device may result in serious adverse health consequences or death to humans or animals.

(8) "Third-party logistics provider" is defined by KRS 315.400(18).

Section 2. Requirements. (1) A third-party logistics provider providing services in the Commonwealth, including distributing into the Commonwealth, shall apply for a license from the Board in accordance with KRS 315.4102 and this administrative regulation.

(2) A separate license shall be required for each third-party logistics provider's facility that provides services in the Commonwealth, including distributing into the Commonwealth, regardless of whether joint ownership or control exists.

(3) An agent or employee of a licensee shall not be required to obtain a license under this section if the agent or employee is acting in the usual course of business or employment.

(4) A license shall not be issued or renewed unless the applicant demonstrates or continues to demonstrate acceptable operational procedures, including:

(a) Adequate operation, maintenance, and storage conditions to ensure proper lighting, ventilation, temperature and humidity control, sanitation, space, and security as per label requirements or official United States Pharmacopoeia (USP) compendium requirements, USP Chapter 659, Packaging and Storage Requirements, as incorporated by reference in 201 KAR 2:105. Appropriate manual, electromechanical, or electronic temperature and humidity recording equipment, devices, or logs shall be utilized to document proper storage of components, prescription drugs, or drug-related devices;

(b) Separation and quarantine of deteriorated, damaged, outdated, misbranded, adulterated, or recalled components, prescription drugs, or drug-related devices until they are destroyed or returned; and

(c) If applicable, provide proof of registration with the U.S. Food and Drug Administration (FDA) and U.S. Drug Enforcement Administration (DEA) and shall comply with all federal laws, state and local laws, and regulations.

(5) A third-party logistics provider shall comply with all requirements as outlined in the Drug Supply Chain Security Act (DSCSA), 21 U.S.C 360eee-360eee-4, and other applicable federal laws.

(6) A third-party logistics provider shall establish a system to quarantine or destroy suspect or illegitimate product if directed to do so by the manufacturer, repackager, wholesale distributor, dispenser, or authorized government agency.

(7) A third-party logistics provider shall have readily retrievable within forty-eight (48) hours, upon written request of the board or its agents, and maintain for board inspection, a list of all manufacturers, wholesale distributors, repackagers, and dispensers for whom the third-party logistics provider provides services;

(8) A third-party logistics provider shall have readily retrievable within forty-eight (48) hours, upon written request of the board or its agents, and maintain for Board inspection, a list of each partner, limited liability company member, corporate officer or director, and facility manager, including a description of the duties and qualifications of each; and

(9) A third-party logistics provider shall have readily retrievable within forty-eight (48) hours, upon written request of the board or its agents, and maintain for board inspection, records with capability to trace the receipt and outbound distribution or disposition of components, prescription drugs, or drug-related devices and records of inventory.

Section 3. Qualifications for Licensure. (1) The Board shall consider, at a minimum, the following factors in determining the eligibility for initial licensure and renewal of third-party logistics providers:

- (a) Minimum considerations in KRS 315.4106(1);
 (b) Any convictions of the applicant or its officers under any federal, state, or local laws relating to drugs, including drug samples and controlled substances;
 (c) The applicant's and its officers' past experience with

distribution of prescription drugs and drug-related devices, including drug samples and controlled substances; and

(d) Compliance with the requirements under any previously granted license or permit, if any.

(2) The Board may deny a license to an applicant if it finds that the granting of that license would not be in the public interest based on health and safety considerations.

(3) A license shall not be issued pursuant to this administrative regulation unless the applicant has furnished proof satisfactory to the board:

(a) That the applicant is in compliance with all applicable federal, state, and local laws and regulations relating to prescription drugs and drug-related devices; and

(b) That the applicant is equipped as to land, buildings, and security to properly conduct the business described in the application.

(4) A license issued pursuant to this administrative regulation failing to comply with the provisions of KRS 315.400, 315.4102, 315.4104, 315.4106, 315.4108, 315.4110, or this administrative regulation may result in discipline, suspension, or revocation under KRS 315.121.

Section 4. Application, Fees, Renewals.

(1) An applicant for initial licensure or renewal as a third-party logistics provider shall submit:

(a) A non-refundable initial licensure or renewal fee of ~~\$400~~~~[\$200]~~ by check or money order made payable to the Kentucky State Treasurer;

(b) A complete, sworn, and notarized Application to Operate as a Third-Party Logistics Provider or Application for Third-Party Logistics Provider License Renewal;

(c) Unless previously provided, documentation of licensure as a third-party logistics provider through proof of registration with either:

1. The FDA; or
2. The state in which the third-party logistics provider is located;

(d) Unless previously provided, copy of most current inspection report conducted by the FDA. If the most current inspection report is not available from the FDA, the applicant shall submit an inspection report by:

1. The National Association of Boards of Pharmacy (NABP); or
2. The resident state licensing or permitting authority's authorized agent;

(e) A confirmation statement from the previous owner if ownership changed;

(f) Legal proof of any name change, if applicable;

(g) An explanation if an applicant, officer, partner, or director has ever been convicted of a felony or had a professional license or permit disciplined under federal, state, or local law;

(h) Ownership information for each partner, director, or officer, including:

1. Name and title;
2. Email addresses;
3. Federal employer identification number;
4. Address;
5. Phone number;
6. Social security number; and
7. Date of birth;

(i) State of incorporation or organization if the owner is a corporation; and

(j) Upon request, a list of all manufacturers, repackagers, wholesale distributors, and dispensers for whom the third-party logistics provider provides services.

(2) An applicant applying for any ownership or address change shall submit a non-refundable fee of ~~\$150~~~~[\$400]~~.

(3) Each license shall expire on June 30 following date of issuance, unless earlier suspended or revoked. There shall be a delinquent renewal fee of ~~\$150~~~~[\$200]~~ for failure to renew by June 30 of each year.

Section 5. Standards. (1) Facilities.

(a) All facilities in which components, prescription drugs, or drug-related devices are held shall be of suitable size, construction, and location to facilitate cleaning, maintenance, and proper

operations;

(b) All facilities shall meet all applicable federal, state, and local laws and regulations;

(c) A third-party logistics provider shall quarantine components, prescription drugs, or drug-related devices that are outdated, damaged, deteriorated, misbranded, recalled, or adulterated;

(d) A facility shall not be located in a residence; and

(e) A facility shall be located apart and separate from any pharmacy permitted by the Board.

(2) Security.

(a) A third-party logistics provider shall be equipped with an alarm system to detect entry after hours.

(b) A third-party logistics provider shall assure that access from outside the provider's premises is well controlled and reduced to a minimum. This includes the installation of adequate lighting at the outside perimeter of the premises.

(c) Internal security policies shall be developed to provide reasonable protection against theft and diversion by limiting access to areas where components, prescription drugs, or drug-related devices are held to authorized personnel. These policies shall provide protection against tampering with computers or electronic records.

(d) A third-party logistics provider shall employ adequate personnel with the education and experience necessary to safely and lawfully engage in providing these services.

(3) Recordkeeping requirements for companies handling prescription drugs and drug-related devices exempt from the DSCSA.

(a) Inventories and other records regarding the receipt and distribution or disposition of components, prescription drugs, or drug-related devices shall be maintained and readily retrievable within forty-eight (48) hours for inspection or photocopying by the Board and authorized officials of any federal, state or local law enforcement agencies for a period of six (6) years. These records shall include:

1. The business name and address of the third-party logistics provider's client and the address of the location from which the ~~components~~~~[component]~~, prescription drugs, or drug-related devices were received;

2. The business name and address to whom the components, prescription drugs, or drug-related devices were distributed or disposed of;

3. The identity and quantity of the components, prescription drugs, or drug-related devices received and distributed or disposed of; and

4. The dates of receipt and distribution or disposition of the components, prescription drugs, or drug-related devices.

(b) Records described in this section that are kept at the inspection site or that may be immediately retrieved by computer or other electronic means shall be readily available for authorized inspection during the retention period. Records kept at a central location apart from the inspection site and not electronically retrievable shall be made available for inspection within two (2) working days of a request by the Board or an authorized official of any federal, state or local law enforcement agency.

(c) Third-party logistics providers shall maintain an ongoing list of verified persons or businesses to whom they ship prescription drugs and drug-related devices.

(d) Third-party logistics providers may distribute components, prescription drugs, or drug-related devices only to the following, except as established in KRS 315.0351(2) and 315.404:

1. A currently permitted manufacturer;
2. A currently licensed wholesaler;
3. A currently licensed third party logistics provider;
4. A currently permitted pharmacy;
5. A currently licensed outsourcing facility;
6. A currently licensed practitioner;
7. A currently permitted repackager;
8. A currently licensed hospital, but only for use by or in that hospital;
9. A person in charge of a laboratory, but only for use in that laboratory for scientific and medical research purposes; or
10. Any other appropriately licensed or permitted facility in the

jurisdiction in which it is located.

(4) Written policies and procedures.

(a) A third-party logistics provider shall establish, maintain, and adhere to written policies and procedures for the receipt, security, storage, inventory, and distribution or disposition of components, prescription drugs, or drug-related devices.

(b) There shall be written policies and procedures for identifying, recording, and reporting significant losses or thefts to the Board, and, if applicable, the FDA and the DEA.

(c) There shall be written policies and procedures for protecting against, and handling crisis situations that affect the security or operation of the facility. These crises shall include fires, floods, or other natural disasters, and situations of local, state, or national emergency.

(d) There shall be written policies and procedures for managing and correcting all errors or inaccuracies in inventories.

(e) There shall be written policies and procedures as to the handling of any outdated, returned, or damaged prescription drugs and drug-related devices. Any outdated, returned, or damaged components, prescription drugs, or drug-related devices shall be segregated.

(f) There shall be written policies and procedures by which the third-party logistics provider exercises control over the shipping and receiving of all components, prescription drugs, or drug-related devices within the operation.

(g) There shall be written policies and procedures for quarantining suspect product and illegitimate product if directed to do so by the respective manufacturer, repackager, wholesale distributor, dispenser, or authorized government agency.

(5) Handling recalls. A third-party logistics provider shall establish, maintain, and adhere to a written policy and procedure in accordance with business agreements as to the handling of recalls and withdrawals of components, prescription drugs, or drug-related devices.

Section 6. Violations. (1) A third-party logistics provider shall not distribute components, prescription drugs, or drug-related devices directly to a consumer or a patient, except as established in KRS 315.0351(2).

(2) A third-party logistics provider shall not operate in a manner that endangers the public health.

(3) Violations of any of these provisions shall be grounds for action under KRS 315.121.

Section 7. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Application to Operate as a Third-Party Logistics Provider", June 2023[May 2020]; and

(b) "Application For Third-Party Logistics Provider License Renewal", June 2023[May 2020].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Pharmacy, State Office Building Annex, Suite 300, 125 Holmes Street, Frankfort, Kentucky 40601-8024, Monday through Friday, 8:00 a.m. to 4:30 p.m. This material is also available on the Board's Web site at <https://pharmacy.ky.gov/Businesses/Pages/Third-Party-Logistics-Provider-License-Information.aspx>.

CONTACT PERSON: Christopher Harlow, Executive Director, Kentucky Board of Pharmacy, 125 Holmes Street, Suite 300, State Office Building Annex, Frankfort, Kentucky 40601, phone (502) 564-7910, fax (502) 696-3806, email Christopher.harlow@ky.gov.

BOARDS AND COMMISSIONS

Board of Nursing

(As Amended at ARRS, October 10, 2023)

201 KAR 20:620. Licensing requirements for licensed certified professional midwives.

RELATES TO: KRS 194A.540[~~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 as a Licensed Professional Midwife 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 the applicant[~~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 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 for a Licensed Professional Midwife 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 for a Licensed Professional Midwife, 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 as a Licensed Professional Midwife 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 as a Licensed Professional Midwife", 2/2023[7/2023][4/2020]; and

(b) "~~[Certified Professional Midwife]~~ Licensure Renewal Application for a Licensed Professional Midwife", 2/2023[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>.

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.

**KENTUCKY HOUSING CORPORATION
(As Amended at ARRS, October 10, 2023)**

202 KAR 002:020. Rural Housing Trust Fund.

RELATES TO: KRS 198A.740 ~~—[to]~~ 198A.750

STATUTORY AUTHORITY: KRS 198A.744, 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 ~~establishes~~is necessary to establish additional criteria to qualify for the loans and grants and ~~establishes~~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 ~~the~~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 ~~shall~~is not ~~be~~ 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.

CONTACT PERSON: Samuel Thorne, General Counsel, Kentucky Housing Corporation, 1231 Louisville Road, Frankfort, Kentucky 40601, phone (502) 564-7630, fax (502) 564-7322, email sthorner@kyhousing.org.

EDUCATION AND LABOR CABINET
Kentucky Board of Education
Department of Education
(As Amended at ARRS, October 10, 2023)

702 KAR 7:065. Designation of agent to manage middle and high school interscholastic athletics.

RELATES TO: KRS 61.805 - 61.850, 156.070(2), 158.162, 160.380, 160.445, 20 U.S.C. 1681

STATUTORY AUTHORITY: KRS 156.070(1), (2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.070(1) requires the Kentucky Board of Education to manage and control the common schools, including interscholastic athletics in the schools. KRS 156.070(2) authorizes the board to designate an agency to manage athletics. This administrative regulation designates an agent for middle and high school athletics; establishes the financial planning and review processes for the agent; and incorporates by reference the bylaws, procedures, and rules of the agent.

Section 1. Definitions. (1) "Contact Drill" means that drills are run at Level 3, Level 4, or Level 5.

(2) "KBE" means Kentucky Board of Education.

(3) "KHSAA" means Kentucky High School Athletics Association.

(4) "Level 0" or "air" means that players run a drill unopposed without contact.

(5) "Level 1" or "bags" means that a drill is run with a bag or against another soft contact surface.

(6) "Level 2" or "control" means that:

(a) A drill is run at an assigned speed until the moment of contact;

(b) One (1) player is predetermined the winner by the coach;

(c) Contact remains above the waist; and

(d) Players stay on their feet.

(7) "Level 3" or "Control to Ground" means that:

(a) A drill is run at an assigned non-competitive speed or with players pre-engaged;

(b) There is a pre-determined winner; and

(c) Players are allowed to take their opponent to the ground in a controlled manner.

(8) "Level 4" or "thud" means that:

(a) A drill is run at a competitive speed through the moment of contact;

(b) There is no predetermined winner;

(c) Contact is above the waist;

(d) Players stay on their feet; and

(e) A quick whistle ends the drill.

(9) "Level 5" or "live" means that a drill is run at a competitive speed in game-like conditions.

(10) "Non-Contact Drill" means that drills are run at Level 0, Level 1, or Level 2.

(11) "OCR" means the United States Department of Education, Office for Civil Rights.

Section 2. The KHSAA shall be the Kentucky Board of Education's agent to manage interscholastic athletics at the middle and high school level in the common schools and private schools desiring to associate with KHSAA or to compete with a common school.

Section 3. To remain eligible to maintain the designation as the agent to manage interscholastic high school athletics, the KHSAA shall:

(1) Accept four (4) at-large members appointed by the Kentucky Board of Education to its high school Board of Control;

(2) Sponsor an annual meeting of its member high schools;

(3) Provide for each member high school to have a vote on the KHSAA Constitution and bylaw changes submitted for consideration;

(4) Provide for high school regional postseason tournament net revenues to be distributed to the member high schools in that region participating in that sport, utilizing a share approach determined by

the high schools within that region playing that sport;

(5) Provide for students desiring to participate at the high school level (regardless of the level of play) to be enrolled in at least grade seven (7);

(6) Require its governing body to annually establish goals and objectives for its commissioner and perform a self-assessment and submit the results annually to the KBE by December 31;

(7) Advise the Department of Education of all legal action brought against the KHSAA;

(8) Permit a board of control member to serve a maximum of two (2) consecutive four (4) year terms with no region represented for more than eight (8) consecutive years;

(9) Employ a commissioner and evaluate that person's performance annually by October 31, and establish all staff positions upon recommendation of the commissioner;

(10) Permit the commissioner to employ other personnel necessary to perform the staff responsibilities;

(11) Permit the Board of Control to assess fines on a member high school;

(12) Utilize a trained independent hearing officer instead of an eligibility committee for a high school athletic eligibility appeal;

(13) Establish a philosophical statement of principles to use as a guide in a high school eligibility case;

(14) Conduct continual cycles of field audits of the association's entire high school membership, which provides that each high school is audited regarding each school's compliance with 20 U.S.C. Section 1681 (Title IX) and submit annual summary reports, including the highlighting of any potential deficiencies in OCR compliance to the Kentucky Board of Education;

(15) As a condition precedent to high school membership, require each member high school and superintendent to annually submit a written certification of compliance with 20 U.S.C. Section 1681 (Title IX);

(16) Conduct all meetings related to high school athletics in accordance with KRS 61.805 through 61.850;

(17) Provide written reports of any investigations into possible violations of statute, administrative regulation, KHSAA Constitution, KHSAA Bylaws, or other rules governing the conduct of high school interscholastic athletics conducted by KHSAA or their designees to the superintendent and principal of the involved school district and school before being made public;

(18) Not punish or sanction, in any manner, a school, student, coach, or administrator for allowing a student to play in an athletic contest or practice with the team during a time when an order of a court of competent jurisdiction permits the student to participate or otherwise stays or enjoins enforcement of a KHSAA final decision on eligibility;[and]

(19) Require any student enrolled initially in grade seven (7) through twelve (12) who is repeating a grade for any reason, to be ineligible, during the school year that the grade is repeated, to compete in an interscholastic athletics competition at any level; and

(20) Produce a public report or reports~~report(s)~~ of member schools' compliance with submitting the required member school application and the required training aspects of KRS 158.162 and KRS 160.445 regarding emergency and cardiac action plans related to interscholastic athletics.

Section 4. To remain eligible to maintain the designation as the agent to manage interscholastic athletics at the middle school level, the KHSAA shall implement the following requirements for all participants in middle school interscholastic athletics, distribute these requirements to all middle schools, and publish via the KHSAA Web site:

(1) Require that these provisions apply to all middle school interscholastic athletics. The following indicates that a team is representative of a school and classified as middle school athletics:

(a) The contest, event, or tournament is sponsored by a school or combined group of schools;

(b) Competitors wear a school-issued uniform;

(c) The contest, event, or tournament is sponsored by an outside entity as a school entry event, which is advertised or promoted as a school event, whether or not an entry fee is required;

(d) A school entity pays an entry fee, for the student or team,

including payment by booster organizations;

(e) A school representative accompanies the student-athlete or transports the student-athlete to the contest, event, or tournament;

(f) A designated or hired member of a school coaching staff, whether paid or unpaid, is present and offering instruction, advice, evaluation, or refinement of skills or exercising other duties defined as coaching within the sport rules;

(g) Transportation to or from the contest, event, or tournament utilizes school provided or approved transportation;

(h) Competitors in the contest, event, or tournament wear apparel identifying them by the name of the school, including the formal name, informal name, or team nickname;

(i) Competitors in the contest, event, or tournament are provided promotional or other resources by the school including school media recognition, signage, and items indicative of school representation;

(j) Competition in a contest, event, or tournament has, in any form, jurisdiction of the local school board or school-based decision-making body, including financial or other approval control; or

(k) Competition in a contest, event, or tournament is covered by any school or school system provided or procured insurance policy;

(2) Require that any head or assistant coach, whether paid or unpaid, desiring to coach interscholastic athletics at the middle school level:

(a) Meet the requirements of KRS 156.070(2)(h)2 ~~156.070(2)(g)2~~;

(b) Meet the requirements of KRS 160.380(5) and (6); and

(c) Provide to the school documentation of successful completion of a C.P.R. course including the use of an automatic external defibrillator and the first aid training, conducted by an instructor or program approved by a college or university, the American Red Cross, the American Heart Association, or other bona fide accrediting agency that is approved by the KHSAA based upon industry standards. The certification shall be updated as required by the approving agency;

(3) Require adherence to the following items regarding safety, sports medicine, and risk minimization for all interscholastic athletics at the middle school level:

(a) Each student, before trying for a place on a middle school athletic team, shall provide an annual medical examination, in accordance with KRS 156.070(2)(e), and shall use the KHSAA form PPE01, with PPE02 being optional for the health care provider;

(b) All participants at the middle school level shall adhere to all sports medicine and risk minimization policies in use at the high school level that may be supplemented by the school, school district, conference, or association including:

1. Heat index and heat illness programs;

2. Wrestling weight management programs;

3. Concussion and other head injury policies including policies for minimizing impact exposure and concussion risks;

4. The following football equipment drill work and practice activity limitations:

a. Football contact and non-contact practice shall use the appropriate clothing and equipment for the level of drill, including:

(i) A drill conducted in helmets-only shall be a Level 0, or Level 1;

(ii) A drill conducted in shells (shorts, shoulder pads, and helmets) shall be a non-contact drill; and

(iii) A contact drill shall be conducted in full equipment;

b. Middle school football shall practice a minimum of eleven (11) days before engaging another group or opponent in full contact, using the following minimum schedule:

(i) Five (5) days in helmets;

(ii) Followed by three (3) days in helmets and shoulder pads; and

(iii) Concluding with three (3) days in full equipment practice; and

c. Contact drills shall not be conducted more than twenty-one (21) days before the first regular-season contest;

d. The [the] first regular season interscholastic contest shall not be played before the Saturday preceding week seven (7) of the National Federation of High Schools Standardized Procedure for Numbering Calendar Weeks; and

e. All middle schools shall maintain protective helmets in accordance with manufacturer's warranty guidelines for recertification;

5. The following baseball pitching limitations shall apply to all interscholastic play at the middle school level including scrimmages, regular season, and post season games:

a. The pitch count shall be based on pitches thrown for strikes (including foul balls), balls, balls in play, and outs;

b. Warm-up pitches allowed before each inning, warm-up pitches allowed by the umpire in case of injury or game delay, and plays attempted against the batter-runner or any runner at first, second, or third base shall not count against this limit;

c. A pitcher at any level who reaches the pitch count limit in the middle of an at-bat shall be allowed to finish that hitter;

d. The required calendar rest shall begin on the day following the date on which the game began, or a resumed game began regardless of the conclusion time of the game; and

e. The rest periods shall be based on the following total pitches:

(i) Maximum pitches - eighty-five (85);

(ii) Fifty-six (56) pitches or more - three (3) calendar days rest;

(iii) Thirty-six (36) to fifty-five (55) pitches - two (2) calendar days rest;

(iv) Twenty (20) to thirty-five (35) pitches - one (1) calendar day rest; and

(v) One (1) to nineteen (19) pitches - no mandated rest;

6. Students seeking to play or practice, including scrimmages, regular season, and post season games, in the sport of fastpitch softball, shall be required to wear face protection, commercially manufactured for softball facial protection and worn as intended by the manufacturer, when playing the positions of first base, third base, and pitcher; and

7. Teams participating in middle school athletics as defined by subsection (1) of this section shall use KHSAA licensed officials in the sports of baseball, basketball, field hockey, football, soccer, softball, and volleyball;

(4) Create a permanent Middle School Athletics Advisory Committee. This committee shall:

(a) Report regularly, not less than annually to the Board of Control of the KHSAA with the Board of Control obligated to make a recommendation to the Kentucky Board of Education with respect to annually proposed regulatory changes;

(b) Be composed of no less than three (3) middle school representatives from each Supreme Court district as well as no less than three (3) at large representatives from throughout the state;

(c) Provide an opportunity for nonprofit athletic groups, parents, and others to participate and provide input on the sport, athletic event, or athletes involved in interscholastic activities through local school districts;

(d) Meet not less than twice annually to review current programs and policies, make recommendations for improvements to and participation in middle school interscholastic activities, as well as any changes in statute, administrative regulation, or policy related to middle school interscholastic athletics, and assist in the development of model guidelines for schools, districts, conferences, and associations to be used in implementing a middle school athletic program; and

(e) Report regularly, not less than annually, to the commissioner of the KHSAA and issue, in conjunction with the commissioner, a formal written report annually to the KBE with recommendations for changes in statute, administrative regulation, or policy;

(5) Require any organization conducting a school-based event at the middle school level to submit the following, which shall be published and listed on the KHSAA Web site:

(a) Annual financial reports of all sanctioned and approved events sponsored by the organization; and

(b) Documentation of financial accountability including verification of federal status and tax documents including an annual IRS Form 990;

(6) Provide notice to the middle schools related to any program conducted by KHSAA related to educating school administrators about the provisions of 20 U.S.C. 1681, Title IX;

(7) Provide educational materials and a mechanism to facilitate the monitoring and tracking capabilities for the middle schools to ensure compliance with the provisions of KRS 160.445 and other requirements for coaches at the middle school level;

(8) Require that any student who turns:

(a) Fifteen (15) years of age before August 1 of the current school year shall not be eligible for interscholastic athletics in Kentucky in competition against students exclusively enrolled in grades eight (8) and below;

(b) Fourteen (14) years of age before August 1 of the current year shall not be eligible for interscholastic athletics in Kentucky in competition against students exclusively enrolled in grades seven (7) and below; and

(c) Thirteen (13) years of age before August 1 of the current school year shall not be eligible for interscholastic athletics in Kentucky in competition against students exclusively enrolled in grades six (6) and below;

(9) Require each school, school district, conference, or association of schools to develop rules and limitations regarding student participation at the middle school level to include:

(a) A defined age limitation for participating students;

(b) A policy regarding the participation of students below grade six (6);

(c) A limitation on practice time before the season in any sport or sport activity which shall not exceed the practice time adopted for play at the high school level;

(d) A limitation on the number of school-based scrimmages and regular season, school based contests in each sport or sport-activity, which shall not include post season contests and shall not exceed the allowable number of contests for that sport or sport-activity at the high school level; and

(e) A limitation on the length of the regular competitive season in each sport or sport-activity, not including any post season activities, which shall not exceed the length for that sport or sport-activity at the high school level;

(10) Conduct all meetings related to middle school athletics in accordance with KRS 61.805 through 61.850;

(11) Issue an annual report to the KBE on the status of interscholastic athletics at the middle school level, including any recommendations for changes in statute, administrative regulation, or policy;

(12) Allow a school or school district to join a conference or association that has developed rules for any particular sport or sport-activity to satisfy the requirements of this administrative regulation; and

(13) The period of June 25 to July 9, inclusive, shall be a dead period for middle school athletics. During the dead period:

(a) Students shall not receive coaching or training from school personnel, whether salaried or non-salaried;

(b) School facilities, uniforms, nicknames, transportation, or equipment shall not be used;

(c) School funds shall not be expended in support of interscholastic athletics; and

(d) A postseason wrap-up activity, celebration, or recognition event relating to a spring sports team at a school may be held.

Section 5. Financial Planning and Review Requirements. (1) KHSAA shall annually submit the following documents to the KBE by October 31:

(a) Draft budget for the next two (2) fiscal years, including the current year;

(b) End-of-year budget status report for the previous fiscal year;

(c) Revisions to the KHSAA Strategic Plan as a result of an annual review of the plan by the KHSAA governing body;

(d) A summary report of operations including summaries of financial, legal, and administrative actions taken and other items ongoing within KHSAA. This report shall also include a summary of items affecting:

1. Athletic appeals and their disposition, including the name of the individual, grade, school, and the action taken by KHSAA;

2. Eligibility rules;

3. Duties of school officials;

4. Contests and contest limitations;

5. Requirements for officials and coaches; and

6. Results of a biennial review of its bylaws that results in a recommendation for a change, directing any proposals for change in association rules to be considered for a vote by the member schools at the next legislative opportunity; and

(e) A review of all items which have been submitted to the membership for approval through the processes established in the KHSAA Constitution and the result of the voting on those issues.

(2) The KHSAA shall annually submit at the next meeting of the Kentucky Board of Education following receipt and adoption by the Board of Control, audited financial statements with the KHSAA Commissioner's letter addressing exceptions or notes contained in management correspondence if any.

Section 6. Forms. The forms incorporated by reference in this administrative regulation shall be filed:

(1) Using the paper form; or

(2) Using the electronic forms found on the Kentucky High School Athletic Association Web site at www.khsaa.org.

Section 7. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "KHSAA Constitution", 7/2021;

(b) "KHSAA Bylaws", 7/2023[7/2024];

(c) "KHSAA Due Process Procedure", 7/2023[7/2024];

(d) "KHSAA Board of Control Adopted[and Officials Division] Policies", 9/2023[7/2023][7/2024];

(e) KHSAA Form BA101- Baseball Pitching Limitation", 6/2016;

(f) KHSAA Form GE01, "Application for Membership", 7/2023[5/2020];

(g) KHSAA Form GE04, "Athletic Participation Form, Parental and Student Consent and Release for High School Level (grades 9 - 12) Participation", 5/2023[7/2020];

(h) KHSAA Form DP02, "Request for Statutory Waiver of Bylaw 2", 6/2018;

(i) KHSAA Form DP06, "Application for Athletic Eligibility for Domestic Students", 7/2023[7/2020];

(j) KHSAA Form DP07, "Application for Athletic Eligibility for Non-Domestic Students [having J-1 or F-1 Status]", 07/2023[7/2020];

(k) [KHSAA Form DP08, "Application for Non-U.S. Student Athletic Eligibility for Students Not having J-1/F-1 Status", 7/2020;

(l)]KHSAA Form DP16, "Request for Waiver of 20 Day Notice", 6/2018;

(m)]KHSAA Form DP17, "Add. Info for Appeal", 6/2018;

(n)]KHSAA Form DP18 "Waiver - 15 Day Exceptions", 6/2018;

(o)]KHSAA Form GE14- Contract for Athletic Contests", 7/2020; and

(p)]KHSAA Form GE19-Title IX Procedures Verification", 5/2011;

(q)]KHSAA Form GE20, "Heat Index Measurement and Record", 4/2014[;

(r) KHSAA Form PPE01/Physician Clearance, "PPE01-Physician Clearance Form (Grades 6-12)", 7/2020;

(s) KHSAA Form PPE02/Physical Exam, "PPE02-Physical Exam Form (Grades 6-12)", 7/2021;

(t) KHSAA Form PPE/Supplemental, "PPE-Physical Exam History Supplemental Form for Athletes With Special Needs (Grades 6-12)", 7/2019; and

(u) "KHSAA Form MS01- Athletic Participation Parental and Student Consent and Release for Middle School (grades 5-8) Participation", 7/2020].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Legal Services, Department of Education, 5th Floor, 300 Sower Blvd, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

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

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.

PUBLIC PROTECTION CABINET
Department of Insurance
Licensing Division
(As Amended at ARRS, October 10, 2023)

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 prefiling 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" means[shall mean]:

(a) A catastrophe ~~as defined by KRS 304.9-020(6)~~; or

(b) An event that results in a declaration of emergency by the Governor pursuant to [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 the[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.

(3)(a) The commissioner shall have thirty (30) business days to approve or disapprove a contract form filing. The public adjuster shall ~~not use[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, the[a] public adjuster shall file an Intent to Contract Form with the insured's insurer.

(2) The public adjuster ~~shall[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>.

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.

PUBLIC PROTECTION CABINET
Department of Insurance
Health Life and Managed Care
(As Amended at ARRS, October 10, 2023)

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-163, 304.17A-1631, 304.17A-168, 304.17A-505, 304.17A-535, 304.17A-600, 304.17A-607, 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, 304.17A-1631, 304.17A-629]~~

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]~~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 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)(c).

(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) and includes pharmacy as required by 806 KAR 17:580.

(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;

(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 with KRS 304.17A-627(7), 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, ~~the 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, ~~the 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)

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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>.

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CABINET FOR HEALTH AND FAMILY SERVICES Department for Community Based Services Division of Protection and Permanency (As Amended at ARRS, October 10, 2023)

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", beginning July 1, 2024 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) **Beginning July 1, 2024**, 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) A minimum of a **master's[bachelor's]** degree from an accredited college or university; and

(b) **Three (3) years of post-bachelor's degree experience in administration.**

~~(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) A forensic interviewer, if employed by the center, shall have:

(a) A minimum of a master's degree from an accredited college or university in a mental health, education, human services, or criminal justice field; and

(b) Two (2) years of post-bachelor's degree direct service experience with children.

(7) Staff providing direct services shall have a minimum of a bachelor's degree from an accredited college or university.

(8)(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.~~

(9)(8)(i) 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.

(10)(9)(j) 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.

(11)(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.

(12)(11)(l) 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.

(13)(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. **Beginning July 1, 2024.** [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>.

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

**CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Child Care
(As Amended at ARRS, October 10, 2023)**

922 KAR 2:245. Kentucky Infant and Toddler Credential.

RELATES TO: KRS 620.020(8)

STATUTORY AUTHORITY: KRS 194A.050(1), 199.896(17), 199.898(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) authorizes the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. KRS 199.896(17) and 199.898(3) require the cabinet to make available training for child care providers through the development or approval of a model training curriculum and training materials, including video instruction material. This administrative regulation establishes the requirements for applicants to complete the required training and education in order to obtain a Kentucky Infant and Toddler Credential.

Section 1. Definitions. (1) "Applicant" means an individual making an application for any level of an Infant and Toddler Credential.

(2) "Child Development Associate" or "CDA" means the nationally recognized credential approved by the Council for Professional Recognition.

(3) "Clock hour" means a sixty (60) minute period of instruction.

(4) "Infant" means a child who is less than twelve (12) months of age.

(5) "Pediatric abusive head trauma" is defined by KRS 620.020(8).

(6) "Toddler" means a child between the age of twelve (12) and thirty-six (36) months.

Section 2. Eligibility Criteria, Application, and Approval for the Kentucky Infant and Toddler Credential for All Levels.

(1) An individual applying for a Kentucky Infant and Toddler Credential shall:

(a) Be at least eighteen (18) years of age;

(b) Complete and submit the following to the cabinet or its designee:

1. Verification of the completion of the cabinet ~~[-approved]~~ training "Introduction to Kentucky Credentials";

2. Verification of the completion of cabinet ~~[-approved]~~ training on trauma informed care;

3. Verification of the possession of a current Pediatric First Aid and CPR certification;

4. Verification of the possession of a current Pediatric Abusive Head Trauma certification;

5. The DCC-245A, "Kentucky Infant and Toddler Credential Candidate Self-Assessment"; and

6. The DCC-245, "Kentucky Infant and Toddler Credential

Application", which shall include documentation verifying that the individual meets the applicable requirements for the appropriate credential level established in Section 3, 4, or 5 of this administrative regulation;

(c) Submit a letter of recommendation to the cabinet or its designee from a:

1. Current supervisor; or

2. Parent or guardian of a child that is currently registered in the applicant's program if the applicant does not have a supervisor; and

(d) Meet the instructional and work or volunteer requirements established in Section 3, 4, or 5 of this administrative regulation.

(2) Upon approval of the documentation required by subsection (1) of this section, the cabinet or its designee shall award the individual a:

(a) Letter of approval; and

(b) Kentucky Infant and Toddler Credential for a credential level established in Sections 3 through 5 of this administrative regulation.

Section 3. Level 1 Infant and Toddler Associate Credential Requirements. In order to be approved as a Level 1 Kentucky Infant and Toddler Associate, an individual shall:

(1) Have completed sixty (60) clock hours of instruction in cabinet-approved infant and toddler topics within the past two (2) years; or

(2) Have completed sixty (60) clock hours of instruction from an institution of secondary education in cabinet-approved infant and toddler topics.

Section 4. Level 2 Kentucky Infant and Toddler Professional Credential Requirements. In order to be approved as a Level 2 Kentucky Infant and Toddler Professional, an individual shall:

(1) Have completed 120 clock hours of instruction in cabinet-approved infant and toddler topics within the past two (2) years and provide to the cabinet or designee a detailed resume that includes 480 hours of work or volunteer experience in providing services directly to infants and toddlers in the past three (3) years;

(2) Possess a current Infant and Toddler CDA;

(3) Possess a current Family Child Care CDA and have completed an additional thirty (30) hours of instruction in cabinet-approved infant and toddler topics in the past three (3) years; or

(4) Possess a current Family Child Care CDA and have obtained the Level 1 Kentucky Infant and Toddler Associate credential within the past three (3) years.

Section 5. Level 3 Kentucky Infant and Toddler Leader Credential Requirements. In order to be approved as a Level 3 Kentucky Infant and Toddler Leader, an individual shall:

(1) Possess:

(a) An associate or bachelor's degree or higher in early care and education with a minimum of nine (9) credit hours specifically focusing on cabinet-approved infant and toddler topics; or

(b) A bachelor's degree or higher in a field not related to early care and education with sixty (60) additional hours of instruction in cabinet-approved infant and toddler topics completed within the past two (2) years; and

(2) Provide a detailed resume that includes 480 hours of work or volunteer experience in providing services directly to infants and toddlers within the past three (3) years.

Section 6. Renewal of All Levels of a Kentucky Infant and Toddler Credential.

(1) A Kentucky Infant and Toddler Credential shall be:

(a) Valid for three (3) years; and

(b) Renewable.

(2) An application for renewal shall be submitted to the cabinet or its designee and shall include:

(a) A completed DCC-245;

(b) Documentation of forty-five (45) hours of cabinet-approved training or college coursework in infant and toddler topics within the past three (3) years;

(c) A detailed resume that includes 480 hours of work or volunteer experience in providing services directly to infants and toddlers within the past three (3) years;

- (d) Current Pediatric First Aid and CPR Certification;
- (e) Current Pediatric Abusive Head Trauma Certification;
- (f) A completed DCC-245A; and
- (g) A letter of recommendation from a:
 - 1. Current supervisor; or
 - 2. Parent or guardian of a child that is currently registered in the applicant's program if the applicant does not have a supervisor.

Section 7. Denial of Application or Renewal.

- (1) The cabinet shall deny a Kentucky Infant and Toddler Credential or renewal if the individual fails to comply with:
 - (a) Section 2 of this administrative regulation for an initial application; or
 - (b) The corresponding requirements for the requested credential or renewal established in Sections 3, 4, 5, or 6 of this administrative regulation.
- (2) If the Kentucky Infant and Toddler Credential is denied, the individual:
 - (a) Shall be informed as to the unmet requirements that resulted in the denial; and
 - (b) May reapply after the requirements that caused the denial are met.

Section 8. Revocation of Credential.

- (1) The cabinet shall revoke a Kentucky Infant and Toddler Credential from an applicant who:
 - (a) Falsifies a record; or
 - (b) Fails to comply with the requirements established in this administrative regulation.
- (2) An individual whose credential has been revoked may:
 - (a) Request a hearing pursuant to 922 KAR 2:260; or
 - (b) Reapply for a Kentucky Infant and Toddler Credential after two (2) years from the date of revocation.

Section 9. Incorporation by Reference.

- (1) The following material is incorporated by reference:
 - (a) DCC-245, "Kentucky Infant and Toddler Credential Application", **October** 2023; and
 - (b) DCC-245A, "Kentucky Infant and Toddler Credential Candidate Self-Assessment", 2023;
- (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>.

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

ADMINISTRATIVE REGULATIONS AMENDED AFTER PUBLIC HEARING
OR RECEIPT OF WRITTEN COMMENTS

GENERAL GOVERNMENT
Department of Agriculture
Office of the State Veterinarian
(Amended After Comments)

302 KAR 22:150. Cervids.

RELATES TO: KRS 150.730-150.735, 246.030(4), 257.020, 257.030, 257.080, 257.990, Chapter 321, 9 C.F.R. 55, 81.4, 161.1-161.4

STATUTORY AUTHORITY: KRS 150.720(1), 246.295(1), 257.550, 257.552

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.720(1), 246.295(1), and 257.550 require the Department of Agriculture, in cooperation with the Department of Fish and Wildlife Resources, to promulgate administrative regulations pertaining to health requirements, eradication of diseases, and identification of privately owned and farm-raised cervids maintained for the production of meat and other products. This administrative regulation establishes criteria and health requirements necessary to prevent the introduction of chronic wasting disease into Kentucky and develop a herd monitoring system, and establishes requirements for intrastate and interstate movement of farmed cervids.

Section 1. Definitions.

(1) "Adjacent herd" means: A herd of cervids occupying premises that shares a border or boundary line with premises occupied by a chronic wasting disease positive herd, including herd separated by a road or stream; and

(2) "Animal identification number" or "AIN" means a numbering system for the official identification of individual animals in the United States that provides a nationally unique identification number for each animal. The AIN consists of fifteen (15) digits, with the first three (3) being the country code (either 840 for the United States at large or a unique code for any U.S. territory that elects to use it in place of the 840 code).

(3) "APHIS" means the Animal and Plant Health Inspection Service of the United States Department of Agriculture.

(4) "Approved laboratory" means the National Veterinary Service Laboratory in Ames, Iowa, or any other laboratory approved by the APHIS.

(5) "Certificate of Veterinary Inspection" or "CVI" means an official document, on a form approved by the chief animal health official of the state of origin or by USDA APHIS Veterinary Services for verification of veterinary inspection that is issued by a licensed and accredited veterinarian.

(6) "Certified" means the status achieved by a herd that has met the standards of the Chronic Wasting Disease Herd Certification Program continuously for at least five (5) years.

(7) "Certified Chronic Wasting Disease (CWD) Herd" or "herd" means a group of cervids under common ownership or supervision that has achieved "certified" status in the Kentucky Herd Certification Program, the federal Chronic Wasting Disease Herd Certification Program, or a state Chronic Wasting Disease Certification Program approved by APHIS or the State Veterinarian.

(8) "Cervid" means deer, elk, moose, caribou, reindeer, and related species and hybrids thereof, including all members of the Cervidae family and hybrids thereof.

(9) "Cervid Chronic Wasting Disease Surveillance and Identification" or "CCWDSI" means the:

- (a) Chronic Wasting Disease HCP; and
- (b) Chronic Wasting Disease HMP.

(10) "Cervid Herd Plan" means a written herd management agreement or premises management agreement:

- (a) Developed by OSV in collaboration with the herd owner to address compliance issues within an[a] HCP or HMP herd; or
- (b) That establishes the steps needed to eradicate CWD from a CWD positive herd, to control the risk of CWD in a CWD exposed or CWD-suspect herd, or to prevent introduction of CWD into that herd

or any other herd.

(11) "Chronic Wasting Disease" or "CWD" means a transmissible spongiform encephalopathy of cervids.

(12) "Farmed cervid":

(a) Means cervid livestock that are enrolled in a CCWDSI program and are maintained for propagation, selling, trade, or barter or for taking by any harvest or slaughter method; and

(b) Does not mean any cervid that has not originated from and been continuously maintained within a herd that is enrolled in and complies with an[a] HCP or HMP.

(13) "Exposed" means a cervid that is part of a CWD positive herd, or that has been exposed to a CWD-positive cervid or contaminated premises within the previous five (5) years.

(14) "Harvest" means to slaughter or take by hunting farmed cervids for meat and other products.

(15) "Herd Certification Program" or "HCP" means a program established by this administrative regulation to determine the CWD status of farmed cervid herds.

(16) "Herd Monitoring Program" or "HMP" means a program established by this administrative regulation to monitor farmed cervids in harvesting facilities for CWD.

(17) "Identification" means a device or means of identification approved for use under this administrative regulation by the State Veterinarian.

(18) "Interstate movement" means movement from another state into or out of Kentucky.

(19) "Intrastate movement" means movement solely within the boundaries of Kentucky.

(20) "Move" means to carry, enter, import, ship, or transport; to aid, abet, cause, or induce carrying, entering, importing, mailing, shipping, or transporting; to offer to carry, enter, import, mail, ship, or transport; to receive in order to carry, enter, import, mail, ship, or transport; or to allow any of these activities.

(21) "National Uniform Eartagging System" or "NUES" means a numbering system for the official identification of individual animals in the United States that provides a nationally unique identification number for each animal that is USDA approved.

(22) "Office of State Veterinarian" or "OSV" means that office within the Kentucky Department of Agriculture as established in KRS 246.030(4).

(23) "Official Chronic Wasting Disease test" or "CWD test" means any test for the diagnosis of Chronic Wasting Disease approved by APHIS and conducted in a laboratory approved by APHIS in accordance with 9 C.F.R. Part 55.

(24) "Official eartag" means an identification tag approved by APHIS that bears an official identification number for individual animals. Beginning March 11, 2014, all official eartags manufactured bear an official eartag shield. Beginning March 11, 2015, all official eartags applied to animals bear an official eartag shield. The design, size, shape, color, and other characteristics of the official eartag depend on the needs of the users, subject to the approval of the USDA Administrator. The official eartag is tamper-resistant and has a high retention rate in the animal.

(25) "Official identification number" means a nationally unique number that is permanently associated with a cervid and complies with:

- (a) National Uniform Eartagging System (NUES);
- (b) Animal Identification Number (AIN); or
- (c) Any other numbering system approved by the Administrator for the official identification of animals, including a group identification number.

(26) "Owner" is defined by KRS 257.010(14).

(27) "Person" means any individual, corporation, company, association, firm, partnership, society, joint stock company, or other legal entity.

(28) "Physical inventory" means an inventory that confirms individual identification of each cervid by hands on observation to include physical or chemical restraint as needed.

(29) "Positive" means a cervid has had a diagnosis of CWD confirmed by means of two (2) official CWD tests.

(30) "Premises identification number" or "PIN" means a nationally unique number allocated to a premises by a state or federal animal health official and:

(a) Is used in conjunction with a producer's own livestock production numbering system to provide a nationally unique and herd-unique identification number for an animal; and

(b) Is the number system permitted by the state of origin specifically as a CWD program site.

(31) "Quarantine" means an imposed restriction prohibiting movement of live or dead cervids, or parts thereof, to any location without specific written approval of the State Veterinarian.

(32) "Radio Frequency Identification Device" or "RFID" means a device electronically encoded with a unique identification and that complies with the applicable International Standards Organization (ISO) standards and that bears the visual number.

(33) "State" means any state of the United States, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, or Guam.

(34) "USDA" means the United States Department of Agriculture.

(35) "USDA-accredited veterinarian" means a veterinarian accredited by the USDA as category II in accordance with the provisions of 9 C.F.R. 161.1 to 161.4, and licensed to practice veterinary medicine in their home state.

(36) "Visual inventory" means an inventory done when distance observation of identification of identification devices is possible.

Section 2. All Farmed Cervids Shall Be in a Program. Every farmed cervid in Kentucky shall be enrolled in either the Chronic Wasting Disease Herd Certification Program or the Chronic Wasting Disease Herd Monitoring Program.

Section 3. Required CWD program Training.

(1) Prior to initial enrollment in a CWD program, a minimum of one (1) hour initial educational training provided by the OSV shall be completed.

(2) Supplemental trainings provided by OSV shall be required when there is a change in Chronic Wasting Disease prevalence, change in Kentucky program administrative regulations, or a change in USDA CWD program standards, or any other time deemed necessary by the State Veterinarian to prevent the spread of disease. Notice for any additional training shall be provided at least thirty (30) days in advance of the date.

~~[(3) All persons with a HCP or HMP permit at the date this administrative regulation becomes effective shall complete an educational training for one (1) hour prior to their renewal for the following year.]~~

Section 4. Chronic Wasting Disease Herd Certification Program (HCP).

(1) An[A] HCP permit shall be required to participate in the HCP program. An[A] HCP permit shall be valid from January 1 to December 31 of each year, regardless of the date of application or enrollment.

(a) The applicant for the HCP shall submit:

1. A complete Cervid Chronic Wasting Disease Surveillance Identification (CCWDSI) Herd Certification Program (HCP) or Herd Monitoring Program (HMP) Application;

2. A written statement by a Kentucky-licensed and USDA accredited veterinarian certifying that the veterinarian and the herd owner have a valid veterinarian-client-patient relationship; and

3. An initial fee of \$150. Renewal fees the next year are described in subsection (2) of this section.

(b) The OSV shall grant an[a] HCP permit within thirty (30) days after it receives the completed application package with the required fee. Incomplete applications or insufficient fees shall be returned to the applicant without approval. The OSV shall not approve any application if the applicant owes fees or fines to the KDA.

(c) An[A] HCP participant whose permit expires prior to renewal shall be subject to the penalties established in Section 19 of this administrative regulation.

(2) Annual HCP permit renewal required. Fees shall be based on the officially tagged inventory submitted in paragraph (e) of this subsection. Renewal applicants shall:

(a) Submit a complete Cervid Chronic Wasting Disease Surveillance Identification (CCWDSI) Herd Certification Program (HCP) or Herd Monitoring Program (HMP) Application by November 30 of each year;

(b) Pay a fee of \$135 for herds up to fifty (50) cervids, \$250 for herds between fifty-one (51) and 100, or \$450 for herds containing more than 101 cervids, for applications submitted prior to December 1, preceding the applicable permit year;

(c) Pay a fee of \$150 for herds up to fifty (50) cervids, \$275 for herds between fifty-one (51) and 100, or \$500 for herds containing more than 101 cervids, for applications submitted between December 1 and December 31, preceding the applicable permit year;

(d) Pay a fee of \$250 for herds up to fifty (50) cervids, \$375 for herds between fifty-one (51) and 100, or \$600 for herds containing more than 101 cervids, for applications submitted late, January 1 and after of the applicable permit year; and

(e) Submit a current herd inventory as of the time of application submission, and the most recent reporting documents due to the OSV as required in subsection (3)(c) of this section if not already on file with the OSV.

(f) Permits not renewed by February 15 of the applicable program year will be terminated from the program effective February 16 and not be eligible for renewal. Section 20 of this administrative regulation shall apply as those cervids would be not continuously enrolled and shall not be deemed farmed cervids.

(3) HCP Requirements.

(a) Herds enrolled in this program shall comply with the requirements established in this section and 9 C.F.R. Part 55, Subpart B, and shall follow the USDA Chronic Wasting Disease Standards, and the RFID official identification requirements of Section 8.

1. After an initial permit is issued, the participant shall enroll the herd into the HCP by obtaining movement permits for those cervids moving into the premises. Any additions subsequent to the initial delivery shall be recorded and submitted according to the other timelines established in this administrative regulation.

2. After the first year in the HCP, the participant shall:

a. Conduct the physical inventory and continuously identify cervids as required;

b. Provide any records required by this administrative regulation to the OSV for the cervids; and

c. Maintain and complete the provisions of this administrative regulation and a Cervid Herd Plan, if developed.

(b) Cervid identification requirement.

1. Each cervid shall have at least two (2) forms of cervid identification prior to or at the time of the annual herd inventory, one (1) of which shall be a RFID official identification and one (1) form shall be a visual type of identification, both of which shall be unique to that cervid within the herd.

2. A cervid of any age shall have official identification before being moved from the premises for any purpose.

(c) Cervid inventory.

1. The baseline herd inventory shall consist of the cervids that were delivered initially after program enrollment.

2.

a. An annual herd inventory shall be conducted that reviews all records and includes observation of all cervids in an enclosed area, including physical restraint if necessary, to reconcile all visible identification devices with available records. This required inventory shall be conducted in January, February, March, or April.

b. Beginning May 1, the herd shall be placed in quarantine and no movement shall be permitted until the physical or visual inventory is completed for those herds not completing a visual[physical] inventory January, February, March, or April. The OSV shall determine what style of inventory is required for those not completed by OSV staff prior to May 1.

3. The state veterinarian or an APHIS representative may request additional physical inventories to verify herd compliance with program standards. A physical inventory shall be conducted at least once in any three (3) year time period, but may occur at any time of the calendar year so that it may be completed at a time when the owner deems appropriate.

4. The owner shall be responsible for assembling, handling, and restraining the cervids, and for all risks and costs incurred, to present the cervids for visual or physical inspection.

5. Additional herd inventory record inspections and reviews shall be conducted quarterly at the cervid premises or at another location mutually agreed to by the owner and the OSV.

(d) Herd Additions.

1. New cervids shall be introduced into the herd only from other herds enrolled in the Kentucky HCP, or from a herd in a state, approved by the OSV, with an USDA-approved CWD Certification Program in which CWD has never been confirmed.

2. New cervids shall not be introduced into the herd unless it has been approved by the State Veterinarian.

3. If cervids are introduced from a herd of lower status, the receiving herd status shall revert to the lower status.

(e) HCP Reporting requirements. The owner shall report to OSV any cervids that escape or disappear and all deaths (including cervids killed by harvest or slaughter) of cervids in the herd.

1. The reporting time frame shall be:

a. For cervids that escape or disappear, a report shall be made within forty-eight (48) hours;

b. For cervids taken by harvest, a report shall be submitted within seven (7) days; and

c. For cervids that die from illness or any other reason, a report shall be submitted within seven (7) days.

2. The report shall include all applicable identification numbers, including the visual tag and the date of the death, disappearance, or escape.

3. Cervids that die or are harvested shall have the required tissue specimens collected and submitted for Chronic Wasting Disease testing except if exempted in writing by request to, and approval of, the OSV. Exemptions shall only be granted in extenuating circumstances, such as natural disaster or a disease event.

4. An APHIS or OSV representative shall investigate herds that fail to comply with testing requirements and shall evaluate the herd's status.

5. Cervid escapes return protocol.

a. Cervids that escape may be returned to the herd only if:

(i) Within seventy-two (72) hours, the cervids are re-captured and the fence is repaired and secured to prevent further escape and meet the requirements established by Kentucky Department of Fish and Wildlife Resources in 301 KAR 2:083. Any cervid recaptured after seventy-two (72) hours shall be introduced back into the herd only with written permission of the OSV; and

(ii) Within seven (7) days of initial escape, an updated inventory is provided to the OSV representative in writing.

b. An OSV representative may require physical inspection of cervids to confirm inventory.

(f) Herd Veterinarian Notice Requirement. The herd veterinarian shall be notified within twenty-four (24) hours of observance of a cervid with clinical signs suggestive of Chronic Wasting Disease.

(g) An owner maintaining separate herds shall comply with the separate-herd requirements established in 9 C.F.R. 55.23.

(h) The herd premises shall have a valid Kentucky Department of Fish and Wildlife Resources permit and shall maintain perimeter fencing meeting the requirements established in KRS 150.730 through 150.735.

(i) The owner shall maintain and provide to the OSV representative upon request the following herd records:

1. Complete inventory of cervids including the official identification and any other identification, and the age and sex of each cervid;

2. A record for each purchased or natural addition to the herd including:

a. The official identification, species, age, and sex of the cervid;

b. The name and address of the person from whom the cervid was purchased;

c. The address of the herd from which the cervid was purchased;

d. A copy of the CVI that accompanied the cervid for intrastate or interstate movement;

e. Date the purchased addition entered the herd; and

f. Approximate date of birth, if a natural addition;

3. A record of each cervid leaving the herd, including:

a. The date of movement, the name of the person to whom it was shipped, the place to which it was shipped, and a copy of the Certificate of Veterinary Inspection related to the shipment; and

b. A cervid's death or harvest on the premises, including the date of death, the apparent cause of death; the cervid's age, sex, and state-federal official individual cervid identification; date and laboratory submitted for CWD testing, if required; and the disposition of the cervid's carcass. If the carcass was removed from the premises, the record shall identify the carcass' destination and recipient;

4. A record of all individual CWD tests that were conducted on cervids in the herd;

5. Records received from the herd veterinarian related to the veterinary services he or she provided to the herd; and

6. All individual identification numbers (from, for example, tags and electronic implants) associated with each cervid.

(j) Herd status levels.

1. Upon a herd being first enrolled in the Herd Certification Program, the herd shall be placed in first-year status, except that if the herd is comprised solely of cervids obtained from herds already enrolled in the Herd Certification Program, the newly enrolled herd shall have the same status as the lowest status of any herd that provided cervids for the herd.

2. If a herd continues to comply with the requirements of the Herd Certification Program, the herd status shall be upgraded by one (1) year on the anniversary of the program enrollment date.

3. One (1) year after the date a herd was placed in fifth-year status, the herd status shall be changed to "certified". The herd shall remain in "certified" status as long as the herd remains enrolled in the program, if its status is not revoked or suspended in accordance with this administrative regulation or 9 C.F.R. 55.24.

4. A herd owner shall be issued a certificate of "Certified" status upon completing the Herd Certification Program requirements established in this administrative regulation.

5. Renewal of a Certified Cervid Herd. A herd shall be certified for twelve (12) months. For continuous certification, adherence to the provisions in this administrative regulation and all other state laws and administrative regulations pertaining to holding cervids shall be required.

6. The herd enrollment date shall be the latter date of:

a. The physical inventory being completed in accordance with paragraph (c) of this subsection; or

b. The initial cervid delivery.

(k) Disease surveillance procedures. A cervid that is twelve (12) months or older that dies for any reason, including harvest, shall be tested for CWD. The herd owner shall be responsible for sample collection by an OSV certified CWD sample collector, submission, and testing. Samples for testing shall be properly collected, handled, and preserved, and shall be submitted to an approved laboratory within seven (7) days of death and collection. If incidents of mass casualty or mortality events are confirmed by the OSV, the OSV may waive the testing requirements for all cervids and instead only require testing based on risk.

(l) USDA Chronic Wasting Disease Program Standards deficiencies may, based on the nature of the deficiencies, require a Cervid Herd Plan in lieu of, or in addition to, administrative penalties. Deficiencies in required testing, from poor sample quality or for failure to submit a sample, may result in an order from the OSV requiring a similar living cervid be euthanized for CWD testing.

Section 5. Chronic Wasting Disease Herd Monitoring Program (HMP).

(1) An[A] HMP permit shall be required to participate in the HMP program. An[A] HMP permit shall be valid from January 1 to December 31 of each year, regardless of the date of application or enrollment.

(a) The applicant for the HMP program shall submit:

1. A complete Cervid Chronic Wasting Disease Surveillance Identification (CCWDSI) Herd Certification Program (HCP) or Herd Monitoring Program (HMP) Application;

2. A written statement by a Kentucky-licensed and USDA accredited veterinarian, certifying that the veterinarian and the herd

owner have a valid veterinarian-client relationship; and

3. A fee of \$500.

(b) OSV shall grant the HMP permit within thirty (30) days after it receives the completed application package with the required fee. Incomplete applications or insufficient fees shall be returned to the applicant without approval. The OSV shall not approve any application if the applicant owes any fees or fines to the KDA.

(c) HMP participants whose permit expires prior to renewal shall be subject to the penalties in Section 19 of this administrative regulation.

(2) Annual HMP permit renewal required. Renewal applicants shall:

(a) Submit a completed Cervid Chronic Wasting Disease Surveillance Identification (CCWDSI) Herd Certification Program (HCP) or Herd Monitoring Program (HMP) Application by November 30 of each year.

(b) Pay a fee of \$500.

(c) Submit a current herd inventory as of the moment of application, and the most recent reporting documents due to the OSV as required in subsection (4)(c) of this section if not already on file with the OSV.

(d) The permit shall be effective January 1 through December 31 of each year.

(3) Restrictions and limitations on HMP-enrolled cervids and herds.

(a) A cervid shall not leave an HMP-enrolled herd alive.

(b) A cervid shall not be moved to another HMP-enrolled herd.

(c) An[A] HMP herd, or any cervid within an[a] HMP-enrolled herd shall not be eligible to enter the HCP.

(4) HMP Requirements.

(a) Herds enrolled in this program shall comply with the requirements established in this section.

1. After an initial permit is issued, the participant shall enroll the herd into the HMP by obtaining movement permits for those cervids moving into the premises. Any additions subsequent to the initial delivery shall be recorded and submitted according to the other timelines established in this administrative regulation.

2. After the first year in the HMP, the participant shall:

a. Conduct the inventory and continuously identify cervids as required;

b. Submit records to the OSV for the cervids that are required in this administrative regulation; and

c. Maintain and complete the provisions of this administrative regulation and a herd-specific Cervid Herd Plan, if developed.

(b) Cervid identification requirement.

1. Each cervid twelve (12) months of age or older shall have at least two (2) forms of cervid identification, one (1) of which shall be a RFID official identification and one (1) form shall be a visual type of identification, which shall be unique to that cervid within the herd.

2. Any untagged cervid that dies or is harvested shall be officially identified and shall be CWD tested.

(c) Cervid inventory.

1. The baseline herd inventory shall consist of the cervids that were delivered initially after program enrollment.

2. An annual herd inventory shall be conducted and submitted to the OSV that reviews all records and documents that would change the baseline herd inventory.

3. The state veterinarian or an APHIS representative may request a visual or physical inventory conducted by OSV staff to verify herd compliance with program standards. A herd plan may be created to allow images or other data in lieu of a visual inventory.

4. The owner shall be responsible for assembling, handling, and restraining the cervids, and for all risks and costs incurred, to present the cervids for inspection.

5. Cervids that have been in inventory for four (4) years without a visual confirmation shall be presumed dead by the permit holder and written notice be provided to the OSV via mail or email. If the presumed dead cervid is later found alive it shall be added back to the inventory.

(d) Herd Additions. New cervids shall be introduced into the herd only from other herds enrolled in the Kentucky HCP, or from a herd in a state, approved by the OSV, with an USDA-approved CWD Certification Program in which CWD has never been confirmed. All

female cervid additions in an HMP shall be spayed or otherwise confirmed by a veterinarian to be incapable of reproduction after March 31, 2024.

(e) If evidence of natural additions are found, a Cervid Herd Plan shall be developed to eliminate future breeding. Intentional breeding shall not be allowed.

(f) HMP Participant Reporting requirements. The owner shall report to the OSV any cervids that escape or disappear, and all deaths (including cervids killed by harvest or slaughter) of cervids in the herd.

1. This report shall be submitted to the OSV by the close of business on the first business day of each month for the activities of the previous calendar month.

2. The report shall include applicable cervid identification numbers, including the visual tag; the date of the death, disappearance, escape; and the dates the CWD tests were submitted for testing.

3. All cervids that die or are harvested shall have the required tissue specimens collected and submitted for CWD testing.

4. In accordance with 9 C.F.R. 55.23, an APHIS or OSV representative shall investigate herds that fail to comply with testing requirements, which shall be considered noncompliance.

5. Cervid escapes return protocol.

a. Cervids that escape may be returned to the herd only if:

(i) Within seventy-two (72) hours, the cervids are re-captured and the fence is repaired and secured to prevent further escape and meet the requirements established by Kentucky Department of Fish and Wildlife Resources in 301 KAR 2:083. Any cervid recaptured after seventy-two (72) hours shall be introduced back into the herd only with written permission of the OSV; and

(ii) Within seven (7) days of initial escape, an updated inventory is provided to the OSV representative in writing.

b. An OSV representative may require physical inspection of cervids to confirm inventory.

(g) Herd Veterinarian Notice Requirement. The herd veterinarian shall be notified within twenty-four (24) hours of observance of a cervid with clinical signs suggestive of Chronic Wasting Disease.

(h) The herd premises shall have a valid Kentucky Department of Fish and Wildlife Resources permit and shall maintain perimeter fencing meeting the requirements established in KRS 150.730 through 150.735.

(i) The owner shall maintain and provide to the OSV representative upon request the following herd records:

1. Complete inventory of cervids, including the official identification, and any other identification, and the age and sex of each cervid;

2. A record for each purchased or natural addition to the herd, including:

a. The official identification, species, age, and sex of the cervid;

b. The name and address of the person from whom the cervid was purchased;

c. The address of the herd from which the cervid was purchased;

d. A copy of the CVI that accompanied the cervid for intra- or interstate movement;

e. Date the purchased addition entered the herd; and

f. Approximate date of birth, if a natural addition;

3. A record of each cervid leaving the herd including a record of each cervid that died or was harvested on the premises including:

a. The date of death;

b. The apparent cause of death;

c. The cervid's age and sex;

d. State-federal official individual cervid identification, date, and laboratory submitted for CWD testing, if required; and

e. The disposition of the cervid's carcass. If the carcass left the premises, the record shall identify the carcass destination and recipient;

4. A record of all individual CWD tests that were conducted on cervids in the herd;

5. Records received from the herd veterinarian related to the veterinary services he or she provided to the herd; and

6. All individual identification numbers (from, for example, tags and electronic implants) associated with each cervid.

(j) Disease surveillance procedures. A cervid that is twelve (12) months or older that dies for any reason, including harvest, shall be tested for CWD. The herd owner shall be responsible for sample collection, submission, and testing. Samples for testing shall be properly collected, handled, and preserved, and shall be submitted to an approved laboratory within thirty (30) days of collection. Deficiencies in required testing, from poor sample quality or for failure to submit a sample, may result in an order from the OSV requiring a similar living cervid be euthanized for CWD testing.

Section 6. Testing, Investigation, and Quarantine.

(1) Surveillance testing procedures.

(a) CWD testing shall be in accordance with the procedures established in 9 C.F.R. 55.8.

(b) A positive or non-negative of CWD by an approved laboratory shall be sent to the National Veterinary Service Laboratory for confirmation.

(c) If required tissues from test eligible cervids are not submitted for laboratory diagnosis by the cervid owner, the state veterinarian shall revoke the permit or implement a mutually agreed upon Cervid Herd Plan.

(2) Investigation of CWD-positive cervids.

(a) An epidemiological investigation in accordance with 9 C.F.R. 55.23 shall be conducted by OSV or APHIS VS for all cervids diagnosed at an approved laboratory CWD positive or suspect.

(b) All CWD-positive herds and all source, exposed, and adjacent herds and the premises where these herds are located shall be investigated epidemiologically by OSV.

(3) Duration of Quarantine. Quarantines issued by the State Veterinarian for CWD in accordance with this administrative regulation shall be removed as established in paragraphs (a) and (b) of this subsection.

(a) A premises shall not be removed from quarantine until after completion of the cervid herd plan and five (5) years of compliance with all provisions of 9 C.F.R. Part 55.

(b) An adjacent or exposed herd or premises may be removed from quarantine only after an epidemiological investigation and by order of the OSV.

Section 7. CWD Sample Collection Training.

(1) Required CWD samples shall be collected by a licensed accredited veterinarian or an individual certified by the OSV.

(2) To become certified, an individual shall:

(a) Submit a request for certification to the OSV at Statevet@ky.gov or contact the OSV; and

(b) Attend a training course offered by the OSV.

(3) Certification is valid for five (5) years from the date of training course or until new sample collection protocols have been mandated by OSV or USDA. Renewal certification shall require completion of a renewal form.

(4) Certified individuals shall comply with CWD collection and submission protocols. Failure to submit quality samples may result in revocation of certification status.

(5) Certified individual shall maintain record of sample collections for ten (10) years. Records shall include a copy of the laboratory submission form or a generated report which contains the following:

- (a) Date of sample collection;
- (b) Premises Name and City where sample collection occurred;
- (c) List of official identification devices of each sample;
- (d) Number of samples collected; and
- (e) Name of Laboratory where samples were submitted.

Section 8. Certificate of Veterinary Inspection.

(1) A Certificate of Veterinary Inspection shall remain valid for thirty (30) days after date of inspection.

(2) A CVI shall contain:

- (a) Identification of each animal recorded on the certificate;
- (b) A RFID and visual identification for each cervid;
- (c) The species, breed, sex, and age of each cervid;
- (d) The name and address of the owner, cosigner, or agent shipping the cervid, and phone number of each;
- (e) The location from which the animal is loaded for movement;

(f) The name and address of the consignee or person receiving the cervid;

(g) The location at which the animal will be received;

(h) The purpose of the movement and the total number of cervids;

(i) All non-applicable data fields crossed out by the USDA-accredited Veterinarian prior to signing;

(j) The movement permit number issued by the OSV;

(k) The following statement or one substantially similar: "I certify as an accredited veterinarian that the above described animals have been inspected by me on this date and that they are not showing signs of infection or communicable disease. The vaccinations and results of tests are as indicated on the certificate. The animals listed on this certificate meet the state of destination requirements and federal interstate requirements"; and

(l) The signature, USDA category II accreditation number, and phone number of the veterinarian.

(3) Paper submitted Certificate of Veterinary Inspection.

(a) The first physical page shall be mailed or otherwise delivered to the office of the state veterinarian in the origin state within seven (7) days of the date it is written.

(b) An exact replica image (a scan in a PDF) of the first page may be submitted in lieu of the first physical page required in paragraph (a) of this subsection by submitting via electronic mail within seven (7) days of the date it is written to Statevet@ky.gov.

(c) The second page shall physically accompany the cervid being moved and be readily accessible during the movement.

(d) The third page shall be sent to the Animal Health Official in the state of destination within seven (7) days of the date it is written.

(e) The fourth page shall be retained by the issuing veterinarian for at least five (5) years from the date of issuance.

(f) A legible copy of any supplemental pages shall be stapled to the original and each copy of the CVI.

(4) Electronically submitted CVIs.

(a) Certificate of Veterinary Inspection and Permit may be submitted via an importable format as approved by the OSV.

(b) Cervids moving with an electronically submitted Certificate of Veterinary Inspection shall be accompanied by a paper copy or have the electronic material stored on a device that may be read immediately upon request.

(5) A person shall not issue a CVI bearing the seal of the Commonwealth of Kentucky unless that person is a Kentucky licensed and USDA category II accredited veterinarian.

Section 9. Movement Permit.

(1) A person shall not move a cervid within or into Kentucky without first obtaining a permit from the OSV at least forty-eight (48) hours prior to the movement, unless approved in writing by the OSV after consideration of the risks involved.

(2) Proof of required vaccinations or other applicable health practices to ensure disease prevention based on place or origin, as found on the Web site at www.kyagr.gov, shall be completed prior to permit issuance. Instructions for a permit may be obtained on the Web site.

(3) Movement permit instructions may be obtained by calling OSV at 502-573-0282, Monday through Friday, 8 a.m. EST to 4:30 p.m. EST.

(4) Required testing or vaccination. Required tests and vaccinations shall be performed or verified by a:

- (a) Licensed and USDA category II accredited veterinarian;
- (b) Designee of the State Veterinarian; or
- (c) Designee of the federal government.

(5) Required tests shall be conducted at no expense to the Commonwealth of Kentucky.

(6) Required laboratory tests shall be conducted in a state-federal approved laboratory.

Section 10. Official Identification and Other Required Identification.

(1) Beginning July 1, 2020, RFID official identification shall be applied in any initial tagging event, retagging event, or anytime a cervid is restrained by any method, including permitted movements. All imported cervids shall require an RFID at the time of importation

beginning July 1, 2020. This RFID shall be cross referenced with any other existing official identification at the time of application. Existing official identification shall not be removed without the prior written approval of the OSV.

(2) Methods of official identification. An official individual identification shall consist of a set of alphanumeric characters or physical characteristics that are uniquely associated with an individual cervid and that constitute:

(a) Official USDA NUES that was applied prior to June 30, 2020; and

(b) An RFID that:

1. The RFID uniquely identifies the animal and is USDA approved;

2. The RFID is attached to the animal;

3. The RFID is registered to a PIN or to a person; and

4. Only one (1) official RFID is placed on an animal.

(3) Use of more than one (1) official eartag.

(a) Any person applying the additional official eartag shall record the following information about the event, and submit to the OSV within seven (7) days the required information, and maintain the record for at least ten (10) years:

1. The date the additional official eartag is added;

2. The reason for the additional official eartag device; and

3. The official identification numbers of the new official eartag and the one or ones already attached to the animal.

(b) An eartag with an Animal Identification Number (AIN) beginning with the 840 prefix (either radio frequency identification or visual-only tag) may be applied to a cervid that is already officially identified with one (1) or more National Uniform Eartagging System tags. The person applying the Animal Identification Number eartag shall record the date the Animal Identification Number tag is added and the official identification numbers of any official eartags and shall maintain those records for at least ten (10) years.

(4) Removal or loss of official identification devices.

(a) Removal of official identification shall be prohibited, except as approved in writing by the OSV or a USDA area veterinarian in charge if a device needs to be replaced.

(b) If a cervid loses an official identification device:

1. A replacement tag with a different official identification number may be applied. The person applying a new official identification device with a different official identification number shall record the following information about the event and maintain the record for at least ten (10) years:

a. The date the new official identification device was added;

b. The official identification number on the device; and

c. The official identification number on the old device, if known.

2. Replacement of a temporary identification device with a new official identification device shall be considered to be a retagging event and shall be noted on the Retag Form.

(5) Removal of official identification, without prior written approval of the OSV shall be strictly prohibited.

(6) Replacement records required. Any time an official identification device is replaced, as authorized by OSV or the USDA, the person replacing the device shall record the following information about the event and maintain the record for at least five (5) years:

(a) The date on which the previous device was removed;

(b) Contact information for the location where the device was removed;

(c) The official identification number (to the extent possible) on the device that was removed;

(d) The type of device removed (for example, metal eartag or RFID eartag);

(e) The reason for the removal of the former device;

(f) The new official identification number on the replacement device; and

(g) The type of replacement device that was applied to replace the former device.

Section 11. Premises of Origin Location.

(1) POL information shall be provided by the person seeking the permit for the premises from which the cervids are to be loaded upon seeking a movement permit.

(2) The POL of the specific location the cervids were loaded

shall include:

(a) A PIN issued by the USDA or the Animal Health Official in the state of origin or a LID; and

(b) The owner at the time of movement and that owner's address and contact information.

Section 12. Requirements for Interstate Movement into Kentucky.

(1) A person or hauler shall not move a cervid into Kentucky without first obtaining a CVI from a licensed and USDA category II accredited veterinarian;

(2) Obtained a movement permit from the OSV at least forty-eight (48) hours prior to movement and scheduling by the OSV, that includes a scheduled appointment for delivery of cervids between the hours of 6 a.m. and 9 p.m.; and

(3) An OSV representative, USDA representative, or an USDA category II accredited veterinarian shall be present for the unloading of the cervids at the point of destination at the time scheduled in (2) and shall be responsible for removing the transport seal and observing the offloading.

(4) An entry permit shall not be issued for a cervid that does not have certified status or an equivalent status, as documented by a certificate issued in accordance with 9 C.F.R. 81.4. An entry permit shall not be issued for a cervid that originated in, or at any time resided, in a state where CWD has been confirmed in either wild or captive cervids.

(5) An entry permit shall not be issued for a cervid that is not:

(a) Negative to an official tuberculosis test within ninety (90) days of entry; or

(b) Originating from a cervid tuberculosis accredited herd. The herd accreditation number and the last herd test date shall be listed on the CVI.

Section 13. Requirements for Movement Within Kentucky.

(1) A movement permit issued by the OSV and CVI shall be required prior to cervid movement within Kentucky.

(2) A CVI shall not be required if the movement is from the same herd to a different permitted premises within the same farm, if the cervid has official identification, prior to the movement.

(3) Movement shall not commence until forty-eight (48) hours after the issuance of the permit.

(4) An OSV representative, USDA representative, or an USDA category II accredited veterinarian shall be present at the loading at the point of origin, or the unloading of the cervids at the point of destination for movements to a different premises.

(5) The requirements of this section shall be the responsibility of the owners, agents, and haulers of the moved cervid.

Section 14. Requirements for Movement for Export from Kentucky.

(1) A movement permit issued by the OSV and CVI shall be required prior to cervid movement from Kentucky.

(2) Movement shall not commence until forty-eight (48) hours after the issuance of the permit by the OSV and scheduling.

(3) All cervids being exported from Kentucky shall have movement documentation and any applicable permits as required by the state of destination, and have these documents immediately available for inspection.

(4) A cervid shall not leave Kentucky until:

(a) The CVI is written to meet the state of destination requirements by a Kentucky licensed category II veterinarian; and

(b) The owner, agent, or hauler contacts the OSV designee at least forty-eight (48) hours in advance of the movement to schedule an appointment for departure inspection and movement documentation between the hours of 6 a.m. and 9 p.m.

Section 15. Requirements for Movement Through Kentucky. Cervids moving through Kentucky shall have movement documentation and any applicable permits as required by the state of destination, and have these documents immediately available for inspection. A Kentucky movement permit shall not be required for direct movement through Kentucky. Persons directly moving cervids through Kentucky may voluntarily obtain a permit from the OSV.

Section 16. Reindeer Exhibition.

(1) Any reindeer exhibiting in the state of Kentucky shall obtain written permission of the OSV.

(2) Requests for an exhibition permit shall be made to the OSV in writing or electronically at statevet@ky.gov a minimum of ten (10) business days prior to the movement to the exhibit.

Section 17. Voluntary Accreditation and Certification Programs.

(1) Cervid owners wishing to seek a voluntary herd certification for brucellosis shall follow the provisions established in APHIS 91-45-16, Brucellosis in Cervidae.

(2) Cervid owners wishing to seek a voluntary herd accreditation for tuberculosis eradication shall follow the provisions established in APHIS 91-45-011, Bovine Tuberculosis Eradication. (3) After the completion of terms in APHIS 91-45-011 or APHIS 91-45-16, the OSV shall issue a certificate, for the respective disease, that shall be valid in Kentucky for a period of thirty-six (36) months from issuance.

Section 18. Retention of Records.

(1) Intrastate movement or sales documents shall be maintained by both the buyer and the seller for at least ten (10) years after the movement of the cervids.

(2) Official identification device distribution records. Any veterinarian who distributes official identification, shall maintain distribution lists and documents for at least ten (10) years after issuance.

(3) Interstate movement records and documentation that is required by this administrative regulation shall be maintained for at least ten (10) years.

(4) Herd plans, inventory records, and disposition of cervid records shall be maintained for at least ten (10) years.

Section 19. Penalties.

(1) Penalties for failure to comply with standards established in this administrative regulation.

(a) OSV shall have the authority to revoke or suspend a herd's permit for the Herd Certification Program or the Herd Monitoring Program if a person:

1. Falsifies information on an enrollment application, falsifies subsequent information required for continued enrollment, or refuses to produce documents requested by a representative of OSV;

2. Fails to comply with requirements in this administrative regulation on cervid identification, cervid inventory, herd records, testing, or cervid movement;

3. Or facility fails to remain in compliance with KRS Chapters 257 or 150, or any administrative regulation promulgated under the authority thereof;

4. Fails to comply with an instruction from a representative of OSV; or

5. Fails to produce any document required to be created or maintained by this administrative regulation.

(b) In accordance with KRS 257.990, a permit holder shall be subject to a monetary fine for violation of this administrative regulation.

(2) Penalties for failure to comply with Section 8, 9, 10, or 11 of this administrative regulation.

(a) In accordance with KRS 150.740(6), a person shall be guilty of a Class D felony upon conviction; and

(b) Upon conviction of a second violation, a person shall be permanently ineligible for renewal of a captive cervid permit.

(3) In accordance with KRS 150.740(7), the Kentucky Department of Fish and Wildlife Resources shall have authority to seize captive cervids that were imported into the Commonwealth in violation of this administrative regulation or KRS 150.740 and 257.550.

(4) Any person whose permit is revoked shall not reapply to the HCP or HMP programs for a period of five (5) years.

(5) Herds enrolled in HMP or HCP programs whose permit holders fail to reapply for permits on or before the application deadline shall be immediately placed in quarantine. These herds

shall be subject to a physical herd inventory prior to permit issuance. A hunting or harvest shall not take place during the quarantine period. Herds shall not be re-enrolled in any program without first paying the initial fee of \$150 and the renewal fee as required in either the HCP or HMP program.

(6) Removal of official identification, from a cervid without written permission of the OSV shall result in the loss of status for all cervids inside the herd.

Section 20. Expiration or Removal of HCP or HMP Status. All entities that exit an HCP or HMP program that have remaining inventory shall be placed under quarantine until such inventory is eliminated by harvest or sales permitted by the OSV to other HCP or HMP permit holders[shall be referred to the Kentucky Department of Fish and Wildlife for herd disposal].

Section 21. Restriction on hog hunting. No hunting of hogs or any member of the porcine species shall be allowed in any HCP or HMP permit area.

Section 22. Material Incorporated by Reference.

(1) The following material is incorporated by reference:

(a) "Cervid Chronic Wasting Disease Surveillance Identification (CCWDSI) Herd Certification Program (HCP) or Herd Monitoring Program (HMP) Application", October 2020;

(b) "Deceased Animal Report", May 2019;

(c) "Herd/Flock Additions", October 2020;

(d) "Herd/Flock Deletions", October 2020;

(e) "Retag Form", February 2017;

(f) "USDA Chronic Wasting Disease Program Standards", May 2019;

(g) "APHIS 91-45-16, Brucellosis in Cervidae", September 2003; and

(h) "APHIS 91-45-011, Bovine Tuberculosis Eradication", January 1999.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Agriculture, Division of Animal Health, 111 Corporate Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

RYAN QUARLES, Commissioner of Agriculture

APPROVED BY AGENCY: October 12, 2023

FILED WITH LRC: October 14, 2023 at 11:00 a.m.

CONTACT PERSON: Clint Quarles, Staff Attorney, Kentucky Department of Agriculture, 107 Corporate Drive, Frankfort Kentucky 40601, phone (502) 330-6360, email clint.quarles@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Clint Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This filing creates the rules for cervid farming.

(b) The necessity of this administrative regulation: This filing is necessary to create a uniform set of rules and processes cervid farming.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This filing creates a uniform set rules and processes for cervid farming.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This filing assists with the statute by incorporating the federal manual for cervid farming.

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

(a) How the amendment will change this existing administrative regulation: This filing removes training requirements after the initial one. The filing creates language for limiting breeding in an HMP, and makes clear the process for exiting the program.

(b) The necessity of the amendment to this administrative regulation: The changes are required to add clarity about longstanding expectations.

(c) How the amendment conforms to the content of the authorizing statutes: This filing adds clarity to the regulations where the statutes granted broad authority to the KDA to create rules.

(d) How the amendment will assist in the effective administration of the statutes: The changes are required to add clarity about longstanding expectations.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation affects entities and persons seeking be in cervid farming. Approximately 119 HCP and 7 HMP participants.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: All persons seeking participate in cervid farming need to comply with the minimum standards laid out in this filing.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The cost depends on the activity the regulated entity is involved in and the size of the herd.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Entities will be able cervid farm.

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

(a) Initially: The KDA estimates \$275,000 total annually.

(b) On a continuing basis: The KDA estimates at least \$275,000 total annually.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: A combination of fees and the KDA general fund.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Fee establishments are required to attempt to cover part of the program costs.

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

(9) TIERING: Is tiering applied? No, all entities are treated the same. The only fee difference is based on volume held.

FISCAL NOTE

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 257

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The KDA expects to receive \$57,000 annually at current volumes purchased.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The KDA expects to receive \$57,000 annually at current volumes purchased as a projection.

(c) How much will it cost to administer this program for the first year? The cost to administer the Cervid program is \$275,000

(d) How much will it cost to administer this program for subsequent years? The cost to administer the Cervid program for subsequent years is estimated to be at least \$275,000.

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

regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? Cost savings for regulated entities will remain at current levels.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? Cost savings for regulated entities will remain at current levels is a reasonable expectation.

(c) How much will it cost the regulated entities for the first year? Costs will depend on the volume purchased in the prior year at application time.

(d) How much will it cost the regulated entities for subsequent years? Costs will depend on the volume purchased in the prior year at application time.

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)]. Fees will not exceed the major economic impact threshold.

JUSTICE AND PUBLIC SAFETY CABINET Department of Juvenile Justice (Amended After Comments)

505 KAR 1:250. Drug screening and testing.

RELATES TO: KRS 15A.065, 15A.0652, ~~[15A.067,]~~200.080-200.120, Chapters 600-645

STATUTORY AUTHORITY: KRS 15A.065(1), 15A.0652, ~~[15A.067,]~~15A.160, ~~[15A.210,]~~200.115, 605.150, 635.095, 635.100(7), 635.500, 640.120, 645.250

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.065(1), 15A.0652, ~~[15A.067,]~~15A.160, ~~[15A.210,]~~605.150, 635.095, and 640.120 authorize the Justice and Public Safety Cabinet and the Department of Juvenile Justice to promulgate administrative regulations for the proper administration of the cabinet and its programs. This administrative regulation establishes procedures for the drug screening and testing of juveniles in the custody of the department.

Section 1. (1) Juveniles are subject to drug screening and testing at any time and shall be provided with documentation regarding the drug screening and testing process and the consequences of a positive drug test during intake and orientation. The consequences of a positive drug screen or test may include:

(a) Progressive discipline;

(b) Movement to a more restrictive level of care;

(c) Revocation of probation or supervised placement;

(d) Criminal charges filed by a law enforcement agency; or

(e) Sanctions by the court.

(2) A juvenile shall be informed, in writing, that failure or refusal to cooperate by providing a specimen, within two (2) hours of a request, is a major rule violation and may result in discipline. A juvenile may be kept on one-to-one supervision until the juvenile provides[they provide] a specimen.

(3) Confidentiality. Facility staff and the laboratory involved in any aspect of the drug screening or testing program shall maintain

strict standards of confidentiality, as required by law.

(4) If the juvenile admits to any drug usage prior to the drug screen, the juvenile shall be asked to sign a statement acknowledging the use **and drug used** and that the screen may be positive. Prior to providing a written statement, the juvenile shall be informed that the written statement may be used in legal proceedings. This written statement shall not be coerced and shall be provided by the juvenile voluntarily. The specimen shall still be collected.

(5) Positive Screen Result. If the drug screen is positive, the juvenile shall be asked to sign a statement acknowledging that he or she has been using drugs and that the results of the drug screen are accurate. Prior to providing a written statement, the juvenile shall be informed that the written statement may be used in legal proceedings. This written statement shall not be coerced and shall be provided by the juvenile voluntarily.

(a) A confirmation test **by a laboratory** shall be conducted after a positive drug screen.

(b) Confirmation Test Results. Facility staff shall notify the juvenile of the confirmation test results within twenty-four (24) hours of receipt. A juvenile on furlough shall be notified of the results within one (1) business day. Except for positive screens or tests upon initial intake at a detention center, a penalty slip or disciplinary review notice shall be issued and the disciplinary review process in 505 KAR 1:400[XXX] shall be followed.

(c) A juvenile testing positive for drugs shall be subject to progressive discipline.

VICKI REED, Commissioner

APPROVED BY AGENCY: October 12, 2023

FILED WITH LRC: October 12, 2023 at 3:15 p.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 establishes procedures for the drug screening and testing of juveniles in the custody of the department.

(b) The necessity of this administrative regulation: This administrative regulation meets statutory authorization or requirements in KRS 15A.065(1), 15A.0652, 15A.160, 605.150, 635.095, and 640.120 for administrative regulations.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 15A.065(1), 15A.0652, 15A.067, 15A.160, 605.150, 635.095, and 640.120 authorize the Justice and Public Safety Cabinet and the Department of Juvenile Justice to promulgate administrative regulations for the proper administration of the cabinet and its programs.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation provides direction and information to department staff and juveniles concerning the drug screening and testing of juveniles.

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

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

(b) The necessity of the amendment to this administrative regulation: Not applicable

(c) How the amendment conforms to the content of the authorizing statutes: Not applicable

(d) How the amendment will assist in the effective administration of the statutes: Not applicable

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects approximately 632 DJJ employees, 348 juveniles and their families.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this

administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The facilities will need to follow the procedures for drug screening and testing of juveniles.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The administrative regulation will assist in the effective and orderly management of the department and its facilities.

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

(a) Initially: An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

(b) On a continuing basis: An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

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

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

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

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

FISCAL NOTE

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 15A.065, 15A.0652, 15A.160, 200.080-200.120, 605.150, 635.095, 640.120, 645.250, Chapters 600-645

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

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

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

(c) How much will it cost to administer this program for the first year? An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

(d) How much will it cost to administer this program for subsequent years? An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

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

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

(c) How much will it cost the regulated entities for the first year? An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

(d) How much will it cost the regulated entities for subsequent years? An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] A major economic impact to the agency is not anticipated.

JUSTICE AND PUBLIC SAFETY CABINET
Department of Juvenile Justice
(Amended After Comments)

505 KAR 1:260. Education.

RELATES TO: KRS 15A.065, 15A.0652, 15A.067, 158.281, 200.080-200.120, Chapters 600-645, 605.110, 707 KAR 1:002, 707 KAR 1:320

STATUTORY AUTHORITY: KRS 15A.065(1), 15A.0652, 15A.067, 15A.160, 605.150, 635.095, 640.120, 645.250

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.065(1), 15A.0652, 15A.067, 15A.160, 605.150, 635.095, and 640.120 authorize the Justice and Public Safety Cabinet and the Department of Juvenile Justice to promulgate administrative regulations for the proper administration of the cabinet and its programs. This administrative regulation establishes requirements to ensure that education is provided to juveniles in the department's custody.

Section 1. General.

(1) Education services through the local school district shall be made available to juveniles upon admission at a DJJ facility during instructional days, except if there is substantial evidence to justify otherwise. Substantial evidence may include the juvenile having earned a diploma or GED or having an IEP that requires something different. Educational services, necessary specialized equipment, and appropriate educational materials shall be provided at no cost to a juvenile up to the completion of high school or the General Education Development program.

(2) A juvenile enrolled in a community school shall be transported in accordance with the local school district's transportation policy.

Section 2. Assessments.

(1) For a juvenile at a detention center, educational and vocational needs assessment shall be completed within five (5) instructional days of the juvenile's admission following the detention

hearing. Previous results may be used if completed within the last 180 days.

(2) For a juvenile at a youth development center, educational and vocational assessments shall be completed within fourteen (14) days of the juvenile's admission if previous results are not available.

(3) A juvenile at a youth development center who has completed the fifth grade and enters a YDC without a previously administered vocational assessment shall be administered vocational assessments of aptitude, interest inventory, and learning and working styles. The results shall be used to:

(a) Determine a juvenile's vocational aptitude and interests, learning and working styles, and career clusters;

(b) Assist DJJ and school district staff as they integrate academic, vocational and work assignments, social skills, and treatment goals;

(c) Assist DJJ and school district staff as they communicate with the juvenile;

(d) Develop or review and revise if necessary, a juvenile's Individual Learning Plan and Transition Plan; and

(e) Provide each juvenile with career options.

Section 3. Educational Services at Juvenile Detention Centers. Educational services at a detention center shall be individualized to meet the assessment, educational, and developmental instruction needs of the juvenile, constructed on an open entry-open exit basis, and scheduled so that educational services do not compete with other facility programming. Provisions shall be made for academic counseling.

Section 4. Educational Services in YDCs and Group Homes.

(1) Educational, technical, and treatment services shall be integrated and individualized to meet the assessment, educational, rehabilitative, and developmental instruction needs of each juvenile.

(2) Post-secondary course fees may require a juvenile to access grant money, individual juvenile accounts, parent contributions, or community sponsors.

(3) Juveniles shall receive credit for education that can be transferred to other schools.

(4) A juvenile's individual client record shall include academic and vocational information.

Section 5. Vocational and Technical Programming for YDCs.

(1) A juvenile shall have the opportunity to enroll in pre-vocational and skill-based vocational training programs and explore vocational and technical opportunities based on the criteria for enrollment.

(2) Each local school district that operates within a YDC shall submit a monthly progress report to the DJJ Education Branch.

(3) Each technical program shall submit their vocational plan to the Education Branch at the beginning of each school year.

Section 6. Technical Education Safety. A juvenile may only use power driven machines and tools under the following circumstances:

(1) The juvenile has met the requirements for enrollment in a technical program;

(2) The juvenile has been enrolled in a technical training program;

(3) The juvenile is performing tasks designated by the Office of Career and Technical Education for the training program in which the juvenile is enrolled;

(4) The certified technical teacher of the training program is supervising the juvenile;

(5) The juvenile has successfully completed the safety training and the safety test necessary to use the machines and tools or complete the task;

(6) The certified technical teacher documents[shall document] that the student has completed safety training; and

(7) The certified technical teacher of the training program and facility staff continuously monitor[monitors] the emotional state and consider[considers] the mental stability of the juvenile prior to allowing the juvenile to use power driven machines and tools or perform a potentially hazardous task.

Section 7. Agreements with Local School Districts.

(1) DJJ shall have an agreement with the school district servicing juvenile detention centers, youth development centers, and group homes that includes the following:

(a) Educational services shall be provided on an open entry-open exit basis;

(b) Education and treatment shall be an integral part of the juvenile's instructional plan;

(c) Education and treatment schedules shall be coordinated for the benefit of the juvenile;

(d) Work programs for juveniles shall not interfere with educational programming; and

(e) Disciplinary measures shall not interfere with educational programming, except if there is substantial evidence to justify otherwise.

(2) DJJ may provide training for school district and technical education staff on DJJ policies and procedures, including[for] discipline of a juvenile in accordance with 505 KAR 1:400 and security issues. Appropriate classroom management techniques to carry out the disciplinary rules shall be used.

Section 8. Individual Learning Plan, Individual Education Plan, and Individual Treatment Plan.

(1) The results of educational and vocational assessments shall be used as a basis for the initial development, and periodic review and revision, of an integrated ILP, Individual Education Plan if applicable, Individual Treatment Plan, and aftercare plan.

(2) DJJ and school district staff shall participate jointly in the development, review, and revision of a juvenile's ITP, ILP, IEP if applicable, and aftercare plan.

(3) The ILP and IEP, if[when] applicable, shall be integrated with the ITP and completed within fourteen (14) days of admission.

Section 9. Educational Disability. If a DJJ staff person suspects a juvenile may have an educational disability, the local school district's director of special education shall be notified as soon as practicable.

Section 10. Behavior and Discipline.

(1) Discipline of juveniles at detention centers and YDCs shall be in accordance with 505 KAR 1:400. Discipline of group home juveniles during school activities shall be in accordance with local school board procedures and 505 KAR 1:400.

(2) A juvenile in a detention center or YDC who demonstrates behavior so disruptive that the juvenile is[they are] removed from the classroom shall not be readmitted to the classroom until the juvenile demonstrates[they demonstrate] improved behavior as determined by the teacher in collaboration with the staff.

(3) A juvenile in a group home who demonstrates behavior so disruptive that the juvenile is[they are] removed from the classroom may be remanded to the supervision of group home staff until readmitted to the classroom.

(4) If a juvenile is removed from the classroom, the juvenile shall be given assignments to work on individually.

Section 11. Educational and Vocational Records in Detention Centers and YDCs.

(1) A person, including education personnel, authorized to obtain records pursuant to KRS Chapters 600 to 645, shall not obtain or attempt to obtain records to which the person is[they are] not entitled or for purposes for which the person is[they are] not permitted to obtain them.

(2) A person, including education personnel, not authorized to obtain records pursuant to KRS Chapter 600 to 645, shall not obtain or attempt to obtain records that are made confidential pursuant to KRS Chapters 600 to 645, except upon proper motion to a court of competent jurisdiction.

(3) A person shall not destroy or attempt to destroy any record that is required to be kept unless the destruction is permitted by state law and is authorized by the court upon proper motion and good cause for the destruction being shown.

(4) Release of the juvenile's record, including behavior management, medical, dental, mental, or psychological reports,

shall be prohibited unless presented as evidence in court in accordance with the law. A person, including school personnel, shall not disclose any report or information contained therein except as permitted by law or specific order of the court.

VICKI REED, Commissioner

APPROVED BY AGENCY: October 12, 2023

FILED WITH LRC: October 12, 2023 at 3:15 p.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 establishes requirements to ensure that education is provided to juveniles in the department's custody.

(b) The necessity of this administrative regulation: This administrative regulation meets statutory authorization or requirements in KRS 15A.065(1), 15A.0652, 15A.067, 15A.160, 605.150, 635.095, and 640.120 for administrative regulations.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 15A.065(1), 15A.0652, 15A.067, 15A.160, 605.150, 635.095, and 640.120 authorize the Justice and Public Safety Cabinet and the Department of Juvenile Justice to promulgate administrative regulations for the proper administration of the cabinet and its programs.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation provides direction and information to department staff and juveniles concerning staff duties and the procedures that govern operations of facilities with juveniles in the custody of the department.

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

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

(b) The necessity of the amendment to this administrative regulation: Not applicable

(c) How the amendment conforms to the content of the authorizing statutes: Not applicable

(d) How the amendment will assist in the effective administration of the statutes: Not applicable

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects approximately 632 DJJ employees, 348 juveniles, and their families.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: DJJ staff and juveniles will have to follow the requirements for education.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The administrative regulation will assist in the effective and orderly management of the department and its facilities.

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

(a) Initially: An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

(b) On a continuing basis: An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation

will increase current costs.

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

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

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

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

FISCAL NOTE

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 15A.065, 15A.0652, 15A.067, 15A.160, 15A.305, 200.080-200.120, 605.150, 635.095, 640.120, 645.250, Chapters 600-645

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

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

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

(c) How much will it cost to administer this program for the first year? An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

(d) How much will it cost to administer this program for subsequent years? An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

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

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

(c) How much will it cost the regulated entities for the first year? An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

(d) How much will it cost the regulated entities for subsequent years? An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

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

regulation.

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] A major economic impact to the agency is not anticipated.

JUSTICE AND PUBLIC SAFETY CABINET Department of Juvenile Justice (Amended After Comments)

505 KAR 1:270. Grievances.

RELATES TO: KRS 15A.065, 15A.0652, 15A.067, 200.080-200.120, Chapters 600-645

STATUTORY AUTHORITY: KRS 15A.065(1), 15A.0652, 15A.160, 605.150, 635.095, 640.120

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.065(1), 15A.0652, 15A.160, 15A.210, 605.150, 635.095, and 640.120 authorize the Justice and Public Safety Cabinet and the Department of Juvenile Justice to promulgate administrative regulations for the proper administration of the cabinet and its programs. This administrative regulation establishes the grievance process for juveniles in the custody of the department or attending a department day treatment program.

Section 1. General Information.

(1) Staff shall explain the grievance process to a juvenile upon intake and post the process in the program and living areas. The handbook shall include instructions for the grievance process.

(2) A juvenile shall have the right to file a grievance without fear of retaliation.

(3) A juvenile may file a grievance regarding the following:

(a) Violation of federal or state law;

(b) Violation of department policies and procedures;

(c) Violation of department standard operating procedures;

(d) Claimed unsafe or unsanitary living conditions within the facility or program; or

(e) The level of care provided within the facility or program.

(4) A juvenile shall not file a grievance on issues already grieved and decided.

(5) Non-grievable issues shall include:

(a) Court decisions;

(b) Disciplinary review decisions; and

(c) Legislative actions.

(6) An untimely filed grievance or one that concerns a non-grievable issue shall be returned to the juvenile with an explanation.

(7) A grievance that is missing information shall be returned to the juvenile explaining the information needed and the juvenile shall have five business days to return the grievance with the missing information. The time for a grievance response shall not begin until the grievance is returned with the missing information.

(8) Grievance forms shall be located in an area that is easily accessible to the juveniles and each facility shall provide one or more clearly marked lockboxes for the submission of a grievance. The lockbox shall be in an open area accessible to all juveniles.

(9) Each facility shall have a designated grievance officer. The grievance officer shall manage the lockboxes and oversee the grievance process.

(10) Deadline. A grievance shall be submitted by the juvenile within fourteen (14) days of the grieving incident occurrence. If the juvenile files a grievance after the deadline, the juvenile shall explain the reason for the delay on the grievance form when the grievance is filed for a delay determination by the facility manager[superintendent]. The exception to this shall be if the incident falls under the classification of a Prison Rape Elimination

Act occurrence. A PREA incident shall not have a time limit applied.

(11) Informal Resolution. Prior to filing a grievance, an effort shall be made to resolve the issue informally. The juvenile shall discuss the matter either with the staff person involved or the grievance officer. In determining whether to deny a grievance for failure to attempt informal resolution, the grievance officer shall consider the juvenile's and staff person's ability or barriers to informally resolve the grievance issue.

(12) Special Incident and PREA. A special incident shall not be handled informally or through the grievance process and shall be reported immediately to the facility **manager[superintendent]** and Internal Investigation Branch. A PREA incident shall be reported through the hotline **or in writing to the commissioner or director of compliance**.

Section 2. Grievance Process.

(1) The grievance form shall be submitted in writing and signed and dated by the juvenile. The grievance shall include:

- (a) Name of the juvenile filing the grievance;
- (b) Name of facility;
- (c) Details concerning the issue being grieved;
- (d) Date of occurrence being grieved;
- (e) Information concerning the effort to informally resolve the issue; and
- (f) The desired resolution.

(2) If a juvenile is unable to adequately express the grievance in writing, the juvenile shall be allowed to present the grievance to the designated grievance officer verbally. The designated grievance officer shall make a written summary of the verbal grievance on a grievance form and have the juvenile sign and date it.

(3) A grievance or notification of intent to present a verbal grievance shall be deposited, by the juvenile, into a grievance lockbox.

(4) Grievances shall be retrieved from the lockbox within twenty-four (24) hours for juvenile detention centers and within two (2) business days for group homes, YDCs, and day treatment centers.

(5) The juvenile shall receive a written response with findings within three (3) business days. If a grievance is a medical issue, a facility nurse **or regional nurse** shall be involved in the resolution process at the facility level.

(6) A juvenile may withdraw a current or previously filed grievance at any time.

(7) The juvenile shall acknowledge all grievance findings, including withdrawals, with their signature. The grievance officer shall document any refusals to acknowledge the grievance findings on the grievance form.

(8) A copy of the grievance shall be placed in the juvenile's individual client record and a copy shall be given to the juvenile.

Section 3. Grievance Appeal Process. (1) If dissatisfied with the resolution, within forty-eight (48) hours, the juvenile may appeal the resolution of the grievance to the **facility manager[superintendent]** by indicating on the grievance form that the juvenile is appealing and depositing it into the lockbox. The juvenile shall provide all previous information submitted.

(2) Within three (3) business days of receiving the appealed grievance resolution, the **facility manager[superintendent]** shall meet with the designated grievance officer and the juvenile and may meet with the staff involved and other witnesses.

(3) The **facility manager[superintendent]** shall have up to five (5) business days to present a written final response to the juvenile.

Section 4. Grievance Process Deadlines. (1) If the grievance process deadlines are not met by the juvenile, the juvenile shall explain the reason for the delay in filing the grievance on the grievance form when the grievance is filed.

(2) The grievance officer shall forward the grievance delay explanation to the **facility manager[superintendent]** to determine if the grievance may proceed through the process. The **facility manager[superintendent]** shall decide this within twenty-four (24) hours of receipt and return the grievance to the grievance officer for further steps. The grievance officer shall deny the grievance with an explanation if the delay is not approved by the **facility**

manager[superintendent] or an explanation for the delay is not made by the juvenile.

(3) If the time frames are not met by the grievance officer, the grievance shall automatically be referred to the **facility manager[superintendent]** by the grievance officer. The **facility manager[superintendent]** shall follow the grievance appeal process deadlines in this section.

(4) If an essential party is unavailable, the time frames may be extended by the **facility manager[superintendent]**. The reason for the extension shall be noted on the grievance documentation.

(5) If more than ten (10) grievances are received by the grievance officer in any one (1) work week, the grievance officer may call a moratorium on the time limits for those grievances.

Section 5. Grievance Limits. If the **facility manager[superintendent]** determines that a juvenile has abused the grievance process by filing numerous frivolous or harassing grievances, the **facility manager[superintendent]** may limit the number of grievances which may be filed by the juvenile. A juvenile whose grievances have been limited shall be allowed to file no more than one (1) grievance every ten (10) business days. This limitation shall be placed into effect for no more than six (6) months at which time the juvenile may apply to the **facility manager[superintendent]** for removal of restricted status. Restrictions shall be removed or extended for periods not to exceed six (6) months at each application for release.

VICKI REED, Commissioner

APPROVED BY AGENCY: October 12, 2023

FILED WITH LRC: October 12, 2023 at 3:15 p.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 establishes the grievance process for juveniles in the custody of the department or attending a department day treatment program.

(b) The necessity of this administrative regulation: This administrative regulation meets statutory authorization or requirements in KRS 15A.065(1), 15A.0652, 15A.160, 605.150, 635.095, and 640.120 for administrative regulations.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 15A.065(1), 15A.0652, 15A.067, 15A.160, 605.150, 635.095, and 640.120 authorize the Justice and Public Safety Cabinet and the Department of Juvenile Justice to promulgate administrative regulations for the proper administration of the cabinet and its programs.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation provides direction and information to department staff and juveniles concerning staff duties and the procedures that govern operations of facilities with juveniles in the custody of the department.

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

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

(b) The necessity of the amendment to this administrative regulation: Not applicable

(c) How the amendment conforms to the content of the authorizing statutes: Not applicable

(d) How the amendment will assist in the effective administration of the statutes: Not applicable

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects approximately 670 DJJ employees, 504 juveniles and their families.

(4) Provide an analysis of how the entities identified in question

(3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Staff will be trained in how to handle and respond to grievances. Juveniles and their families will be informed of the juvenile's right to file a grievance and the procedure for grievances.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The administrative regulation will assist in the effective and orderly management of the department and its facilities.

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

(a) Initially: An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

(b) On a continuing basis: An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

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

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

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

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

FISCAL NOTE

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 15A.065, 15A.0652, 15A.160, 15A.305, 200.080-200.120, 605.150, 635.095, 640.120, 645.250, Chapters 600-645

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

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

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

(c) How much will it cost to administer this program for the first year? An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

(d) How much will it cost to administer this program for subsequent years? An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

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

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

(c) How much will it cost the regulated entities for the first year? An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

(d) How much will it cost the regulated entities for subsequent years? An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] A major economic impact to the agency for the purchase of equipment and provision of training is not anticipated.

JUSTICE AND PUBLIC SAFETY CABINET

Department of Juvenile Justice

(Amended After Comments)

505 KAR 1:280. Hair and grooming.

RELATES TO: KRS 15A.065, 15A.0652, ~~[15A.067,]~~200.080-200.120, Chapters 600-645

STATUTORY AUTHORITY: KRS 15A.065(1), 15A.0652, ~~[15A.067,]~~15A.160, 15A.210, 605.150, 635.095, 640.120, 645.250

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.065(1), 15A.0652, ~~[15A.067,]~~15A.160, 15A.210, 605.150, 635.095, and 640.120 authorize the Justice and Public Safety Cabinet and the Department of Juvenile Justice to promulgate administrative regulations for the proper administration of the cabinet and its programs. This administrative regulation establishes the requirements for hairstyles and grooming for juvenile detention centers, youth development centers, and group homes.

Section 1. Definitions.

(1) "Cornrows" means a hairstyle in which the hair is arranged in an intricate pattern of tight rows of braids close to the scalp. For people with tightly curled hair textures, this style is not removable by combing or brushing in a brief period of time.

(2) "Dreadlocks" means a hairstyle in which the hair is styled into ropelike sections formed by matting, braiding, or twisting that causes the strands of hair to lock together and due to the locking of the hair is not removable by combing or brushing in a brief period of time.

(3) "Religious exemption" means an approved justification to not be required to conform to a particular grooming standard based upon a sincerely held religious belief.

Section 2. Hairstyles and Grooming.

(1) Each juvenile shall have hair that is clean and styled in a way that does not obscure the face or make the juvenile hard to identify by staff.

(2) A juvenile may wear braids, cornrows, or dreadlocks that are neatly groomed.

(3) A juvenile shall not wear hairstyles that allow hair to fall lower than the eyebrows.

(4) Hairpins and bobby pins shall be prohibited.

(5) A juvenile shall not be allowed to cut or style designs into their hair or color hair after admission to the facility.

(6) Long hair shall be pulled up off the shoulders when on work detail or vocational programming, if safety or sanitation considerations require.

(7) Hairnets shall be provided for and worn by juveniles that work in food service.

(8) Wigs and hairpieces shall not be worn unless medically necessary, and if medically necessary, shall require approval from the Director of Medical Services or designee.

(9) Basic hair care services and culturally sensitive hair care maintenance shall be provided free of charge to the juvenile at least one (1) time a month. Basic hair care services shall include a haircut. Culturally sensitive hair care maintenance shall include basic **washing. It shall also include[wash and]** relaxation, if a licensed professional with expertise in culturally sensitive hair care is readily available **and[.]** relaxation shall require parental permission unless the juvenile has attained the age of eighteen (18).

(10) A juvenile shall be allowed to grow and maintain facial hair not to exceed a length of one-fourth (1/4) inch.

(11) A juvenile shall be issued culturally sensitive hair maintenance items or general hair care products on a daily basis, including combs and brushes.

Section 3. Licensed Professionals. (1) Only individuals licensed by the Commonwealth of Kentucky as barbers or cosmetologists shall provide hair care and grooming services to a juvenile. Each contracted barber or cosmetologist shall have a documented pre-service orientation training prior to conducting business at a DJJ residential facility, which shall include training on tool control, control of hazardous materials, and other basic procedures.

(2) Security. All tools, equipment, and chemicals used by the barber or cosmetologist shall be in the control of and maintained by the barber or cosmetologist when conducting business at a DJJ residential facility.

(3) Sanitation. The barber or cosmetologist shall adhere to the sanitation standards set for licensure. Equipment used for hair care services shall be sanitized after each use.

(4) Medical Services.

(a) If the barber or cosmetologist observes an open lesion, cut, or wound on the scalp, neck, or facial area, staff shall be notified and the juvenile shall be referred for immediate medical services. If an open lesion, cut, or wound occurs during the barbering process, the supervising DJJ staff shall provide appropriate first aid and the juvenile shall not be provided further barber or cosmetology services until medically cleared.

(b) The facility nurse shall be notified and follow-up with the juvenile for medical consultation regarding the lesion, cut, or wound.

(c) A barber or cosmetologist shall not perform medical therapy on any skin condition.

Section 4. Photograph. If the appearance of a juvenile changes, including a significant change in hairstyle or length or the presence of facial hair, DJJ staff shall obtain an updated photograph of the juvenile to be scanned into the electronic record.

Section 5. Staff prohibited acts.

(1) DJJ staff shall not cut, shave, groom, or style the hair or facial hair of a juvenile.

(2) DJJ staff shall not mandate or order that the hair or facial hair of a juvenile be cut, except if:

(a) A medical condition exists and the action is approved by the Director of Medical Services;

(b) The cutting or styling of designs in the hair represent gang identification symbols or inappropriate language or depictions; or

(c) The hair presents a safety or security concern for the facility or its orderly operation and is approved by the Commissioner.

(3) A juvenile may be required by a juvenile's employer or instructor to restrain or cover hair in a manner that complies with health requirements for food service or other jobs or prevents hair

entanglement in equipment.

Section 6. Search. (1) DJJ may search a juvenile's hair for contraband.

(2) Ordinary search procedures may include:

(a) Passing a hand-held metal detector over the inmate's hair and scalp to determine whether any metal objects are present;

(b) Directing a juvenile to turn the juvenile's head upside down and run their fingers vigorously through the hair including facial hair;

(c) Pressing the hair with the thumb and other fingers or squeezing the hair to detect foreign objects; and

(d) Using a body scanner to search for contraband.

(3) For youth development centers and youth detention centers, a juvenile's hair shall be searched:

(a) At intake; and

(b) After return from a trip outside the facility.

VICKI REED, Commissioner

APPROVED BY AGENCY: October 12, 2023

FILED WITH LRC: October 12, 2023 at 3:15 p.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 establishes the requirements for hairstyles and grooming.

(b) The necessity of this administrative regulation: This administrative regulation meets statutory authorization or requirements in KRS 15A.065(1), 15A.0652, 15A.160, 605.150, 635.095, and 640.120 for administrative regulations.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 15A.065(1), 15A.0652, 15A.067, 15A.160, 605.150, 635.095, and 640.120 authorize the Justice and Public Safety Cabinet and the Department of Juvenile Justice to promulgate administrative regulations for the proper administration of the cabinet and its programs.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation provides direction and information to department staff and juveniles concerning staff duties and the procedures that govern operations of facilities with juveniles in the custody of the department.

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

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

(b) The necessity of the amendment to this administrative regulation: Not applicable

(c) How the amendment conforms to the content of the authorizing statutes: Not applicable

(d) How the amendment will assist in the effective administration of the statutes: Not applicable

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects approximately 632 DJJ employees, 348 juveniles, and their families.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Staff will be instructed on proper hairstyle and grooming techniques as well as prohibited acts in regard to a juvenile's hair and grooming. Juveniles and their families will be informed of the juvenile's rights in regard to hair and grooming as well as restrictions on particular hairstyles.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in

question (3): An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The administrative regulation will assist in the effective and orderly management of the department and its facilities.

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

(a) Initially: An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

(b) On a continuing basis: An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

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

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

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

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

FISCAL NOTE

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 15A.065, 15A.0652, 15A.160, 15A.305, 200.080-200.120, 605.150, 635.095, 640.120, 645.250, Chapters 600-645

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

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

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

(c) How much will it cost to administer this program for the first year? An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

(d) How much will it cost to administer this program for subsequent years? An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

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

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

(c) How much will it cost the regulated entities for the first year? An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] A major economic impact to the agency for the purchase of equipment and provision of training is not anticipated.

JUSTICE AND PUBLIC SAFETY CABINET Department of Juvenile Justice (Amended After Comments)

505 KAR 1:310. Leave, releases, and furloughs.

RELATES TO: KRS 15A.065, 15A.0652, 15A.067, 200.080-200.120, 439.600, Chapters 600-645

STATUTORY AUTHORITY: KRS 15A.065(1), 15A.0652, 15A.067, 15A.160, 605.150, 635.095, 640.120, 645.250

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.065(1), 15A.0652, 15A.067, 15A.160, 605.150, 635.095, and 640.120 authorize the Justice and Public Safety Cabinet and the Department of Juvenile Justice to promulgate administrative regulations for the proper administration of the cabinet and its programs. This administrative regulation establishes the requirements for leaves, releases, and furloughs for juveniles in the custody of the department.

Section 1. (1) Supervised off-grounds activities, day releases, furloughs, and approved leave for emergencies may be permitted to meet the treatment objectives of public offenders who are in custody. Authorized leave may be granted for youthful offenders consistent with the requirements of KRS 439.600.

(2) Eligibility for day releases and furloughs shall be consistent with the juvenile's track. At a minimum, the plan for day releases and furloughs consistent with the assigned track shall be as follows:

(a) Misdemeanor track – one (1) day release and one (1) weekend furlough or up to seventy-two (72) hours.

(b) Felony track – one (1) day release and two (2) weekend furloughs or up to seventy-two (72) hours for each approved furlough.

(c) A juvenile sentenced as a YO shall not be eligible for day release or furlough without approval of the Commissioner.

(d) A juvenile probated as a YO but committed as a public offender shall be eligible for day release and furlough as stated in paragraphs (a) – (c) of this subsection.

(3) Off-grounds activities, day releases, and furloughs shall be used for public offenders, unless extenuating circumstances exist or the treatment team determines that the use of furloughs is contraindicated in assisting the juvenile in achieving treatment goals.

(4) A juvenile assigned to a Level 4 facility may be eligible for individual or group off-grounds activities, community activities, day releases, or furloughs with approval of the division director.

(5) The juvenile's treatment team shall recommend a day release or furlough only after the juvenile achieves progress level, excluding medical and emergency furloughs. Day passes may be issued for a juvenile obtaining progress level. A juvenile shall not be furlough eligible until the last week of progress level.

(6) Planning for day releases and furloughs shall be discussed during aftercare planning at the initial treatment planning meeting.

Section 2. Day Releases. (1) For day releases to the parent or caregiver the following shall occur:

(a) If the day release will include the juvenile visiting their home, the home evaluation shall be updated if the preliminary home evaluation was not conducted within the past six (6) months.

(b) The juvenile and parent or caregiver shall sign and receive a copy of the day release agreement incorporated by reference in this administrative regulation.

(c) The juvenile shall comply with the requirements in the day release agreement.

(d) The unescorted day release of a youthful offender shall require approval of the commissioner or designee consistent with the provision of KRS 439.600.

(e) Declared juvenile sexual offenders shall only be approved for a day release, furlough, or emergency leave by the treatment team.

(2) For day releases for education or work release, the following shall occur:

(a) Program procedures may allow for a juvenile's participation in unescorted leave for employment or school programs.

(b) Approvals shall be requested for unescorted day releases for ongoing educational or career related activities on an individual basis.

(c) For declared juvenile sex offenders, a reassessment shall be completed.

(3) The conditions of the day release and documentation shall be given to the juvenile prior to the day release.

Section 3. Furloughs. (1) Prior to a juvenile being approved for furlough, the following shall occur:

(a) An updated home evaluation on the proposed furlough residence shall be completed;

(b) A furlough agreement shall be developed and approval obtained prior to a furlough;

(c) The juvenile and parent or caregiver shall have the furlough agreement explained to them. The juvenile and parent or caregiver shall sign and receive a copy of the furlough agreement and shall receive furlough documentation to accompany them during the furlough.

(d) If the juvenile is a youthful offender, a furlough request shall be submitted to the commissioner for final approval of the furlough.

(e) Furlough time for a declared juvenile sex offender, prior to program completion, shall be considered on a case-by-case basis and shall not exceed ten (10) days. A reassessment shall be completed for the declared juvenile sex offender prior to furlough, unless the furlough is less than thirty (30) days and the juvenile is expected to return to the facility after the furlough.

(2) While on furlough, the juvenile shall comply with the requirements of the furlough agreement and maintain daily contact with the facility as required in the furlough agreement.

(3) A furlough shall be planned in a manner that the juvenile's educational needs continue to be met by facility educational staff, including scheduling furloughs around weekends and holidays. Educational staff may also lengthen school days during the week to allow the juvenile to go on furlough on a Friday or Monday, provided all local educational requirements continue to be met.

(4) Furloughs to out-of-state locations shall be pursuant to the DJJ interstate compact policies incorporated by reference in 505 KAR 1:190.

Section 4. Medical Furloughs. (1) Medical furloughs for juveniles in a youth development center and group home shall be requested for approval.

(2) A medical furlough of a youthful offender may be authorized as provided in KRS 439.600.

(3) A medical furlough shall be governed by a written medical furlough agreement, which shall outline the length of the medical furlough and behavioral expectations of the juvenile during the medical furlough.

(4) The medical furlough agreement shall be signed by the juvenile and parent or caregiver before the juvenile is placed on medical furlough.

(5) A copy of the signed agreement shall be given to the juvenile and parent or caregiver supervising the juvenile during the medical furlough.

(6) Medical furloughs shall be granted for the duration specified by the juvenile's attending physician and approved by director of medical services.

Section 5. Emergency Furlough. (1) The circumstances of the emergency shall be verified before an emergency furlough request is submitted for approval.

(2) An emergency furlough shall not exceed more than seven (7) consecutive days without authorization from the commissioner or designee.

(3) The emergency furlough for a youthful offender shall only be approved as provided in KRS 439.600. Prior to the emergency furlough of a youthful offender, a written request shall be submitted to the facility manager~~[superintendent]~~ requesting final approval of the emergency furlough.

(4) The juvenile and parent or caregiver shall have the emergency furlough agreement explained to them. The juvenile and parent or caregiver shall sign and receive a copy of the emergency furlough agreement and shall receive documentation to accompany them during the emergency furlough.

(5) During the emergency furlough period, contact shall be maintained with the juvenile and parent or caregiver.

(6) For the critical illness or death of an immediate family member, the juvenile may be allowed to go to the bedside under escort or alone, if statutes and circumstances allow. The procedures for emergency furlough shall be followed.

Section 6. Non-Compliance. If a juvenile is not compliant with the agreement during a day release, medical furlough, emergency furlough, or furlough, the following shall occur:

(1) The day release, medical furlough, emergency furlough, or furlough may be cancelled at any time due to the juvenile's non-compliance with the agreements or other significant factors related to the juvenile's status in the program.

(2) If a violation or circumstance occurs that would result in cancellation of the release or furlough, the following shall apply:

(a) If the juvenile is with the parent or caregiver, the parent or caregiver shall notify the JSW and youth counselor of the alleged violation or circumstance.

(b) A commissioner's warrant shall be used to facilitate the return of a juvenile to the designated facility when the juvenile is absent without leave while on furlough or day release.

Section 7. Leave from a Detention Center. (1) Escorted leaves for the purpose of obtaining necessary medical, dental, or mental health care shall require authorization from the facility manager~~[Superintendent]~~ and shall not require an order of the court. All other escorted leaves shall require a written court order.

(2) Transport during an escorted leave shall be conducted in accordance with 505 KAR 1:~~220~~~~[XXX]~~.

(3) Unescorted leave for any purpose shall occur only upon written order of the court.

Section 8. Release from Detention. (1) A juvenile released on medication shall be provided a minimum of three (3) days medication supply.

(2) A juvenile in an alternative to secure detention program shall not be required to be physically returned to the detention center to be processed for release upon receipt of a court order authorizing the juvenile's release.

Section 9. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "Day Release Agreement", 2023; and
- (b) "Furlough Agreement", 2023.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Juvenile Justice, Office of the Commissioner, 1025 Capital Center Drive, Third Floor, Frankfort, Kentucky 40601, or at any department field office, Monday through Friday, 8 a.m. to 4:30 p.m. This material may be obtained from the Department of Juvenile Justice Web site at <https://djj.ky.gov/About%20DJJ/Pages/lrcfilings.aspx>.

VICKI REED, Commissioner

APPROVED BY AGENCY: October 12, 2023

FILED WITH LRC: October 12, 2023 at 3:15 p.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 establishes the requirements for leaves, releases, and furloughs for juveniles in the custody of the department.

(b) The necessity of this administrative regulation: This administrative regulation meets statutory authorization or requirements in KRS 15A.065(1), 15A.0652, 15A.160, 605.150, 635.095, and 640.120 for administrative regulations.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 15A.065(1), 15A.0652, 15A.067, 15A.160, 605.150, 635.095, and 640.120 authorize the Justice and Public Safety Cabinet and the Department of Juvenile Justice to promulgate administrative regulations for the proper administration of the cabinet and its programs.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation provides direction and information to department staff and juveniles concerning the procedures that govern operations of facilities with juveniles in the custody of the department.

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

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

(b) The necessity of the amendment to this administrative regulation: Not applicable

(c) How the amendment conforms to the content of the authorizing statutes: Not applicable

(d) How the amendment will assist in the effective administration of the statutes: Not applicable

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects approximately 863 DJJ employees, 348 juveniles, and their families.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Staff will be trained. Juveniles and caregivers will be informed about the day release and furlough requirements and must sign an agreement.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The administrative regulation will assist in the effective and orderly management of the department

and its facilities.

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

(a) Initially: An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

(b) On a continuing basis: An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

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

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

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

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

FISCAL NOTE

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 15A.065, 15A.0652, 15A.160, 15A.305, 200.080-200.120, 605.150, 635.095, 640.120, 645.250, Chapters 600-645

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

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

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

(c) How much will it cost to administer this program for the first year? An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

(d) How much will it cost to administer this program for subsequent years? An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

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

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

(c) How much will it cost the regulated entities for the first year? An exact cost of compliance is unknown, but it is not anticipated that

this administrative regulation will increase current costs.

(d) How much will it cost the regulated entities for subsequent years? An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] A major economic impact to the agency is not anticipated.

JUSTICE AND PUBLIC SAFETY CABINET
Department of Juvenile Justice
(Amended After Comments)

505 KAR 1:330. Personal property, dress, and clothing and bedding supply.

RELATES TO: KRS 15A.065, 15A.0652, 15A.067, 200.080-200.120, Chapters 600-645

STATUTORY AUTHORITY: KRS 15A.065(1), 15A.0652, 15A.067, 15A.160, 200.115, 605.150, 635.095, 635.100(7), 640.120, 645.250

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.065(1), 15A.0652, 15A.067, 15A.160, 605.150, 635.095, and 640.120 authorize the Justice and Public Safety Cabinet and the Department of Juvenile Justice to promulgate administrative regulations for the proper administration of the cabinet and its programs. This administrative regulation establishes personal property limitations and requirements for clothes and bedding for juvenile detention centers, youth development centers, and group homes.

Section 1. Personal Property (1) At intake, staff shall take inventory of personal belongings of the juvenile and the juvenile and staff shall sign the personal property inventory. The juvenile shall receive a copy of the inventory, the original shall be maintained in the individual client record, and a copy shall be maintained with the property.

(2) The facility shall provide the juvenile with written information, in the juvenile orientation handbook or otherwise, concerning the property that may remain in the juvenile's possession.

(a) A juvenile in a juvenile detention center may have the following:

1. Letters;
2. Court papers;
3. Photos with no nudity, revealing clothes, or gang signs;
4. Religious book, e.g. Bible, Quran;
5. School work or certificates.

(b) A juvenile in a youth development center or group home may have the following:

1. Letters;
2. Court papers;
3. Photos with no nudity, revealing clothes, or gang signs;
4. Religious book, e.g. Bible, Quran; **and**
5. School work or certificates;
6. Treatment work;
7. Personal journals;
8. Watch; and
9. At least one set of personal clothes including shirt, pants, and shoes.

(3) The youth's parent or caregiver shall be advised of the personal items needed or permitted at the facility.

(4) Items and clothes that are inappropriate pursuant to the dress code in Section 3(5) **of this administrative regulation** shall be stored or returned to the parent or caregiver.

(5) Property Disposal.

(a) After thirty (30) days, the juvenile's personal account shall be used to send **unpermitted** property to the juvenile's parent or caregiver with delivery confirmation; or

(b) If the juvenile does not have sufficient funds to send the property, the facility shall incur the cost of delivery to the parent or caregiver with delivery confirmation.

(6) The inventory shall be updated and signed by the youth as items are added or removed.

(7) Inventoried items shall be signed for and returned to the juvenile, upon release from the custody of DJJ.

(8) Personal belongings of a juvenile absent without leave or on escape status shall be stored and retained by the program for thirty (30) days following the AWOL or escape incident.

Section 2. Lost or Stolen Property. (1) If a juvenile reports that personal property has been stolen or is lost and the report is substantiated, the juvenile shall be reimbursed.

(2) The maximum cost of replacement or repair shall be limited to the following:

- (a) Blouse or shirt twenty-five (25) dollars;
- (b) Skirt or trousers thirty (30) dollars;
- (c) Sweater twenty-five (25) dollars;
- (d) T-shirt ten (10) dollars;
- (e) Dress forty (40) dollars;
- (f) Coat or jacket seventy-five (75) dollars;
- (g) Shoes fifty (50) dollars;
- (h) Jewelry seventy-five (75) dollars;
- (i) Electronic devices and accessories \$100; and
- (j) Other items shall be evaluated on a per item basis.

(3) Approval of reimbursement for property that is in the possession of the juvenile shall be based upon the facts of each situation.

Section 3. Clothing. (1) DJJ shall ensure a juvenile is provided required clothing.

(2) A facility shall provide for the thorough cleaning and, if necessary, disinfecting of a juvenile's personal clothing before storage or before allowing the juvenile to keep and wear personal clothing.

(3) A facility shall allow for clean socks and underwear daily and a minimum of three (3) sets of clean clothing per week, and more often if necessary, depending on activities and weather conditions. Clothing shall be properly fitted and climatically suitable.

(4) Provision shall be made for the issuance of special and, if appropriate, protective clothing and equipment to a juvenile assigned to food service, a technical program, and a work experience program. If standard issue clothing presents a security risk, the juvenile shall be supplied with a security garment.

(5) Dress code.

(a) The dress code shall be contained in the juvenile orientation handbook and explained to each juvenile upon admission.

(b) A juvenile's clothing shall be proper in size and shall reflect a neat and well-groomed appearance.

(c) Clothing that displays profanity or sexual lewdness or conveys a message contrary to the treatment goals of the juvenile and facility shall be prohibited.

(d) Clothing that is identified with gangs, including the way it is worn, shall be prohibited. A facility may prohibit specific colors of clothing that are associated with a gang.

(e) State issued clothing shall be provided to a juvenile in a detention center.

(f) A juvenile in a YDC or group home may wear personal clothing, uniforms, or a combination thereof that is consistent with the requirements of the facility.

(g) A juvenile may be subject to discipline for failure to abide by the established dress code.

(6) Discharge. At discharge, an inventory of facility-issued clothing shall be made. The facility shall assess the basic clothing needs of the juvenile, and may allow the juvenile to retain state-

issued clothing, as needed, with approval from the facility manager[Superintendent].

Section 4. Bedding. A residential facility shall provide clean bed linens weekly and clean towels and wash cloths at least three (3) times per week.

VICKI REED, Commissioner

APPROVED BY AGENCY: October 12, 2023

FILED WITH LRC: October 12, 2023 at 3:15 p.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 establishes personal property limitations and requirements for clothes and bedding for juvenile detention centers, youth development centers, and group homes.

(b) The necessity of this administrative regulation: This administrative regulation meets statutory authorization or requirements in KRS 15A.065(1), 15A.0652, 15A.160, 605.150, 635.095, and 640.120 for administrative regulations.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 15A.065(1), 15A.0652, 15A.067, 15A.160, 605.150, 635.095, and 640.120 authorize the Justice and Public Safety Cabinet and the Department of Juvenile Justice to promulgate administrative regulations for the proper administration of the cabinet and its programs.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation provides direction and information to department staff and juveniles concerning procedures that govern operations of facilities with juveniles in the custody of the department.

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

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

(b) The necessity of the amendment to this administrative regulation: Not applicable

(c) How the amendment conforms to the content of the authorizing statutes: Not applicable

(d) How the amendment will assist in the effective administration of the statutes: Not applicable

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects approximately 632 DJJ employees, 348 juveniles, and their families.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Staff and juveniles will have to be aware of and follow the rules for personal property and clothes and bedding supply.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The administrative regulation will assist in the effective and orderly management of the department and its facilities.

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

(a) Initially: An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

(b) On a continuing basis: An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

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

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

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

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

FISCAL NOTE

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 15A.065, 15A.0652, 15A.160, 200.080-200.120, 605.150, 635.095, 640.120, 645.250, Chapters 600-645

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

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

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

(c) How much will it cost to administer this program for the first year? An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

(d) How much will it cost to administer this program for subsequent years? An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

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

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

(c) How much will it cost the regulated entities for the first year? An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

(d) How much will it cost the regulated entities for subsequent years? An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] A major economic impact to the agency is not anticipated.

JUSTICE AND PUBLIC SAFETY CABINET
Department of Juvenile Justice
(Amended After Comments)

505 KAR 1:340. Recreation.

RELATES TO: KRS 15A.065, 15A.0652, 15A.067, 200.080-200.120, Chapters 600-645

STATUTORY AUTHORITY: KRS 15A.065(1), 15A.0652, 15A.160, ~~[15A.210]~~, 605.150, 635.095, 640.120, 645.250

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.065(1), 15A.0652, 15A.160, ~~[15A.210]~~, 605.150, 635.095, and 640.120 authorize the Justice and Public Safety Cabinet and the Department of Juvenile Justice to promulgate administrative regulations for the proper administration of the cabinet and its programs. This administrative regulation establishes requirements for recreation in juvenile detention centers, youth development centers, and group homes.

Section 1. Juvenile Facilities. (1) Juveniles shall have one (1) hour of large muscle exercise and one (1) hour of planned exercise or constructive leisure time activity during school days with an additional one (1) hour of exercise or constructive leisure time activity each day on weekends and holidays.

(2) A variety of fixed and movable equipment for indoor and outdoor recreation shall be provided and may include the following: bats, balls, pool sticks, and horseshoes. Free weights shall be prohibited in detention centers.

(3) A juvenile shall not participate in water sports unless a certified lifeguard is present. An approved life jacket shall be worn for activities occurring on natural waters.

(4) A juvenile who is restricted from activity by medical staff shall not participate until medically released. If a juvenile is unable to participate in the planned recreational activity due to a medical limitation, another recreational activity shall be arranged for that juvenile in consultation with medical staff for a juvenile in a detention center, YDC, or group home, or with a parent or caregiver for youth at a day treatment program.

(5) Physical exercise shall not be used as punishment or discipline.

(6) Recreation shall be counted separately from a physical education class. One shall not be used to replace the other.

Section 2. Ratings. (1) A movie with a rating of restricted ("R") or higher shall be prohibited. A movie with a rating of parental guidance ("PG-13") shall require approval from the facility manager ~~[Superintendent]~~ or designee before being viewed.

(2) A television (TV) show with a rating of "Mature" or higher shall be prohibited. A TV show with a rating of parental guidance ("TV 14") shall require approval from the facility manager ~~[Superintendent]~~ or designee before being viewed.

(3) A video game with a rating of "Mature" or higher shall be prohibited. A video game with a rating of "Teen" shall require

approval from the facility manager ~~[Superintendent]~~ or designee before being viewed.

(4) Music with lyrics that are profane, violent, sexually explicit, or gang-related shall be prohibited.

Section 3. Isolation, Protective Custody and Room Confinement. Special efforts shall be made to provide daily physical exercise for juveniles in isolation, protective custody, and room confinement. If a juvenile is placed in any of these during a scheduled recreation time, an alternative recreation activity that provides one (1) hour of large muscle activity shall be offered. The alternative recreation activity may be conducted in the ~~[room or]~~ area in which the juvenile is confined.

VICKI REED, Commissioner

APPROVED BY AGENCY: October 12, 2023

FILED WITH LRC: October 12, 2023 at 3:15 p.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 establishes requirements for recreation in juvenile detention centers, youth development centers, and group homes.

(b) The necessity of this administrative regulation is: This administrative regulation meets statutory authorization or requirements in KRS 15A.065(1), 15A.0652, 15A.160, 605.150, 635.095, and 640.120 for administrative regulations.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 15A.065(1), 15A.0652, 15A.067, 15A.160, 605.150, 635.095, and 640.120 authorize the Justice and Public Safety Cabinet and the Department of Juvenile Justice to promulgate administrative regulations for the proper administration of the cabinet and its programs.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation provides direction and information to department staff and juveniles concerning staff duties and the procedures that govern operations of facilities with juveniles in the custody of the department.

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

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

(b) The necessity of the amendment to this administrative regulation: Not applicable

(c) How the amendment conforms to the content of the authorizing statutes: Not applicable

(d) How the amendment will assist in the effective administration of the statutes: Not applicable

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects approximately 632 DJJ employees, 348 juveniles and their families.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Staff will be instructed on recreation requirements and restrictions. Juveniles and their families will be informed of recreation requirements and restrictions on entertainment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The administrative regulation will assist in the effective and orderly management of the department and its facilities.

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

(a) Initially: An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

(b) On a continuing basis: An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

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

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

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

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

FISCAL NOTE

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 15A.065, 15A.0652, 15A.160, 15A.305, 200.080-200.120, 605.150, 635.095, 640.120, 645.250, Chapters 600-645

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

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

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

(c) How much will it cost to administer this program for the first year? An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

(d) How much will it cost to administer this program for subsequent years? An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

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savings.

(c) How much will it cost the regulated entities for the first year? An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

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(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] A major economic impact to the agency is not anticipated.

JUSTICE AND PUBLIC SAFETY CABINET Department of Juvenile Justice (Amended After Comments)

505 KAR 1:350. Religious practice.

RELATES TO: KRS 15A.065, **15A.0651**, 15A.0652, 15A.067, 200.080-200.120, Chapters 600-645

STATUTORY AUTHORITY: KRS 15A.065(1), 15A.0652, 15A.160, 605.150, **610.320, 610.340**, 635.095, 640.120, 645.250

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.065(1), 15A.0652, 15A.160, 605.150, 635.095, and 640.120 authorize the Justice and Public Safety Cabinet and the Department of Juvenile Justice to promulgate administrative regulations for the proper administration of the cabinet and its programs. This administrative regulation establishes religious practice procedures for juveniles in the custody of the department.

Section 1. Religious Practice. (1) A juvenile in custody may engage in the religious practices of the juvenile's[their] faith. A juvenile shall not be discriminated against based on the juvenile's[their] religious belief or practice.

(2) DJJ shall provide a juvenile the opportunity to participate in the practices of the juvenile's faith unless it is a threat to the safety of persons involved in the activity or the safety of the facility, the activity disrupts order in the facility or interferes with the treatment goals of the juvenile, or is not available.

(3) A juvenile's participation in religious activities shall be voluntary. A juvenile shall not be penalized for not participating in religious activities.

(4) A juvenile may designate any or no religious preference and indicate any religious accommodation needed upon intake to a facility or any time while a juvenile resides at the facility. A juvenile shall not be harassed or ridiculed because of a religious designation or coerced toward a religious designation.

Section 2. Religious Designation. (1) Religious designation documentation shall be in writing, signed, and dated by the juvenile and DJJ staff receiving the designation.

(2) A juvenile shall submit a request to change the juvenile's[their] religious designation in writing.

(3) Once a religious designation has been made, another designation cannot be made for ninety (90) days.

Section 3. Religious Accommodation Request. (1) A juvenile may request a religious item or practice that is not available at the facility, including a religious dietary accommodation.

(2) A religious accommodation request shall be in writing, signed, and dated by the juvenile and DJJ staff receiving the

accommodation request.

(3) The religious accommodation request shall explain the item or practice wanted.

(4) A decision regarding the accommodation request shall be made in writing within seven (7) business days from the date that it was received by DJJ staff.

(5) Appeal. A juvenile may appeal an accommodation request that is denied.

(a) The appeal shall be made in writing and given to the religious program coordinator or facility manager[superintendent] within five (5) days after the receipt of the denial.

(b) The facility religious program coordinator or facility manager[superintendent] shall submit the appeal to the commissioner for review and disposition within three (3) business days from receipt from the juvenile.

(c) The commissioner shall review the appeal and make a written determination within five (5) days of receipt.

Section 4. Religious Items.

(1) A juvenile may possess items essential to the practice of the juvenile's[their] particular religious faith, if the item is allowed pursuant to Section 1(2) of this administrative regulation.

(2) A religious item shall be subject to review before entering the facility through the accommodation process.

(a) Once an item has been approved, if money is available in the juvenile's account, the juvenile may pay for the item;

(b)1. If money is not available in the juvenile's account, the facility religious program coordinator[counselor] shall consult the parent or caregiver to discuss payment for the item; or

2. The agency religious program coordinator shall consult community religious resources for a request for a religious item for an indigent juvenile.

Section 5. Religious Contacts and Visits.

(1) A juvenile may have a visit from a personal minister, pastor, or religious counselor who has been designated by the juvenile and is on the approved visitor's list at scheduled times and other times as approved by the facility manager[Superintendent] or designee.

(2) If a juvenile requests assistance in obtaining a religious counselor[leader], the agency religious program coordinator or the facility religious program coordinator shall provide assistance to the juvenile in finding a religious counselor[leader].

(3) A juvenile may decline a visit with a personal minister, pastor, or religious counselor.

~~(4) [A volunteer minister, pastor, or religious counselor, approved by the facility religious coordinator, shall have access to each area of the facility identified for religious programming. DJJ staff shall not serve as a volunteer minister, pastor, or religious counselor in the facility where the staff member works.]~~

~~(5) A juvenile shall be allowed to have confidential verbal communications with clergy. Written correspondence shall be subject to the security inspection outlined in 505 KAR 1:380.~~

Section 6. Volunteer minister, pastor, or religious counselors.

(1) A volunteer minister, pastor, or religious counselor, approved by the facility religious program coordinator, shall have access to each area of the facility identified for religious programming. DJJ staff shall not serve as a volunteer minister, pastor, or religious counselor in the facility at which the staff member works.

~~(2)[(6)]~~ A volunteer minister, pastor, or religious counselor, approved by the facility religious program coordinator, shall comply with KRS 15A.0651, 610.320, and 610.340 regarding the confidentiality of juvenile information.

VICKI REED, Commissioner

APPROVED BY AGENCY: October 12, 2023

FILED WITH LRC: October 12, 2023 at 3:15 p.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 establishes religious practice procedures for juveniles in the custody of the department.

(b) The necessity of this administrative regulation: This administrative regulation meets statutory authorization or requirements in KRS 15A.065(1), 15A.0652, 15A.160, 605.150, 635.095, and 640.120 for administrative regulations.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 15A.065(1), 15A.0652, 15A.160, 605.150, 635.095, and 640.120 authorize the Justice and Public Safety Cabinet and the Department of Juvenile Justice to promulgate administrative regulations for the proper administration of the cabinet and its programs.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation provides direction and information to department staff and juveniles concerning the procedures that govern religious practice in department facilities.

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

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

(b) The necessity of the amendment to this administrative regulation: Not applicable

(c) How the amendment conforms to the content of the authorizing statutes: Not applicable

(d) How the amendment will assist in the effective administration of the statutes: Not applicable

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects approximately 632 DJJ employees, 348 juveniles, and their families.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The facilities will need to comply with the procedures for religious practice and accommodation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The administrative regulation will assist in the effective and orderly management of the department and its facilities.

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

(a) Initially: An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

(b) On a continuing basis: An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

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

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

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

administrative regulation does establish any fee.

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

FISCAL NOTE

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 15A.065, 15A.0652, 15A.160, 200.080-200.120, 605.150, 635.095, 640.120, 645.250, Chapters 600-645

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

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

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

(c) How much will it cost to administer this program for the first year? An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

(d) How much will it cost to administer this program for subsequent years? An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

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

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

(c) How much will it cost the regulated entities for the first year? An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

(d) How much will it cost the regulated entities for subsequent years? An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] A major economic impact

to the agency is not anticipated.

JUSTICE AND PUBLIC SAFETY CABINET Department of Juvenile Justice (Amended After Comments)

505 KAR 1:360. Searches.

RELATES TO: KRS 15A.065, 15A.0652, 15A.067, 200.080-200.120, Chapters 600-645

STATUTORY AUTHORITY: KRS 15A.065(1), 15A.0652, 15A.160, 605.150, 635.095, 635.100(7), 640.120, 645.250

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.065(1), 15A.0652, 15A.160, ~~[15A.210,]~~ 605.150, 635.095, and 640.120 authorize the Justice and Public Safety Cabinet and the Department of Juvenile Justice to promulgate administrative regulations for the proper administration of the cabinet and its programs. This administrative regulation establishes search parameters.

Section 1. Routine Searches. (1) All juveniles and their possessions shall be subject to a routine search at any time. All searches shall be documented.

(2) A routine search of the person may include:

(a) A pat down search;

(b) Scanning with a metal wand;

(c) Scanning with a metal detector; and

(d) Whole body imaging.

(3) Staff shall provide the individual being searched with verbal instructions for the type of search being used.

(4) If possible, searches shall be conducted by same gender staff. Cross-gender searches shall only be conducted under exigent circumstances and shall be documented.

(5) Pat down search. Staff shall have the youth remove shoes, jackets, sweaters, gloves, and hats and staff shall inspect these items. Staff shall visually check the juvenile's hair, ears, nose, mouth, and under tongue.

(6) An incident report shall be completed if contraband is discovered.

Section 2. Strip Search. (1) Reasonable suspicion that a juvenile may be concealing contraband shall exist prior to the authorization of a strip search.

(2) Authorization shall be required by the facility manager[superintendent] and director of medical services prior to a strip search.

(3) An incident report shall be completed that includes the reasonable suspicion for the strip search.

Section 3. Body Cavity Searches. (1) Outside medical providers shall be the only individuals authorized to conduct a body cavity search. Reasonable suspicion that a juvenile may be concealing contraband in a body cavity shall exist prior to the authorization of a body cavity search.

(2) Authorization shall be required by the facility manager[superintendent] and director of medical services prior to a body cavity search.

(3) An incident report shall be completed that includes the reasonable suspicion for the body cavity search and the identity of the outside medical provider who conducted the search.

Section 4. Visitors. (1) All visitors and their possessions shall be subject to search.

(2) If any visitor refuses to submit to a search, the visitor shall be denied entry.

(3) A visitor who leaves the visitation area shall be subject to search upon reentry.

~~[Section 5. Contraband Confiscation and Chain of Custody.]~~

~~(4)[(4)]~~ Each facility shall have a sign posted, in a visible location on the grounds of the facility, to advise all persons that it is a violation

of Kentucky law to bring weapons, intoxicants, drugs, and other contraband onto the grounds or into the premises.

~~[(2) If contraband is discovered at a facility, staff shall confiscate and place the contraband in a secure location. A chain of custody for the contraband shall be maintained.]~~

Section 5.[Section 6.] Whole Body Scanning. (1) Any juvenile, staff, or visitor that is pregnant, has a disability, requires reasonable accommodation, or is otherwise unable to be scanned shall be searched by other means when entering a facility.

(2) If possible and absent exigent circumstances, body scans of juveniles, staff, and visitors shall be conducted by an operator of the same sex.

(3) The images generated by the system may only be viewed by the operator unless the person scanned is believed to be in possession of contraband or the operator observes anything unusual about the scan, then the image may be viewed by the facility **facility manager[Superintendent]**, designated investigative staff as assigned by the **facility manager[Superintendent]**, and outside law enforcement agencies as appropriate. Something unusual may include a bulge in a location that would not normally have a bulge, an obvious metal object, or other variation from a normal scan that the operator would recognize as out of the ordinary from a clear scan from training.

(4) Staff and visitors who refuse to be scanned without a medical exemption provided in advance may be denied entry into an institution pending further investigation into the refusal.

(5) Juveniles who refuse to be scanned or attempt to manipulate or interrupt the scanning process and remain uncooperative may be issued a disciplinary report.

VICKI REED, Commissioner

APPROVED BY AGENCY: October 12, 2023

FILED WITH LRC: October 12, 2023 at 3:15 p.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 establishes search parameters.

(b) The necessity of this administrative regulation: This administrative regulation meets statutory authorization or requirements in KRS 15A.065(1), 15A.0652, 15A.160, 605.150, 635.095, and 640.120 for administrative regulations.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 15A.065(1), 15A.0652, 15A.067, 15A.160, 605.150, 635.095, and 640.120 authorize the Justice and Public Safety Cabinet and the Department of Juvenile Justice to promulgate administrative regulations for the proper administration of the cabinet and its programs.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation provides direction and information to department staff and juveniles concerning staff duties and the procedures that govern operations of facilities with juveniles in the custody of the department.

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

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

(b) The necessity of the amendment to this administrative regulation: Not applicable

(c) How the amendment conforms to the content of the authorizing statutes: Not applicable

(d) How the amendment will assist in the effective administration of the statutes: Not applicable

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects approximately 836 DJJ employees, 1163 juveniles, and their families.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Staff will be trained on proper search techniques. Juveniles and visitors will be informed that they will be subject to searches.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The administrative regulation will assist in the effective and orderly management of the department and its facilities.

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

(a) Initially: An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

(b) On a continuing basis: An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

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

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

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

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

FISCAL NOTE

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 15A.065, 15A.0652, 15A.160, 15A.305, 200.080-200.120, 605.150, 635.095, 640.120, 645.250, Chapters 600-645

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

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

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

(c) How much will it cost to administer this program for the first year? An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

(d) How much will it cost to administer this program for subsequent years? An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

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

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

(c) How much will it cost the regulated entities for the first year? An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

(d) How much will it cost the regulated entities for subsequent years? An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] A major economic impact to the agency is not anticipated.

**JUSTICE AND PUBLIC SAFETY CABINET
Department of Juvenile Justice
(Amended After Comments)**

505 KAR 1:380. Mail, visiting, and telephone use.

RELATES TO: KRS 15A.065, 15A.0652, 200.080-200.120, Chapters 600-645

STATUTORY AUTHORITY: KRS 15A.065(1), 15A.0652, 15A.160, 605.150, 635.095, 640.120, 645.250

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.065(1), 15A.0652, 15A.067, 15A.160, 605.150, 635.095, and 640.120 authorize the Justice and Public Safety Cabinet and the Department of Juvenile Justice to promulgate administrative regulations for the proper administration of the cabinet and its programs. This administrative regulation establishes requirements and procedures for mail, visitation, and telephone use for juveniles in juvenile detention centers, youth development centers, and group homes.

Section 1. Mail.

(1) Notification that mail is subject to search and inspection shall be given to the juvenile and mailed to the juvenile's parent or caregiver within twenty-four (24) hours of admission.

(2) If a juvenile bears the mailing cost, there shall not be a limit on the volume of letters a juvenile may send or receive.

(3) A juvenile shall be allowed to mail five (5) first class letters each week, at no cost to the juvenile. The juvenile shall be allowed unlimited postage to contact juvenile's[their] attorney. The postage allowance shall not be transferable to another juvenile.

(4) Mail received by the facility for the juvenile shall not be held more than twenty-four (24) hours, and packages shall not be held more than forty-eight (48) hours, excluding weekends and holidays. In an emergency situation in which normal facility procedure, policy,

or activity is disrupted due to riot, escape, fire, natural disaster, employee action, or other serious incident, mail shall be delivered according to schedule when normal procedure and activity is restored.

(5) A first class letter or a package received for a juvenile who has been transferred or released shall be forwarded to the address designated by the juvenile or to the receiving facility. If there is no forwarding address, it shall be returned to the sender.

(6) A juvenile may send and receive a sealed, first class letter to and from court, counsel, and officials of DJJ or the Justice and Public Safety Cabinet, as well as those individuals on their approved mail list.

(a) Staff, in the presence of the juvenile, may inspect outgoing mail for contraband before it is sealed; and

(b) Mail received by the juvenile, from those listed in this subsection[~~6~~], shall be opened only to inspect for contraband and only in the presence of the juvenile, unless waived in writing, marked as not privileged by the sender, or in circumstances that may indicate contamination.

(7) Mail shall be given to the facility manager[superintendent] for a restriction determination, if the mail:

(a) Is marked with gang signs, symbols, or writing on the envelope;

(b) Is from a parent or other individual with a no contact order; or

(c) Was received from an incarcerated individual at another juvenile facility or correctional institution.

(8) Cash, checks, or money orders shall be removed from incoming mail and deposited in the juvenile's personal account with a receipt given to the juvenile.

(9) The treatment team shall assess the appropriateness of publications received by a juvenile on a case-by-case basis. Restrictions to access shall be directly related to the maintenance of facility order, treatment, or security.

(10) The facility manager[superintendent] or designee shall notify the juvenile in writing if a mail restriction has occurred or a mail item has been returned.

(11) A facility shall inform a juvenile at orientation of the hours and procedures for mail and procedures regarding the approved senders list.

Section 2. Telephone Use.

(1) Telephone services available for a juvenile shall be reasonably priced with rates and charges commensurate with those charged to the general public for like services.

(2) A juvenile with a hearing or speech disability shall be given access to a Telecommunications Device for the Deaf or comparable equipment.

(3) A facility shall notify a juvenile at orientation of the hours and procedures for telephone access and procedures regarding the approved callers list.

(4) A juvenile shall require approval to make a telephone call.

(5) Procedures for access to the telephone may relate to the progress of the juvenile, as demonstrated by advancement through the level system, except calls to and from the juvenile's legal representative,~~[-or]~~ juvenile service worker, or parent or guardian.

(6) A juvenile shall be permitted phone contact with a parent or caregiver not less than once per week, unless the facility manager[superintendent] determines there is a threat to facility order, treatment, or security.

(7) A juvenile shall be permitted phone contact with their attorney as needed, but the timing of the contact may be impacted by operational issues.

(8) Calls may be monitored, except calls to and from the juvenile's legal representative.

(9) Any telephone messages shall be transmitted to a juvenile as soon as practicable, but within twenty-four (24) hours.

Section 3. In Person Visitation.

(1) Visitation information shall be communicated to the juvenile and parent or caregiver within seventy-two (72) hours of admission.

(2) A juvenile shall have an approved visitors list.

(3) A secure program may retain the visitor's ID as the visitor signs in.

(4) A visitor of a juvenile shall be subject to search.

(5) Dress. A visitor shall be appropriately dressed. Lewd, revealing, transparent, gang affiliated, drug or alcohol affiliated, or offensive clothing, or any apparel that conveys a message contrary to treatment goals shall not be worn.

(6) Visitation suspension. Visitation suspension shall be approved by the **facility manager[superintendent]** or designee. Temporary suspension of visitation may occur for a juvenile or visitor due to a facility disruption or to support treatment goals as follows:

(a) For a visitor:

1. The visitor shall be notified of the suspension, in writing, within five (5) business days of the suspension determination; and

2. This notification shall include the conditions under which the suspension of visitation may be lifted.

(b) For a juvenile:

1. The juvenile shall be notified of the suspension;[.]

2. This notice shall include the conditions under which the suspension of visitation may be lifted; and

3. Notification of the suspension shall be sent to the juvenile and parent or caregiver.

(c) To support treatment goals:

1. The temporary suspension shall require recommendation by the treatment team; and

2. Notification of the suspension shall be sent to the parent or caregiver.

(7) A visitor may be excluded from contact with a juvenile and the facility for the following reasons:

(a) Involvement in the juvenile's offense;

(b) Posing a threat to the safety of the juvenile or the security of the facility;

(c) Refusal to follow facility rules or procedures, including search;

(d) Appearing intoxicated or under the influence of drugs; or

(e) Facility documentation of a substantiated disruption during a previous visitation.

(8) Denial of visitation privileges shall be documented in writing.

A copy of the denial and justification shall be sent to the excluded individual within five (5) business days of the denial determination.

(9) If available, teleconferencing or video conferencing may be coordinated by the juvenile's counselor with the juvenile service worker as a means for the parent or caregiver to contact the juvenile.

~~[(10)] [Group visits shall comply with the following:]~~

~~[(a)] [A group wishing to visit the facility or a specific juvenile shall require advance approval from the superintendent;]~~

~~[(b)] [A group not routinely involved in the program or known to the facility superintendent or designee shall provide, in an advance, a written request for the visit to the superintendent for approval;]~~

~~[(c)] [Group visits shall be limited to those groups who have a legitimate, beneficial purpose for the juvenile or facility; and]~~

~~[(d)] [Each individual within a group shall be subject to the same requirements established for individual visitation.]~~

~~[(11)] [An approved visitor shall have the responsibility for providing their own transportation for visits.]~~

Section 4. Approved List.

(1) A person that a juvenile may correspond with, telephone, or see for a visit shall be on the list approved by the **facility manager[superintendent]** or designee in consultation with the treatment team. The list shall include:

(a) Immediate family members;

(b) Guardian;

(c) Caregiver;[and]

(d) Attorney; and

(e) Religious counselor.

(2) Factors to be considered in approving a person for the list shall include:

(a) Treatment progress or disruption; and

(b) Safety or security of the juvenile, others, or the facility.

(3) An attorney shall not be disapproved except for introduction of contraband or other safety or security issue.

(4) Once approved, the superintendent and treatment team may exclude a person on the list based on a treatment or safety and security issue.

(5) An approved visitor shall provide the visitor's own transportation for visits.

Section 5. Group Visits.

(1) Any juvenile shall be permitted visitation from individuals representing organizations in the community.

(2)

(a) Group visits shall be limited to those groups who have a legitimate, beneficial purpose for the juvenile or facility; and

(b) Each individual within a group shall be subject to the same requirements established for individual visitation.

(3) A group wishing to schedule a visit to a facility or a specific juvenile shall require advance approval from the facility manager.

(a) A group shall provide a written request for a visit, at least fourteen (14) days in advance, to the facility manager or designee for review. The request shall include:

1. The name of each person who intends to visit;

2. The purpose of the visit;

3. The primary contact for the group with phone number and email address; and

4. The juveniles whom the group intends to visit by description or name, if the group does not intend the visit to include all juveniles in the facility.

(b) The facility manager or designee may request additional information from the group prior to a decision concerning the visit.

(c) The facility manager or designee shall send a notice of the decision concerning the visit to the group primary contact at least five (5) days prior to the requested visit.

(4) A juvenile may refuse to visit with the group.

(5) A group that has been previously approved to visit may request a visit with seven (7) days' notice.

VICKI REED, Commissioner

APPROVED BY AGENCY: October 12, 2023

FILED WITH LRC: October 12, 2023 at 3:15 p.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 establishes requirements and procedures for mail, visitation, and telephone use for juveniles in juvenile detention centers, youth development centers, and group homes.

(b) The necessity of this administrative regulation: This administrative regulation meets statutory authorization or requirements in KRS 15A.065(1), 15A.0652, 15A.160, 605.150, 635.095, and 640.120 for administrative regulations.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 15A.065(1), 15A.0652, 15A.160, 605.150, 635.095, and 640.120 authorize the Justice and Public Safety Cabinet and the Department of Juvenile Justice to promulgate administrative regulations for the proper administration of the cabinet and its programs.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation provides direction and information to department staff and juveniles concerning procedures that govern operations of facilities with juveniles in the custody of the department.

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

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

(b) The necessity of the amendment to this administrative regulation: Not applicable

(c) How the amendment conforms to the content of the authorizing statutes: Not applicable

(d) How the amendment will assist in the effective administration of the statutes: Not applicable

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects approximately 632 DJJ employees, 348 juveniles, and their families.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: DJJ staff and juveniles will have to be aware of and comply with the rules concerning visits, mail, and telephone use.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The administrative regulation will assist in the effective and orderly management of the department and its facilities.

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

(a) Initially: An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

(b) On a continuing basis: An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

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

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

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

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

FISCAL NOTE

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 15A.065, 15A.0652, 15A.160, 200.080-200.120, 605.150, 635.095, 640.120, 645.250, Chapters 600-645

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

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

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire

departments, or school districts) for subsequent years? This administrative regulation will not create any revenue.

(c) How much will it cost to administer this program for the first year? An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

(d) How much will it cost to administer this program for subsequent years? An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

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

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

(c) How much will it cost the regulated entities for the first year? An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

(d) How much will it cost the regulated entities for subsequent years? An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] A major economic impact to the agency is not anticipated.

JUSTICE AND PUBLIC SAFETY CABINET Department of Juvenile Justice (Amended After Comments)

505 KAR 1:390. Juvenile accounts and youth activity fund account.

RELATES TO: KRS 15A.065, 15A.0652, ~~[15A.067]~~, 200.080-200.120, Chapters 600-645

STATUTORY AUTHORITY: KRS 15A.065(1), 15A.0652, 15A.160, 605.150, 635.095, 640.120, 645.250

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.065(1), 15A.0652, ~~[15A.067]~~, 15A.160, ~~[15A.240]~~, 605.150, 635.095, and 640.120 authorize the Justice and Public Safety Cabinet and the Department of Juvenile Justice to promulgate administrative regulations for the proper administration of the cabinet and its programs. This administrative regulation establishes requirements for the youth activity fund for department facilities and juvenile personal funds accounts for juvenile detention centers, youth development centers, and group homes.

Section 1. Juvenile Accounts for Juvenile Detention Centers, Youth Development Centers, and Group Homes.

(1) A juvenile may have a personal financial account. The personal account shall be maintained by the DJJ facility in an account at a local bank or other financial depository. A juvenile's individual funds received from allowance, work detail, work release, and money sent to a juvenile from outside the facility shall be deposited in the juvenile's account. If any interest is earned from the bank on the account, it shall become part of the Youth Activity Fund account and used for the benefit of the juveniles.

(2) A juvenile may request a statement of deposits and expenditures for the juvenile's individual account on a periodic basis.

(3) If a juvenile has sufficient funds in the juvenile's personal account to meet the minimum deposit requirements for the outside bank at which the youth activity fund account is maintained, the juvenile may open an interest-bearing personal account at the bank. The parent or guardian of the juvenile shall be responsible for opening and maintaining the bank account for the juvenile. A juvenile shall be given notice when his or her funds are sufficient to permit the juvenile to establish a personal account.

Section 2. Youth Activity Fund Account.

(1) Each facility operated by the department shall establish an account with a local bank or other financial depository. This account shall be called the youth activity fund account. The facility shall deposit all funds earned through work projects, sales of articles produced by juveniles, and private donations received by a facility into the youth activity fund account. The funds shall be used for the benefit of the juveniles in general.

(2) The facility shall maintain an adequate accounting system to ensure an accurate accounting of the funds deposited in the youth activities fund account.

Section 3. Trustees and Management.

(1) The **facility manager[superintendent]** shall serve as primary trustee of the facility's youth activity fund account. The facility's office coordinator shall be the secondary trustee. The **facility manager[superintendent]** may designate a third trustee. The final trustee shall be the non-governmental accounts contact person in the fiscal branch.

(2) All checks written from the activity fund account shall require signatures from two (2) trustees.

(3) Bank statements for each account shall be reconciled monthly.

(4) The facility shall maintain a ledger for the youth activity funds. The ledger shall record receipts, disbursements, and maintain a positive balance.

(5) All disbursements of the fund shall be covered by a sufficient balance in the account at the time of expending or obligating. All disbursements from the account shall be properly documented with a receipt or invoice and have two-party verification. Disbursements shall not be made in cash.

(6) The youth activity account fund shall not be used for disbursements for items or services for staff.

(7) If for any reason the facility or program discontinues operation or discontinues the youth activity fund, the assets of the fund shall be frozen with no new activity obligations. Any remaining balance shall be assigned to the youth activity fund at another facility or program.

VICKI REED, Commissioner

APPROVED BY AGENCY: October 12, 2023

FILED WITH LRC: October 12, 2023 at 3:15 p.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 establishes requirements for the youth activity fund for department facilities and juvenile personal funds accounts for

juvenile detention centers, youth development centers, and group homes.

(b) The necessity of this administrative regulation: This administrative regulation meets statutory authorization or requirements in KRS 15A.065(1), 15A.0652, 15A.160, 605.150, 635.095, and 640.120 for administrative regulations.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 15A.065(1), 15A.0652, 15A.067, 15A.160, 605.150, 635.095, and 640.120 authorize the Justice and Public Safety Cabinet and the Department of Juvenile Justice to promulgate administrative regulations for the proper administration of the cabinet and its programs.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation provides direction and information to department staff and juveniles concerning staff duties and the procedures that govern operations of facilities with juveniles in the custody of the department.

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

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

(b) The necessity of the amendment to this administrative regulation: Not applicable

(c) How the amendment conforms to the content of the authorizing statutes: Not applicable

(d) How the amendment will assist in the effective administration of the statutes: Not applicable

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects approximately 632 DJJ employees, 348 juveniles, and their families.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Staff will be trained on youth activity fund and youth account procedures. Juveniles and their families will be informed of youth activity funds and youth account procedures.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The administrative regulation will assist in the effective and orderly management of the department and its facilities.

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

(a) Initially: An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

(b) On a continuing basis: An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

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

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

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

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

FISCAL NOTE

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 15A.065, 15A.0652, 15A.160, 15A.305, 200.080-200.120, 605.150, 635.095, 640.120, 645.250, Chapters 600-645

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

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

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

(c) How much will it cost to administer this program for the first year? An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

(d) How much will it cost to administer this program for subsequent years? An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

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

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

(c) How much will it cost the regulated entities for the first year? An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

(d) How much will it cost the regulated entities for subsequent years? An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] A major economic impact to the agency for the purchase of equipment and provision of training is not anticipated.

JUSTICE AND PUBLIC SAFETY CABINET

Department of Juvenile Justice

(Amended After Comments)

505 KAR 1:400. Behavior management and progressive discipline.

RELATES TO: KRS 15A.065, 15A.0652, 15A.067, 200.080-200.120, Chapters 600-645

STATUTORY AUTHORITY: KRS 15A.065(1), 15A.0652, 15A.067, 15A.160, 605.150, 635.095, 635.100(7), 640.120, 645.250

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.065(1), 15A.0652, 15A.067, 15A.160, ~~[15A.210,]~~605.150, 635.095, and 640.120 authorize the Justice and Public Safety Cabinet and the Department of Juvenile Justice to promulgate administrative regulations for the proper administration of the cabinet and its programs. This administrative regulation establishes the procedures for the use of incentives and progressive discipline for juveniles in department facilities.

Section 1. General Provisions. (1) A juvenile shall be made aware of the rules of the facility and the discipline imposed for violating these rules upon admission or as part of the orientation process. The rules and progressive discipline shall also be included in the handbook and conspicuously posted in the facility. Material shall either be written or interpreted to ensure understanding by the juvenile. Foreign language interpretation shall be provided for the juvenile if a language barrier exists.

(2) Discipline shall not:

(a) Be used as a means to demonstrate a staff member's authority over a juvenile;

(b) Be physically abusive, verbally abusive, or used to dehumanize or humiliate a juvenile;

(c) Include the withholding of meals, snacks, educational access, required recreation; or

(d) Include the use of restraints.

Section 2. Incentives. (1) A juvenile in the custody of the department who demonstrates compliance with the rules shall earn appropriate and available incentives. For incentives, staff shall set goals for juveniles to meet individually or as a group to qualify for an incentive. Eligible juveniles shall be informed of the goal required for the incentive by providing the information in writing, posting it, or being informed orally.

(2) Incentives may include:

(a) Extra recreation time;

(b) Special events participation;

(c) Later bedtime;

(d) Extra movie;

(e) Additional television time;

(f) Group recreation;

(g) Additional telephone time;

(h) Computer time;

(i) Additional time on a favorite project;

(j) Special visits with siblings and significant others;

(k) Wearing personal clothing at a designated time, but not in detention centers;

(l) Special snacks;

(m) Ability to purchase items from the canteen; and

(n) Other rewards that are suitable for the juvenile's level or facility.

(3) For youth development centers and group homes, incentives may include field trips or additional community contacts if appropriate. These incentives shall be consistent with the treatment level expectations in 505 KAR 1:370, and require recommendation from the treatment team, approval from the facility manager~~[superintendent]~~ or designee, and facilities regional administrator.

Section 3. Minor Rule Violations. (1) Consequences for a minor rule violation shall be an immediate response to a juvenile's behavior and not require a disciplinary review. Discipline shall be reasonably time-limited.

- (2) A minor rule violation shall include the following:
- (a) Minor destruction of property (including tampering with property);
 - (b) Bullying;
 - (c) Disorderly conduct;
 - (d) Horseplaying;
 - (e) Racism, prejudice, or sexist comment of any kind;
 - (f) Showing, writing, or demonstrating gang signs or affiliations in any fashion;
 - (g) Unauthorized trading, lending, or borrowing between juveniles;
 - (h) Tattooing oneself or others;
 - (i) Inappropriate sexual behavior (to include gestures, comments, or sexually acting out); and
 - (j) Other similarly minor violations of other rules posted at or provided to a juvenile at a facility.
- (3) Discipline for a minor rule violation may include:
- (a) Removal of a privilege;
 - (b) Loss of an activity;
 - (c) Early bedtime;
 - (d) Removal from the group;
 - (e) Placement on a behavior contract;
 - (f) Written treatment assignments; and
 - (g) Use of staff directed time out.

Section 4. Major Rule Violations for Detention, Youth Development Centers, and Group Homes.

(1) If a juvenile engages in behavior that is a major rule violation, the juvenile shall be issued a penalty slip **[or disciplinary review notice]** within twenty-four (24) hours of the violation or once staff becomes aware of the violation.

- (2) A major rule violation shall include the following:
- (a) Escape;
 - (b) Attempted escape, plotting, or assisting in escape;
 - (c) Physical or sexual assault;
 - (d) Major property damage;
 - (e) Possession of contraband;
 - (f) Physical restraint;
 - (g) Riot or inciting a riot;
 - (h) Theft;
 - (i) Unauthorized use of drugs, alcohol, intoxicants, or unauthorized use of medication;
 - (j) Chronic program disruption; and
 - (k) Commission of any crime under Kentucky law.

Section 5. Loss of Privileges. A juvenile may lose privileges by failing to comply with department and facility rules. Privileges may include:

- (1) Television time;
- (2) Group recreation;
- (3) Telephone time;
- (4) Computer time;
- (5) Gaming system time;
- (6) Music listening time;
- (7) Room time;
- (8) Group movie night;
- (9) Games; and
- (10) Other privileges suitable for the juvenile's level or facility.

Section 6. Time-out. If a juvenile is placed in a staff directed time out:

- (1) The time out shall not exceed sixty (60) minutes;
- (2) The door shall not be shut;
- (3) The juvenile shall participate in determining the end of the timeout; and
- (4) Upon completion of the time out period, the juvenile shall discuss the situation with a staff member.

Section 7. Intensive Room Supervision. (1) Intensive room supervision shall only be used:

- (a) For a juvenile who is showing or expressing a behavior that is a safety or security threat to the program;
- (b) As a less restrictive attempt to avoid a locked isolation

placement; or

- (c) As a step-down from an isolation placement.
- (2) Intensive room supervision shall not last longer than four (4) hours without authorization of the **facility manager[superintendent]** or administrative duty officer, and shall not exceed twenty-four (24) hours.
- (3) Release criteria shall include whether the juvenile:
 - (a) Has regained control of their behavior; and
 - (b) Is no longer a threat to the security, safety, or orderly management of the facility.
- (4) Intensive room supervision shall not apply to a group home or day treatment program.

Section 8. Room Restriction. (1) Room restriction shall not exceed twelve (12) hours, without authorization of the **facility manager[superintendent]** or ADO, and shall not exceed twenty-four (24) hours.

- (2) Release criteria shall include whether the juvenile:
- (a) Has regained control of their behavior;
 - (b) Is acting according to the terms of the plan for release; and
 - (c) Is no longer a threat to the security, safety, or orderly management of the facility.
- (3) If the juvenile is under reasonable control and demonstrating behavior according to the terms of the plan for release, the juvenile shall be released from room restriction.

(4) In a juvenile detention center and Level 4 YDC, the door shall be shut, but not locked for room restriction. In a group home or other YDC, the door shall be open.

(5) A superintendent, YSPS, or YWS, if on duty at the facility, shall visit each juvenile each day.

(6) If the juvenile's behavior has escalated beyond the staff's ability to control the juvenile by counseling or disciplinary measures, the regional psychologist or designee shall conduct interviews and assessment for disturbances in the juvenile's mental status including: depression;

1. Suicidal ideation;

2. Impaired thought processes, cognition, or memory;

3. Agitation;

4. Paranoia;

5. Self-injurious behavior;

6. Evidence of bruises; or

7. Other signs of trauma.

(7) If a juvenile exhibits deterioration in mental status during room restriction, the regional psychologist shall be contacted to determine the most appropriate action based on the treatment needs of the youth.

(8) The juvenile shall receive a visit from the facility nurse or health trained staff, unless medical attention is needed more frequently.

(9) The juvenile in room restriction shall be afforded living conditions and privileges approximating those available to the general population including modified access to recreation, educational, and treatment services taking into consideration the juvenile's and facility's safety and security needs.

(10) The juvenile shall be responsible for the daily cleaning of the juvenile's living area while in room restriction.

(11) Room restriction shall not be used for protective custody. If protective custody is required, the juvenile shall be moved to a safe location within the facility or DJJ.

Section 9. Room Confinement. (1) Room confinement shall only be used in a Level 4 YDC or juvenile detention center for de-escalation and as a less restrictive placement for a juvenile who is showing or expressing a behavior that could warrant an isolation placement.

(2) It shall only be used during operational hours when a counselor is present.

(3) During room confinement, the door shall be shut and locked.

(4) Room confinement shall not last longer than four (4) hours and the juvenile shall not be placed on room confinement more than one (1) time in a twenty-four (24) hour period.

(5) At initial placement and within two (2) hours of placement on room confinement, a professional review shall be conducted by a

juvenile counselor or the Treatment Director with the juvenile to counsel the juvenile and plan for release to the general population.

(6) When a juvenile is placed in room confinement, a plan for release of the juvenile from room confinement shall be made. The plan shall:

(a) State the behavioral expectations required for release from room confinement;

(b) Be explained to the juvenile by staff; and

(c) Be signed by the juvenile. If a juvenile refuses to sign, the plan shall be explained orally by a non-involved staff member and witnessed by a third party.

(7) Release criteria shall include whether the juvenile:

(a) Has regained control of their behavior;

(b) Is acting according to the terms of the plan for release; and

(c) Is no longer a threat to the security, safety, or orderly management of the facility.

(8) If the juvenile is under reasonable control and demonstrating behavior according to the terms of the plan for release, the juvenile shall be released from room confinement.

(9) Room confinement shall only apply to a Level 4 youth development center and a juvenile detention center.

Section 10. Unit Restriction. (1) Unit restriction shall not exceed forty-eight (48) hours without a disciplinary review being conducted by the treatment team.

(2) The door shall not be locked.

(3) When a juvenile is placed in unit restriction, a plan for release of the juvenile from unit restriction shall be made. The plan shall:

(a) State the behavioral expectations required for release from unit restriction;

(b) Be explained to the juvenile by staff; and

(c) Be signed by the juvenile. If a juvenile refuses to sign, the plan shall be explained orally by a non-involved staff member and witnessed by a third party.

(4) Release criteria shall include whether the juvenile:

(a) Has regained control of their behavior;

(b) Is acting according to the terms of the plan for release; and

(c) Is no longer a threat to the security, safety, or orderly management of the facility.

(5) If the juvenile is under reasonable control and demonstrating behavior according to the terms of the plan for release, the juvenile shall be released from unit restriction.

Section 11. Unit Confinement. (1) Unit confinement shall not exceed five (5) days without a disciplinary review being conducted by the treatment team.

(2) The unit door shall be locked.

(3) If a juvenile is placed in unit confinement, a plan for release of the juvenile from unit confinement shall be made. The plan shall:

(a) State the behavioral expectations required for release from unit confinement;

(b) Be explained to the juvenile by staff; and

(c) Be signed by the juvenile. If a juvenile refuses to sign, the plan shall be explained orally by a non-involved staff member and witnessed by a third party.

(4) Release criteria shall include whether the juvenile:

(a) Has regained control of their behavior;

(b) Is acting according to the terms of the plan for release; and

(c) Is no longer a threat to the security, safety, or orderly management of the facility.

(5) If the juvenile is under reasonable control and demonstrating behavior according to the terms of the plan for release, the juvenile shall be released from unit confinement.

Section 12. Facility Restriction. (1) Facility restriction shall not exceed forty-eight (48) hours without a disciplinary review being conducted by the treatment team.

(2) If a juvenile is placed in facility restriction, a plan for release of the juvenile from facility restriction shall be made. The plan shall:

(a) State the behavioral expectations required for release from facility restriction;

(b) Be explained to the juvenile by staff; and

(c) Be signed by the juvenile. If a juvenile refuses to sign, the

plan shall be explained orally by a non-involved staff member and witnessed by a third party.

(3) Release criteria shall include whether the juvenile:

(a) Has regained control of their behavior;

(b) Is acting according to the terms of the plan for release; and

(c) Is no longer a threat to the security, safety, or orderly management of the facility.

(4) If the juvenile is under reasonable control and demonstrating behavior according to the terms of the plan for release, the juvenile shall be released from facility restriction.

Section 13. Isolation may only be used in juvenile detention centers and YDCs and shall require approval from the facility manager[superintendent], shift supervisor, or other designee prior to use. If prior authorization cannot be obtained without jeopardizing safety and security, authorization shall be obtained immediately following the safe securing of the juvenile. Facilities shall follow proper time limits if using isolation as discipline as established in 505 KAR 1:410.

Section 14. Safety and Security Responses. Approved safety and security responses shall not be used as punishment and shall only be imposed if there is a threat to the overall safety and orderly operation of the facility. Approved safety and security responses may include room, unit or facility lockdown. The lockdown shall last until the security threat has passed. Unit lockdown and facility lockdown shall only apply to juvenile detention centers and level 4 YDCs.

Section 15. Dangerous or Chronic Behavior. (1) For YDCs and group homes, the treatment team shall develop an individual program plan for a juvenile with assaultive behavior, chronic program disruption, or who presents a danger to themselves or others.

(2) The facility manager[superintendent] or shift supervisor may order immediate separation of a juvenile from the general population to allow for individualized attention for the behaviors in subsection (1) of this section. The treatment director shall be consulted immediately.

(3) Separation from the general population beyond twenty-four (24) hours shall require approval by the facility manager[superintendent] and the treatment director. The chief of mental health services and regional psychologist shall be consulted.

(4) This action shall be reviewed by the treatment team within seventy-two (72) hours.

(5) A juvenile shall be returned to their original status once the expectations stated in the IPP are met.

Section 16. Investigation. (1) An investigation shall be conducted for all alleged major rule violations that occur at a juvenile detention center, youth development center, or group home.

(2) A juvenile who violates a major rule at a detention center, YDC, or group home shall be given a copy of the disciplinary review notice and incident report. A juvenile who violates a major rule at a YDC or group home shall receive a penalty slip with a disciplinary review notice, the alleged violation, and any immediate actions taken by staff to control and de-escalate the situation.

Section 17. Disciplinary Review. (1) A disciplinary review for a major rule violation shall be conducted in a[YDC, and]GH, or detention centers by the disciplinary review committee[treatment team] within five (5)[seven (7)] business days after the penalty slip is issued[; and

(b) Detention center, by the Disciplinary Review Committee within twenty-four (24) to seventy-two (72) hours from the infraction].

(2) Postponement of the review may occur if there is justifiable cause.

(3) The juvenile shall be given written notice of the disciplinary review at least twenty-four (24) hours prior to the disciplinary review, unless the juvenile:

(a) Signs a waiver to allow the review to take place sooner; or

(b) Has waived the right to a review.

(4) The juvenile shall be present during the disciplinary review unless the juvenile's behavior justifies exclusion or the juvenile waived the right to be present. The juvenile may be excluded during testimony of any juvenile whose statement is given in confidence.

(5) A staff member may represent the juvenile at the disciplinary review if the juvenile requests the representation or if the juvenile is incapable of self-representation.

(6) The juvenile may make a statement, present evidence, or request witnesses on the juvenile's behalf.

(7) The disciplinary review determination shall be based solely on all of the information obtained during the disciplinary review process including staff reports; the statements of the juvenile charged with the violation; evidence derived from witnesses, records, or other sources; and any impact that a disability may have on the juvenile's behavior.

(8) At the disciplinary review, the violation may be removed from the juvenile's file if it is determined that the violation did not occur. Discipline may be imposed against the juvenile in compliance with this administrative regulation, if it is determined that the violation occurred.

Section 18. Violation Decision. (1) The discipline to be imposed shall be determined during the disciplinary review.

(2) The treatment team or disciplinary review committee shall determine the appropriate progressive discipline to be imposed based on the frequency, length, and gravity of the violation, the juvenile's acceptance of responsibility and attempts to correct the behavior, current or previous behavioral health concerns, and other recent violations. Gravity shall be considered the most significant category as it relates to the protection of the juvenile, staff, and facility. Priority shall be given to facility and juvenile safety. All discipline shall be logical, proportional, timely, and consistent with the juvenile's individual treatment plan.

(4) Except for detention centers, a juvenile who does not complete required discipline shall advance through the level system in 505 KAR 1:370, but shall not be eligible for development or demonstration level privileges until discipline is complete.

(5) The treatment team or disciplinary review committee shall be responsible for making all treatment decisions regarding a juvenile in response to the major rule violation, changes in the ITP, or recommendation for transfer.

Section 19. Disciplinary Review Appeal. (1) A juvenile may appeal a disciplinary review decision within fourteen (14) days of receipt of the treatment team's or disciplinary review committee's decision. The appeal shall be in writing to the facility manager[superintendent]. The facility manager[superintendent] shall make a decision on the appeal within thirty (30) days of receipt.

(2) If the facility manager[superintendent] reverses the treatment team's or disciplinary review committee's decision and finds that the juvenile is not responsible for any or all of the alleged rule infractions, the assigned consequences shall be ordered lifted or adjusted accordingly. The incident or disciplinary report shall be removed from the juvenile's individual client record.

VICKI REED, Commissioner

APPROVED BY AGENCY: October 12, 2023

FILED WITH LRC: October 12, 2023 at 3:15 p.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 establishes the procedures for the use of incentives and progressive discipline for juveniles in department facilities.

(b) The necessity of this administrative regulation: This

administrative regulation meets statutory authorization or requirements in KRS 15A.065(1), 15A.0652, 15A.160, 605.150, 635.095, and 640.120 for administrative regulations.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 15A.065(1), 15A.0652, 15A.160, 605.150, 635.095, and 640.120 authorize the Justice and Public Safety Cabinet and the Department of Juvenile Justice to promulgate administrative regulations for the proper administration of the cabinet and its programs.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation provides direction and information to department staff and juveniles concerning the procedures that govern operations of facilities with juveniles in the custody of the department for behavior management and progressive discipline.

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

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

(b) The necessity of the amendment to this administrative regulation: Not applicable

(c) How the amendment conforms to the content of the authorizing statutes: Not applicable

(d) How the amendment will assist in the effective administration of the statutes: Not applicable

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects approximately 632 DJJ employees, 348 juveniles, and their families.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Staff will be trained on proper search techniques. Juveniles and visitors will be informed that they will be subject to searches.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The administrative regulation will assist in the effective and orderly management of the department and its facilities.

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

(a) Initially: An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

(b) On a continuing basis: An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

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

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

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

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

FISCAL NOTE

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 15A.065, 15A.0652, 15A.160, 15A.305, 200.080-200.120, 605.150, 635.095, 640.120, 645.250, Chapters 600-645

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

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

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

(c) How much will it cost to administer this program for the first year? An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

(d) How much will it cost to administer this program for subsequent years? An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

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

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

(c) How much will it cost the regulated entities for the first year? An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

(d) How much will it cost the regulated entities for subsequent years? An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] A major economic impact to the agency is not anticipated.

JUSTICE AND PUBLIC SAFETY CABINET
Department of Juvenile Justice
(Amended After Comments)

505 KAR 1:410. Isolation and protective custody.

RELATES TO: KRS 15A.065, 15A.0652, 200.080-200.120, Chapters 600-645

STATUTORY AUTHORITY: KRS 15A.065(1), 15A.0652, 15A.160, 605.150, 635.095, 635.100(7), 640.120, 645.250

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.065(1), 15A.0652, 15A.160, ~~[15A.210,]~~605.150, 635.095, and 640.120 authorize the Justice and Public Safety Cabinet and the Department of Juvenile Justice to promulgate administrative regulations for the proper administration of the cabinet and its programs. This administrative regulation establishes procedures for isolation and protective custody in juvenile detention centers and youth development centers.

Section 1. Isolation. (1) Isolation shall only apply to juveniles in juvenile detention centers and youth development centers.

(2) A juvenile may be placed in isolation if the juvenile constitutes a threat to the safety or security of the facility, staff, or a juvenile.

(3) The following situations may constitute a threat to the safety or security of the facility, staff, or a juvenile and may result in an isolation placement:

- (a) Assault or attempted assault;
- (b) Sexual assault or attempted sexual assault;
- (c) Attempted escape or attempted absent without leave;
- (d) Escape;
- (e) Participating in a riot;
- (f) Planning a riot;
- (g) Possessing dangerous contraband; or
- (h) Causing extensive property damage.

(4) Authorization shall be obtained from the facility manager[superintendent], youth services program supervisor, administrative duty officer, or shift supervisor prior to placing a juvenile into isolation. If prior authorization cannot be obtained without jeopardizing the safety and security of the facility, staff, or other juveniles, authorization shall be obtained immediately following the safe securing of the juvenile. An isolation placement shall not exceed four (4) hours without further action as stated in subsections (5) through (7) of this section.

(5) Isolation in a detention center.

(a) The facility manager[superintendent] may authorize a juvenile to remain in isolation beyond an initial four (4) hour period, not to exceed twenty-four (24) hours.

(b) An extension of an isolation placement beyond twenty-four (24) hours and up to thirty-six (36) hours shall require the approval of the division director. The division director shall consider whether the juvenile:

- 1. Has regained control of their behavior; and
- 2. Is no longer a threat to the security, safety, or orderly management of the facility.

(c) An extension of an isolation placement beyond thirty-six (36) hours and up to a maximum of forty-eight (48) hours shall require the approval of the division director and the chief of mental health services. For the extension decision, they shall consider:

1. Whether the juvenile has regained control of their behavior; and

2. Whether the juvenile is no longer a threat to the security, safety, or orderly management of the facility; and

3. The mental health issues of the juvenile.

(d) If a highly assaultive juvenile requires isolation for more than forty-eight (48) hours, an extension of an isolation placement beyond forty-eight (48) hours shall require the approval of the respective division director and the chief of mental health services. Any extension made shall be reviewed every twenty-four (24) hours and shall not exceed five (5) days. For the extension decision, they shall consider:

1. Whether the juvenile has regained control of their behavior; and

2. Whether the juvenile is no longer a threat to the security, safety, or orderly management of the facility; and

3. The mental health issues of the juvenile.

(6) Isolation in youth development centers and group homes.

(a) The facility manager[superintendent] may authorize a juvenile to remain in isolation beyond an initial four (4) hour period, not to exceed twenty-four (24) hours.

(b) An extension of an isolation placement beyond twenty-four (24) hours and up to thirty-six (36) hours shall require the approval of the facilities regional administrator. For the extension decision, the FRA shall consider whether the juvenile:

1. Has regained control of their behavior; and
2. Is no longer a threat to the security, safety, or orderly management of the facility.

3. An extension of an isolation placement beyond thirty-six (36) hours and up to a maximum of forty-eight (48) hours shall require the approval of the respective division director and the regional psychologist. For the extension decision, they shall consider:

- a. Whether the juvenile has regained control of their behavior; and

- b. Whether the juvenile is no longer a threat to the security, safety, or orderly management of the facility; and

- c. The mental health issues of the juvenile.

(c) If a highly assaultive juvenile requires isolation for more than forty-eight (48) hours, an extension of an isolation placement beyond forty-eight (48) hours shall require the approval of the respective division director, the regional psychologist, and the chief of mental health services. Any extension made shall be reviewed every twenty-four (24) hours and shall not exceed five (5) days. For the extension decision, they shall consider:

1. Whether the juvenile has regained control of their behavior; and

2. Whether the juvenile is no longer a threat to the security, safety, or orderly management of the facility; and

3. The mental health issues of the juvenile.

(7) The nurse shift program supervisor or on call nurse designee shall be notified as soon as feasible to determine if there are contraindications for the juvenile being placed in isolation.

(a) The facility nurse or health services protocol trained staff shall assess a juvenile placed in isolation as soon as it is safe to do so, as dictated by the director of medical services.

(b) Injuries, bruises, scratches, and other observations shall be noted by a minimum of two (2) staff. The nurse or designee shall document the date, time, and results of the assessment.

(8) Isolation may be used if requested by a juvenile and staff concur that the placement is in the best interest of the juvenile.

(9) An assessment of a juvenile in isolation shall not be required to occur within the deadlines established in subsections (5) through (7) of this section, if the deadline falls within the normal sleep time for the facility. A delayed assessment shall occur within two hours of the normal awake time for the facility.

(10) A juvenile in isolation shall be visited at least once a day by the facility manager[superintendent] or designee, medical or medically trained staff, and clinical or social work staff or designee. A juvenile may request a visit from clergy or other religious representative. All interactions with the juvenile during placement on isolation shall be documented.

(11) The regional psychologist or designee shall conduct interviews and assessments for disturbances in mental status, including, for example, depression; suicidal ideation; impaired thought processes, cognition or memory; agitation; paranoia; self-injurious behavior; evidence of bruises or other signs of trauma; and whether the juvenile's behavior has escalated beyond the staff's ability to control the juvenile by counseling or disciplinary measures.

(12) If a juvenile exhibits deterioration in mental status while in isolation, the regional psychologist shall be contacted to determine the most appropriate action based on the treatment needs of the juvenile.

(13) If a juvenile's problem behavior lasts twenty-four (24) hours and there appears to be a need for continued intervention, qualified health personnel shall assess the juvenile daily.

(14) The juvenile in isolation shall be afforded living conditions and privileges approximating those available to the general population, including modified access to recreation and educational and treatment services taking into consideration the juvenile's and facility safety and security needs.

(15) The juvenile shall be responsible for the daily cleaning of their living area in isolation.

(16) Release from isolation may occur based on the juvenile's behavior and state of mind.

Section 2. Isolation of suicidal juveniles. (1) Isolation shall not be used as a suicide precaution.

(2) A juvenile who is suicidal may only be placed in isolation if the juvenile presents an immediate assault risk to staff or other juveniles as evidenced by physical actions and other less restrictive interventions have failed or are not appropriate. All other suicide protocols shall be followed.

Section 3. Protective Custody. (1) A juvenile requiring protection from others may be placed in protective custody until alternative permanent housing is found within the facility or the juvenile is transferred to another facility.

(2) The facility manager[superintendent] or designee may order immediate placement in protective custody or isolation if it is necessary to protect the juvenile from harm. This action shall be reviewed every twenty-four hours of placement by the facility manager[superintendent] or designee. Separation from the general population beyond twenty-four (24) hours shall require approval by the facility manager[superintendent] and Treatment Director and shall consider any mental health issues of the juvenile. The chief of mental health services and regional psychologist shall be consulted. The action shall be reviewed by the treatment team within seventy-two (72) hours.

(3) The youth development center treatment team may develop a special management plan to assure the safety of and continuous services and programming for the juvenile.

VICKI REED, Commissioner

APPROVED BY AGENCY: October 12, 2023

FILED WITH LRC: October 12, 2023 at 3:15 p.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 establishes search parameters.

(b) The necessity of this administrative regulation: This administrative regulation meets statutory authorization or requirements in KRS 15A.065(1), 15A.0652, 15A.160, 605.150, 635.095, and 640.120 for administrative regulations.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 15A.065(1), 15A.0652, 15A.067, 15A.160, 605.150, 635.095, and 640.120 authorize the Justice and Public Safety Cabinet and the Department of Juvenile Justice to promulgate administrative regulations for the proper administration of the cabinet and its programs.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation provides direction and information to department staff and juveniles concerning staff duties and the procedures that govern operations of facilities with juveniles in the custody of the department.

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

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

(b) The necessity of the amendment to this administrative regulation: Not applicable

(c) How the amendment conforms to the content of the authorizing statutes: Not applicable

(d) How the amendment will assist in the effective administration of the statutes: Not applicable

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects approximately 632 DJJ employees, 348 juveniles, and their families.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Staff will be trained on behavior management and progressive discipline. Juveniles will be informed of rules, incentives, and progressive discipline consequences.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The administrative regulation will assist in the effective and orderly management of the department and its facilities.

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

(a) Initially: An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

(b) On a continuing basis: An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

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

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

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

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

FISCAL NOTE

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 15A.065, 15A.0652, 15A.160, 15A.305, 200.080-200.120, 605.150, 635.095, 640.120, 645.250, Chapters 600-645

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

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

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

(c) How much will it cost to administer this program for the first year? An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

(d) How much will it cost to administer this program for subsequent years? An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

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

regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

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

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

(c) How much will it cost the regulated entities for the first year? An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

(d) How much will it cost the regulated entities for subsequent years? An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] A major economic impact to the agency is not anticipated.

JUSTICE AND PUBLIC SAFETY CABINET

Department of Juvenile Justice

(Amended After Comments)

505 KAR 1:420. Youthful offenders.

RELATES TO: KRS 15A.065, 15A.0652, 15A.067, 196.280, 197.045, 200.080-200.120, 439.265, 439.267, Chapters 600-645

STATUTORY AUTHORITY: KRS 15A.065(1), 15A.0652, 15A.067, 15A.160, 605.150, 635.100(7), 640.120, 645.250

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.065(1), 15A.0652, 15A.067, 15A.160, 605.150, and 640.120 authorize the Justice and Public Safety Cabinet and the Department of Juvenile Justice to promulgate administrative regulations for the proper administration of the cabinet and its programs. This administrative regulation establishes the requirements for youthful offenders in the custody of the department.

Section 1. Sentence, Admission, Transfer. (1) A youthful offender sentenced to confinement by a circuit court shall serve the sentence in a DJJ operated facility, or approved or contracted facility, until one (1) of the events listed in KRS 640.030 occurs.

(2) A youthful offender convicted and awaiting classification placement shall:

(a) Be placed within sixty (60) days of sentencing;

(b) Have contact from a DJJ representative at least once per week while in a non-DJJ detention facility; and

(c) Be subject to DNA collection.

(3) A youthful offender shall be advised verbally and in writing, and sign an acknowledgement regarding the requirements of KRS 640.070 upon admission. A program shall provide foreign language interpretation of the materials for the youthful offender[juvenile] if a language barrier exists.

(4) Placement of a youthful offender shall be in accordance with the Classification and Placement Manual incorporated by reference in 505 KAR 1:100.

(5) If a youthful offender is transferred to another facility, a new copy of the KRS 640.070 acknowledgement shall be signed by the youthful offender.

(6) DJJ shall not extend jurisdiction for a youthful offender beyond the age of eighteen (18) years and five (5) months except in special circumstances as described by KRS 640.075(1).

Section 2. Educational Good Time. (1) Sentence credits for education shall be awarded in accordance with KRS 197.045(1)(a)(2) for a youthful offender. A youthful offender shall receive ninety (90) days sentence credit for:

(a) Successful completion of the following education:

1. High school equivalency diploma;

2. High school diploma;

3. Two (2) or four (4) year degree from an accredited college or university;

4. Career or technical education program approved by the department; or

5. Two (2) or four (4) year degree from an accredited college or university online or by correspondence approved by the department;

(b) Successfully completing a drug treatment or other evidenced based program approved by the department; or

(c) Successfully completing a civics education program that requires passing a final exam approved or offered by the department.

(2) A list of department approved courses shall be available on the department Web site and posted at each facility in an area accessible to juveniles.

(3) Education sentence credit shall not be awarded for:

(a) An individual course;

(b) A certificate;

(c) Completion of a module or level within a larger trade or career or technical education program;

(d) Degree from an unapproved~~a non-approved~~ correspondence course provider;

(e) Degree from non-accredited entity; or

(f) Any program not approved by the department.

Section 3. Meritorious Good Time. (1) A youthful offender shall be considered for meritorious good time monthly to determine eligibility.

(2) If a youthful offender was absent without leave or was adjudicated or convicted of an additional felony that occurred while in a DJJ residential program, the six (6) month period following the return to the program from AWOL status or conviction of another felony shall not be considered for an award of meritorious good time.

(3) Once an award period has been reviewed, future awards shall not include any previously considered time period.

(4) Youthful offenders may be awarded meritorious good time for each full calendar month served. Meritorious good time may be awarded on jail or detention time or parole violation time. Partial months shall not be considered for award amounts.

(5) Facility time shall be calculated in full month increments only and shall not be added to jail or detention credit or parole violation time.

Section 4. Extraordinary Meritorious Good Time. (1) A youthful offender may be considered for extraordinary meritorious good time pursuant to KRS 197.045(1)(b)3.

(2) A youthful offender may be nominated for extraordinary meritorious good time by a staff person. The nomination shall be in writing and describe in detail the exceptional service performed by the youthful offender and the emergency. The written nomination shall be provided to the offender information administrator.

(3) The offender information administrator shall submit the completed nomination to the commissioner for a decision concerning extraordinary meritorious good time. The commissioner may request additional information before making a decision concerning the nomination.

(4) Offender information staff shall credit to the youthful offender's sentence any extraordinary meritorious good time awarded by the commissioner. The document approving the extraordinary meritorious good time shall be maintained in the offender management system or individual client record.

Section 5. Victim Information and Notification Everyday. (1) A crime victim may register to be notified, if a youthful offender is absent without leave or has escaped, reaches sentence serve-out, or has a court-ordered release.

(2) Registering by the victim or members of the public in VINE shall be voluntary and confidential.

(3) A person shall be registered to receive electronic notification. The person may register:

(a) Electronically using the Web site~~website~~, www.vinelink.com; or

(b) By calling the toll-free VINE line at 800-511-1670.

(4) A convicted youthful offender shall be added to the VINE database no later than the day of initial placement by the classification branch, and in the event of a change in custody status, the change shall be entered.

VICKI REED, Commissioner

APPROVED BY AGENCY: October 12, 2023

FILED WITH LRC: October 12, 2023 at 3:15 p.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 establishes the requirements for youthful offenders in the custody of the department.

(b) The necessity of this administrative regulation: This administrative regulation meets statutory authorization or requirements in KRS 15A.065(1), 15A.0652, 15A.067, 15A.160, 605.150, 635.095, and 640.120 for administrative regulations.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 15A.065(1), 15A.0652, 15A.067, 15A.160, 605.150, 635.095, and 640.120 authorize the Justice and Public Safety Cabinet and the Department of Juvenile Justice to promulgate administrative regulations for the proper administration of the cabinet and its programs.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation provides direction and information to department staff and youthful offenders concerning special requirements for youthful offenders and procedures for victim notification of release and procedures that govern operations of facilities with juveniles in the custody of the department.

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

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

(b) The necessity of the amendment to this administrative regulation: Not applicable

(c) How the amendment conforms to the content of the authorizing statutes: Not applicable

(d) How the amendment will assist in the effective administration of the statutes: Not applicable

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects approximately 538 DJJ employees, 54 youthful offenders and their families, and victims of youthful offenders.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: DJJ staff and juveniles will have to follow the requirements for youthful offenders and victims for notification of release.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The administrative regulation will assist in the effective and orderly management of the department and its facilities.

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

(a) Initially: An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

(b) On a continuing basis: An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

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

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

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

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

FISCAL NOTE

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 15A.065, 15A.0652, 15A.067, 15A.160, 15A.305, 200.080-200.120, 605.150, 635.095, 640.120, 645.250, Chapters 600-645

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

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

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

(c) How much will it cost to administer this program for the first year? An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

(d) How much will it cost to administer this program for subsequent years? An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

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

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

(c) How much will it cost the regulated entities for the first year? An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

(d) How much will it cost the regulated entities for subsequent years? An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] A major economic impact to the agency is not anticipated.

PUBLIC PROTECTION CABINET Kentucky Horse Racing Commission (Amended After Comments)

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 overweightings, 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, 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. Quarter horses shall be timed to the 1/1000th of a second.

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: October 12, 2023

FILED WITH LRC: October 13, 2023 at 9:05 a.m.

CONTACT PERSON: Jennifer Wolsing, General Counsel,
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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: This amendment establishes and clarifies that Quarter Horse races are timed to one one-thousandth of a second from a standing start.

(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 (Amended After Comments)

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.

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(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: **110 yds., black and white stripes;** 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.

For Quarter Horse races, the photo finish cameras shall be equipped with mirror image to photograph the finish of each race and shall record the running time for each horse to the nearest 1/1000th second.

(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 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: October 12, 2023

FILED WITH LRC: October 13, 2023 at 9:05 a.m.

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 distance poles at 110 yards with black and white stripes and 1,000 yards with red and blue stripes. Section 13 is amended to clarify that for quarter horse races, the photo finish cameras shall be equipped with mirror image to photograph the finish of each race and shall record the running time for each horse to the nearest 1/1000th second. 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 additional distance poles. The amendment to Section 13 provides specifics for quarter horse photo finish cameras. 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 distance poles, photo finish camera specifications, 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 the previous question will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions each of the regulated entities have to take to comply with this regulation or amendment: 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: 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: 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 or photo finish camera.

(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
(Amended After Comments)**

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 a[the] turn shall have completed at least one (1) workout at 660 yards or farther[~~further~~] within thirty (30) days prior to entry.

(h)(i) Quarter horses that have previously started in a race around a[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) As a condition of entry, quarter horses shall either submit negative hair samples with a test date within thirty (30) days of the race or have a hair sample pulled by a commission veterinarian prior to the race and sent to a testing laboratory[as a condition of entry]. If a hair sample taken by a commission veterinarian returns a positive finding, the horse shall be disqualified and the owner and trainer may incur penalties established in 810 KAR 8:030. 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 mutuel 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) When there is a scratch in a straightaway quarter horse race that has an also eligible list, the also eligible horse shall take the post position of the scratched horse. When there is a scratch in a quarter horse race around a turn, the also eligible horse[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 mutuel 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: October 12, 2023

FILED WITH LRC: October 13, 2023 at 9:05 a.m.

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 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 require workouts for quarter horses racing around a turn and allow owners to either provide proof of a negative hair sample taken thirty days prior to the race or allow the KHRC veterinarians to take a hair sample prior to the race. Section 11 is amended to state that, in a race around a turn, a horse who gains a position from the also eligible list takes the outside post position in order drawn from the also eligible list. In straightaway races, when a horse gains a position from the also eligible list, the horse takes the post position of the scratched horse.

(b) The necessity of the amendment to this administrative regulation: The amendments to Section 3 and 11 are necessary to ensure the safety and integrity of Quarter Horse racing by providing

standards for quarter horse workouts, entry eligibility, drug testing, and post positions. The amendment to Section 3 provides more flexibility for horse owners but also ensures that horses who would have failed hair sample tests will not win races. The amendment to Section 11 clarifies the Commission's regulation and ensures that Kentucky quarter horse racing is in line with national practices.

(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 quarter horse 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 quarter horse 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 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 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.

CABINET FOR HEALTH AND FAMILY SERVICES

Department for Public Health

Division of Public Health Protection and Safety (Amended After Comments)

902 KAR 100:019. Standards for protection against radiation.

RELATES TO: KRS 211.842-211.852, 211.990(4), [10 C.F.R. 20.1001-20.1906, 20.2101-20.2204, 20.2206, Appendixes A, B-20.1001-20.2401, 40 C.F.R. 190, 49 C.F.R. 100-180, 173.403(m), (w), 173.421-173.424]

STATUTORY AUTHORITY: KRS 194A.050(1), [211.090, 211.844, 10 C.F.R. 10.1001-20.1906, 20.2101-20.2204, 20.2206, Appendixes A, B-20.1001-20.2401, 40 C.F.R. 190, 49 C.F.R. 100-

180, 49 C.F.R. 173.403(m), (w), 173.421-173.424.]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate the programs and fulfill the responsibilities vested in the cabinet. KRS 211.844 requires the cabinet [for Health and Family Services] to provide by administrative regulation for the registration [and licensing] of the possession or use of sources of ionizing or electronic product radiation [and the handling and disposal of radioactive waste]. This administrative regulation establishes standards for the protection of the user and general public against radiation exposure [and establishes standards] for protection against ionizing radiation resulting from activities conducted by persons issued [licenses or] registrations by the cabinet; and [This administrative regulation establishes standards] to control the receipt, possession, use, transfer, and disposal of sources of radiation by a person [licensee,] or registrant [so the total dose to an individual (including doses resulting from registered and unregistered) licensed and unlicensed radioactive material and radiation sources other than background radiation) shall not exceed the standards for protection against radiation established in this administrative regulation].

Section 1. Radiation Protection Implementation. (1) This administrative regulation shall not limit actions required in order to protect against an immediate danger to public health and safety.

(2) This administrative regulation shall apply to a person [licensed or] registered by the cabinet to receive, possess, use, transfer, or dispose of sources of radiation.

(3) The limits in this administrative regulation shall not apply to doses due to background radiation, exposure of patients to radiation for the purpose of medical diagnosis or therapy, or voluntary participation in medical research programs.

Section 2. Radiation Protection Programs. A person [licensee,] or registrant shall: (1) Develop, document, and implement a radiation protection program commensurate with the scope and extent of the person's activities and sufficient to ensure compliance with the provisions of this administrative regulation.;

(2) Use procedures and engineering controls based upon sound radiation protection principles, to the extent practical, to achieve occupational doses and doses to members of the public that shall be as low as reasonably achievable (ALARA) pursuant to 902 KAR 100:015, Section 2.;

(3) Annually review the radiation protection program content and implementation; and

(4) Establish a constraint on air emissions of radioactive material to the environment, excluding radon-222 and its daughters, to implement the ALARA requirements of subsection (2) of this section and the requirements of Section 10 of this administrative regulation.

(a) Any constraint shall ensure that the highest dose that could be received by a person shall not exceed a dose in excess of ten (10) millirems (0.1 mSv) per year.

(b) A licensee, if required to establish these constraints, shall report any exceedance as provided in Section 40 of this administrative regulation and shall take appropriate corrective action to ensure against recurrence].

Section 3. Occupational Dose Limits for Adults. (1) A person [licensee,] or registrant shall control the occupational dose to individual adults, except for planned special exposures as established in Section 5[7] of this administrative regulation, to:

(a) An annual limit, which shall be the more limiting of the:

1. Total effective dose equivalent being equal to five (5) rems (0.05 Sv); and

2. Sum of the deep-dose equivalent and the committed dose equivalent to an individual organ or tissue, other than the lens of the eye, being equal to fifty (50) rems (0.50 Sv); and

(b) The annual limits to the lens of the eye, the skin, and the extremities, which shall be:

1. A lens dose equivalent of fifteen (15) rems (0.15 Sv); and

2. A shallow-dose equivalent of fifty (50) rems (five-tenths (0.50) Sv) to the skin of the whole body or to the skin of an extremity.

(2) Doses received in excess of the annual limits, including doses received during accidents, emergencies, and planned special exposures, shall be subtracted from the limits for planned special exposures that the individual may receive during the current year and during the individual's lifetime as established in Section 5[7](3)(a) and (b) of this administrative regulation.

(3) The assigned deep-dose equivalent and shallow-dose equivalent shall be for the part of the body receiving the highest exposure. The assigned shallow dose equivalent shall be the dose averaged over the contiguous ten (10) square centimeters of skin receiving the highest exposure. If the individual monitoring device was not in the region of highest potential exposure, the deep-dose equivalent, lens dose equivalent, and shallow-dose equivalent may be assessed from surveys or other radiation measurements for the purpose of demonstrating compliance with the occupational dose limits.

(4) [Derived air concentration (DAC) and annual limit on intake (ALI) values are established in 10 C.F.R., 20, Appendix B, Table 1, and shall be used to:

(a) Determine the individual's dose as required in Section 34 of this administrative regulation; and

(b) Demonstrate compliance with the occupational dose limits.

(5) In addition to the annual dose limits, the person, licensee, or registrant shall limit the soluble uranium intake by an individual to ten (10) milligrams in a week in consideration of chemical toxicity as established in 10 C.F.R., 20 Appendix B.

(6) A person[, licensee,] or registrant shall reduce the dose that an individual may be allowed to receive in the current year by the amount of occupational dose received while employed by a person as described in Section 20[32] of this administrative regulation.

Section 4. Compliance with[Requirements for] Summation of [External and Internal] Doses from Radiation Producing Machines and Radioactive Materials. A registrant who

[(1) If a licensee or registrant] is required to monitor for dose received by exposure to both radiation producing machines and radioactive materials[both Section 13(1) and (2) of this administrative regulation, the licensee or registrant] shall demonstrate compliance with the dose limits by following the requirements of 902 KAR Chapter 100.

Section 5. [summing external and internal doses.

(2) If a licensee or registrant is required to monitor only by Section 13(1) or (2) of this administrative regulation, summation shall not be required to demonstrate compliance with the dose limits.

(3) A licensee or registrant may demonstrate compliance with the requirements for summation of external and internal doses by meeting one (1) of the conditions specified in subsection (5) of this section and the conditions in subsections (6) and (7) of this section.

(4) The dose equivalents for the lens of the eye, the skin, and the extremities shall not be included in the summation but shall be subject to separate limits established in Section 3 of this administrative regulation.

(5) If the only intake of radionuclides occurs by inhalation, the total effective dose equivalent limit shall not be exceeded if the sum of the deep-dose equivalent divided by the total effective dose equivalent limit, and one (1) of the following, does not exceed unity:

(a) Sum of the fractions of the inhalation ALI for each radionuclide;

(b) Total number of derived air concentration-hours (DAC-hours) for radionuclides divided by 2,000; or

(c) Sum of the calculated committed effective dose equivalents to significantly irradiated organs or tissues (T) calculated from bioassay data using appropriate biological models and expressed as a fraction of the annual limit.

(6) If the occupationally exposed individual also receives an intake of radionuclides by oral ingestion greater than ten (10) percent of the applicable oral ALI, the licensee or registrant shall account for this intake and include it in demonstrating compliance with the limits.

(7) A licensee or registrant shall evaluate and, to the extent practical, account for intakes through wounds or skin absorption. The intake through intact skin has been included in the calculation

of DAC for hydrogen-3 and does not need to be further evaluated.

Section 5. Determination of External Dose from Airborne Radioactive Material.

(1) If determining the dose from airborne radioactive material, a licensee or registrant shall include the contribution to the deep-dose equivalent, lens dose equivalent, and shallow-dose equivalent from external exposure to the radioactive cloud.

(2) If the airborne radioactive material includes radionuclides other than noble gases or the cloud of airborne radioactive material is not relatively uniform, airborne radioactivity measurements and DAC values shall not be used as the primary means to assess the deep-dose equivalent.

(3) The determination of the deep-dose equivalent to an individual shall be based upon measurements using instruments or individual monitoring devices.

Section 6. Determination of Internal Exposure. (1) For purposes of assessing dose used to determine compliance with occupational dose equivalent limits, the licensee or registrant shall, if required by Section 13 of this administrative regulation, take suitable and timely measurements of:

(a) Concentrations of radioactive materials in the air in work areas;

(b) Quantities of radionuclides in the body;

(c) Quantities of radionuclides excreted from the body; or

(d) Combinations of these measurements.

(2) A licensee or registrant shall assume an individual inhales radioactive material at the airborne concentration in which the individual is present, unless respiratory protective equipment is used, as provided in Section 19 of this administrative regulation, or the assessment of intake is based on bioassays.

(3) If specific information on the physical and biochemical properties of the radionuclides taken into the body, or the behavior or material in an individual is known, a licensee or registrant may:

(a) Use the information to calculate the committed effective dose equivalent, and, if used, the licensee or registrant shall document the information in the individual's record;

(b) Upon prior approval by the cabinet, adjust the DAC or ALI values to reflect the actual physical and chemical characteristics of airborne radioactive material (for example, aerosol size distribution or density); and

(c) Separately assess the contribution of fractional intakes of Class D, W, or Y compounds of a radionuclide, as provided in 10 C.F.R., 20 Appendix A, to the committed effective dose equivalent.

(4) If a licensee or registrant chooses to assess intakes of Class Y material using the measurements provided in subsection (1)(b) or (c) of this section, the licensee or registrant may delay the recording and reporting of the assessments for periods up to seven (7) months, unless otherwise required by Section 39 or 40 of this administrative regulation, in order to permit the licensee or registrant to make additional measurements basic to the assessments.

(5) If the identity and concentration of radionuclides in a mixture are known, the fraction of the DAC applicable to the mixture for use in calculating DAC-hours shall be the:

(a) Sum of the ratios of the concentration to the appropriate DAC value (D, W, Y) from 10 C.F.R., 20 Appendix B, for radionuclides in the mixture; or

(b) Ratio of the total concentration for radionuclides in the mixture to the most restrictive DAC value for a radionuclide in the mixture.

(6) If the identity of radionuclides in a mixture is known, but the concentration of one (1) or more of the radionuclides in the mixture is not known, the DAC for the mixture shall be the most restrictive DAC of a radionuclide in the mixture.

(7) If a mixture of radionuclides in air exists, a licensee or registrant may disregard certain radionuclides in the mixture if the:

(a) Licensee or registrant uses the total activity of the mixture in demonstrating compliance with the dose limits in Section 3 of this administrative regulation and in complying with the monitoring requirements in Section 13(2) of this administrative regulation;

(b) Concentration of a disregarded radionuclide is less than ten (10) percent of its DAC; and

(c) Sum of these percentages for the disregarded radionuclides in the mixture does not exceed thirty (30) percent.

(8) In order to calculate the committed effective dose equivalent, a licensee or registrant may assume that the inhalation of one (1) ALI or an exposure of 2,000 DAC-hours results in a committed effective dose equivalent of five (5) rems (0.05 Sv) for radionuclides having their ALIs or DACs based on the committed effective dose equivalent.

(a) If the ALI and the associated DAC are determined by the nonstochastic organ dose limit of fifty (50) rems (five-tenths (0.50) Sv), the intake of radionuclides that result in a committed effective dose equivalent of five (5) rems (0.05 Sv) (the stochastic ALI) is listed in parentheses in 10 C.F.R., 20 Appendix B. A licensee or registrant may, as a simplifying assumption, use the stochastic ALIs to determine committed effective dose equivalent.

(b) If a licensee or registrant uses the stochastic ALIs, the licensee or registrant shall also demonstrate that the limit in Section 3(1)(a)2 of this administrative regulation is met.

Section 7. ~~Planned Special Exposures.~~ (1) A ~~licensee or~~ registrant may authorize an adult worker to receive doses in addition to, and accounted for separately from the doses received under, the limits specified in Section 3 of this administrative regulation provided each of the following conditions are satisfied:

(a) The ~~licensee or~~ registrant authorizes a planned special exposure only in an exceptional situation if alternatives that may avoid the dose estimated to result from the planned special exposure are unavailable or impractical;

(b) The ~~licensee or~~ registrant, and employer if the employer is not the ~~licensee or~~ registrant, specifically authorize the planned special exposure, in writing, before the exposure occurs; and

(c) Before a planned special exposure, the ~~licensee or~~ registrant ensures that the individuals involved are:

1. Informed of the purpose of the planned operation;

2. Informed of the estimated doses, and associated potential risks, and specific radiation levels, or other conditions that may be involved in performing the task; and

3. Instructed in the measures to be taken to keep the dose ALARA considering other risks that may be present.

(2) Prior to permitting an individual to participate in a planned special exposure, a ~~licensee or~~ registrant shall ascertain prior doses as required by Section 20[32](2) of this administrative regulation during the lifetime of the individual for each individual involved.

(3) Subject to Section 3(2) of this administrative regulation, a ~~licensee or~~ registrant shall not authorize a planned special exposure that shall cause an individual to receive a dose from planned special exposures and doses in excess of the limits to exceed:

(a) The numerical values of the dose limits in Section 3(1) of this administrative regulation in a year; and

(b) Five (5) times the annual dose limits in Section 3(1) of this administrative regulation during the individual's lifetime.

(4) A ~~licensee or~~ registrant shall:

(a) Maintain records of the conduct of a planned special exposure pursuant to Section 21[33] of this administrative regulation; and

(b) Submit a written report pursuant to Section 28[44] of this administrative regulation.

(5) A ~~licensee or~~ registrant shall record the best estimate of the dose resulting from the planned special exposure in the individual's record and inform the individual, in writing, of the dose within thirty (30) days from the date of the planned special exposure. The dose from planned special exposures shall not be considered in controlling future occupational dose of the individual by Section 3(1) of this administrative regulation but shall be included in evaluations required by subsections (2) and (3) of this section ~~Section 7(2) and (3) of this administrative regulation~~.

Section 6. ~~Occupational Dose Limits for Minors.~~ The annual occupational dose limits for minors shall be ten (10) percent of the annual dose limits specified for adult workers in Section 3 of this administrative regulation.

Section 7. ~~Section 9.~~ Dose Equivalent to an Embryo or Fetus.

(1) A ~~licensee or~~ registrant shall ensure that the dose equivalent to an embryo or fetus during the entire pregnancy, due to occupational exposure of a declared pregnant woman, does not exceed five-tenths (0.5) rem (5 mSv). Recordkeeping requirements are established in Section 22[42] of this administrative regulation.

(2) A ~~licensee or~~ registrant shall make efforts to avoid substantial variation above a uniform monthly exposure rate to a declared pregnant woman to satisfy the limit in subsection (1) of this section.

(3) The dose equivalent to an embryo or fetus shall be taken as the sum of:

(a) The deep-dose equivalent to the declared pregnant woman; and

(b) The dose equivalent to the embryo or fetus resulting from radionuclides in the embryo or fetus and radionuclides in the declared pregnant woman.

(4) If the dose equivalent to the embryo or fetus is found to have exceeded five-tenths (0.5) rem (five (5) mSv), or is within 0.05 rem (five-tenths (0.5) mSv) of this dose, by the time the woman declares the pregnancy to a registrant, the ~~licensee or registrant~~, the ~~licensee or~~ registrant shall be in compliance with subsection (1) of this section if the additional dose equivalent to the embryo or fetus does not exceed 0.05 rem (five-tenths (0.5) mSv) during the remainder of the pregnancy.

Section 8. ~~Section 10.~~ Radiation Dose Limits for Individual Members of the Public. (1) A ~~licensee or~~ registrant shall conduct operations to ensure that the:

(a) Total effective dose equivalent to individual members of the public from ~~licensed,~~ registered~~,~~ and other operations shall not exceed 0.1 rem (one (1) mSv) in a year, exclusive of the dose contributions from:

1. Background radiation;

2. A medical administration the individual received; and

3. ~~An exposure to individuals administered radioactive material and released in accordance with 902 KAR 100:072, Section 27;~~

4. ~~Voluntary participation in medical research programs; and~~

5. ~~The licensee's or registrant's disposal of radioactive material into sanitary sewerage under 902 KAR 100:021, Section 3; and]~~

(b) Dose in an unrestricted area from external sources~~,~~ exclusive of the dose contributions from patients administered radioactive material and released in accordance with 902 KAR 100:072, Section 27~~,~~ shall not exceed 0.002 rem (0.02 mSv) in one (1) hour.

(2) If a ~~licensee or~~ registrant permits members of the public to have access to controlled areas, the limits for members of the public specified in this section shall apply to those individuals.

(3) A ~~licensee,~~ registrant~~,~~ or applicant for a ~~license or~~ registration may apply for prior authorization to operate up to an annual dose limit for an individual member of the public of five-tenths (0.5) rem (five (5) mSv). The application shall include ~~the following information~~:

(a) Demonstration of the need for, and the expected duration of, operations in excess of the limit in subsection (1) of this section;

(b) A ~~licensee's or~~ registrant's program to assess and control dose within the five-tenths (0.5) rem (five (5) mSv) annual limit; and

(c) The procedures to be followed to maintain the dose ALARA.

(4) ~~In addition to the provisions of this administrative regulation, a person, licensee, or registrant subject to the provisions of U.S. Environmental Protection Agency's applicable environmental radiation standards in 40 C.F.R. 190 shall comply with those standards.~~

(5) ~~The cabinet may impose additional restrictions on the total allowable radiation levels in unrestricted areas and on the total quantity of radionuclides that a licensee or registrant may release in effluents in order to restrict the collective dose.~~

(6) In addition to the requirements in subsection (1)(a) of this section, a licensee may permit visitors to an individual who cannot be released under 902 KAR 100:072, Section 27, to receive a radiation dose greater than one-tenth (0.1) rem (1 mSv) if:

(a) The radiation dose received does not exceed five-tenths

(0.5) rem (5 mSv); and

(b) The authorized user, as defined in 902 KAR 100:010, has determined before the visit that it is appropriate].

Section 9.~~[Section 14.]~~ Compliance with Dose Limits for Individual Members of the Public. (1) To demonstrate compliance with the dose limits for individual members of the public in Section 8[40] of this administrative regulation, a [licensee or] registrant shall make or cause to be made surveys of:

(a) radiation levels in unrestricted and controlled areas; and

(b) Radioactive materials in effluents released to unrestricted and controlled areas].

(2) A [licensee or] registrant shall show compliance with the annual dose limit in Section 8[40] of this administrative regulation by:

(a) Demonstrating by measurement or calculation that the total effective dose equivalent to the individual likely to receive the highest dose from the registered~~[licensed]~~ operation shall not exceed the annual dose limit; or

(b) Demonstrating that:

1. The annual average concentrations of radioactive material released in gaseous and liquid effluents at the boundary of the restricted area shall not exceed the values specified in 10 C.F.R. 20, Appendix B; and

2. if an individual were continually present in an unrestricted area, the dose from external sources shall not exceed 0.002 rem (0.02 mSv) in an hour and 0.05 rem (five-tenths (0.5) mSv) in a year.

[3] Upon approval from the cabinet, a licensee or registrant may adjust the effluent concentration values in 10 C.F.R., 20 Appendix B, for members of the public, to take into account the actual physical and chemical characteristics of the effluents (for example, aerosol size distribution, solubility, density, radioactive decay equilibrium, or chemical form).]

Section 10.~~[Section 12.]~~ Surveys and Monitoring. (1) A [licensee or] registrant shall make or cause to be made, surveys that are:

(a) Necessary for the [licensee or] registrant to comply with the provisions in this administrative regulation; and

(b) Reasonable under the circumstances to evaluate:

1. The magnitude and extent of radiation levels; and

2. [Concentrations or quantities of radioactive material; and

3.] The potential radiological hazards.

(2) A [licensee or] registrant shall ensure that instruments and equipment used for quantitative radiation measurements (for example, dose rate ~~and effluent monitoring~~) are calibrated periodically for the radiation measured.

(3) Personnel dosimeters, except direct and indirect reading pocket ionization chambers and those dosimeters used to measure the dose to the extremities, that require processing to determine the radiation doses used by [licensees or] registrants to comply with Section 3 of this administrative regulation, other applicable provisions of 902 KAR Chapter 100, or conditions specified ~~in a license~~, shall be processed and evaluated by a dosimetry processor:

(a) Holding current personnel dosimetry accreditation from the National Voluntary Laboratory Accreditation Program (NVLAP) of the National Institute of Standards and Technology; and

(b) Approved in this accreditation process for the type of radiation or radiations included in the NVLAP program that most closely approximates the type of radiation or radiations for which the individual wearing the dosimeter is monitored.

Section 11.~~[Section 13.]~~ Conditions Requiring Individual Monitoring of External ~~[and Internal]~~ Occupational Dose. (1) A [licensee or] registrant shall monitor exposures to radiation ~~[and radioactive material]~~ at levels sufficient to demonstrate compliance with the occupational dose limits of this administrative regulation.

(2) At a minimum, the [licensee or] registrant shall monitor occupational exposure to radiation, from ~~[licensed and unlicensed, registered and unregistered radiation sources under the [licensee's or] registrant's control,~~ and shall supply and require the use of individual monitoring devices by:

(a) Adults likely to receive, in one (1) year from radiation sources external to the body, a dose in excess of ten (10) percent of the limits

in Section 3(1) of this administrative regulation;

(b) Minors likely to receive, in one (1) year from sources external to the body, a deep dose equivalent in excess of 0.1 rem (1 mSv), a lens dose equivalent in excess of 0.15 rem (1.5 mSv), or a shallow dose equivalent to the skin or to the extremities in excess of five-tenths (0.5) rem (5 mSv);

(c) Declared pregnant women likely to receive during the entire pregnancy, from radiation sources external to the body, a deep dose equivalent in excess of 0.1 rem (1mSv). All of the occupational doses in Section 3 continue to be applicable to the declared pregnant worker as long as the embryo or fetus dose limit is not exceeded; and

(d) Individuals entering a high or very high radiation area.

~~[(2) A licensee or registrant shall monitor, pursuant to Section 6 of this administrative regulation, the occupational intake of radioactive material by, and assess the committed effective dose equivalent to:~~

(a) Adults likely to receive, in one (1) year, an intake in excess of ten (10) percent of the applicable ALIs in 10 C.F.R., 20 Appendix B;

(b) Minors likely to receive, in one (1) year, a committed effective dose equivalent in excess of 0.1 rem (1 mSv); and

(c) Declared pregnant women likely to receive, during the entire pregnancy, a committed effective dose equivalent in excess of 0.1 rem (1 mSv).]

Section 12.~~[Section 14.]~~ Control of Access to High Radiation Areas. (1) A [licensee or] registrant shall ensure that each entrance or access point to a high radiation area shall have at least one (1) of the following features:

(a) A control device that, upon entry into the area, shall cause the level of radiation to be reduced below the level an individual may receive a deep-dose equivalent of 0.1 rem (one (1) mSv) in one (1) hour at thirty (30) centimeters from the radiation source or from a surface that the radiation penetrates;

(b) A control device that shall energize a conspicuous visible or audible alarm signal so the individual entering the high radiation area and the supervisor of the activity shall be made aware of the entry; or

(c) Entryways that shall be locked, except during periods that access to the areas is required, with positive control over each individual entry.

(2) In place of the controls required by subsection (1) of this section for a high radiation area, a [licensee or] registrant may substitute continuous direct or electronic surveillance that shall be capable of preventing unauthorized entry.

(3) A [licensee or] registrant may **make a written request to the cabinet for approval of an alternative method for controlling access to high radiation areas. The cabinet may grant approval for a reasonable request if the alternative method is appropriately protective of health and safety. The cabinet may require additional information related to the request[apply to the cabinet for approval of alternative methods for controlling access to high radiation areas].**

(4) A [licensee or] registrant shall establish the controls required by subsections (1) and (3) of this section that shall not prevent individuals from leaving a high radiation area.

~~[(5) Control shall not be required for an entrance or access point to a room or other area that is a high radiation area solely because of the presence of radioactive materials prepared for transport and packaged and labeled in accordance with 49 C.F.R. 100-180 if the packages will not remain in the area longer than three (3) days, and the dose rate at one (1) meter from the external surface of a package will not exceed 0.01 rem (0.1 mSv) per hour.~~

~~[(6) Control of entrance or access to rooms or other areas in hospitals shall not be required solely because of the presence of patients containing radioactive material if personnel are in attendance who:~~

(a) Take the necessary precautions to prevent the exposure of individuals to radiation or radioactive material in excess of the limits established in this administrative regulation; and

(b) Operate within the ALARA provisions of the licensee's or registrant's radiation protection program.

(7) A registrant is not required to control entrance or access to rooms or other areas containing sources of radiation capable of producing a high radiation area as described in this section if the registrant has met the specific requirements for access and control specified in 902 KAR 100:100, 100:115, and 100:155.]

~~Section 13.~~[Section 15.] Control of Access to Very High Radiation Areas. (1) In addition to the provisions in Section 12[44] of this administrative regulation, a [licensee or]registrant shall institute additional measures to ensure that an individual shall not be able to gain unauthorized or inadvertent access to areas in which radiation levels may be encountered at 500 rads (five (5) grays) or more in one (1) hour at one (1) meter from a radiation source or a surface through which the radiation penetrates.

(2) A registrant shall not be required to control entrance or access to rooms or other areas containing sources of radiation capable of producing a very high radiation area as established in subsection (1) of this section if the registrant has met the specific requirements for access and control specified in 902 KAR 100:115, 100:136, 100:137, and 100:155.~~[100:100, 100:115, and 100:155.~~

~~Section 16. Control of Access to Very High Radiation Areas for Irradiators.~~ (1) This section shall apply to radiation from sources of radiation used in sealed sources in nonself-shielded irradiators.

(2) This section shall not apply to:

(a) Sources of radiation used in teletherapy, radiography, or completely self-shielded irradiators in which the source:

1. Is both stored and operated within the same shielding radiation barrier; and

2. In the designed configuration of the irradiator is always physically inaccessible to an individual and cannot create high levels of radiation in an area that is accessible to an individual; and

(b) Sources from which the radiation shall be incidental to some other use or to nuclear reactor-generated radiation.

(3) Areas where radiation levels may exist in excess of 500 rads (five (5) grays) in one (1) hour at one (1) meter from a source of radiation used to irradiate materials shall meet the following requirements:

(a) An entrance or access point shall be equipped with entry control devices that:

1. Function automatically to prevent an individual from inadvertently entering the area if very high radiation levels exist;

2. Permit deliberate entry into the area only after a control device is actuated that causes the radiation level within the area, from the source of radiation, to be reduced below a level where it is possible for an individual to receive a deep-dose equivalent in excess of 0.1 rem (one (1) mSv) in one (1) hour; and

3. Prevent operation of the source of radiation if the source would produce radiation levels in the area that may result in a deep-dose equivalent to an individual in excess of 0.1 rem (one (1) mSv) in one (1) hour.

(b) Additional control devices shall be provided so that, upon failure of the entry control devices to function as required by subsection (3)(a) of this section:

1. The radiation level within the area, from the source of radiation, is reduced below a level where it is possible for an individual to receive a deep-dose equivalent in excess of 0.1 rem (one (1) mSv) in one (1) hour; and

2. Conspicuous visible and audible alarm signals shall be generated to make an individual attempting to enter the area aware of the hazard, and at least one (1) other authorized individual who is physically present, familiar with the activity, and prepared to render or summon assistance, aware of the failure of the entry control devices;

(c) A licensee or registrant shall provide control devices so that, upon failure or removal of physical radiation barriers other than the source's shielded storage container:

1. The radiation level from the source of radiation shall be reduced below a level where it is possible for an individual to receive a deep-dose equivalent in excess of 0.1 rem (one (1) mSv) in one (1) hour; and

2. Conspicuous visible and audible alarm signals shall be generated to make potentially affected individuals aware of the

hazard, and a licensee, registrant, or at least one (1) other individual who is familiar with the activity and prepared to render or summon assistance, aware of the failure or removal of the physical barrier;

(d) If the shield for the stored source is a liquid, the licensee or registrant shall provide means to:

1. Monitor the integrity of the shield; and

2. Automatically signal loss of adequate shielding;

(e) Physical radiation barriers that comprise permanent structural components, such as walls, that have no credible probability of failure or removal in ordinary circumstances need not meet the requirements of paragraphs (c) and (d) of this subsection;

(f) An area shall be equipped with devices that automatically generate conspicuous visible and audible alarm signals:

1. To alert personnel in the area before the source can be put into operation;

2. In sufficient time for an individual in the area to operate a clearly identified control device, which is installed in the area and can prevent the source from being put into operation;

(g) An area shall be controlled by use of administrative procedures and devices as are necessary to ensure that the area is cleared of personnel prior to use of the source;

(h) An area shall be checked by a radiation measurement to ensure that, prior to the first individual's entry into the area after use of the source of radiation, the radiation level from the source of radiation in the area is below a level where it is possible for an individual to receive a deep-dose equivalent in excess of 0.1 rem (one (1) mSv) in one (1) hour;

(i) The entry control devices required in paragraph (a) of this subsection shall have been tested for proper functioning as follows:

1. Daily prior to initial operation with the source of radiation; unless operations were continued uninterrupted from a previous day;

2. Prior to resumption of operation of the source of radiation after an unintended interruption; and

3. By adherence to a submitted schedule for periodic tests of the entry control and warning systems;

(j) A licensee or registrant shall not conduct operations if control devices are not functioning properly, other than those necessary to place the source of radiation in safe condition or to effect repairs on controls; and

(k) Entry and exit portals used in transporting materials to and from the irradiation area, and not intended for use by individuals, shall be controlled by devices and administrative procedures as are necessary to physically protect and warn against inadvertent entry by an individual through these portals. Exit portals for processed materials shall be equipped to detect and signal the presence of loose radiation sources carried toward an exit to automatically prevent loose radiation sources from being carried out of the area.

(4)(a) Persons holding licenses or registrations, or applicants for licenses or registrations, for radiation sources may apply to the cabinet for approval of the use of alternative safety measures if they:

1. Are governed by the provisions of subsection (3) of this section; and

2. May be used in a variety of positions or in locations, such as open fields or forests, that make it impracticable to comply with provisions of subsection (3) of this section (for example, those for the automatic control of radiation levels).

(b) Alternative safety measures shall provide personnel protection equivalent to those specified in subsection (3) of this section.

(c) At least one (1) of the alternative measures shall include an entry-preventing interlock control, based on a measurement of the radiation, that ensures the absence of high radiation levels before an individual may gain access to the area in which sources of radiation are used.

(5) Entry control devices required by subsections (3) and (4) of this section shall be established in a way that an individual shall not be prevented from leaving the area.

~~Section 17. Use of Process or Other Engineering Controls.~~ The licensee or registrant shall use, to the extent practicable, process or other engineering controls (such as containment, decontamination, or ventilation) to control the concentration of radioactive material in

air.

Section 18. Use of Other Controls. (1) If it is not practicable to apply process or other engineering controls to control the concentrations of radioactive material in air to values below those that define an airborne radioactivity area, a licensee or registrant shall, consistent with maintaining the total effective dose equivalent ALARA, increase monitoring and limit intakes by one (1) or more of the following means:

- (a) Control of access;
- (b) Limitation of exposure times;
- (c) Use of respiratory protection equipment; or
- (d) Other controls.

(2) If the licensee or registrant performs an ALARA analysis to determine if respirators should be used, the licensee or registrant may consider safety factors other than radiological factors. The licensee or registrant may also consider the impact of respirator use on workers' industrial health and safety.

Section 19. Use of Individual Respiratory Protection Equipment.

(1) If a licensee or registrant uses respiratory protection equipment to limit the intake of radioactive material:

(a) 1. The licensee or registrant shall use only respiratory protection equipment that shall be tested and certified by the National Institute for Occupational Safety and Health (NIOSH); or

2. Prior to using equipment that has not been tested or certified by NIOSH, or for which there exists no schedule for testing or certification, the licensee or registrant shall submit to the cabinet an application for authorized use of that equipment, except as provided in this administrative regulation.

a. The application shall include evidence that the material and performance characteristics of the equipment are capable of providing the proposed degree of protection under anticipated condition of use; and

b. The material and performance characteristics shall be demonstrated either by licensee or registrant testing or on the basis of reliable test information;

(b) A licensee or registrant shall implement and maintain a respiratory protection program that shall include:

1. Air sampling sufficient to identify the potential hazard, permit proper equipment selection, and estimate doses;

2. Surveys and bioassays, as appropriate, to evaluate actual intakes;

3. Testing of respirators for operability (user seal check for face sealing devices and functional check for others) immediately prior to each use;

4. Written procedures regarding:

- a. Respirator selection;
- b. Supervision and training of respirator users;
- c. Monitoring, including air sampling and bioassays;
- d. Fit testing;
- e. Breathing air quality;
- f. Inventory and control;

g. Storage, issuance, maintenance, repair, testing, and quality assurance of respiratory protection equipment;

h. Recordkeeping; and

i. Limitations on periods of respirator use and relief from respirator use;

5. Determination by a physician prior to initial fitting of a face sealing respirator, and either every twelve (12) months or periodically at a frequency determined by a physician, that the individual user shall be medically fit to use the respiratory protection equipment; and

6. Fit testing, with a fit factor ten (10) times the APF for negative pressure devices and a fit factor greater than or equal to 500 for any positive pressure, continuous flow, and pressure-demand devices, before the first field use of tight fitting, face-sealing respirators and periodically thereafter at a frequency not to exceed one (1) year. Fit testing shall be performed with the facepiece operating in the negative pressure mode;

(c) A licensee or registrant shall issue a written policy statement on respirator usage covering the:

1. Use of process or other engineering controls, instead of

respirators;

2. Routine, nonroutine, and emergency use of respirators; and

3. Periods of respirator use and relief from respirator use;

(d) A licensee or registrant shall advise a respirator user that the user may leave the area for relief from respirator use in the event of:

- 1. Equipment malfunction;
- 2. Physical or psychological distress;
- 3. Procedural or communication failure;
- 4. Significant deterioration of operating conditions; or
- 5. Other conditions that may require relief;

(e) A licensee or registrant, when selecting respiratory devices, shall:

- 1. Consider limitations appropriate to type and mode of use;
- 2. Provide visual correction, adequate communication, low temperature work environments, and concurrent use of other safety or radiological equipment; and

3. Use equipment in a way as not to interfere with the proper operation of the respirator;

(f) Standby rescue persons shall:

1. Be required if one-piece atmosphere-supplying suits or any combination of supplied air respiratory protection device and personnel protective equipment are used from which an unaided individual would have difficulty extricating himself or herself;

2. Be equipped with respiratory protection devices or other apparatus appropriate for the potential hazards;

3. Observe or otherwise maintain continuous communication with the workers (visual, voice, signal line, telephone, radio, or other suitable means); and

4. Be immediately available to assist them in case of a failure of the air supply or for any other reason that requires relief from distress;

(g) A sufficient number of standby rescue persons shall be immediately available to assist all users of this type of equipment and to provide effective emergency rescue if needed;

(h) Atmosphere-supplying respirators shall be supplied with respirable air of grade D quality or better as defined by Compressed Gas Association in publication G-7.1, Commodity Specification for Air, and included in the regulations of the Occupational Safety and Health Administration (29 C.F.R. 1910.134(i)(1)(ii)(A) through (E)). Grade D quality of air criteria include:

- 1. Oxygen content (v/v) of 19.5-23.5 percent;
- 2. Hydrocarbon (condensed) content of five (5) milligrams per cubic meter of air or less;
- 3. Carbon monoxide (CO) content of ten (10) parts per million (ppm) or less;
- 4. Carbon dioxide content of 1,000 ppm or less; and
- 5. Lack of noticeable odor;

(i) The licensee or registrant shall ensure that no objects, materials, or substances, such as, facial hair, or any conditions that interfere with the face-piece seal or valve function, and that are under the control of the respirator wearer, are present between the skin of the wearer's face and the sealing surface of a tight-fitting respirator facepiece; and

(j) 1. In estimating the dose to individuals from intake of airborne radioactive materials, the concentration of radioactive material in the air that is inhaled when respirators are worn is initially assumed to be the ambient concentration in air without respiratory protection divided by the assigned protection factor.

2. If the dose is later found to be greater than the estimated dose, the corrected value shall be used.

3. If the dose is later found to be less than the estimated dose, the corrective value may be used.

(2) The licensee shall obtain authorization from the cabinet before using assigned protection factors in excess of those specified in 10 C.F.R. 20, Appendix A. The cabinet may authorize a licensee to use higher assigned protection factors on receipt of an application that:

(a) Describes the situation for which a need exists for higher protection factors; and

(b) Demonstrates that the respiratory protection equipment provides these higher protection factors under the proposed conditions of use.

~~Section 20. Further Restrictions on the Use of Respiratory Protection Equipment. The cabinet may impose restrictions in addition to those in Sections 18 and 19 of this administrative regulation and 10 C.F.R. 20, Appendix A to:~~

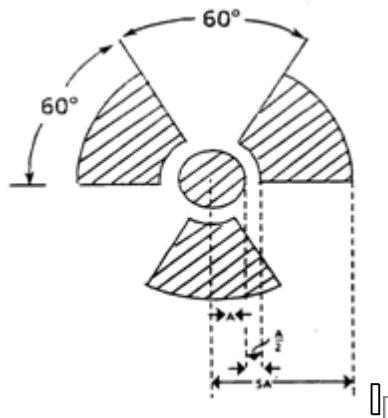
~~(1) Ensure that the respiratory protection program of the licensee shall be adequate to limit doses to individuals from intakes of airborne radioactive materials consistent with maintaining total effective dose equivalent ALARA; and~~

~~(2) Limit the extent to which a licensee shall use respiratory protection equipment instead of process or other engineering controls.~~

~~Section 21. Security of Sources of Radiation. A licensee or registrant shall secure from unauthorized removal or access, licensed materials stored in controlled or unrestricted areas.~~

~~Section 22. Control of Sources of Radiation Not in Storage. A licensee or registrant shall control and maintain constant surveillance of licensed or registered material in a controlled or unrestricted area and not in storage.]~~

~~Section 14.[Section 23.] Caution Signs and Standard Radiation Symbol.~~



RADIATION SYMBOL

(1) Unless otherwise authorized by the cabinet, the symbol established in this section shall use the colors magenta, purple, or black on yellow background. The symbol established in this section shall be the three (3) bladed design:

- (a) Cross-hatched area shall be magenta, purple, or black; and
- (b) The background shall be yellow.

(2) ~~[Exception to color requirements for standard radiation symbol. A licensee or registrant may label sources, source holders, or device components containing sources of radiation subjected to high temperatures with conspicuously etched or stamped radiation caution symbols and without a color requirement.~~

(3) ~~] Additional information on signs and labels. In addition to the contents of signs and labels prescribed in this section, a [licensee or] registrant may provide on or near the required signs and labels additional information, as appropriate, to make individuals aware of potential radiation exposures and to minimize the exposures.~~

~~Section 15.[Section 24.] Posting Requirements. (1) Posting of radiation areas. A [licensee or] registrant shall post a radiation area with a conspicuous sign or signs bearing the radiation symbol and the words: "CAUTION, RADIATION AREA".~~

~~(2) Posting of high radiation areas. A [licensee or] registrant shall post a high radiation area with a conspicuous sign or signs bearing the radiation symbol and the words: "CAUTION, HIGH RADIATION AREA" or "DANGER, HIGH RADIATION AREA".~~

~~(3) Posting of very high radiation areas. A [licensee or] registrant shall post a very high radiation area with a conspicuous sign or signs bearing the radiation symbol and words: "GRAVE DANGER, VERY HIGH RADIATION AREA".~~

~~(4) Posting of airborne radioactivity areas. A licensee or registrant shall post an airborne radioactivity area with a conspicuous sign or signs bearing the radiation symbol and the~~

~~words: "CAUTION, AIRBORNE RADIOACTIVITY AREA" or "DANGER, AIRBORNE RADIOACTIVITY AREA".~~

~~(5) Posting of areas or rooms in which licensed or registered material shall be used or stored. A licensee or registrant shall post an area or room in which there is used or stored an amount of licensed or registered material exceeding ten (10) times the quantity of the material specified in 902 KAR 100:030 with a conspicuous sign or signs bearing the radiation symbol and the words "CAUTION, RADIOACTIVE MATERIAL(S)" or "DANGER, RADIOACTIVE MATERIAL(S)".]~~

~~Section 16.[Section 25.] Exceptions to Posting Requirements.~~

~~[(1)] A [licensee or] registrant shall not be required to post caution signs in areas or rooms containing sources of radiation for periods of less than eight (8) hours if the following conditions are met:~~

~~(1)[(a)] The sources of radiation are constantly attended during these periods by an individual who takes the precautions necessary to prevent the exposure of individuals to radiation [or radioactive materials] in excess of the limits established in this administrative regulation; and~~

~~(2)[(b)] The area or room is subject to the [licensee's or] registrant's control.~~

~~[(2)] Rooms or other areas in hospitals occupied by patients shall not be required to be posted with caution signs pursuant to Section 24 of this administrative regulation if the patient could be released from licensee control in accordance with 902 KAR 100:072, Section 27:~~

~~(3) A room or area is not required to be posted with a caution sign because of the presence of a sealed source if the radiation level at thirty (30) centimeters from the surface of the source container or housing does not exceed 0.005 rem (0.05 mSv) per hour.~~

~~(4) Rooms in hospitals or clinics that are used for teletherapy are exempt from the requirement to post caution signs under Section 24 of this administrative regulation if:~~

~~(a) Access to the room is controlled pursuant to 902 KAR 100:072, Section 50; and~~

~~(b) Personnel in attendance take necessary precautions to prevent the inadvertent exposure of workers, other patients, and members of the public to radiation in excess of the limits established in this administrative regulation.~~

~~Section 26. Labeling Containers. (1) A licensee or registrant shall ensure a container of licensed or registered material bears a durable, clearly visible label with the radiation symbol and the words "CAUTION, RADIOACTIVE MATERIAL" or "DANGER, RADIOACTIVE MATERIAL".~~

~~(a) The label shall provide the following information:~~

- ~~1. Radionuclide present;~~
- ~~2. An estimate of the quantity of radioactivity;~~
- ~~3. Date the activity is estimated;~~
- ~~4. Radiation levels;~~
- ~~5. Kinds of materials; and~~
- ~~6. Mass enrichment.~~

~~(b) Information in this subsection shall permit individuals handling or using the containers, or working in the vicinity of the containers, to take precautions to avoid or minimize exposures.~~

~~(2) A licensee or registrant shall, prior to removal or disposal of empty uncontaminated containers to unrestricted areas:~~

~~(a) Remove or deface the radioactive material label; or~~

~~(b) Clearly indicate the container no longer contains radioactive materials.~~

~~Section 27. Exemptions to Labeling Requirements. (1) A licensee or registrant shall not be required to label:~~

~~(a) Containers holding licensed or registered material in quantities less than the quantities listed in 902 KAR 100:030;~~

~~(b) Containers holding licensed or registered material in concentrations less than those specified in 10 C.F.R. 20, Appendix B;~~

~~(c) Containers attended by an individual who takes precautions necessary to prevent the exposure of individuals in excess of the limits established by this administrative regulation;~~

(d) Containers if they are in transport and packaged and labeled in accordance with 49 C.F.R. Parts 100-180;

(e) Containers that are accessible only to individuals authorized to handle or use them, or to work in the vicinity of the containers, if the contents are identified to these individuals by a readily available written record (for example, containers in locations that include water-filled canals, storage vaults, or hot cells). The record shall be retained as long as the containers are in use for the purpose indicated on the record; or

(f) Installed manufacturing or process equipment, such as chemical process equipment, piping, and tanks.

(2) Labeling of packages containing radioactive materials shall be required by the U.S. Department of Transportation (DOT) if the amount and type of radioactive material exceeds the limits for an excepted quantity or article pursuant to 49 C.F.R. 173.403 and 173.421-173.424.

Section 28. Procedures for Receiving and Opening Packages.

(1) A licensee or registrant who expects to receive a package containing quantities of radioactive material in excess of a Type A quantity pursuant to 902 KAR 100:010 shall make arrangements to receive:

(a) The package if the carrier offers it for delivery; or

(b) Notification of the arrival of the package at the carrier's terminal and take possession of the package expeditiously.

(2)(a) A licensee or registrant shall monitor the external surfaces of a labeled package for:

1. Radioactive contamination unless the package contains only radioactive material in the form of a gas or in special form as defined in 902 KAR 100:010; and

2. Radiation levels unless the package contains quantities of radioactive material that are less than or equal to the Type A quantity defined in 902 KAR 100:010; and

(b) All packages known to contain radioactive material for radioactive contamination and radiation levels if there is evidence of potential contamination such as packages that are crushed, wet, or damaged.

(3) A licensee or registrant shall perform the monitoring required by subsection (2) of this section as soon as practicable after receipt of the package, but not later than three (3) hours:

(a) After the package is received at the licensee's facility if received during the licensee's or registrant's normal working hours; or

(b) From the beginning of the next working day if received after working hours.

(4) A licensee or registrant shall immediately notify the final delivery carrier and the Manager of the Radiation Health Branch by telephone if:

(a) Removable radioactive surface contamination exceeds the limits of 902 KAR 100:070, Section 17; or

(b) External radiation levels exceed the limits of 902 KAR 100:070, Section 17.

(5) A licensee or registrant shall:

(a) Establish, maintain, and retain written procedures for safely opening packages in which radioactive material is received; and

(b) Ensure that the procedures are followed and due consideration is given to special instructions for the type of package being opened.

(6) A licensee or registrant transferring special form sources in licensee or registrant owned or operated vehicles to and from a work site shall be exempt from the contamination monitoring requirements of subsection (2) of this section, but shall not be exempt from the survey requirement for measuring radiation levels that are required to ensure the source shall remain properly lodged in its shield.]

Section 17.[Section 29:] General Provisions for Records. (1)(a) A [licensee or] registrant shall use the units roentgen[curie], rad, and rem, including multiples and subdivisions, and shall clearly indicate the units of quantities on records required by this administrative regulation.

(b)[4:] All quantities shall be recorded as stated in paragraph (a) of this section, except that the registrant[licensee] may record

quantities in the International System of Units (SI) in parentheses following each of the units specified in paragraph (a) of this section.

[2. Information shall be recorded in SI or in SI and units as specified in paragraph (a) of this section when recording information on shipment manifests, as required in 902 KAR 100:021, Section 9.]

(2) A [licensee or] registrant shall make a clear distinction among the quantities entered on the records required by this administrative regulation, such as:

(a) Total effective dose equivalent;

(b) Shallow-dose equivalent;

(c) Eye dose equivalent;

(d) Deep-dose equivalent; and

(e) Committed effective dose equivalent.

Section 18.[Section 30:] Records of Radiation Protection Programs. (1) A [licensee or] registrant shall maintain records of the radiation protection program, including:

(a) The provisions of the program; and

(b) Audits and other reviews of program content and implementation.

(2) A [licensee or] registrant shall retain records required by subsection (1)(a) of this section until the cabinet terminates each pertinent registration[license] requiring the record.

(3) A [licensee or] registrant shall retain records required by subsection (1)(b) of this section for at least three (3) years after the record is made.

Section 19.[Section 31:] Records of Surveys. (1) A [licensee or] registrant shall:

(a) Maintain records showing the results of surveys and calibrations required by Section 10[Sections 12 and 28(2)] of this administrative regulation; and

(b) Retain records for at least three (3) years after the record is made.

(2) A [licensee or] registrant shall retain [the following records until the cabinet terminates the pertinent license or registration requiring the record:

(a)] results of surveys to determine the dose from external sources of radiation and used, in the absence of or in combination with individual monitoring data, in the assessment of individual dose equivalents until the cabinet terminates the pertinent registration requiring the record];

(b) Results of measurements and calculations used to determine individual intakes of radioactive material and used in the assessment of internal dose;

(c) Results of air sampling, surveys, and bioassays required pursuant to Section 19(1)(b)1. and 2. of this administrative regulation; and

(d) Results of measurements and calculations used to evaluate the release of radioactive effluents to the environment].

Section 20.[Section 32:] Determination of Prior Occupational Dose. (1) For an individual likely to receive, in a year, an occupational dose requiring monitoring under Section 11[13] of this administrative regulation, the [licensee or] registrant shall:

(a) Determine the occupational radiation dose received during the current year; and

(b) Attempt to obtain the records of lifetime cumulative occupational radiation dose.

(2) Prior to permitting an individual to participate in a planned special exposure, a [licensee or] registrant shall determine:

(a) The [internal and] external doses from previous planned special exposures; and

(b) Doses in excess of the limits, including doses received during accidents and emergencies, received during the lifetime of the individual.

(3) In complying with the requirements of subsection (1) of this section, a [licensee or] registrant may:

(a) Accept, as a record of the occupational dose the individual received during the current year, a written signed statement from the individual or from the individual's most recent employer for work involving radiation exposure, that discloses the nature and amount of an occupational dose the individual may have received during the

current year;

(b) Accept, as the record of lifetime cumulative radiation dose, an up-to-date Nuclear Regulatory Commission (NRC) [NRC] Form 4, Cumulative Occupational Dose History, available at <https://www.nrc.gov/reading-rm/doc-collections/forms/index.html>, or equivalent, signed by the individual and counter-signed by an:

1. Appropriate official of the most recent employer for work involving radiation exposure; or

2. The individual's current employer if the individual is not employed by the [licensee or] registrant; or

(c) Obtain reports of the individual's dose equivalent from the most recent employer for work involving radiation exposure, or the individual's current employer if the individual is not employed by the [licensee or] registrant, by telephone, [telegram,] electronic media, or letter. If the authenticity of the transmitted report cannot be established, a [licensee or] registrant shall request a written verification of the dose data.

(4) A [licensee or] registrant shall record the exposure history, as required by subsection (1) of this section, on NRC Form 4, Cumulative Occupational Dose History, or other clear and legible record, of the information required on that form.

(a) The form or record shall:

1. Show each period the individual received occupational exposure to radiation [or radioactive material]; and

2. Be signed by the individual who received the exposure.

(b) For each period a [licensee or] registrant obtains reports, the [licensee or] registrant shall use the dose shown in the report in preparing NRC Form 4, Cumulative Occupational Dose History.

(c) For a period in which a [licensee or] registrant does not obtain a report, the registrant [licensee] shall place a notation on NRC Form 4, Cumulative Occupational Dose History, indicating the periods of time for which data are not available.

(5) If a registrant [licensee] is unable to obtain a complete record of an individual's current and previously accumulated occupational dose, the [licensee or] registrant shall assume:

(a) In establishing administrative controls under Section 3(4) [(6)] of this administrative regulation for the current year, that the allowable dose limit for the individual is reduced by 1.25 rems (twelve and five-tenths (12.5) mSv) for each quarter for which records were unavailable and the individual was engaged in activities that may have resulted in occupational radiation exposure; and

(b) That the individual is not available for planned special exposures.

(6) A [licensee or] registrant shall:

(a) Retain the records on NRC Form 4, Cumulative Occupational Dose History, or equivalent, at least until the cabinet terminates the pertinent [license or] registration requiring this record; and

(b) Retain records used in preparing NRC Form 4, Cumulative Occupational Dose History, for at least three (3) years after the record is made.

Section 21. [Section 33.] Records of Planned Special Exposures.

(1) For each use of the provisions of Section 5[7] of this administrative regulation for planned special exposures, a [licensee or] registrant shall maintain records that include:

(a) The name of the management official who authorized the planned special exposure;

(b) A copy of the signed authorization; and

(c) Description of:

1. The exceptional circumstances requiring the use of a planned special exposure;

2. What actions were necessary;

3. Why the actions were necessary;

4. How doses were maintained ALARA;

5. What individual and collective doses were expected to result; and

6. The doses actually received in the planned special exposure.

(2) A [licensee or] registrant shall retain the records at least until the cabinet terminates the [pertinent license or] registration requiring these records.

Section 22. [Section 34.] Records of Individual Monitoring Results. (1) A [licensee or] registrant shall maintain records of doses received:

(a) By individuals for whom monitoring was required by Section 11[13] of this administrative regulation; and

(b) During planned special exposures, accidents, and emergency conditions.

(2) The recordkeeping requirements shall include, if applicable:

(a) Deep-dose equivalent to the whole body;

(b) Lens dose equivalent;

(c) Shallow-dose equivalent to the skin and extremities; and

(d) [Estimated intake of radionuclides;

(e) Committed effective dose equivalent assigned to the intake of radionuclides;

(f) Specific information used to calculate the committed effective dose equivalent under Section 6(1) and (3), and Section 13 if required, of this administrative regulation;

(g) Total effective dose equivalent, if required by Section 4 of this administrative regulation; and

(h) Total of the deep-dose equivalent and the committed dose to the organ receiving the highest total dose].

(3) A [licensee or] registrant shall make entries of the records specified in subsection (1) of this section at least annually.

(4) A [licensee or] registrant shall maintain the records specified in subsection (1) of this section on NRC Form 5, Occupational Dose Record for a Monitoring Period, available at <https://www.nrc.gov/reading-rm/doc-collections/forms/index.html>, in accordance with the instructions for NRC Form 5, or in clear and legible records containing the information required by NRC Form 5.

(5) The records required under this section shall be protected from public disclosure because of their personal privacy nature.

(6) A [licensee or] registrant shall maintain the:

(a) Records of dose to an embryo or fetus with the records of dose to the declared pregnant woman; and

(b) Declaration of pregnancy on file, which may be maintained separately from the dose records.

(7) A [licensee or] registrant shall retain each required form or record at least until the cabinet terminates the pertinent license or registration requiring the record.

(8) Assessments of dose equivalent and records made using units in effect before a [licensee's or] registrant's adoption of this administrative regulation need not be changed.

Section 23. [Section 35.] Records of Dose to Individual Members of the Public. (1) A [licensee or] registrant shall maintain records sufficient to demonstrate compliance with the dose limit for individual members of the public.

(2) A [licensee or] registrant shall retain the records required by subsection (1) of this section at least until the cabinet terminates the pertinent [license or] registration requiring the record.

[Section 36. Records of Testing Entry Control Devices for Very High Radiation Areas. (1) A licensee or registrant shall maintain records of tests made under Section 16(3)(i) of this administrative regulation on entry control devices for very high radiation areas. These records shall include the date, time, and results of each test of function.

(2) A licensee or registrant shall retain the records required by subsection (1) of this section for at least three (3) years after the record is made.]

Section 24. [Section 37.] Form of Records. (1) Records required by 902 KAR Chapter 100 shall be legible throughout the specified retention period.

(2) The record shall be:

(a) The original; or

(b) A reproduced copy; or

(c) A microform if the copy or microform is authenticated by authorized personnel and the microform is capable of producing a clear copy throughout the required retention period].

(3) The record may be stored in electronic media with the capability for producing legible, accurate, and complete records during the required retention period.

(4) Records such as letters, drawings, and specifications shall include pertinent information such as stamps, initials, and signatures.

(5) A [licensee or] registrant shall maintain adequate safeguards against tampering with and loss of records.

Section 25.~~[Section 38.]~~ Reports of Theft or Loss of [Licensed or] Registered Sources of Radiation.

(1) A registrant shall report to the cabinet a lost, stolen, or missing registered radiation producing machine [Telephone reports.

(a) A licensee or registrant shall report by telephone as follows:

1. Immediately after its occurrence becomes known to the licensee or registrant, lost, stolen, or missing licensed or registered material in an aggregate quantity equal to or greater than 1,000 times the quantity specified in 902 KAR 100:030 under circumstances in which it appears to the licensee or registrant that an exposure may result to persons in unrestricted areas; or

2.] within thirty (30) days after the occurrence.

(2) The report shall include:

(a) A description of the registered machine involved, including:

1. Type of machine;

2. Make and model of machine; and

3. Maximum outputs;

(b) The date the loss or theft became known to the registrant; and

(c) A description of the circumstances under which the loss or theft occurred~~[of lost, stolen, or missing licensed or registered material becomes known to the licensee or registrant, licensed or registered material in a quantity greater than ten (10) times the quantity pursuant to 902 KAR 100:030 still missing at this time.~~

(b) Reports shall be made to the cabinet.

(2) Written reports.

(a) A licensee or registrant required to make a report pursuant to subsection (1) of this section shall, within thirty (30) days after making the telephone report, make a written report setting forth the following information:

1. Description of the licensed or registered material involved, including:

a. Kind;

b. Quantity; and

c. Chemical and physical form;

2. Description of the circumstances under which the loss or theft occurred;

3. Statement of disposition, or probable disposition, of the licensed or registered material involved;

4. Exposures of individuals to radiation, circumstances under which the exposures occurred, and the possible total effective dose equivalent to persons in unrestricted areas;

5. Actions that have been or shall be taken to recover the material; and

6. Procedures or measures that have been or shall be adopted to ensure against a recurrence of the loss or theft of licensed or registered material.

(b) Reports shall be made to the cabinet.

(3) Subsequent to filing the written report, a licensee or registrant shall report additional substantive information on the loss or theft within thirty (30) days after the licensee or registrant learns of the information.

(4) A licensee or registrant shall prepare and file a report with the cabinet as required by this section so that names of individuals who may have received exposure to radiation shall be stated in a separate and detachable part of the report].

Section 26.~~[Section 39.]~~ Notification of Incidents. (1) Immediate notification. A [licensee or] registrant shall immediately report an event involving radiation producing machines~~[radioactive material]~~ possessed by the [licensee or] registrant that may have caused, or threatens to cause, [one (1) or more of the following conditions:

(a)] an individual to~~[may]~~ receive:

(a)[4-] A total effective dose equivalent of twenty-five (25) rems (0.25 Sv) or more;

(b)[2-] A lens dose equivalent of seventy-five (75) rems (0.75 Sv) or more; or

(c)[3-] A shallow-dose equivalent to the skin or extremities of 250 rads (two and five-tenths (2.5) Gy) or more];

(b) The release of radioactive material, inside or outside of a restricted area, so that, had an individual been present for twenty-four (24) hours, the individual may have received an intake five (5) times the occupational annual limit on intake. The provisions of this paragraph shall not apply to locations in which personnel are not normally stationed during routine operations, such as in hot cells or process enclosure;

(c) A loss of one (1) working week or more of the operation of facilities affected; or

(d) Damage to property in excess of \$200,000].

(2) Twenty-four (24) hour notification. A [licensee or] registrant shall, within twenty-four (24) hours of discovery of the event, report an event [involving loss of control of licensed or registered source of radiation possessed by the licensee or registrant] that may have caused, or shall threaten to cause, [one (1) or more of the following conditions:

(a)] an individual to receive, in a period of twenty-four (24) hours:

(a)[4-] A total effective dose equivalent exceeding five (5) rems (0.05 Sv);

(b)[2-] A lens dose equivalent exceeding fifteen (15) rems (0.15 Sv); or

(c)[3-] A shallow-dose equivalent to the skin or extremities exceeding fifty (50) rems (five-tenths (0.5) Sv)];

(b) The release of radioactive material, inside or outside of a restricted area so that, had an individual been present for twenty-four (24) hours, the individual may have received an intake in excess of one (1) occupational annual limit on intake. The provisions of this paragraph shall not apply to locations in which personnel are not normally stationed during routine operations, such as in hot cells or process enclosures;

(c) A loss of one (1) day or more of the operation of facilities affected; or

(d) Damage to property in excess of \$2,000].

(3) A [licensee or] registrant shall prepare and file a report with the cabinet as required by this section so that names of individuals who have received exposure to radiation [or radioactive material] are stated in a separate and detachable part of the report.

(4) A [Licensee or] registrant shall make reports required by subsections (1) and (2) of this section to the cabinet by telephone.

(5) The provisions of this section shall not include doses that result from planned special exposures that are within the limits for planned special exposures, and are reported under Section 28[44] of this administrative regulation.

Section 27.~~[Section 40.]~~ Reports of Exposures and~~[.]~~ Radiation Levels~~[, and Concentrations of Radioactive Material]~~ Exceeding the Limits. (1) Reportable events. In addition to the notification required by Section 26[39] of this administrative regulation, a [licensee or] registrant shall submit a written report within thirty (30) days after learning of one (1) or more of the following occurrences:

(a) An incident for which notification shall be required by Section 26[39] of this administrative regulation; or

(b) Doses in excess of one (1) of the following:

1. Occupational dose limits for adults in Section 3 of this administrative regulation;

2. Occupational dose limits for a minor in Section 6[8] of this administrative regulation;

3. Limits for an embryo or fetus of a declared pregnant woman in Section 7[9] of this administrative regulation;

4. Limits for an individual member of the public in Section 8[40] of this administrative regulation; or

5. Applicable limit in the license or registration; or

[6- ALARA constraints for air emissions established under Section 2(4);]

(c) Levels of radiation [or concentrations of radioactive material]in:

1. A restricted area in excess of an applicable limit in the [license or] registration; or

2. An unrestricted area in excess of ten (10) times an applicable limit set forth in this administrative regulation[, the license,] or the registration, regardless of whether exposure of an individual in

excess of the limits in Section 8[40] of this administrative regulation occurs[; or

(d) For a person, agency, or licensee subject to the provisions of 40 C.F.R. 190, levels of radiation or releases of radioactive material in excess of those standards, or conditions related to those standards].

(2) Contents of reports.

(a) A report required by subsection (1) of this section shall describe the extent of exposure of individuals to radiation [and radioactive material,] including, as appropriate:

1. Estimates of each individual's dose;
2. The levels of radiation [and concentrations of radioactive material] involved;
3. The cause of the elevated exposures or dose rates[; or concentrations]; and

4. Corrective steps taken or planned to ensure against a recurrence, including the schedule for achieving conformance with applicable limits[; ALARA constraints and environmental standards, and associated license or registration conditions].

(b) A report filed under subsection (1) of this section shall include for each individual exposed:

1. Name of the individual;
2. Social Security number; and
3. Date of birth.

(c) The report shall be prepared so that information is stated in a separate and detachable part.

(d) With respect to the limit for the embryo or fetus, the identifiers shall be of the declared pregnant woman.

(3) A [licensee or] registrant who makes a report under subsection (1) of this section shall submit the report, in writing, to the Manager of the Radiation Health Branch, Department for Health Services, 275 East Main Street, Frankfort, Kentucky 40621.

Section 28. [Section 41.] Reports of Planned Special Exposures.

(1) A [licensee or] registrant shall submit a written report to the Manager of the Radiation Health Branch, Department for Health Services, 275 East Main Street, Frankfort, Kentucky 40621, within thirty (30) days following a planned special exposure conducted in accordance with Section 5[7] of this administrative regulation.

(2) A [licensee or] registrant shall:

- (a) Inform the Manager of the Radiation Health Branch that a planned special exposure was conducted;
- (b) Indicate the date the planned special exposure occurred; and
- (c) Provide the information required by Section 21[33] of this administrative regulation.

Section 29. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Cumulative Occupational Dose History", NRC Form 4, November 2020; and

(b) "Occupational Dose Record for Monitoring Period", NRC Form 5, January 2021.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of the Commissioner of Public Health, 275 East Main Street, Frankfort, Kentucky 40621, 8 a.m. until 4:30 p.m., Monday through Friday.

(3) This material is also available at <https://www.nrc.gov/reading-rm/doc-collections/forms/index.html>.

[Section 42. Reports of Individual Monitoring. (1) This section shall apply to persons licensed or registered by the cabinet to:

- (a) Possess or use sources of radiation for purposes of radiography authorized by 902 KAR 100:100;
- (b) Receive radioactive waste from other persons for disposal pursuant to 902 KAR 100:022; or
- (c) Possess or use, for processing or manufacturing for distribution required by 902 KAR 100:058, byproduct material in amounts exceeding one (1) of the following quantities:

	Quantity of Radionuclide ^a in curies
Cesium-137	4
Cobalt-60	4
Gold-198	400

Iodine-131	4
Iridium-192	40
Krypton-85	1,000
Promethium-147	40
Technetium-99m	1,000

^aIf necessary, the cabinet may require as a license or registration condition, KRS 211.842-211.852 or 902 KAR 100:015, Section 8, reports from licensees or registrants who are licensed or registered to use radionuclides not on this list, in quantities sufficient to cause comparable radiation levels.

(2) A licensee or registrant in a category listed in subsection (1) of this section shall:

(a) Submit an annual report of the results of individual monitoring carried out by the licensee for each individual for whom monitoring was required by Section 13 of this administrative regulation during that year; and

(b) Use Form NRC 5, Occupational Dose Record for a Monitoring Period, or other clear and legible record, which contains all the information required by Form NRC 5.

(3) A licensee or registrant may include additional data for individuals for whom monitoring may be provided, but not required.

(4) A licensee or registrant shall:

(a) File the report required by subsection (2) of this section covering the preceding year on or before April 30 of each year; and

(b) Submit the report to the Manager of the Radiation Health Branch, Department for Health Services, 275 East Main Street, Frankfort, Kentucky 40621.

Section 43. Protection Factors for Respirators. Protection factors shall be determined as established in 10 C.F.R. 20, Appendix A.

Section 44. Annual Limits on Intake (ALI) and Derived Air Concentrations (DAC) of radionuclides for occupational exposure, effluent concentrations, and concentrations for release to sanitary sewerage shall be determined as established in 10 C.F.R. 20, Appendix B.

Section 45. Material Incorporated by Reference.

(1) The following material is incorporated by reference:

(a) "Cumulative Occupational Dose History", NRC Form 4, June 2011;

(b) "Occupational Dose Record for a Monitoring Period", NRC Form 5, June 2011; and

(c) "Commodity Specification for Air", August 2004.

(2) This material may be inspected, copied, or obtained, subject to copyright law, at the Office of the Commissioner of Public Health, 275 East Main Street, Frankfort, Kentucky 40621, 8 a.m. until 4:30 p.m., Monday through Friday.]

STEVEN J. STACK, Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: October 11, 2023

FILED WITH LRC: October 12, 2023 at 9:30 a.m.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes standards for the protection of the user and general public against radiation exposure and establishes standards for protection against ionizing radiation resulting from activities conducted by persons issued registrations by the cabinet. This administrative regulation establishes standards to control the receipt, possession, use, transfer, and disposal of sources of radiation by a person or registrant so the total dose to an individual (including doses resulting from registered and unregistered radiation sources other than background radiation) shall not exceed the

standards for protection against radiation established in this administrative regulation.

(b) The necessity of this administrative regulation: Exposure to radiation can have long lasting effects on the individual's health. The occupational exposure controls and limits established in this administrative regulation ensure the individual is protected from an overexposure of radiation.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 194A.050(1) requires the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate the programs and fulfill the responsibilities vested in the cabinet. KRS 211.844 requires the cabinet to provide by administrative regulation for the registration of the possession or use of sources of ionizing or electronic product radiation.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation ensures those registered with the cabinet to possess or use sources of ionizing radiation are properly registered, and individual are properly monitored to avoid an overexposure to radiation.

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

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation clarifies that the requirements for registration and monitoring are applicable to sources of ionizing radiation and those who work with those machines, updates the dose limits to current industry standards, and makes other changes necessary for KRS Chapter 13A compliance. The amended after comments version makes additional changes for KRS Chapter 13A compliance.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to avoid confusion regarding the applicability of the requirements for monitoring dose limits. Those who are licensed to possess radioactive materials should not be referencing this administrative regulation. This administrative regulation is applicable to those who are registered with the cabinet to possess and utilize sources of ionizing radiation.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 211.842(1) establishes the Cabinet for Health and Family Services as the radiation control agency for the State of Kentucky. KRS 211.844 requires the cabinet to provide by administrative regulation for the registration of the possession or use of sources of ionizing or electronic product radiation.

(d) How the amendment will assist in the effective administration of the statutes: The amendment to this administrative regulation will ensure all those who are registered to possess and use sources of ionizing radiation are properly registered with the cabinet and will ensure any occupational exposure to radiation is properly monitored.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are currently 4,250 registrants. Registrants include those in the fields of medicine, research, industry, as well as academia, and all employees who use sources of ionizing radiation in their employment.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Individuals who are registered to possess and use sources of ionizing radiation will need to be aware of the occupational exposure limits, and registrants will need to be aware of the exposure limit, signage, and reporting requirements.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no cost to the regulated entities as compliance with this administrative regulation is currently a condition of registration.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Workers who use sources of ionizing radiation in their employment will be properly protected from overexposure to radiation.

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

(a) Initially: This is an ongoing program, there are no initial costs.

(b) On a continuing basis: This administrative regulation does not impact cost for the agency.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Radiation Health Branch is funded through a mix of state general fund dollars and the fees paid by registrants to possess and use sources of ionizing radiation.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: There are no fees established in this administrative regulation.

(9) TIERING: Is tiering applied? Tiering is not applied as the requirements of this administrative regulation are applied equally to all registrants.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Radiation Health Branch in the Department for Public Health will be impacted by the amendment to this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050 and 211.844.

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

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

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

(c) How much will it cost to administer this program for the first year? This administrative regulation does not impact cost for the agency.

(d) How much will it cost to administer this program for subsequent years? This administrative regulation does not impact cost for the agency.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? Cost savings for the regulated entities will result from ensuring the occupational dose to employees does not exceed established limits. Overexposure to occupational sources of ionizing radiation can result in increased time away from work and other related health concerns for the employee.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? Registrants will continue to see costs savings by protecting workers

from overexposure to occupational sources of ionizing radiation in subsequent years.

(c) How much will it cost the regulated entities for the first year? There will be no cost to regulated entities in the first year as the requirements of this administrative regulation are not new requirements.

(d) How much will it cost the regulated entities for subsequent years? There will be no change in the cost for regulated entities in subsequent years.

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] This administrative regulation does not have a major economic impact.

**CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Public Health Protection and Safety
(Amended After Comments)**

902 KAR 100:050. General licenses.

RELATES TO: KRS 194A.005, 211.842-211.852, 211.990(4), 10 C.F.R. Part 31, 42 U.S.C. 2021

STATUTORY AUTHORITY: KRS 194A.050(1), [211.090, 211.844]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary to promulgate, administrative regulations necessary to implement programs mandated by federal law, to qualify for the receipt of federal funds, and to cooperate with other state and federal agencies. KRS 211.844 authorizes the cabinet [for Human Resources is empowered by KRS 211.844] to provide by regulation for the registration and licensing of the possession or use of any source of ionizing or electronic product radiation and the handling and disposal of radioactive waste. [The purpose of.] This administrative regulation establishes [is to provide for] the general licensing requirements for [of] certain uses of radioactive material and specific devices containing radioactive material.

Section 1. Definitions. (1) "Agreement state" means a state that the United States Nuclear Regulatory Commission (NRC) or the United States Atomic Energy Commission has entered into an effective agreement under subsection 274 b. of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2021(b) et seq.).

(2) "Cabinet" is defined by KRS 194A.005(1).

(3) "Licensee" means a person who holds:

(a) A specific license issued by the cabinet pursuant to 902 KAR 100:040 and this administrative regulation;

(b) A specific license issued by the U.S. Nuclear Regulatory Commission or an agreement state; or

(c) A general license pursuant to this administrative regulation or equivalent regulations of the U.S. Nuclear Regulatory Commission or an agreement state.

Section 2. Applicability. [The provisions of.] This administrative regulation establishes the requirements for licensees [apply to persons] who manufacture or use radioactive material under a general license. Except as established in subsections (1) through (4) of this section, the licensee shall comply with 10 C.F.R. Part 31.

(1) The licensee shall not be subject to:

(a) 10 C.F.R. 31.4;

(b) 10 C.F.R. 31.22; or

(c) 10 C.F.R. 31.23.

(2) Application for specific license. Each application for a specific license shall be filed pursuant to 902 KAR 100:040.

(3)(a) Reference to the NRC, Commission, or an agreement state shall be deemed to reference the Cabinet for Health and Family Services, Department for Public Health, Radiation Health Branch[, the NRC, or an agreement state].

(b) In 10 C.F.R. 31.5(b)(1)(ii), 31.5(c)(3)(ii), 31.5(c)(8)(i), 31.6, 31.7(a), 31.10(a), 31.10(b)(1), and 31.12(c)(4), reference to "an agreement state", shall be deemed to be a reference to "the NRC, or an agreement state".

(c) In 10 C.F.R. 31.6, reference to "any non-agreement state" or "offshore waters" shall be deemed a reference to the "Commonwealth of Kentucky".

(4) Notifications and reports required by 10 C.F.R. Part 31 shall be directed to the manager, Radiation Health Branch at:

(a) 275 East Main Street, Mailstop HS1-C-A, Frankfort, Kentucky 40621;

(b) (502) 564-1492: Facsimile;

(c) (502) 564-3700: Telephone, Monday through Friday, 8 a.m. to 4:30 p.m.; or

(d) (800) 225-2587: Telephone, for hours except those established in paragraph (c) of this subsection, [as provided under this administrative regulation].

Section 2. General Licenses; Source Material. (1) A general license is hereby issued authorizing commercial and industrial firms, research, educational and medical institutions, and state and local government agencies to use and transfer not more than fifteen (15) pounds of source material at any time for research, development, educational, commercial, or operational purposes. A person authorized to use or transfer source material pursuant to this general license may not receive more than a total of 150 pounds of source material in any one (1) calendar year:

(2) Persons who receive, possess, use or transfer source material pursuant to the general license issued in subsection (1) of this section are exempt from the provisions of these administrative regulations to the extent that such receipt, possession, use, or transfer is within the terms of such general license; provided, however, that this exemption shall not be deemed to apply to any person who is also in possession of source material under a specific license issued pursuant to these administrative regulations.

(3) A general license is hereby issued authorizing the receipt of title of source material without regard to quantity. The general license under this subsection does not authorize any person to receive, possess, use, or transfer source material.

(4) Depleted uranium in industrial products and devices.

(a) A general license is hereby issued to receive, acquire, possess, use, or transfer, in accordance with the provisions of this subsection, depleted uranium contained in industrial products or devices for the purpose of providing a concentrated mass in a small volume of the product or device:

(b) The general license applies only to industrial products or devices which have been manufactured either in accordance with a specific license issued to the manufacturer of the products or devices pursuant to 902 KAR 100:058 or in accordance with a specific license issued to the manufacturer by the U.S. Nuclear Regulatory Commission or an Agreement State which authorizes manufacture of the products or devices for distribution to persons generally licensed by the U.S. Nuclear Regulatory Commission or an Agreement State.

(c) 1. Persons who receive, acquire, possess, or use depleted uranium pursuant to this general license shall notify the cabinet. The notification shall be submitted within thirty (30) days after the first receipt or acquisition of such depleted uranium. The general licensee shall furnish the following information and such other information as may be required:

a. Name and address of the general licensee;

b. A statement that the general licensee has developed and will maintain procedures designed to establish physical control over the depleted uranium and designed to prevent transfer of such depleted uranium in any form, including metal scrap, to persons not authorized to receive the depleted uranium; and

c. Name and/or title, address, and telephone number of the individual duly authorized to act for and on behalf of the general licensee in supervising the procedures.

2. The general licensee possessing or using depleted uranium under this general license shall report in writing to the cabinet any changes in information furnished by the notification. The report shall be submitted within thirty (30) days after the effective date of such change.

(d) A person who receives, acquires, possesses, or uses depleted uranium pursuant to the general license established by paragraph (a) of this subsection;

1. Shall not introduce such depleted uranium, in any form, into a chemical, physical, or metallurgical treatment or process except a treatment or process for repair or restoration of any plating or other covering of the depleted uranium;

2. Shall not abandon such depleted uranium;

3. Shall transfer or dispose of such depleted uranium only by transfer in accordance with the provisions of 902 KAR 100:040. In the case where the transferee receives the depleted uranium pursuant to the general license established by this subsection, the transferor shall furnish the transferee a copy of this administrative regulation. In the case where the transferee receives the depleted uranium pursuant to a general license contained in the U.S. Nuclear Regulatory Commission's or Agreement State's regulation equivalent, the transferor shall furnish the transferee a copy of this administrative regulation accompanied by a note explaining that use of the product or device is regulated by the U.S. Nuclear Regulatory Commission or Agreement State under requirements substantially the same as those in this administrative regulation;

4. Within thirty (30) days of any transfer, shall report in writing to the cabinet the name and address of the person receiving the depleted uranium pursuant to such transfer; and

5. Shall not export such depleted uranium except in accordance with a license issued by the U.S. Nuclear Regulatory Commission pursuant to 10 C.F.R. Part 140.

(e) Any person receiving, acquiring, possessing, using, or transferring depleted uranium pursuant to the general license established by this subsection is exempt from the requirements of 902 KAR 100:020 and 902 KAR 100:165 of these administrative regulations with respect to the depleted uranium covered by that general license.

Section 3. General Licenses; Radioactive Material Other than Source Material. (1) A general license is hereby issued to transfer, receive, acquire, own, possess, and use radioactive material incorporated in the following devices or equipment which have been manufactured, tested and labeled by the manufacturer in accordance with a specific license issued to the manufacturer by the U.S. Nuclear Regulatory Commission for use pursuant to 10 C.F.R. Part 31.3;

(a) Static elimination device. Devices designed for use as static eliminators which contain, as a sealed source or sources, radioactive material consisting of a total of not more than 500 microcuries of polonium-210 per device; and

(b) Ion generating tube. Devices designed for ionization of air which contain, as a sealed source or sources, radioactive material consisting of a total of not more than 500 microcuries of polonium-210 per device or a total of not more than fifty (50) millicuries of hydrogen-3 (tritium) per device.

(2) The general license provided in subsection (1) of this section is subject to all applicable provisions of these administrative regulations including provisions relating to the labeling of containers.

(3) Certain measuring, gauging or controlling devices.

(a) A general license is hereby issued to commercial, and industrial firms and to research, educational and medical institutions, individuals in the conduct of their business, and state or local government agencies to own, receive, acquire, possess, use or transfer in accordance with the provisions of this subsection, radioactive material, excluding special nuclear material, contained in devices designed and manufactured for the purpose of detecting, measuring, gauging or controlling thickness, density, level, interface location, radiation, leakage, or qualitative or quantitative chemical composition, or for producing light or an ionized atmosphere.

(b) The general license in this subsection applies only to radioactive material contained in devices which have been manufactured and labeled in accordance with the specifications contained in a specific license issued by the cabinet pursuant to 902 KAR 100:058 or in accordance with the specifications contained in a specific license issued by the U.S. Nuclear Regulatory Commission or an Agreement State which authorizes distribution of devices to persons generally licensed by the U.S. Nuclear Regulatory Commission or an Agreement State. Regulations under the Federal Food, Drug, and Cosmetic Act authorizing the use of radioactive control devices in food production require certain additional labeling thereon which is found in 21 C.F.R. Part 179.21.

(c) Any person who owns, receive, acquires, possesses, uses, or transfers radioactive material in a device pursuant to the general license in this subsection:

1. Shall assure that all labels affixed to the device at the time of receipt, and bearing a statement that removal of the label is prohibited, are maintained thereon and shall comply with all instructions and precautions provided by such labels;

2. Shall assure that the device is tested for leakage of radioactive material and proper operation of the "on-off" mechanism and indicator, if any, at no longer than six (6) month intervals or at such other intervals as are specified in the label; however,

a. Devices containing only krypton need not be tested for leakage of radioactive material, and

b. Devices containing only tritium or not more than 100 microcuries of other beta and/or gamma-emitting material or ten (10) microcuries of alpha-emitting material and devices held in storage in the original shipping container prior to initial installation need not be tested for any purpose;

3. Shall assure that other testing, installation, servicing, and removal from installation involving the radioactive material, its shielding or containment, are performed:

a. In accordance with the instructions provided by the labels; or

b. By a person holding an applicable specific license from the cabinet, the U.S. Nuclear Regulatory Commission or an Agreement State to perform such activities;

4. Shall maintain records showing compliance with the requirements of this subsection. The records shall show the results of tests. The records also shall show the names of persons and dates of performance of testing, installation, servicing, and removal from installation concerning the radioactive material, its shielding or containment. Records of tests for leakage of radioactive material shall be maintained for one (1) year after the next required leak test is performed or until the sealed source is transferred or disposed. Records of tests of the "on-off" mechanism and indicator shall be maintained for one (1) year after the next required test of the "on-off" mechanism and indicator is performed or until the sealed source is transferred or disposed. Records which are required by subparagraph 3 of this paragraph shall be maintained for a period of two (2) years from the date of the recorded event or until the device is transferred or disposed;

5. Upon the occurrence of a failure of or damage to, or any indication of a possible failure of or damage to, the shielding of the radioactive material or the "on-off" mechanism or indicator, or upon the detection of 0.005 microcurie or more removable radioactive material, shall immediately suspend operation of the device until it has been repaired by the manufacturer or other person holding an applicable specific license from the cabinet, the U.S. Nuclear Regulatory Commission or an Agreement State to repair such devices, or disposed of by transfer to a person authorized by an applicable specific license to receive the radioactive material contained in the device and, within thirty (30) days, furnish to the cabinet a report containing a brief description of the event and the remedial action taken;

6. Shall not abandon the device containing radioactive material;

7. Except as provided in subparagraph 8 of this paragraph, shall transfer or dispose of the device containing radioactive material only by transfer to a specific licensee of the cabinet, the U.S. Nuclear Regulatory Commission or an Agreement State whose specific license authorizes him to receive the device and within thirty (30) days after transfer of a device to a specific licensee shall furnish to the cabinet a report containing identification of the device by

manufacturer's name and model number and the name and address of the person receiving the device. No report is required if the device is transferred to the specific licensee in order to obtain a replacement device;

8. Shall transfer the device to another general licensee only:

a. Where the device remains in use at a particular location. In such case the transferor shall give the transferee a copy of this administrative regulation and any safety documents identified in the label on the device and within thirty (30) days of the transfer, report to the cabinet the manufacturer's name and model number of device transferred, the name and address of the transferee, and the name and/or position of an individual who may constitute a point of contact between the cabinet and the transferee; or

b. Where the device is held in storage in the original shipping container at its intended location of use prior to initial use by a general licensee; and

9. Shall comply with the provisions of 902 KAR 100:020 for reporting radiation incidents, theft, or loss of licensed material, but shall be exempt from the other requirements of 902 KAR 100:020 and 902 KAR 100:165.

(d) The general license in this subsection does not authorize the manufacture of devices containing radioactive material.

(e) The general license provided in this subsection is subject to the provisions of 902 KAR 100:012, 902 KAR 100:015, 902 KAR 100:040, Sections 7, 13 and 14 and 902 KAR 100:070.

(f) A general license is hereby issued to any person who holds a specific license issued by the U.S. Nuclear Regulatory Commission or an Agreement State authorizing the holder to manufacture, install, or service a device described in this subsection to install and service such device provided:

1. The device has been manufactured, labeled, installed, and serviced in accordance with applicable provisions of the specific license issued to such person by the U.S. Nuclear Regulatory Commission or an Agreement State; and

2. Such person assures that any labels required to be affixed to the device under regulations of U.S. Nuclear Regulatory Commission or an Agreement State which licensed manufacture of the device bear a statement that removal of the label is prohibited.

(4) Luminous safety devices for aircraft.

(a) A general license is hereby issued to own, receive, acquire, possess, and use tritium or promethium-147 contained in luminous safety devices for use in aircraft, provided:

1. Each device contains not more than ten (10) curies of tritium or 300 millicuries of promethium-147; and

2. Each device has been manufactured, assembled, or imported in accordance with a specific license issued by the U.S. Nuclear Regulatory Commission, or each device has been manufactured or assembled in accordance with the specifications contained in a specific license issued by the cabinet or any Agreement State to the manufacturer or assembler of such device pursuant to licensing requirements equivalent to those in Section 32.53 of 10 C.F.R., Part 32, of the regulations of the U.S. Nuclear Regulatory Commission.

(b) Persons who own, receive, acquire, possess, or use luminous safety devices pursuant to the general license in paragraph (a) of this subsection are exempt from the requirements of 902 KAR 100:020 and 902 KAR 100:165 except that they shall comply with the provisions relating to reports of theft or loss of sources of radiation and the provisions relating to notification of incidents.

(c) This general license does not authorize the manufacture, assembly, or repair of luminous safety devices containing tritium or promethium-147.

(d) This general license does not authorize the ownership, receipt, acquisition, possession or use of promethium-147 contained in instrument dials.

(e) This general license is subject to the provisions of 902 KAR 100:015, 902 KAR 100:040, Sections 7, 13, and 14 and 902 KAR 100:070.

(5) Calibration and reference sources.

(a) A general license is hereby issued to those persons listed below to own, receive, acquire, possess, use, and transfer, in accordance with the provisions of paragraphs (d) and (e) of this subsection, americium-241 in the form of calibration or reference

sources:

1. Any person who holds a specific license issued by the cabinet which authorizes him to receive, possess, use, and transfer radioactive material; and

2. Any person who holds a specific license issued by the U.S. Nuclear Regulatory Commission which authorizes him to receive, possess, use, and transfer special nuclear material.

(b) A general license is hereby issued to receive, possess, use, and transfer plutonium in the form of calibration or reference sources in accordance with the provisions of paragraphs (d) and (e) of this subsection to any person who holds a specific license issued by the cabinet which authorizes him to receive, possess, use, and transfer radioactive material.

(c) A general license is hereby issued to own, receive, possess, use, and transfer radium-226 in the form of calibration or reference sources in accordance with the provisions of paragraphs (d) and (e) of this subsection to any person who holds a specific license issued by the cabinet which authorizes him to receive, possess, use, and transfer radioactive material.

(d) The general license in paragraphs (a), (b) and (c) of this subsection apply only to calibration or reference sources which have been manufactured in accordance with the specifications contained in a specific license issued to the manufacturer or importer of the sources by the U.S. Nuclear Regulatory Commission pursuant to Section 32.57 of 10 C.F.R., Part 32, or Section 70.39 of 10 C.F.R., Part 70, or which may have been manufactured in accordance with the specifications contained in a specific license issued to the manufacturer by the cabinet or any Agreement State pursuant to licensing requirements equivalent to those contained in 902 KAR 100:058.

(e) Persons who own, receive, acquire, possess, use, and transfer one (1) or more calibration or reference sources pursuant to these general licenses:

1. Shall not possess at any one (1) time, at any one (1) location of storage or use, more than five (5) microcuries of americium-241, five (5) microcuries of plutonium or five (5) microcuries of radium-226 in such sources;

2. Shall not receive, possess, use, or transfer such source unless the source, or the storage container, bears a label which includes the following statement or a substantially similar statement which contains the information called for in the following statement:

"The receipt, possession, use and transfer of this source, Model _____, Serial No. _____, are subject to a general license and the regulations of the U.S. Nuclear Regulatory Commission or of a state with which the Commission has entered into an agreement for the exercise of regulatory authority. Do not remove this label.

CAUTION - RADIOACTIVE MATERIAL - THIS SOURCE CONTAINS (AMERICIUM-241). (PLUTONIUM) (RADIUM-226)*. DO NOT TOUCH RADIOACTIVE PORTION OF THIS SOURCE.

Name of Manufacturer or Importer"

*Showing only the name of the appropriate material.

3. Shall not transfer, abandon, or dispose of such source except by transfer to a person authorized by a license from the cabinet, U.S. Nuclear Regulatory Commission, or an Agreement State to receive the source;

4. Shall store such source, except when the source is being used, in a closed container adequately designed and constructed to contain americium-241, plutonium or radium-226 which might otherwise escape during storage; and

5. Shall not use such source for any purpose other than the calibration of radiation detectors or the standardization of other sources.

(f) The general licenses provided in paragraphs (a), (b) and (c) of this subsection are subject to the provisions of 902 KAR 100:015, 902 KAR 100:020, 902 KAR 100:040, Sections 7, 13, and 14, 902 KAR 100:070, and 902 KAR 100:165.

(g) These general licenses do not authorize the manufacture of calibration or reference sources containing americium-241, plutonium, or radium-226.

(6) A general license is hereby issued to own radioactive

material without regard to quantity. The general license under this subsection does not authorize the licensee to manufacture, produce, transfer, receive, possess, or use radioactive material.

(7) Ice detection devices:

(a) A general license is hereby issued to own, receive, acquire, possess, use, and transfer strontium-90 contained in ice detection devices, provided each device contains not more than fifty (50) microcuries of strontium-90 and each device has been manufactured or imported in accordance with a specific license issued by the U.S. Nuclear Regulatory Commission or each device has been manufactured in accordance with the specifications contained in a specific license issued by the cabinet or any Agreement State to the manufacturer of such device pursuant to licensing requirements equivalent to those in 902 KAR 100:058.

(b) Persons who own, receive, acquire, possess, use, or transfer strontium-90 contained in ice detection devices pursuant to the general license in paragraph (a) of this subsection:

1. Shall, upon occurrence of visually observable damage, such as a bend or crack or discoloration from overheating to the device, discontinue use of the device until it has been inspected, tested for leakage, and repaired by a person holding a specific license from the cabinet, U.S. Nuclear Regulatory Commission or an Agreement State to manufacture or service such devices; or shall dispose of the device pursuant to the provisions of these administrative regulations;

2. Shall assure that all labels affixed to the device at the time of receipt, and which bear a statement which prohibits removal of the labels, are maintained thereon;

3. Are exempt from the other requirements of these administrative regulations except that such persons shall comply with 902 KAR 100:015, 902 KAR 100:020, Sections 16 and 17, 902 KAR 100:021, 902 KAR 100:040, Sections 7, 13, and 14 and 902 KAR 100:070.

(c) This general license does not authorize the manufacture, assembly, disassembly or repair of strontium-90 sources in ice detection devices.

Section 4. General License for use of Radioactive Material for Certain In Vitro Clinical or Laboratory Testing. (1) A general license is hereby issued to any physician, veterinarian, clinical laboratory, or hospital to receive, acquire, possess, transfer or use, for any of the following stated tests, in accordance with the provisions of subsections (2), (3), (4), (5), and (6) of this section, the following radioactive materials in prepackaged units for use in In Vitro clinical or laboratory tests not involving internal or external administration of radioactive material, or the radiation therefrom, to human beings or animals:

(a) Iodine-125, in units not exceeding ten (10) microcuries each.

(b) Iodine-131, in units not exceeding ten (10) microcuries each.

(c) Carbon-14, in units not exceeding ten (10) microcuries each.

(d) Hydrogen-3 (Tritium), in units not exceeding fifty (50) microcuries each.

(e) Iron-59, in units not exceeding twenty (20) microcuries each.

(f) Cobalt-57, in units not exceeding ten (10) microcuries each.

(g) Mock iodine-125 reference or calibration sources, in units not exceeding 0.05 microcurie of iodine-29 and 0.005 microcurie of americium-241 each.

(h) Selenium-75, in units not exceeding ten (10) microcuries each.

(2) No person shall receive, acquire, possess, use or transfer radioactive material pursuant to the general license established by subsection (1) of this section until he has filed form KR-251, "Registration Certificate - In Vitro Testing" with the cabinet and received from the cabinet a validated copy of form KR-251 with certification number assigned. The physician, veterinarian, clinical laboratory, or hospital shall furnish on form KR-251, the following information and such other information as may be required by that form:

(a) Name and address of the physician, veterinarian, clinical laboratory, or hospital;

(b) The location of use; and

(c) A statement that the physician, veterinarian, clinical laboratory, or hospital has appropriate radiation measuring

instruments to carry out in vitro clinical or laboratory tests with radioactive materials as authorized under the general license in subsection (1) of this section and that such tests will be performed only by personnel competent in the use of such instruments and in the handling of the radioactive material.

(3) A person who receives, acquires, possesses or uses radioactive material pursuant to the general license established by subsection (1) of this section shall comply with the following:

(a) The general licensee shall not possess at any one (1) time, pursuant to the general license in subsection (1) of this section, at any one (1) location of storage or use, a total amount of iodine-125, iodine-131, selenium-75, cobalt-57 and/or iron-59 in excess of 200 microcuries.

(b) The general licensee shall store the radioactive material, until used, in the original shipping container or in a container providing equivalent radiation protection.

(c) The general licensee shall use the radioactive material only for the uses authorized by subsection (1) of this section.

(d) The general licensee shall not transfer the radioactive material to a person who is not authorized to receive it pursuant to a license issued by the cabinet, the U.S. Nuclear Regulatory Commission, or any Agreement State, nor transfer the radioactive material in any manner other than in the unopened, labeled shipping container as received from the supplier.

(e) The general licensee shall dispose of the Mock iodine-125 reference or calibration sources as required by 902 KAR 100:021, Section 2.

(4) The general licensee shall not receive, acquire, possess, or use radioactive material pursuant to subsection (1) of this section:

(a) Except as prepackaged units which are labeled in accordance with the provisions of a specific license issued under these administrative regulations or in accordance with the provisions of an applicable specific license issued pursuant to 902 KAR 100:058 or in accordance with the provisions of a specific license issued by the U.S. Nuclear Regulatory Commission, or any Agreement State which authorizes the manufacture and distribution of iodine-125, iodine-131, carbon-14, hydrogen-3 (tritium), selenium-75, cobalt-57, Mock iodine-125 or iron-59 to persons generally licensed under subsection (1) of this section or its equivalent;

(b) Unless the following statement, or a substantially similar statement which contains the information called for in the following statement, appears on a label affixed to each prepackaged unit or appears in a leaflet or brochure which accompanies the package:

"This radioactive material may be received, acquired, possessed, and used only by physicians, veterinarians, clinical laboratories or hospitals and only for in vitro clinical or laboratory tests not involving internal or external administration of the material, or the radiation therefrom, to human beings or animals. Its receipt, acquisition, possession, use and transfer are subject to the regulations and a general license of the U.S. Nuclear Regulatory Commission or of a state with which the commission has entered into an agreement for the exercise of regulatory authority.

Name of Manufacturer

(5) The physician, veterinarian, clinical laboratory, or hospital possessing or using radioactive material under the general license of subsection (1) of this section shall report in writing to the cabinet, any changes in the information furnished by him in the "Registration Certificate - In Vitro Testing," form KR-251. The report shall be furnished within thirty (30) days after the effective date of such change.

(6) Any person using radioactive material pursuant to the general license of subsection (1) of this section is exempt from the requirements 902 KAR 100:020, 902 KAR 100:021, and 902 KAR 100:165, except that such person using the Mock iodine-125 shall comply with the provisions of 902 KAR 100:020, Sections 16 and 17 and 902 KAR 100:021.

(7) Any licensee who is licensed pursuant to 902 KAR 100:073 for medical use of radioactive material also is authorized to use radioactive material under the general license in this section for the specified in vitro uses without filing form KR-251 as required; provided, that the licensee is subject to the other provisions of this section.

Section 5. General License for Medical Diagnostic Uses. (1) A general license is hereby issued to any physician to receive, possess, transfer, or use radioactive material set forth below for the stated diagnostic uses, provided, however, that the use is in accordance with the provisions of subsections (2), (3), and (4) of this section, the radioactive material is in the form of capsules, disposable syringes, or other prepackaged individual doses; and the radioactive material has been manufactured in accordance with a specific license issued by the cabinet pursuant to 902 KAR 100:058, or by the U.S. Nuclear Regulatory Commission or any Agreement State pursuant to equivalent regulations authorizing distribution to persons generally licensed pursuant to this subsection or its equivalent:

- (a) Iodine-131 as sodium iodide for measurement of thyroid uptake;
- (b) Iodine-131 as iodinated human serum albumin (IHSA) for determinations of blood and blood plasma volume;
- (c) Iodine-125 as iodinated human serum albumin (IHSA) for determinations of blood and blood plasma volume;
- (d) Cobalt-57 for the measurement of intestinal absorption of cyanocobalamin;
- (e) Cobalt-58 for the measurement of intestinal absorption of cyanocobalamin;
- (f) Cobalt-60 for the measurement of intestinal absorption of cyanocobalamin;
- (g) Chromium-51 as sodium radiochromate for determination of red blood cell volumes and studies of red blood cell survival time.

(2) Manufacturers of radiopharmaceuticals which are under a general license shall affix a certain identifying label to the container or in the leaflet or brochure which accompanies the radiopharmaceutical as otherwise provided in these administrative regulations.

(3) No physician shall receive, possess, use, or transfer radioactive material pursuant to the general license established by subsection (1) of this section until he has filed form KR-252, "Registration Certificate - Medical Use of Radioactive Material" with the cabinet and received from the cabinet a validated copy of the form KR-252 with certification number assigned. The generally licensed physician shall furnish on form KR-252 the following information and such other information as may be required by that form:

- (a) Name and address of the generally licensed physician;
- (b) A statement that the generally licensed physician is a duly licensed physician authorized to dispense drugs in the practice of medicine in the state of Kentucky and specifying the license number; and

(c) A statement that the generally licensed physician has appropriate radiation measuring instruments to carry out the diagnostic procedures for which he proposes to use the radioactive material under the general license of this section and that he is competent in the use of such instruments.

(4) A physician who receives, possesses or uses a pharmaceutical containing radioactive material pursuant to the general license established by subsection (1) of this section shall comply with the following:

(a) He shall not possess at any one time pursuant to the general license in subsection (1) of this section more than:

- 1. 200 microcuries of iodine-131;
- 2. 200 microcuries of iodine-125;
- 3. Five (5) microcuries of cobalt-57;
- 4. Five (5) microcuries of cobalt-60;
- 5. Five (5) microcuries of cobalt-58; and
- 6. 200 microcuries of chromium-51.

(b) He shall store the pharmaceutical, until administered, in the original shipping container or a container providing the equivalent radiation protection.

(c) He shall use the pharmaceutical only for the uses authorized by subsection (1) of this section.

(d) He shall not administer the pharmaceutical to a woman with confirmed pregnancy or to a person under eighteen (18) years of age.

(e) He shall not transfer the radioactive material to a person who

is not authorized to receive it pursuant to a license issued by the cabinet, the U.S. Nuclear Regulatory Commission or any Agreement State, or in any manner other than in the unopened, labeled shipping container as received from the supplier, except by administering it to a patient.

(5) The generally licensed physician possessing or using radioactive material under the general license of subsection (1) of this section shall report to the cabinet, any changes in the information furnished by him in the "Registration Certificate - Medical Use of Radioactive Material," form KR-252. The report shall be submitted within thirty (30) days after the effective date of change.

(6) Any person using radioactive material pursuant to the general license of subsection (1) of this section is exempt from the requirements of 902 KAR 100:020, 902 KAR 100:021 and 902 KAR 100:165.]

STEVEN J. STACK, Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: October 11, 2023

FILED WITH LRC: October 12, 2023 at 9:30 a.m.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the general licensing requirements for certain uses of radioactive material and specific devices containing radioactive material.

(b) The necessity of this administrative regulation: This administrative regulation identifies alternate licensing criteria for lower activities and specific uses of radioactive materials.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 211.844 requires the cabinet to provide by administrative regulation the requirements for the licensing, use, and disposal of radioactive materials.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation ensures all those engaged in the licensing, use, transfer, and disposal of radioactive source material meet the regulatory requirements.

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

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation adopts by reference the requirements of 10 C.F.R. Part 31. The amended after comments version amends section 2 for clarification of the notification requirements.

(b) The necessity of the amendment to this administrative regulation: As an agreement state with the Nuclear Regulatory Commission (NRC), Kentucky is required to have state regulations compatible with the regulations promulgated by NRC. This change will make the Radiation Health Branch (RHB) compatible with applicable requirements of 10 C.F.R. Part 31.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 211.842(1) and (2) establish the cabinet as the radiation control agency of the state of Kentucky and authorize the cabinet to issue licenses pertaining to radioactive materials and require registration of other sources of ionizing radiation.

(d) How the amendment will assist in the effective administration of the statutes: The amendment to this administrative regulation ensures all licensees who have a general license for certain uses of radioactive material and specific devices containing radioactive material are in full compliance with state and federal requirements.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are currently 118 licenses issued for certain uses of radioactive material and specific devices containing

radioactive material.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No additional actions will be needed by the licensee to comply with this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is a minimal cost to the cabinet associated with updating references.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Adopting 10 C.F.R. Part 31 by reference will reduce the redundancy between state and federal requirements. This will reduce the time needed to research applicable regulations and make it easier for the licensee to review existing guidance documents.

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

(a) Initially: This is an ongoing program there are no initial costs.

(b) On a continuing basis: This administrative regulation does not impact costs for the agency.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Radiation Health Branch is funded through a mix of state general fund dollars and the various fees associated with issuing licenses.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied. The requirements of this administrative regulation are applied equally to all licensees.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Radiation Health Branch within the Department for Public Health will be impacted by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1) and 211.844.

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

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

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

(c) How much will it cost to administer this program for the first year? There is no impact on cost to the agency.

(d) How much will it cost to administer this program for subsequent years? There is no impact to cost to the agency.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? This administrative regulation may result in minimal cost savings for the regulated entities. The amendment to this administrative regulation reduces the administrative burden of having to research and follow duplicative state and federal requirements.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? This administrative regulation may result in minimal cost savings for the regulated entities. The amendment to this administrative regulation reduces the administrative burden of having to research and follow duplicative state and federal requirements.

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

(d) How much will it cost the regulated entities for subsequent years? This administrative regulation will have no impact on cost for the regulated entities.

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] This administrative regulation does not have a major economic impact.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. Atomic Energy Act of 1954, 42 U.S.C. 2021, as amended, and 10 C.F.R. Part 31.

(2) State compliance standards. As an agreement state with the Nuclear Regulatory Commission the state is required to have a program for the control of radiation hazards adequate to protect the public health and safety with respect to the materials within the state covered by the proposed agreement. The state is required to adopt compliance standards for the protection of the public health, safety, and the environment from hazards associated with such material which are equivalent, to the extent practicable, or more stringent than, standards adopted and enforced by the Commission for the same purpose.

(3) Minimum or uniform standards contained in the federal mandate. In accordance with 42 U.S.C. 2021(g), the commission is authorized and directed to cooperate with the states in the formulation of standards for protection against hazards of radiation to assure that state and commission programs for protection against hazards of radiation will be coordinated and compatible. Pursuant to 42 U.S.C. 2021(a)(3) the purpose of this standard is to promote orderly regulatory pattern between the commission and state governments with respect to nuclear development and use and regulation of byproduct, source, and special nuclear materials.

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

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable as there are no stricter standards, or additional or different responsibilities or requirements.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Public Health Protection and Safety
(Amended After Comments)

902 KAR 100:058. Specific licenses to manufacture, assemble, repair, or distribute products.

RELATES TO: KRS 194A.005, 211.842-211.852, 211.990(4), 10 C.F.R. Part 32, 42 U.S.C. 2021(b)(31.5, 32.2(b), 32.11, 32.18, 32.19, 32.26, 32.51—32.74, 32.101—32.103, 32.110, 32.210, 40.34, 40.35, 70.39]

STATUTORY AUTHORITY: KRS 13B.170, 194A.050(1), [211.090(3),]211.844

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to implement programs mandated by federal law, to qualify for the receipt of federal funds, and to cooperate with other state and federal agencies. KRS 211.844 requires the cabinet [for Health and Family Services—]to promulgate administrative regulations concerning the possession or use of sources of ionizing or electronic product radiation and the handling and disposal of radioactive waste. [KRS 194A.050 authorizes the secretary to promulgate administrative regulations necessary to implement programs mandated by federal law or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs.]This administrative regulation establishes requirements for issuing specific licenses to persons who manufacture, assemble, repair, or distribute commodities, products, or devices, that contain radioactive material.

Section 1. Definitions. (1) "Agreement state" means a state that the United States Nuclear Regulatory Commission (NRC) or the United States Atomic Energy Commission has entered into an effective agreement under subsection 274 b. of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2021(b) et seq.).

(2) "Cabinet" is defined by KRS 194A.005(1).

(3) "Licensee" means a person who holds:

(a) A specific license issued by the cabinet pursuant to 902 KAR 100:185 and this administrative regulation;

(b) A specific license issued by the U.S. Nuclear Regulatory Commission or an agreement state; or

(c) A general license pursuant to 902 KAR 100:050 or equivalent regulations of the U.S. Nuclear Regulatory Commission or an agreement state.

Section 2. Applicability. This administrative regulation establishes the requirements for licensees who manufacture or use radioactive material under a general license. Except as established in subsections (1) through (4) of this section, the licensee shall comply with 10 C.F.R. Part 32.

(1) The licensee shall not be subject to:

(a) 10 C.F.R. 32.1(c)(1);

(b) 10 C.F.R. 32.8;

(c) 10 C.F.R. 32.11;

(d) 10 C.F.R. 32.12;

(e) 10 C.F.R. 32.14;

(f) 10 C.F.R. 32.15;

(g) 10 C.F.R. 32.16;

(h) 10 C.F.R. 32.18;

(i) 10 C.F.R. 32.19;

(j) 10 C.F.R. 32.20;

(k) 10 C.F.R. 32.21;

(l) 10 C.F.R. 32.21a;

(m) 10 C.F.R. 32.22;

(n) 10 C.F.R. 32.23;

(o) 10 C.F.R. 32.25;

(p) 10 C.F.R. 32.26;

(q) 10 C.F.R. 32.27;

(r) 10 C.F.R. 32.28;

(s) 10 C.F.R. 32.29;

(t) 10 C.F.R. 32.30;

(u) 10 C.F.R. 32.31;

(v) 10 C.F.R. 32.32;

(w) 10 C.F.R. 32.301; or

(x) 10 C.F.R. 32.303.

(2)(a) Reference to the NRC, Commission, or an agreement state shall be deemed to reference the Cabinet for Health and Family Services, Department for Public Health, Radiation Health Branch[, the NRC, or an agreement state].

(b) Reference to "Commission" or "agreement state" shall be deemed to be a reference to "Cabinet for Health and Family Services, Department for Public Health, Radiation Health Branch", "Commission", or "agreement state".

(3) Reference to "NRC Form 313, Application for Material License" shall be deemed to be a reference to Form RPS-7, incorporated by reference in 902 KAR 100:040.

(4) Notifications and reports required by 10 C.F.R. Part 32 shall be directed to the manager, Radiation Health Branch at:

(a) 275 East Main Street, Mailstop HS1-C-A, Frankfort, Kentucky 40621;

(b) (502) 564-1492: Facsimile;

(c) (502) 564-3700: Telephone, Monday through Friday, 8 a.m. to 4:30 p.m.; or

(d) (800) 225-2587: Telephone, for hours except those established in paragraph (c) of this subsection.[Registration of Product Information. (1) A manufacturer or initial distributor of a sealed source, or device containing a sealed source, whose product is intended for use under a specific license, shall submit a request to the cabinet pursuant to 10 C.F.R. 32.210, for evaluation of radiation safety information about its product and for its registration.

(2) The request for review of a sealed source or device shall include sufficient information to provide reasonable assurance that the radiation safety properties of the source or device are adequate to protect health and minimize danger to life and property.

(3) The request shall include information on:

(a) Design;

(b) Manufacture;

(c) Prototype testing;

(d) Quality control program;

(e) Labeling;

(f) Proposed uses; and

(g) Leak testing.

(4) For a device, the request shall also include sufficient information about:

(a) Installation;

(b) Service and maintenance;

(c) Operating and safety instructions; and

(d) Potential hazards.

(5) The cabinet shall evaluate a sealed source or device using radiation safety criteria in accepted industry standards. If the standards and criteria pursuant to 10 C.F.R. 32.210, do not readily apply to a particular case, the cabinet shall formulate reasonable standards and criteria, with the help of the manufacturer or distributor. The cabinet shall use criteria and standards sufficient to ensure that the radiation safety properties of the device or sealed source are adequate to protect health and minimize danger to life and property.

(6) After completion of the evaluation, the cabinet shall issue a certificate of registration to the person making the request. The certificate shall acknowledge the availability of the submitted information for inclusion in an application for a specific license proposing use of the product.

(7) A person submitting the request for evaluation and registration of safety information about the product shall manufacture and distribute the product in accordance with:

(a) The statements and representations, including quality control program, contained in the request; and

(b) The provisions of the registration certificate.

Section 2. Licensing the Introduction of Radioactive Material into Products in Exempt Concentrations. (1) In addition to the requirements established in 902 KAR Chapter 100 a specific license authorizing the introduction of radioactive material into a product or

material owned by or in the possession of the licensee or another, to be transferred to a person exempt under 902 KAR 100:045, Section 2(1)(a) shall be issued if:

- (a) The applicant submits a description of the:
 1. Product or material into which the radioactive material will be introduced;
 2. Intended use of the radioactive material and the product or material into which it is introduced;
 3. Method of introduction;
 4. Initial concentration of the radioactive material in the product or material;
 5. Control methods to assure that no more than the specified concentration shall be introduced into the product or material;
 6. Estimated time interval between introduction and transfer of the product or material; and
 7. Estimated concentrations of the radioactive material in the product or material at the time of transfer; and
 - (b) The applicant provides reasonable assurance that the:
 1. Concentrations of the radioactive material at the time of transfer shall not exceed the concentrations established in 902 KAR 100:085;
 2. Reconcentration of the radioactive material in concentrations exceeding those in 902 KAR 100:085 is not likely;
 3. Use of lower concentrations is not feasible; and
 4. Product or material is not likely to be incorporated in a food, beverage, cosmetic, drug, or other commodity or product designed for ingestion or inhalation by, or application to, a human being.
- (2) A person licensed pursuant to this administrative regulation shall:
- (a) Maintain records of transfer of radioactive material;
 - (b) File an annual report with the cabinet that shall include the:
 1. Type and quantity of a product or material into which radioactive material has been introduced during the reporting period;
 2. Name and address of the person who owned or possessed the product or material into which radioactive material has been introduced at introduction;
 3. Type and quantity of radionuclide introduced into a product or material; and
 4. Initial concentrations of the radionuclide in the product or material at transfer of the radioactive material by the licensee;
 - (c) Indicate in the report if no transfers of radioactive material have been made during the reporting period;
 - (d) File a report by July 30 covering the year ending the previous June 30; and
 - (e) Maintain the record of a transfer for a period of one (1) year after the event is included in a report to the cabinet.

~~Section 3. Resins Containing Scandium-46 and Designed for Sand Consolidation in Oil Wells: Requirements for License to Manufacture or Initially Transfer for Sale or Distribution. An application for a specific license to manufacture or initially transfer for sale or distribution, synthetic plastic resins containing scandium-46 for use as indicated in 902 KAR 100:045, Section 3(3), shall be approved if:~~

- ~~(1) The applicant satisfies the requirements specified in 902 KAR 100:040, Section 4;~~
- ~~(2) The product is designed to be used only for sand consolidation in oil wells;~~
- ~~(3) The applicant submits the following information:~~
 - ~~(a) A general description of the product to be manufactured or initially transferred; and~~
 - ~~(b) A description of control procedures used to assure that the concentration of scandium-46 in the final product at the time of distribution shall not exceed 1.4×10^{-3} micro-curie/milliliter; and~~
- ~~(4) A container of the product bears a durable, legible label approved by the cabinet based on the following information:~~
 - ~~(a) The product name;~~
 - ~~(b) A statement that the product contains radioactive scandium and is designed and manufactured only for sand consolidation in oil wells;~~
 - ~~(c) Instructions necessary for proper use; and~~
 - ~~(d) The manufacturer's name.~~

~~Section 4. Licensing the Manufacture and Distribution of a Device to a Person Generally Licensed under 902 KAR 100:050. (1) In addition to the requirements established in 902 KAR Chapter 100 an application for a specific license to distribute certain devices containing radioactive material, excluding special nuclear material, to a person generally licensed shall be issued only if the applicant submits sufficient information relating to the:~~

- ~~(a) Design;~~
- ~~(b) Manufacture;~~
- ~~(c) Prototype testing;~~
- ~~(d) Quality control;~~
- ~~(e) Labels;~~
- ~~(f) Proposed uses;~~
- ~~(g) Installation;~~
- ~~(h) Servicing;~~
- ~~(i) Leak testing;~~
- ~~(j) Operating and safety instructions; and~~
- ~~(k) Potential hazards of the device to provide reasonable assurance that:~~

~~1. Under accident conditions, such as fire and explosion associated with handling, storage, and use of the device, it is unlikely that a person would receive an external radiation dose or dose commitment in excess of the following organ doses:~~

- ~~a. Whole body, head and trunk, active blood-forming organs, gonads, or lens of eye - 15 rems (150 mSv);~~
- ~~b. Hands and forearms, feet and ankles, or localized areas of skin averaged over areas no larger than one (1) square centimeter - 200 rems (2 Sv); or~~
- ~~c. Other organs - 50 rems (500 mSv);~~

~~2. Under ordinary conditions of handling, storage, and use of the device, the radioactive material contained in the device shall not be released or inadvertently removed from the device, and it is unlikely that a person will receive in a period of one (1) calendar year a dose in excess of ten (10) percent of the limits specified in 902 KAR 100:019, Section 3; and~~

~~3. The device can be safely operated by individuals not having training in radiological protection.~~

~~(2) A device identified in subsection (1) of this section shall bear a durable, legible, clearly visible label or labels, in accordance with 902 KAR 100:050, which contain in a clearly identified and separate statement:~~

~~(a) Instructions and precautions necessary to assure safe installation, operation, and servicing of the device or reference to documents, such as operating and service manuals identified in the label that are used to provide this information;~~

~~(b) The requirement, or lack of requirement, for leak testing or for testing an "on-off" mechanism and indicator, including the maximum time interval for the testing and the identification of radioactive material by:~~

- ~~1. Isotope;~~
- ~~2. Quantity of radioactivity; and~~
- ~~3. Date of determination of the quantity; and~~

~~(c) The information called for in the following statement, in the same or substantially similar form:~~

~~"The receipt, possession, use, and transfer of this device, Model _____, Serial No. _____, are subject to a general license or the equivalent and the regulations of the U.S. Nuclear Regulatory Commission or an Agreement State. This label shall be maintained on the device in a legible condition. Removal of this label is prohibited.~~

~~CAUTION - RADIOACTIVE MATERIAL~~

~~Name of manufacturer or distributor~~

~~The model, serial number, and name of the manufacturer or distributor may be omitted from this label if the information is elsewhere specified in labeling affixed to the device.~~

~~(3)(a) If the applicant desires that the device identified in subsection (1) of this section be required to be tested for proper operation of the "on-off" mechanism and indicator or for leakage of radioactive material, subsequent to the initial tests required by this administrative regulation at intervals longer than six (6) months but not exceeding three (3) years, the applicant shall include in the application sufficient information to demonstrate that the longer interval is justified by:~~

1. Performance characteristics of the device or similar devices; and

2. Design features that have a significant bearing on the probability or consequences of leakage of radioactive material from the device or failure of the "on-off" mechanism and indicator.

(b) In determining the acceptable interval for the test for leakage of radioactive material, the cabinet may consider information that shall include:

1. Primary containment or source capsule;
2. Protection of primary containment;
3. Method of sealing containment;
4. Containment construction materials;
5. Form of contained radioactive material;
6. Maximum temperature withstood during prototype tests;
7. Maximum pressure withstood during prototype tests;
8. Maximum quantity of contained radioactive material;
9. Radiotoxicity of contained radioactive material; and
10. Operating experience with identical devices or similarly designed and constructed devices.

(4)(a) If the applicant desires authorization of the general licensee established in 902 KAR 100:050, Section 3, or pursuant to equivalent regulations of the U.S. Nuclear Regulatory Commission or an Agreement State, to install the device, collect the sample to be analyzed by a specific licensee for leakage of radioactive material, service the device, test the "on-off" mechanism and indicator, or remove the device from installation, the applicant shall include in the application:

1. Written instructions to be followed by the general licensee;
2. Estimated calendar quarter doses associated with the activity or activities; and
3. Basis for the estimates.

(b) The information shall demonstrate that performance of the activity by an individual untrained in radiological protection, handling, storage, and use of devices under the general license, is unlikely to cause that individual to receive a dose in excess of ten (10) percent of the annual limits specified in 902 KAR 100:019, Section 3.

(5) A person licensed pursuant to this administrative regulation to distribute devices to generally licensed persons shall:

(a) Furnish a copy of the general license identified in 902 KAR 100:050, Section 3, to each person to whom the licensee, directly or through an intermediate person, transfers radioactive material in a device for use as authorized by a general license;

(b) Furnish a copy of the general license contained in the U.S. Nuclear Regulatory Commission's or Agreement State's regulation equivalent to 902 KAR 100:050, Section 3, or alternatively, furnish a copy of the general license to each person to whom the licensee directly or through an intermediate person transfers radioactive material in a device for use pursuant to the general license of the U.S. Nuclear Regulatory Commission or the Agreement State. If a copy of the general license identified in 902 KAR 100:050, Section 3, is furnished to the person, it shall be accompanied by a note explaining that the use of the device is regulated by the U.S. Nuclear Regulatory Commission or Agreement State under requirements substantially the same as those in 902 KAR 100:050, Section 3;

(c) Report to the cabinet transfers of the devices to persons for use under the general license.

1. The report shall identify:

- a. A general licensee by name and address;
- b. An individual by name or position who may constitute a point of contact between the cabinet and the general licensee;
- c. The type and model number of device transferred; and
- d. The quantity and type of radioactive material contained in the device.

2. If one (1) or more intermediate persons possess the device temporarily at the intended place of use prior to its possession by the user, the report shall include identification of each intermediate person by name, address, contact, and relationship to the intended user.

3. The report shall indicate if no transfers have been made to persons generally licensed during the reporting period.

4. The report shall cover a calendar quarter and shall be filed within thirty (30) days of the close of the quarter.

(d) Furnish reports to other agencies, including:

1.a. Report to the U.S. Nuclear Regulatory Commission transfers of these devices to persons for use under the U.S. Nuclear Regulatory Commission general license in Section 31.5 of 10 C.F.R. Part 31; or

b. Report to the responsible state agency transfers of devices manufactured and distributed for use under a general license in that state's regulations equivalent to 902 KAR 100:050, Section 3;

c. Identify:

- (i) A general licensee by name and address;
- (ii) An individual by name or position who may constitute a point of contact between the agency and the general licensee;
- (iii) The type and model of the device transferred; and
- (iv) The quantity and type of radioactive material contained in the device;

2. If one (1) or more intermediate persons possess the device temporarily at the intended place of use prior to its possession by the user, include identification of each intermediate person by name, address, contact, and relationship to the intended user;

3. Submit within thirty (30) days after the end of the calendar quarter in which the device is transferred to the generally licensed person;

4. If no transfers have been made to U.S. Nuclear Regulatory Commission licensees during the reporting period, this information shall be reported to the U.S. Nuclear Regulatory Commission; and

5. If no transfers have been made to general licensees within a particular state during the reporting period, this information shall be reported to the responsible state agency upon request of that agency;

(e) Keep records showing the name, address, and the point of contact for a general licensee to which the licensee, directly or through an intermediate person, transfers radioactive material in devices for use as authorized by a general license or equivalent regulations of the U.S. Nuclear Regulatory Commission or an Agreement State. The records shall show:

1. The date of transfer;
2. The radionuclide and the quantity of radioactivity in each device transferred;
3. The identity of the intermediate person; and
4. Compliance with the report requirements; and

(f) Maintain the records required by paragraphs (c) and (d) of this subsection for a period of five (5) years from the date of the recorded transfer.

~~Section 5. Special Requirements for the Manufacture, Assembly, or Repair of Luminous Safety Devices for use in Aircraft. An application for a specific license to manufacture, assemble, or repair luminous safety devices containing tritium or promethium-147 for use in aircraft, for distribution to persons generally licensed pursuant to 902 KAR 100:050, shall be approved if:~~

~~(1) The applicant satisfies the requirements specified in 902 KAR 100:040, Section 4; and~~

~~(2) The applicant satisfies the requirements of U.S. Nuclear Regulatory Commission 10 C.F.R. Part 32, Sections 32.2(b), 32.53, 32.54, 32.55, 32.56, 32.101, and 32.110 or their equivalent.~~

~~Section 6. Special Requirements for License to Manufacture and Distribute Calibration Sources Containing Americium-241, Plutonium or Radium-226 for Distribution to Persons Generally Licensed pursuant to 902 KAR 100:050. An application for a specific license to manufacture or distribute calibration and reference sources containing americium-241, plutonium or radium-226 to persons generally licensed pursuant to 902 KAR 100:050 shall be approved if:~~

~~(1) The applicant satisfies the requirements established in 902 KAR 100:040, Section 4; and~~

~~(2) The applicant satisfies the requirements of U.S. Nuclear Regulatory Commission 10 C.F.R. Part 32, Sections 32.57, 32.58, 32.59, and 32.102, and 10 C.F.R. Part 70, Section 70.39, or their equivalent.~~

~~Section 7. Licensing the Manufacture and Distribution of Ice Detection Devices Containing Strontium-90. An application for a~~

specific license to manufacture and distribute ice detection devices to persons generally licensed shall be approved if:

- (1) The applicant satisfies the requirements established in 902 KAR 100:040, Section 4; and
- (2) The criteria of U.S. Nuclear Regulatory Commission 10 C.F.R. Part 32, Sections 32.2(b), 32.61, 32.62, 32.103, and 32.110 are met.

Section 8. Manufacture and Distribution of Radioactive Material for Certain In Vitro Clinical or Laboratory Testing under a General License. An application for a specific license to manufacture or distribute radioactive material for use pursuant to the general license established in 902 KAR 100:050, Section 4, shall be approved if:

- (1) The applicant satisfies the general requirements specified in 902 KAR 100:040, Section 4;
- (2) The radioactive material is to be prepared for distribution in prepackaged units of:
 - (a) Iodine-125 in units not exceeding ten (10) microcuries (370 kBq) each;
 - (b) Iodine-131 in units not exceeding ten (10) microcuries (370 kBq) each;
 - (c) Carbon-14 in units not exceeding ten (10) microcuries (370 kBq) each;
 - (d) Hydrogen-3 (tritium) in units not exceeding fifty (50) microcuries (1.85 MBq) each;
 - (e) Iron-59 in units not exceeding twenty (20) microcuries (704 kBq) each;
 - (f) Selenium-75 in units not exceeding ten (10) microcuries (370 kBq) each;
 - (g) Mock iodine-125 in units not exceeding 0.05 microcurie (1.85 MBq) of iodine-129 and 0.005 microcurie (185 Bq) of americium-241 each; or
 - (h) Cobalt-57 in units not exceeding fifty (50) microcuries (370 kBq) each;
- (3) Each prepackaged unit bears a durable, clearly visible label:
 - (a) Identifying the radioactive contents as to chemical form and radionuclide, and indicating that the amount of radioactivity does not exceed:
 1. Ten (10) microcuries (370 kBq) of iodine-131, iodine-125, selenium-75, cobalt-57, or carbon-14;
 2. Fifty (50) microcuries (1.85 MBq) of hydrogen-3 (tritium);
 3. Twenty (20) microcuries (740 kBq) of iron-59; or
 4. Mock iodine-125 in units not exceeding 0.05 microcurie (1.85 MBq) of iodine-129 and 0.005 microcurie (185 Bq) of americium-241 each; and
 - (b) Displaying the radiation caution symbol described in 902 KAR 100:019, Section 23, and the words, "Caution, Radioactive Material" and "Not for Internal or External Use in Humans or Animals";
- (4) The following statement, or a substantially similar statement which contains the information called for in the following statement, appears on a label affixed to a prepackaged unit, or appears in a leaflet or brochure which accompanies the package:

"This radioactive material may be received, acquired, possessed, and used only by physicians, veterinarians, clinical laboratories or hospitals and only for in vitro clinical or laboratory tests not involving internal or external administration of the material, or the radiation therefrom, to human beings or animals. Its receipt, acquisition, possession, use, and transfer are subject to the administrative regulations and a general license or the equivalent of the United States Nuclear Commission or of an Agreement State.

(Name of Manufacturer)"; and
- (5) The label affixed to the unit, or the leaflet or brochure that accompanies the package, contains adequate information regarding precautions to be observed in handling and storing the radioactive material. For a mock iodine-125 reference or calibration source, the information accompanying the source shall contain directions to the licensee regarding the waste disposal requirements established in 902 KAR 100:021, Section 1.

Section 9. Manufacture and Distribution of Radiopharmaceuticals Containing Radioactive Material for Medical Use Under Specific Licenses. (1) An application for a specific license

to manufacture, prepare, or transfer for commercial distribution radiopharmaceuticals containing radioactive material for use by persons licensed pursuant to 902 KAR 100:072, shall be approved if the applicant:

- (a) Satisfies the requirements specified in 902 KAR 100:040, Section 4;
- (b) Submits evidence that the applicant is at least one (1) of the following:
 1. Registered or licensed with the U.S. Food and Drug Administration (FDA) as a drug manufacturer;
 2. Registered or licensed with a state agency as a drug manufacturer;
 3. Licensed as a pharmacy by the State Board of Pharmacy; or
 4. Operating as a nuclear pharmacy within the federal medical institution;
- (c) Submits information on:
 1. The radionuclide;
 2. Chemical and physical form;
 3. Maximum activity per vial, syringe, generator, or other container of the radioactive drug; and
 4. Shielding provided by the packaging of the radioactive material to show it is appropriate for safe handling and storage of radiopharmaceuticals by medical use licensees; and
- (d) Satisfies the labeling requirements in this paragraph:
 1. The label shall be affixed to the transport radiation shield, if it is constructed of lead, glass, plastic, or other material of a radioactive drug to be transferred for commercial distribution. The label shall include:
 - a. The radiation symbol;
 - b. The words "CAUTION, RADIOACTIVE MATERIAL" or "DANGER, RADIOACTIVE MATERIAL";
 - c. The name of the radioactive drug or its abbreviation; and
 - d. The quantity of radioactivity at a specified date and time. For radioactive drugs with a half life greater than 100 days, the time may be omitted.
 2. A label shall be affixed to a syringe, vial, or other container used to hold a radioactive drug to be transferred for commercial distribution. The label shall include:
 - a. The radiation symbol;
 - b. The words "CAUTION, RADIOACTIVE MATERIAL" or "DANGER, RADIOACTIVE MATERIAL"; and
 - c. An identifier that ensures the syringe, vial, or other container can be correlated with the information on the transport radiation shield label.
- (2) A licensee described by subsection (1)(b)3 or 4 of this section may:
 - (a) Prepare radioactive drugs for medical use, as defined in 902 KAR 100:010, if the radioactive drug is prepared by an authorized nuclear pharmacist, as specified in paragraphs (b) and (c) of this subsection, or an individual under the supervision of an authorized nuclear pharmacist, as specified in 902 KAR 100:072, Section 12;
 - (b) Allow a pharmacist to work as an authorized nuclear pharmacist if the individual:
 1. Qualifies as an authorized nuclear pharmacist as defined in 902 KAR 100:010;
 2. Meets the requirements specified in 902 KAR 100:072, Sections 63 and 66, and the licensee has received an approved license amendment identifying the individual as an authorized nuclear pharmacist; or
 3. Is designated as an authorized nuclear pharmacist in accordance with paragraph (c) of this subsection; and
 - (c) Designate a pharmacist as an authorized nuclear pharmacist if the individual is identified as an authorized user on a nuclear pharmacy license issued by the cabinet.
- (3) The actions authorized in subsections (2)(a) and (b) of this section shall be permitted in spite of more restrictive language in license conditions.
- (4) A licensee shall provide to the cabinet a copy of an individual's certification by the Board of Pharmaceutical Specialties, the cabinet, the U.S. Nuclear Regulatory Commission, or an agreement state license, and a copy of the state pharmacy licensure or registration, no later than thirty (30) days after the date that the licensee allows the individual to work as an authorized nuclear

pharmacist, pursuant to subsection (2)(b)1 and 3 of this section.

(5) A licensee shall:

(a) Possess and use instrumentation to measure the radioactivity of radioactive drugs;

(b) Have procedures for use of the instrumentation;

(c) Measure, by direct measurement or by combination of measurements and calculations, the amount of radioactivity in dosages of alpha-, beta- or photon-emitting radioactive drugs prior to transfer for commercial distribution;

(d) Perform accuracy, linearity, and geometry dependence tests on an instrument before initial use, periodically, and following repair, as appropriate for the instrument, and make necessary adjustments; and

(e) Check an instrument for constancy and proper operation at the beginning of each day of use.

(6) This section shall not relieve a licensee from complying with applicable FDA, other federal, and state requirements governing radioactive drugs.

Section 10. Manufacture and Distribution of Sources or Devices Containing Radioactive Material for Medical Use. An application for a specific license to manufacture and distribute sources and devices containing radioactive material to persons licensed as authorized by 902 KAR 100:072 for use as a calibration, transmission, or reference source or for medical uses listed in 902 KAR 100:072, Sections 37, 45 and 46 shall be approved if:

(1) The applicant satisfies the requirements established in 902 KAR 100:040, Section 4;

(2) The applicant submits sufficient information regarding a type of source or device pertinent to an evaluation of its radiation safety, including:

(a) The radioactive material contained, its chemical and physical form, and amount;

(b) Details of design and construction of the source or device;

(c) Procedures for, and results of, prototype tests to demonstrate that the source or device will maintain its integrity under stresses likely to be encountered in normal use and accidents;

(d) For devices containing radioactive material, the radiation profile of a prototype device;

(e) Details of quality control procedures to assure that production sources and devices meet the standards of the design and prototype tests;

(f) Procedures and standards for calibrating sources and devices;

(g) Legend and methods for labeling sources and devices as to their radioactive content; and

(h) Instructions for handling and storing the source or device from the radiation safety standpoint. The instructions shall be included on a durable label attached to the source or device, or attached to a permanent storage container for the source or device. Instructions too lengthy for a label may be summarized on the label and printed in detail on a brochure referenced on the label;

(3) The label affixed to the source or device, or to the permanent storage container for the source or device, contains:

(a) Information on the radionuclide;

(b) Quantity and date of assay; and

(c) A statement that the name of source or device is licensed by the cabinet for distribution to persons licensed as authorized by 902 KAR 100:072, or under equivalent licenses of the U.S. Nuclear Regulatory Commission or an Agreement State;

(4) If an applicant desires the source or device to be tested for leakage of radioactive material at intervals longer than six (6) months, the applicant shall include in the application sufficient information to demonstrate that the longer interval is justified by:

(a) Performance characteristics of the source or device, or similar sources or devices; and

(b) Design features having a significant bearing on the probability or consequence of leakage of radioactive material from the source; and

(5) In determining the acceptable interval for tests of leakage of radioactive material, the cabinet shall consider information that includes:

(a) Primary containment or source capsule;

(b) Protection of primary containment;

(c) Method of sealing containment;

(d) Containment construction materials;

(e) Form of contained radioactive material;

(f) Maximum temperature withstood during prototype tests;

(g) Maximum pressure withstood during prototype tests;

(h) Maximum quantity of contained radioactive material;

(i) Radiotoxicity of contained radioactive material; and

(j) Operating experience with identical sources or devices, or similarly designed and constructed sources or devices.

Section 11. Requirements for License to Manufacture and Distribute Industrial Products Containing Depleted Uranium for Mass-volume Applications. (1) An application for a specific license to manufacture or distribute an industrial product or device containing depleted uranium for use authorized by 902 KAR 100:050, Section 2, or equivalent regulations of the U.S. Nuclear Regulatory Commission or an Agreement State shall be approved if:

(a) The applicant satisfies the general requirements specified in 902 KAR 100:040, Section 4;

(b) The applicant submits sufficient information relating to the:

1. Design;

2. Manufacture;

3. Prototype testing;

4. Quality control procedures;

5. Labeling or marking;

6. Proposed uses; and

7. Potential hazards of the industrial product or device;

(c) The applicant provides reasonable assurance that possession, use, or transfer of the depleted uranium in the product or device is not likely to cause an individual to receive in a period of one (1) year a radiation dose in excess of ten (10) percent of the limits specified in 902 KAR 100:019, Section 3; and

(d) The applicant submits sufficient information regarding the industrial product or device, and the presence of depleted uranium for a mass-volume application in the product or device, to provide reasonable assurance that unique benefits will accrue to the public because of the usefulness of the product or device.

(2) For an industrial product or device that has questionable unique benefits, the cabinet may approve an application for a specific license pursuant to this section only if the product or device is found to combine a high degree of utility and low probability of uncontrolled disposal and dispersal of significant quantities of depleted uranium into the environment.

(3) The cabinet shall deny an application for a specific license pursuant to this section if the end use of the industrial product or device cannot reasonably be foreseen.

(4) A person licensed as authorized by this section shall:

(a) Maintain the level of quality control required by the license in:

1. Manufacture of the industrial product or device; and

2. Installation of the depleted uranium into the product or device;

(b) Label or mark each unit to identify:

1. The manufacturer of the product or device;

2. The number of the license under which the product or device was manufactured or distributed;

3. The fact that the product or device contains depleted uranium;

4. The quantity of depleted uranium in the product or device; and

5. That the receipt, possession, use, or transfer of the product or device is subject to a general license, or the equivalent, and the regulations of the U.S. Nuclear Regulatory Commission or an Agreement State;

(c) Assure that the depleted uranium, before being installed in a product or device, has been impressed with the legend "DEPLETED URANIUM" clearly legible through plating or other covering;

(d) Furnish a copy of the general license contained in:

1. 902 KAR 100:050 to a person to whom depleted uranium is transferred in a product or device for use authorized by the general license; or

2. The U.S. Nuclear Regulatory Commission's or Agreement State's regulation equivalent to 902 KAR 100:050, and a copy of an applicable U.S. Nuclear Regulatory Commission's or Agreement

State's certificate, to a person to whom depleted uranium is transferred in a product or device for use as authorized by the general license of the U.S. Nuclear Regulatory Commission or an Agreement State, with a note explaining that use of the product or device is regulated by the U.S. Nuclear Regulatory Commission or an Agreement State under requirements substantially the same as those in 902 KAR 100:050;

(e) Furnish the following to either the cabinet, U.S. Nuclear Regulatory Commission, or agreement state:

1. A report of each transfer of an industrial product or device to a person for use pursuant to the general license in 902 KAR 100:050. The report shall identify:

- a. A general licensee by name and address;
- b. An individual, by name or position, who constitutes a point of contact between the cabinet and the general licensee;
- c. The type and model number of device transferred; and
- d. The quantity of depleted uranium contained in the product or device.

2. The report identified in subparagraph 1 of this paragraph shall be submitted within thirty (30) days after the end of a calendar quarter in which the product or device is transferred to the generally licensed person. If no transfers have been made to persons generally licensed pursuant to 902 KAR 100:050 during the reporting period, the report shall so indicate; and

(f) Keep records showing the name, address, and point of contact for a general licensee to whom he transfers depleted uranium in an industrial product or device for use authorized by the general license provided in 902 KAR 100:050 or equivalent regulations of the U.S. Nuclear Regulatory Commission or an Agreement State. The records shall be maintained for a period of three (3) years from the date of transfer and shall show the date of each transfer, the quantity of depleted uranium in a product or device transferred, and compliance with the report requirements of this section.

Section 12. Licensing the Distribution of Naturally Occurring and Accelerator Produced Radioactive Material (NARM) in Exempt Quantities. (1) An application for a specific license to distribute NARM to persons exempted from these regulations authorized by 902 KAR 100:045 shall be approved if:

(a) The radioactive material is not contained in a food, beverage, cosmetic, drug, or other commodity designed for ingestion or inhalation by, or application to, a human being;

(b) The radioactive material is in the form of processed chemical elements, compounds, or mixtures, tissue samples, bioassay samples, counting standards, plated or encapsulated sources, or similar substances, identified as radioactive and to be used for its radioactive properties, but is not incorporated into a manufactured or assembled commodity, product, or device intended for commercial distribution; and

(c) The applicant submits copies of prototype labels and brochures in accordance with 10 C.F.R. 32.18 and 32.19 and the cabinet approves the labels and brochures.

(2) The license issued pursuant to this section shall be subject to the following conditions:

(a) More than ten (10) exempt quantities shall not be sold or transferred in a single transaction. However, an exempt quantity may be composed of fractional parts of one (1) or more of the exempt quantity, if the sum of the fractions does not exceed unity.

(b) An exempt quantity shall be packaged separately and individually. More than ten (10) packaged exempt quantities shall not be contained in an outer package for transfer to persons exempt as authorized by 902 KAR 100:045. The dose rate at the external surface of the outer package shall not exceed five-tenths (0.5) millirem per hour.

(c) The immediate container of each quantity or separately packaged fractional quantity of radioactive material shall bear a durable, legible label which:

1. Identifies the radionuclide and the quantity of radioactivity; and

2. Bears the words "Radioactive Material."

(d) In addition to the labeling information required by this subsection, the label affixed to the immediate container, or an

accompanying brochure, shall:

1. State that the contents are exempt from licensing agency requirements;

2. Bear the words "Radioactive Material - Not for Human Use - Introduction into Foods, Beverages, Cosmetics, Drugs, or Medicinals, or into Products Manufactured for Commercial Distribution is Prohibited - Exempt Quantities Should Not Be Combined"; and

3. Establish appropriate additional radiation safety precautions and instructions relating to the handling, use, storage, and disposal of the radioactive material.

(3)(a) A person licensed pursuant to this section shall maintain records identifying, by name and address, each person to whom radioactive material is transferred for use in accordance with 902 KAR 100:045 or the equivalent regulations of a licensing agency, and stating the kinds and quantities of radioactive material transferred.

(b) An annual summary report stating the total quantity of each radionuclide transferred under the specific license shall be filed with the cabinet.

(c) A report shall cover the year ending June 30 and shall be filed within thirty (30) days after June 30. The report shall indicate if no transfers of radioactive material have been made during the reporting period, as authorized by this section.

Section 13. Licensing the Incorporation of Naturally Occurring and Accelerator Produced Radioactive Material (NARM) into Gas and Aerosol Detectors. (1) An application for a specific license authorizing the incorporation of NARM into gas and aerosol detectors to be distributed to persons exempt pursuant to 902 KAR 100:045 shall be approved if the application satisfies requirements equivalent to those contained in U.S. Nuclear Regulatory Commission 10 C.F.R. Part 32.26.

(2) The maximum quantity of radium-226 in a device shall not exceed one-tenth (0.1) microcurie (3.7 kBq).

STEVEN J. STACK, Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: September 27, 2023

FILED WITH LRC: October 12, 2023 at 9:30 a.m.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Krista Quarles or Julie Brooks

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes requirements for issuing specific licenses to persons who manufacture, assemble, repair, or distribute commodities, products, or devices, that contain radioactive material.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to protect radiation workers and the public from exposure to excessive radiation and set safety limits.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 211.844 requires the cabinet to provide by administrative regulation the requirements for the licensing, use, and disposal of radioactive materials.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation ensures all those engaged in the licensing, use, transfer, and disposal of radioactive source material meet the regulatory requirements.

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

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation adopts by reference the applicable requirements of 10 C.F.R. Part 32. The amended after comments version makes changes to section 2(2) for clarity on references to the department, the commission, or an

agreement state.

(b) The necessity of the amendment to this administrative regulation: As an agreement state with the Nuclear Regulatory Commission (NRC), the Radiation Health Branch (RHB) is required to have state regulations compatible with the regulations promulgated by NRC.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 211.842(1) and (2) establish the cabinet as the radiation control agency of Kentucky and authorize the cabinet to issue licenses pertaining to radioactive materials and require registration of other sources of ionizing radiation.

(d) How the amendment will assist in the effective administration of the statutes: The amendment to this administrative regulation ensures all licensees who have a specific license to manufacture, assemble, repair, or distribute commodities, products, or devices, that contain radioactive material are in full compliance with both state and federal requirements.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are currently 118 licenses issued for certain uses of radioactive material and specific devices containing radioactive material.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The RHB will need to revise guidance documents for licensees to reflect these changes. No additional actions will be needed by the licensee to comply with this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is a minimal cost to the cabinet associated with updating guidance documents.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Adopting the applicable parts of 10 C.F.R. Part 32 will reduce the redundancy between state and federal requirements. This will reduce the time needed to research applicable regulations and make it easier for the licensee to review existing guidance documents.

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

(a) Initially: This is an ongoing program, there are no initial costs.

(b) On a continuing basis: This administrative regulation does not impact cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Radiation Health Branch is funded through a mix of state general fund dollars and the various fees associated with issuing licenses.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied. The requirements of this administrative regulation are applied equally to all licensees.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Radiation Health Branch within the Department for Public Health will be impacted by this administrative regulation.

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

regulation. KRS 194A.050(1) and 211.844.

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

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

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

(c) How much will it cost to administer this program for the first year? This administrative regulation does not add cost to the agency.

(d) How much will it cost to administer this program for subsequent years? This administrative regulation does not add cost to the agency.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? This administrative regulation may result in minimal cost savings for the regulated entities. The amendment to this administrative regulation reduces the administrative burden of having to research and follow duplicative state and federal requirements.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? This administrative regulation may result in minimal cost savings for the regulated entities. The amendment to this administrative regulation reduces the administrative burden of having to research and follow duplicative state and federal requirements.

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

(d) How much will it cost the regulated entities for subsequent years? This administrative regulation will have no impact on cost for the regulated entities.

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] This administrative regulation does not have a major economic impact.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. Atomic Energy Act of 1954, 42 U.S.C. 2021, as amended, and 10 C.F.R. Part 32.

(2) State compliance standards. As an agreement state with the Nuclear Regulatory Commission, the state is required to have a program for the control of radiation hazards adequate to protect the public health and safety with respect to the materials within the state covered by the proposed agreement. The state is required to adopt compliance standards for the protection of the public health, safety, and environment from hazards associated with such material

which are equivalent, to the extent practicable, or more stringent than, standards adopted and enforced by the Commission for the same purpose.

(3) Minimum or uniform standards contained in the federal mandate. In accordance with 42 U.S.C. 2021(g), the Commission is authorized and directed to cooperate with the states in the formulation of standards for protection against hazards of radiation to assure that state and Commission programs for protection against hazards of radiation will be coordinated and compatible. Pursuant to 42 U.S.C. 2021(a)(3), the purpose of this standard is to promote orderly regulatory pattern between the commission and state governments with respect to nuclear development and use and regulation of byproduct, source, and special nuclear materials.

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

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable as there are no stricter standards, or additional or different responsibilities or requirements.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Public Health Protection and Safety
(Amended After Comments)

902 KAR 100:065. Reciprocal recognition.

RELATES TO: KRS 194A.005, 211.842-211.852, 211.990(4), 10 C.F.R. Part 150, 42 U.S.C. 2021(b)[450.20]

STATUTORY AUTHORITY: KRS 13B.170, 194A.050(1), [211.990(3);] 211.844

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary to promulgate administrative regulations necessary to implement programs mandated by federal law, to qualify for the receipt of federal funds, and to cooperate with other state and federal agencies. KRS 211.844 requires the Cabinet for Health and Family Services to provide by administrative regulation for the registration and licensing of the possession or use of sources of ionizing or electronic product radiation and the handling and disposal of radioactive waste. This administrative regulation provides for the reciprocal recognition of radioactive material licenses issued by the United States Nuclear Regulatory Commission or another agreement state.

Section 1. Definitions. (1) "Agreement state" means a state that the United States Nuclear Regulatory Commission (NRC) or the United States Atomic Energy Commission has entered into an effective agreement under subsection 274 b. of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2021(b) et seq.).

(2) "Cabinet" is defined by KRS 194A.005(1).

(3) "Licensee" means a person who holds:

(a) A specific license issued by the cabinet pursuant to 902 KAR 100:040, 902 KAR 100:185, and this administrative regulation;

(b) A specific license issued by the U.S. Nuclear Regulatory Commission or an agreement state; or

(c) A general license pursuant to 902 KAR 100:050 or equivalent regulations of the U.S. Nuclear Regulatory Commission or an agreement state.

Section 2. Applicability. This administrative regulation shall apply to a licensee. The licensee shall comply with 10 C.F.R. Part 150 except as established in subsection (1) through (3) of this section.

(1) The licensee shall not be subject to:

(a) 10 C.F.R. 150.3 Definitions:

1. Agreement state; and

2. Foreign Obligations;

(b) 10 C.F.R. 150.4;

(c) 10 C.F.R. 150.5;

(d) 10 C.F.R. 150.7;

(e) 10 C.F.R. 150.10;

(f) 10 C.F.R. 150.14;

(g) 10 C.F.R. 150.15;

(h) 10 C.F.R. 150.15a;

(i) 10 C.F.R. 150.16;

(j) 10 C.F.R. 150.17;

(k) 10 C.F.R. 150.17a;

(l) 10 C.F.R. 150.19;

(m) 10 C.F.R. 150.21;

(n) 10 C.F.R. 150.30;

(o) 10 C.F.R. 150.31;

(p) 10 C.F.R. 150.32; and

(q) 10 C.F.R. 150.33.

(2)(a) Reference to the NRC, Commission, or an agreement state shall be deemed to reference the Cabinet for Health and Family Services, Department for Public Health, Radiation Health Branch[, the NRC, or an agreement state].

(b) As referenced in 10 C.F.R. 150.2, reference to the "Commission" or "Atomic Energy Commission" shall remain and shall not be deemed to reference the "cabinet".

(c) As referenced in 10 C.F.R. 150.20(a)(1)(i), (ii), (iii), (b), (b)(3), and (b)(4), reference to "non-agreement states", "areas of exclusive federal jurisdiction within agreement states", or "offshore waters" shall be deemed as reference to the Commonwealth of Kentucky.

(d) As referenced in 10 C.F.R. 150.20 reference to an "agreement state license", a "license issued by an agreement state", or a "license from an agreement state" shall be deemed to reference a "Nuclear Regulatory Commission license", a "license issued by the Nuclear Regulatory Commission", or a "license from the Nuclear Regulatory Commission".

(3) Notifications and reports required by 10 C.F.R. Part 150 shall be directed to the manager, Radiation Health Branch at:

(a) 275 East Main Street, Mailstop HS1-C-A, Frankfort, Kentucky 40621;

(b) (502) 564-1492: Facsimile;

(c) (502) 564-3700: Telephone, Monday through Friday, 8 a.m. to 4:30 p.m.; or

(d) (800) 225-2587: Telephone, for hours except those established in paragraph (c) of this subsection.

Section 3. The out-of-state licensee requesting reciprocity shall pay an annual fee in accordance with 902 KAR 100:012. [Reciprocal Recognition of Licenses. (1) Subject to the provisions of 902 KAR Chapter 100, a person who holds a specific license from the United States Nuclear Regulatory Commission or an Agreement State, issued by the agency having jurisdiction where the licensee maintains an office for directing the licensed activity, and at which radiation safety records are normally maintained, shall be granted a general license to conduct the activities authorized in the licensing document within the Commonwealth of Kentucky, except in areas of exclusive federal jurisdiction, for a period of 180 days in a calendar year if:

(a) The licensing document does not limit the activity authorized by the document to specified installations or locations;

(b) 1. The out-of-state licensee notifies the cabinet in writing at least three (3) days prior to engaging in the activity. The notification shall include:

a. The date of arrival;

b. The duration of use;

c. Nature and scope of the use;

d. The company where the radioactive material is to be used;

e. The name of the person in charge of the activity to be conducted under the license;

f. The exact location and type of proposed possession within this state; and

g. A copy of the pertinent licensing document.

2. If, for a specific case, the three (3)-day period would impose an undue hardship on the out-of-state licensee, the licensee may, upon application to the cabinet, obtain permission to proceed sooner.

3. The cabinet may waive the requirement for filing additional written notifications during the remainder of the calendar year following the receipt of the initial notification from a person engaging in activities under the general license provided in this section;

(c) The out-of-state licensee complies with 902 KAR Chapter 100 and with the terms and conditions of his licensing document, except terms and conditions which may be inconsistent with 902 KAR Chapter 100;

(d) The out-of-state licensee supplies information as the cabinet may reasonably request;

(e) The licensee does not establish a permanent office in this state; and

(f) The out-of-state licensee does not transfer or dispose of radioactive material possessed or used in accordance with the general license provided in this section, except by transfer to a person:

1. Specifically licensed by the cabinet or by the United States Nuclear Regulatory Commission to receive the material; or

2. Exempt from the requirements for a license for material specified in 902 KAR Chapter 100; and

(g) The out-of-state licensee pays an annual fee in accordance with 902 KAR 100:012.

(2) In addition to the provisions of subsection (1) of this section, a person who holds a specific license or equivalent licensing document issued by the United States Nuclear Regulatory Commission or an Agreement State authorizing the holder to manufacture, transfer, install or service a device described in 902 KAR 100:050, Section 3(3)(a), relating to the general licensing of certain uses of radioactive material and specific devices containing radioactive material within areas subject to the jurisdiction of the licensing body shall be granted a general license to install, transfer, demonstrate or service the device in the Commonwealth of Kentucky if:

(a) The person satisfies the requirements of 902 KAR Chapter 200;

(b) The device has been manufactured, labeled, installed and serviced in accordance with applicable provisions of the specified license issued to the person by the United States Nuclear Regulatory Commission or an Agreement State;

(c) The person assures that each label required to be affixed to the device, in accordance with administrative regulations of the authority which licensed the manufacture of the device, bears a statement that "removal of this label is prohibited";

(d) The holder of the specific license furnishes to a general licensee to whom he transfers a device, or on whose premises he installs a device, a copy of the general license contained in 902 KAR 100:050, Section 3(3), relating to the general licensing of certain uses of radioactive materials and specific devices containing radioactive material; and

(e) The person files a report with the cabinet within thirty (30) days after the end of a calendar quarter in which a device is transferred to a person, or installed in a location, within the jurisdiction of the cabinet. A report shall identify a general licensee to whom the a device is transferred by:

1. Name and address;

2. The type of device transferred; and

3. The quantity and type of radioactive material contained in the device.

(3) The cabinet may withdraw, limit, or qualify its acceptance of a specific license or equivalent licensing document issued by another agency, or of a product distributed as authorized by a licensing document, upon determining that the action is necessary in order to prevent undue hazard to public health and safety and property.]

STEVEN J. STACK, Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: September 27, 2023

FILED WITH LRC: October 12, 2023 at 9:30 a.m.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Krista Quarles or Julie Brooks

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides reciprocal recognition of radioactive material

licenses issued by the United States Nuclear Regulatory Commission or another agreement state.

(b) The necessity of this administrative regulation: This administrative regulation identifies alternate licensing criteria for lower activities and specific uses of radioactive materials.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 211.844 requires the cabinet to provide by administrative regulation the requirements for the licensing, use, and disposal of radioactive materials.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation allows businesses with a valid radioactive materials license to conduct activities in Kentucky.

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

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation adopts by reference the applicable requirements of 10 C.F.R. Part 150. The amended after comments version amends various sections for clarity.

(b) The necessity of the amendment to this administrative regulation: As an agreement state with the Nuclear Regulatory Commission (NRC), Kentucky is required to have state regulations compatible with the regulations promulgated by NRC. This change will make the Radiation Health Branch (RHB) compatible with applicable requirements of 10 C.F.R. Part 150.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 211.842(1) and (2) establish the cabinet as the radiation control agency of the State of Kentucky and authorize the cabinet to issue licenses pertaining to radioactive materials and require registration of other sources of ionizing radiation.

(d) How the amendment will assist in the effective administration of the statutes: The amendment to this administrative regulation ensures all licensees who have a general license for certain uses of radioactive material and specific devices containing radioactive material are in full compliance with state and federal requirements.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are currently 118 licenses issued for certain uses of radioactive material and specific devices containing radioactive material.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No additional actions will be needed by the licensee to comply with this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is a minimal cost to the cabinet associated with updating references.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Adopting 10 C.F.R. Part 150 by reference will reduce the redundancy between state and federal requirements. This will reduce the time needed to research applicable regulations and make it easier for the licensee to review existing guidance documents.

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

(a) Initially: This is an ongoing program, there are no initial costs to implement.

(b) On a continuing basis: The amendment to this administrative regulation does not impact cost to the agency.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Radiation Health Branch is funded through a mix of state general fund dollars and the various fees associated with issuing licenses.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative

regulation, if new, or by the change if it is an amendment: An increase in fees or funding is not needed to implement the amendment to this administrative regulation.

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

(9) TIERING: Is tiering applied? Tiering is not applied. The requirements of this administrative regulation are applied equally to all licensees.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Radiation Health Branch within the Department for Public Health will be impacted by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1) and 211.844.

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

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

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

(c) How much will it cost to administer this program for the first year? This administrative regulation does not impact cost to the agency.

(d) How much will it cost to administer this program for subsequent years? This administrative regulation does not impact cost to the agency.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? This administrative regulation may result in minimal cost savings for the regulated entities. The amendment to this administrative regulation reduces the administrative burden of having to research and follow duplicative state and federal requirements.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? This administrative regulation may result in minimal cost savings for the regulated entities. The amendment to this administrative regulation reduces the administrative burden of having to research and follow duplicative state and federal requirements.

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

(d) How much will it cost the regulated entities for subsequent years? This administrative regulation will have no impact on cost for the regulated entities.

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact"

means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] This administrative regulation does not have a major economic impact.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. Atomic Energy Act of 1954, 42 U.S.C. 2021, as amended, and 10 C.F.R. Part 150.

(2) State compliance standards. As an agreement state with the Nuclear Regulatory Commission, the state is required to have a program for the control of radiation hazards adequate to protect the public health and safety with respect to the materials within the state covered by the proposed agreement. The state is required to adopt compliance standards for the protection of the public health, safety, and environment from hazards associated with such material which are equivalent, to the extent practicable, or more stringent than, standards adopted and enforced by the Commission for the same purpose.

(3) Minimum or uniform standards contained in the federal mandate. In accordance with 42 U.S.C. 2021(g), the Commission is authorized and directed to cooperate with the states in the formulation of standards for protection against hazards of radiation to assure that state and Commission programs for protection against hazards of radiation will be coordinated and compatible. Pursuant to 42 U.S.C. 2021(a)(3), the purpose of this standard is to promote orderly regulatory pattern between the Commission and state governments with respect to nuclear development and use and regulation of byproduct, source, and special nuclear materials.

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

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable as there are no stricter standards, or additional or different responsibilities or requirements.

CABINET FOR HEALTH AND FAMILY SERVICES

Department for Public Health

Division of Public Health Protection and Safety (Amended After Comments)

902 KAR 100:165. Notices, reports, and instructions to employees.

RELATES TO: KRS 211.842 - 211.852, 211.990(4), 10 C.F.R. Part 19[19.11 to 19.17, 30.7, 30.10]

STATUTORY AUTHORITY: KRS 13B.170, 194A.050(1), [211.090(3), 211.844]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate the programs and fulfill the responsibilities vested in the cabinet. KRS 211.844 requires the Cabinet for Health and Family Services to provide by administrative regulation for the registration and licensing of the possession or use of sources of ionizing or electronic product radiation and the handling and disposal of radioactive waste. This administrative regulation establishes notices, instructions, and reports for the protection of workers who may be exposed to radiation in their employment.

Section 1. Posting of Notices to Workers. (1) A licensee or registrant shall post current copies of the following documents relating to standards for protection against radiation:

- (a) 1. This administrative regulation; and
2. 902 KAR 100:019, as applicable for users other than radioactive materials users; and
3. 902 KAR 100:185 as applicable for radioactive material

~~users[relating to standards for protection against radiation];~~

(b) The license, certificate of registration, conditions or documents incorporated into the license by reference, and amendments to the license;

(c) The operating procedures for work under the license or registration; and

(d) A notice of violation involving radiological working conditions, proposed imposition of civil penalty, or order issued as authorized by 902 KAR 100:170, and responses from the licensee or registrant.

(2) If posting of a document specified in subsection (1)(a), (b), or (c) of this section is not practical, the licensee or registrant shall post a notice that describes the document and states where it may be examined.

(3) Cabinet form KR-441, Notice to Employees, incorporated by reference[reference] in 902 KAR 100:070, shall be prominently posted by a licensee or registrant.

(4) Documents, notices, or forms posted as required by this section shall:

(a) Appear in a sufficient number of places to permit an individual engaged in work under the license or registration to observe them on the way to or from a particular work location to which the document applies;

(b) Be conspicuous; and

(c) Be replaced if defaced or altered.

(5)(a) Cabinet documents posted as required by subsection (1)(d) of this section shall be posted within two (2) working days after receipt of the documents from the cabinet;

(b) The licensee's or registrant's response shall be posted within two (2) working days after dispatch from the licensee or registrant; and

(c) The documents shall remain posted for a minimum of five (5) working days or until action correcting the violation has been completed, whichever is later.

Section 2. Instructions to Workers. (1) An individual who is likely to receive in a year, during the course of employment, an occupational dose in excess of 100 millirems (one (1) mSV) shall be:

(a) Kept informed of the storage, transfer, or use of sources of radiation in the licensee's or registrant's workplace;

(b) Informed of potential health risks[health protection problems][,] to the individual and potential offspring, associated with exposure to radioactive material or radiation, and instructed in precautions or procedures to minimize exposure and in the purposes and functions of protective devices employed;

(c) Instructed in, and instructed to observe, to the extent within the worker's control, the applicable requirements of 902 KAR Chapter 100 and licenses issued under this chapter[thereunder] for the protection of personnel from exposures to radiation or radioactive material;

(d) Instructed of their responsibility to report promptly to the licensee or registrant a condition that may lead to or cause a violation of the Kentucky Radiation Control Act of 1978, as established in KRS 211.840[,] 902 KAR Chapter 100; ~~[, or]~~ or license conditions, or unnecessary exposure to radiation or radioactive material;

(e) Instructed in the appropriate response to warnings made in the event of an unusual occurrence or malfunction that may involve exposure to radiation or radioactive material; and

(f) Informed of the radiation exposure reports that workers may request as authorized by Section 3 of this administrative regulation.

(2) In determining the individuals subject to the requirements of this section, a licensee or registrant shall take into consideration assigned activities during normal and abnormal situations involving exposure to radioactive material or radiation that can reasonably be expected to occur during the life of a licensed or registered facility. The extent of the instructions shall be commensurate with potential radiological health protection problems in the workplace.

Section 3. Notifications and Reports to Individuals. (1) Radiation exposure data for an individual and the results of any measurements, analyses, and calculations of radioactive material deposited or retained in the body of an individual, shall be reported to the individual as specified in this section.

(2) The information reported shall include data and results obtained in accordance with 902 KAR Chapter 100[pursuant to cabinet regulations] ~~[as required by 902 KAR Chapter 100]~~, orders, or license conditions as shown in records maintained by the licensee or registrant ~~[as required by 902 KAR 100:019, Section 34]~~.

(3) Each notification and report shall:

(a) Be in writing;

(b) Include appropriate[the following] identifying data:

1. The name of the licensee or registrant;

2. The name of the individual; and

3. The individual's identification or Social Security number; ~~[,]~~

(c) Include the individual's exposure information; and

(d) Contain the following statement: "This report is furnished to you under the provisions of the Kentucky Cabinet for Health and Family Services' radiation administrative regulation[regulations], 902 KAR 100:165. You should preserve this report for further reference."

(4) Each licensee or registrant shall make dose information available to workers as shown in records maintained by the licensee or registrant under the provisions of 902 KAR 100:185.

(5) The licensee or registrant shall provide an annual report to each individual monitored under 902 KAR Chapter 100 of the dose received in that monitoring year if:

(a) The individual's occupational dose exceeds 1 mSv (100 mrem) TEDE or 1 mSv (100 mrem) to any individual organ or tissue; or

(b) The individual requests his or her annual dose report.

(6) ~~[A licensee or registrant shall advise the worker annually of the worker's exposure to radiation or radioactive material as shown in records maintained by the licensee or registrant required by 902 KAR 100:019, Section 34.~~

(5) ~~[At the request of a worker formerly engaged in licensed activities[work] controlled by the licensee or [the]registrant, each[a] licensee or registrant shall furnish to the worker a report of the worker's exposure to radiation or to radioactive material. The report shall:~~

~~(a) Be furnished within thirty (30) days from the time the request is made, or within thirty (30) days after the exposure of the individual has been determined by the licensee or registrant, whichever is later;]~~

~~(b) Cover the period of time the worker's activities involved exposure to radiation from radioactive material[materials] licensed by[, or radiation machines registered with,] the cabinet; and~~

~~(c) Include the dates and locations of licensed activities[work under the license or registration] in which the worker participated during this period.~~

~~(7) [(6)] If a licensee or registrant is required[, pursuant to 902 KAR 100:019, Sections 40, 41, and 42,] to report to the cabinet an exposure of an individual to radiation or radioactive material, the licensee or the registrant shall also provide the individual a report on the exposure data included in the report to the cabinet. The reports shall be transmitted to the individual at a time not later than the transmittal to the cabinet.~~

~~(8) [(7)] (a) At the request of a worker who is terminating employment with the licensee or registrant that involved[in work involving] exposure to radiation or radioactive material during the current year, the licensee or registrant shall provide to the worker, or to the worker's designee, at termination a written report regarding the radiation dose received by that worker from operations of the licensee or registrant during the current year or fraction of the year[thereof].~~

~~(b) If the most recent individual personnel monitoring results are not available at the time of termination, a written estimate of the dose shall be provided.~~

~~(c) Estimated doses shall be clearly indicated as estimated doses.~~

Section 4. Presence of Representatives of Licensees or Registrants and Workers during Inspection. (1) A licensee or registrant shall afford to the cabinet at all reasonable times opportunity to inspect materials, machines, activities, facilities, premises, and records required by 902 KAR Chapter 100.

(2) During an inspection, cabinet inspectors may consult

privately with workers as specified in Section 5 of this administrative regulation. The licensee or registrant may accompany cabinet inspectors during other phases of an inspection.

(3) If, during the inspection, an individual has been authorized by the workers to represent them during cabinet inspections, the licensee or registrant shall notify the inspectors of the authorization and shall give the workers' representative an opportunity to accompany the inspectors during the inspection of physical working conditions.

(4) The workers' representative shall be routinely engaged in work under control of the licensee or registrant and shall have received instructions as specified in Section 2 of this administrative regulation.

(5) Different representatives of licensees or registrants and workers may accompany the inspectors during different phases of an inspection if there is no resulting interference with the conduct of an inspection. However, only one (1) workers' representative at a time may accompany the inspectors.

(6) With the approval of the licensee or registrant and the workers' representative, an individual who is not routinely engaged in work under control of the licensee or registrant, for example, a consultant to the licensee or registrant or to the workers' representative, shall be afforded the opportunity to accompany cabinet inspectors during the inspection of physical working conditions.

(7) A cabinet inspector shall refuse to permit accompaniment by an individual who deliberately interferes with a fair and orderly inspection.

(8) Unless specifically authorized, an individual accompanying an inspector shall not have access to an area containing information classified by an agency of the U.S. government as a national security interest.

(9) Unless previously authorized by the licensee or registrant, a worker's representative shall not have access to an area containing proprietary information.

Section 5. Consultation with Workers during Inspection. (1) If necessary to conduct an effective and thorough inspection, a cabinet inspector may consult privately with a worker concerning a matter of occupational radiation protection or other matter related to 902 KAR Chapter 100, licenses, or registrations.

(2) During the course of an inspection, a worker may bring to the attention of the inspectors, either orally or in writing, a past or present condition that he or she has reason to believe may have contributed to or caused a violation of the Act, 902 KAR Chapter 100, or license condition, or an unnecessary exposure of an individual to radiation from licensed radioactive material or a registered radiation machine under the licensee's or registrant's control. Any[A] written notice shall comply with the requirements of Section 6(1) of this administrative regulation.

(3) The requirements of subsection (2) of this section shall not be interpreted as authorization to disregard instructions required by Section 2 of this administrative regulation.

Section 6. Requests by Workers for Inspections. (1)(a) A worker or representative of workers who believes that a violation of the Act, 902 KAR Chapter 100, or a license condition exists, or has occurred in work under a license or registration with regard to radiological working conditions in which the worker is engaged, may request an inspection by giving notice of the alleged violation to the Cabinet for Health and Family Services, Radiation Health Branch.

(b) The notice shall:

1. Be in writing;
2. Set forth the specific grounds for the notice; and
3. Be signed by the worker or representative of the workers.

(c) A copy shall be provided to the licensee or registrant by the cabinet no later than at the time of inspection. If the worker giving the notice requests, his or her name and the name of individuals referred to in the notice shall not appear in the copy or on a record published, released, or made available by the cabinet, except for good cause shown.

(2) In accordance with 10[49] C.F.R. 19.16, if, upon receipt of the notice, the Manager, Radiation Health Branch, determines that

the complaint meets the requirements established in subsection (1) of this section, and that there are reasonable grounds to believe that the alleged violation exists or has occurred, the manager of the Radiation and Health Branch shall cause an inspection to be made as soon as practicable, to determine if the alleged violation exists or has occurred. An inspection authorized by this section may not be limited to matters referred to in the complaint.

(3) A licensee, registrant, contractor, or subcontractor of a licensee or registrant, shall not discharge or discriminate against a worker because the worker has:

- (a) Filed a complaint;
- (b) Instituted or caused to be instituted a proceeding under 902 KAR 100:170;
- (c) Testified or is about to testify in a proceeding; or
- (d) Exercised an option on behalf of himself, herself, or others afforded by this administrative regulation.

Section 7. Inspections not Warranted; Informal Review. (1)(a) If the Cabinet for Health and Family Services, Radiation Health Branch determines, with respect to a complaint under Section 6 of this administrative regulation, that an inspection is not warranted because there are no reasonable grounds to believe that a violation exists or has occurred, the cabinet shall notify the complainant in writing of the determination.

(b) The complainant may obtain a review of the determination by submitting a written statement of position with the commissioner, Department for Public Health. The commissioner shall provide the licensee or registrant with a copy of the statement by certified mail excluding, at the request of the complainant, the name of the complainant.

(c) The licensee or registrant may submit an opposing written statement of position with the commissioner, who shall provide the complainant with a copy of the statement by certified mail.

(2) Upon the request of the complainant, the commissioner shall hold an administrative conference[hearing] in accordance with 902 KAR 1:400.

(3) If the Radiation Health Branch determines that an inspection is not warranted because the requirements of Section 6(1) of this administrative regulation have not been met, the complainant shall be notified, in writing, of the determination. The determination shall be without prejudice to the filing of a new complaint meeting the requirements of Section 6(1) of this administrative regulation.

Section 8. Employee Protection. (1) Discrimination by a cabinet licensee;; an applicant for a cabinet license;; a registrant, or a contractor, or subcontractor of a cabinet licensee, registrant, or applicant against an employee for engaging in protected activities shall be prohibited. Discrimination shall include[includes] discharge and other actions that relate to compensation, terms, conditions, or privileges of employment.

(a) The protected activities shall include in part:

1. Providing the cabinet or his or her employer information about alleged violations or possible violations of requirements of 902 KAR Chapter 100;
2. Refusing to engage in a practice made unlawful under these requirements, if the employee has identified the alleged illegality to the employer;
3. Requesting the cabinet to institute action against his or her employer for enforcement of these requirements;
4. Testifying in a cabinet proceeding, before Congress, or at a federal or state proceeding regarding a provision, or proposed provision, of 902 KAR Chapter 100; and
5. Assisting or participating in, or preparing[is about] to assist or participate in, a protected activity.

(b) A protected activity shall retain its protected status even if no formal proceeding is initiated as a result of the employee assistance or participation.

(c) This section shall not be applied to an employee alleging discrimination who, acting without direction from his or her employer or the employer's agent, deliberately causes a violation of the Kentucky Radiation Control Act of 1978 or 902 KAR Chapter 100[the administrative regulations promulgated under the Act].

(2) An employee who believes that he or she has been

discharged or discriminated against for engaging in a protected activity may seek a remedy through an administrative proceeding in the Department of Labor.

(a) ~~If an~~**[The]** aggrieved employee ~~files~~**[shall file]** a complaint, ~~it shall be filed~~ within 180 days after the occurrence of the alleged violation with the Kentucky Education and Labor Cabinet, Workplace Standards, Division of Wages and Hours, at <https://labor.ky.gov/standards/Pages/Wages-and-Hours.aspx> ~~Department of Labor, Employment Standards Administration, Wage and Hour Division~~.

(b) If warranted by the evidence presented, the Division of Wages and Hours~~[Kentucky Department of Labor]~~ may order reinstatement, back pay, and compensatory damages as appropriate to the case.

(3) A violation of subsections (1) or (5) of this section or Section 1(3) of this administrative regulation by a cabinet licensee, an applicant for a cabinet license, or a contractor or subcontractor of a cabinet licensee or applicant shall constitute grounds for:

(a) Denial, revocation, or suspension of the license;

(b) Imposition of a penalty; or

(c) Other enforcement action in accordance with 902 KAR 100:170.

(4)(a) An action taken by an employer or others that adversely affects an employee shall be predicated upon nondiscriminatory grounds.

(b) The prohibition applies if the adverse action occurs because the employee has engaged in a protected activity.

(c) An employee's engagement in a protected activity does not automatically render him or her immune from discharge or discipline for legitimate reasons, or from adverse action dictated by nonprohibited considerations.

(5) An agreement affecting the compensation, terms, conditions, or privileges of employment, including an agreement to settle a complaint filed by an employee with the Kentucky Education and Labor Cabinet~~[Department of Labor]~~, shall not contain a provision that has the potential to prohibit, restrict, or discourage an employee from participating in protected activity, including providing information to the cabinet or to his or her employer on alleged violations or other matters within cabinet's regulatory responsibilities.

Section 9. Deliberate Misconduct. (1) This section applies to:

(a) Licensee;

(b) Registrant;

(c) Certificate of registration holder;

(d) Applicant for a license~~[-]~~ or certificate of registration;

(e) Employee of any person identified in this section; or

(f) Contractor, including a supplier, consultant, or subcontractor to any person identified in this section.

(2) Any person identified in subsection ~~(1)~~ of this section shall not:

(a) Engage in deliberate misconduct that causes or may have caused, if not detected, a licensee, registrant, certificate of registration holder, or applicant to be in violation of the Kentucky Radiation Control Act of 1978~~[a rule]~~, administrative regulation, order~~[-]~~, term, condition, or limitation of a license issued by the cabinet; or

(b) Deliberately submit information to the cabinet, a licensee, registrant, certificate of registration holder, an applicant, ~~[or a licensee's, certificate holder's, or applicant's contractor]~~ or subcontractor of a licensee, certificate holder, or applicant~~[, information]~~ that the person ~~[submitting the information]~~ knows to be incomplete or inaccurate in some respect material to the cabinet.

(3) A person who violates subsection (2) of this section shall be subject to enforcement action in accordance with the procedures in 902 KAR 100:170.

(4) For the purposes of subsection (2)(a) of this section, deliberate misconduct by a person means an intentional act or omission that the person knows:

(a) May cause a licensee, registrant, certificate holder, or applicant for a license, registration, or certificate to be in violation of the Kentucky Radiation Control Act of 1978~~[rule]~~, regulation,

order or a term, condition, or limitation of a license, registration, or certificate issued by the cabinet; or

(b) Constitutes a violation ~~of~~**[or]** a requirement, procedure, instruction, contract, purchase order, or policy of a licensee, registrant, certificate holder, applicant, or the contractor or subcontractor of any of them.

~~[Section 10. Incorporation by Reference. (1) Form KR-441, "Notice to Employees", edition 2/2011 is incorporated by reference.~~

~~(2) This material may be inspected, copied, or obtained, subject to copyright law, at the Office of the Commissioner of Public Health, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. until 4:30 p.m.]~~

STEVEN STACK, M.D., Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: September 27, 2023

FILED WITH LRC: October 12, 2023 at 9:30 p.m.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Krista Quarles or Julie Brooks

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the notices, instructions, and reports for the protection of workers who may be exposed to radiation in their employment.

(b) The necessity of this administrative regulation: The Radiation Health Program licenses, registers, and certifies all uses of radiation, conducts inspections, reviews, and validates environmental surveillance data, manages compliance activity, and administers the state emergency response to radiological incidents and emergencies. This administrative regulation ensures workers engaged in activities that use sources of radiation are provided proper notice of the risks associated with these activities and are protected should an incident occur.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 211.842 requires the cabinet to develop and conduct programs for evaluation and control of hazards associated with the use of sources of ionizing, nonionizing, and electronic product radiation. KRS 211.844 requires the cabinet to provide by administrative regulation for the registration and licensing of the possession or use of sources of ionizing or electronic product radiation and the handling and disposal of radioactive waste.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation ensures the protection of workers engaged in activities that use sources of radiation and protects the workers rights during the inspection process and when reporting violations.

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

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation updates the annual dosage exposure notification requirements, updates the citations to report potential labor violations, and makes other changes necessary for KRS Chapter 13A compliance. The amended after comments version makes further changes necessary for KRS Chapter 13A compliance.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to ensure employees engaged in activities that use sources of radiation are properly protected.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 211.842 requires the cabinet to develop and conduct programs for evaluation and control of hazards associated with the use of sources of ionizing, nonionizing, and electronic product radiation. KRS 211.844 requires the cabinet to provide by administrative regulation for the registration and licensing of the possession or use of sources of ionizing or electronic product

radiation and the handling and disposal of radioactive waste.

(d) How the amendment will assist in the effective administration of the statutes: The amendment to this administrative regulation ensures employees are aware of health risks associated with exposure to sources of radiation and ensures employee rights are protected.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Radiation Health Branch has issued approximately 400 licenses to users in the fields of medicine, industry, research, and academia, as well as approximately 164 general licenses. All licensees are required to be in compliance with this administrative regulation. This administrative regulation will also impact all employees of licensees.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Licensees will need to be aware of the amendment to this administrative regulation and ensure they are in compliance with the notice, reports, and instructions to employee requirements.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be minimal costs to the regulated entities for compliance. The cost associated with compliance include the printing of the required posted materials.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Employees who are exposed to sources of radiation in the course of their work will be aware of the health risks associated with this exposure and will be assured protections should there be a violation of this administrative regulation.

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

(a) Initially: This is an ongoing program, there are no initial costs.
(b) On a continuing basis: This administrative regulation does not impact costs for the agency.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Radiation Health Branch is funded through a combination of state general fund dollars and fees.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: There are no fees established in this administrative regulation.

(9) TIERING: Is tiering applied? Tiering is not applied as the requirements of this administrative regulation are equally applied.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Radiation Health Branch in the Department for Public Health is the only entity that will be impacted by the amendment to this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 13B.170, 194A.050(1), and 211.844.

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

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

(b) How much revenue will this administrative regulation

generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation does not generate revenue.

(c) How much will it cost to administer this program for the first year? This administrative regulation will require no additional cost to administer.

(d) How much will it cost to administer this program for subsequent years? This administrative regulation will require no additional cost to administer.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

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

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

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

(d) How much will it cost the regulated entities for subsequent years? This administrative regulation will require no additional cost to the regulated entities.

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] This administrative regulation does not have a major economic impact.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. Atomic Energy Act of 1954, 42 U.S.C. 2021, as amended, and 10 C.F.R. 19.16.

(2) State compliance standards. As an agreement state with the Nuclear Regulatory Commission, the state is required to have a program for the control of radiation hazards adequate to protect the public health and safety with respect to the materials within the state covered by the proposed agreement. The state is required to adopt compliance standards for the protection of the public health, safety, and environment from hazards associated with such material which are equivalent, to the extent practicable, or more stringent than, standards adopted and enforced by the Commission for the same purpose.

(3) Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 2021(a)(3) is to promote orderly regulatory pattern between the Commission and state governments with respect to nuclear development and use and regulation of byproduct, source, and special nuclear materials.

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

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable as there are no stricter standards, or additional or different responsibilities or requirements.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Public Health Protection and Safety
(Amended After Comments)

902 KAR 100:185. Standards for protection against radiation from radioactive materials.

RELATES TO: KRS 194A.005(1), 211.180(1), 211.842-211.852, 211.990(4), 216B.015(22), 10 C.F.R. Part 20, 42 U.S.C. 2021(b)

STATUTORY AUTHORITY: KRS 194A.050(1), 211.844(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary to promulgate, administrative regulations necessary to implement programs mandated by federal law, to qualify for the receipt of federal funds, and to cooperate with other state and federal agencies. KRS 211.844(1) requires cabinet to provide by administrative regulation for the licensing of the possession or use of sources of ionizing and the handling and disposal of radioactive waste. This administrative regulation establishes the standards for protection of the user and general public against radiation exposure, the standards for protection against ionizing radiation resulting from activities conducted by persons issued licenses or registrations by the cabinet, and the standards to control the receipt, possession, use, transfer, and disposal of sources of radiation by a person, or licensee. ~~[The total dose to an individual, including doses resulting from licensed and unlicensed radioactive material and radiation sources other than background radiation, shall not exceed the standards for protection against radiation established in this administrative regulation.]~~

Section 1. Definitions. (1) "Agreement state" means a state with which the United States Nuclear Regulatory Commission (NRC) or the United States Atomic Energy Commission has entered into an effective agreement under subsection 274 b. of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2021(b) et seq.).

(2) "Cabinet" is defined by KRS 194A.005(1).

(3) "Licensee" means a person who holds:

(a) A specific license issued by the cabinet pursuant to 902 KAR 100:040 and this administrative regulation;

(b) A specific license issued by the U.S. Nuclear Regulatory Commission or an agreement state; or

(c) A general license pursuant to 902 KAR 100:050 or equivalent regulations of the U.S. Nuclear Regulatory Commission or an agreement state.

(4) "Person" is defined by KRS 216B.015(22).

Section 2. Applicability. This administrative regulation shall apply to a licensee. The licensee shall comply with 10 C.F.R. Part 20 except as established in subsections (1) through (5) of this section.

(1) The licensee shall not be subject to:

(a) 10 C.F.R. 20.1003, Definition for licensee;

(b) 10 C.F.R. 20.1007;

(c) 10 C.F.R. 20.1009;

(d) ~~10 C.F.R. 20.1405;~~

~~(e)~~ 10 C.F.R. 20.1406(b);

~~(e)(f)~~ 10 C.F.R. 20.1905(g);

~~(f)(g)~~ 10 C.F.R. 20.2203(c);

~~(g)(h)~~ 10 C.F.R. 20.2206(a)(1), (a)(3), (a)(4), and (a)(5);

~~(h)(i)~~ 10 C.F.R. 20.2401; and

~~(i)(j)~~ 10 C.F.R. 20.2402.

(2) (a) Except for the definition of special nuclear material in 10 C.F.R. 20.1003, reference to the "Commission" or "NRC" shall be deemed to be a reference to the "Cabinet for Health and Family Services, Department for Public Health, Radiation Health Branch".

(b) Reference to the "Commission", "NRC", or an agreement state shall be deemed to be a reference to the "Cabinet for Health and Family Services, Department for Public Health, Radiation Health Branch", the commission[NRC], or an agreement state.

(3) Reference to "NRC Form 313, Application for Material

License" shall be deemed to be a reference to "Application for Radioactive Material License" RPS-7, incorporated by reference in 902 KAR 100:040.

(4) Reference to the violations under 10 C.F.R. 20.2401 shall be deemed to be a reference to 902 KAR 100:170.

(5) Reference to the criminal penalties under 10 C.F.R. 20.2402 shall be deemed to be a reference to KRS 211.990.

Section 3. Annual Report of Waste Generated. (1) A licensee issued a specific license, pursuant to 902 KAR 100:040, shall file an Annual Low Level Radioactive Waste (LLRW) Report with the cabinet.

(2) The report shall be filed regardless of whether[if] the licensee was~~[, or was not,]~~ a waste generator during the reporting period, except for a licensee that is authorized for only sealed radioactive sources and has leak test results indicating no leakage or damaged sources.

(3) The report shall:

(a) Contain information regarding low-level radioactive waste associated with activities authorized by the license for a period of one (1) calendar year;

(b) Contain the types and amounts of generated waste, and estimates of future wastes to be generated; and

(c) Be filed no later than January 15 of the following year.

Section 4. Reporting of Events and Notifications. The reporting of events and notifications required by 10 C.F.R. Part 20 shall be directed to the manager, Radiation Health Branch, at:

(1) 275 East Main Street, Mailstop HS1-C-A, Frankfort, Kentucky 40621;

(2) (502) 564-1492: Facsimile;

(3) (502) 564-3700: Telephone, Monday through Friday from 8 a.m. to 4:30 p.m.; or

(4) (800) 255-2587: Telephone, for hours outside of those in subsection (3) of this section.

Section 5. Incorporation by Reference. (1) "Annual Low Level Radioactive Waste (LLRW) Report", 05/2023, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copy right law, at Department for Public Health, Radiation Health Branch, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

(3) This material is available on the agency's Web site at <https://www.chfs.ky.gov/agencies/dph/dphps/rhb/Documents/LLRWReportForm1.pdf>.

STEVEN J. STACK, Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: September 28, 2023

FILED WITH LRC: October 12, 2023 at 9:30 a.m.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This new administrative regulation establishes the receipt, possession, use, transfer, and disposal of licensed material by any licensee in such a manner that the total dose to an individual, including doses resulting from licensed and unlicensed radioactive material and from radiation sources other than background radiation, does not exceed the standards for protection against radiation. The amended after comment version of this new administrative regulation deletes the reference to federal public notification and public participation requirements, clarifies the applicability of the notification requirements, and makes other changes necessary for KRS Chapter 13A compliance.

(b) The necessity of this administrative regulation: This new

administrative regulation is necessary to protect radiation workers and the public from exposure to excessive radiation and sets safety limits.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 211.844 requires the cabinet to provide by administrative regulation the requirements for the licensing, use, and disposal of radioactive materials.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This new administrative regulation ensures all those engaged in the licensing, use, transfer, and disposal of radioactive source material meet the regulatory requirements.

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are approximately 350 licenses issued for certain uses of radioactive material and specific devices containing radioactive material.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No additional actions will be needed by the licensee to comply with this new administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is a minimal cost to the cabinet associated with updating references.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Adopting 10 C.F.R. Part 20 by reference will reduce the redundancy between state and federal requirements. This will reduce the time needed to research applicable regulations and make it easier for the licensee to review existing guidance documents.

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

(a) Initially: This new administrative regulation will not impact cost to the agency.

(b) On a continuing basis: There will be no ongoing costs to the agency to implement this new administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Radiation Health Branch is funded through a mix of state general fund dollars and the various fees associated with issuing licenses.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied. The requirements of this administrative regulation are applied equally to all licensees.

FISCAL NOTE

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

Branch within the Department for Public Health will be impacted by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050 and 211.844.

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

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

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

(c) How much will it cost to administer this program for the first year? This new administrative regulation does not impact cost to the agency.

(d) How much will it cost to administer this program for subsequent years? This new administrative regulation does not impact cost to the agency.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? This administrative regulation may result in minimal cost savings for the regulated entities. This new administrative regulation reduces the administrative burden of having to research and follow duplicative state and federal requirements.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? This administrative regulation may result in minimal cost savings for the regulated entities. This new administrative regulation reduces the administrative burden of having to research and follow duplicative state and federal requirements.

(c) How much will it cost the regulated entities for the first year? This new administrative regulation will have no impact on cost for the regulated entities.

(d) How much will it cost the regulated entities for subsequent years? This new administrative regulation will have no impact on cost for the regulated entities.

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] This administrative regulation does not have a major economic impact.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. Atomic Energy Act of 1954, 42 U.S.C. 2021, as amended, and 10 C.F.R. Part 20.

(2) State compliance standards. As an agreement state with the Nuclear Regulatory Commission the state is required to have a program for the control of radiation hazards adequate to protect the

public health and safety with respect to the materials within the state covered by the proposed agreement. The state is required to adopt compliance standards for the protection of the public health, safety, and the environment from hazards associated with such material which are equivalent, to the extent practicable, or more stringent than, standards adopted and enforced by the Commission for the same purpose.

(3) Minimum or uniform standards contained in the federal mandate. In accordance with 42 U.S.C. 2021(g), the commission is authorized and directed to cooperate with the states in the formulation of standards for protection against hazards of radiation to assure that state and commission programs for protection against hazards of radiation will be coordinated and compatible. Pursuant to 42 U.S.C. 2021(a)(3) the purpose of this standard is to promote orderly regulatory pattern between the commission and state governments with respect to nuclear development and use and regulation of byproduct, source, and special nuclear materials.

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

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable as there are no stricter standards, or additional or different responsibilities or requirements.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Public Health Protection and Safety
(Amended After Comments)

902 KAR 100:195. Licensing of special nuclear material.

RELATES TO: KRS 194A.005(1), 211.180(1), 211.842-211.852, 211.990(4), 10 C.F.R. Part 70, 42 U.S.C. 2021(b)

STATUTORY AUTHORITY: KRS 194A.050(1), 211.844(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate the programs and fulfill the responsibilities vested in the cabinet. KRS 211.844(1) requires the Cabinet for Health and Family Services to provide by administrative regulation for the registration and licensing of the possession or use of sources of ionizing or electronic product radiation and the handling and disposal of radioactive waste. This administrative regulation establishes procedures, criteria, terms, and conditions upon which the cabinet issues licenses for special nuclear material.

Section 1. Definitions. (1) "Agreement state" means a state that the United States Nuclear Regulatory Commission (NRC) or the United States Atomic Energy Commission has entered into an effective agreement under subsection 274 b. of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2021(b) et seq.).

(2) "Cabinet" is defined by KRS 194A.005(1).

(3) "Licensee" means a person who holds:

(a) A specific license issued by the cabinet pursuant to 902 KAR 100:040 and this administrative regulation;

(b) A specific license issued by the U.S. Nuclear Regulatory Commission or an agreement state; or

(c) A general license pursuant to 902 KAR 100:050 or equivalent regulations of the U.S. Nuclear Regulatory Commission or an agreement state.

Section 2. Applicability. This administrative regulation shall apply to a licensee. Except as established in subsections (1) through (4) of this section, the licensee shall comply with 10 C.F.R. Part 70.

(1) The licensee shall not be subject to:

(a) 10 C.F.R. 70.1(c), (d), and (e);

(b) 10 C.F.R. 70.4 Definitions:

1. Commencement of Construction (2); and

2. Construction (9)(ii);

(c) 10 C.F.R. 70.5;

(d) 10 C.F.R. 70.8;

(e) ~~10 C.F.R. 70.10(b);~~

~~(f)~~ 10 C.F.R. 70.13;

~~(f)(g)~~ 10 C.F.R. 70.14;

~~(g)(h)~~ 10 C.F.R. 70.20a;

~~(h)(i)~~ 10 C.F.R. 70.20b;

~~(i)(j)~~ 10 C.F.R. 70.21(a)(1), (c), (f), (g), and (h);

~~(j)(k)~~ 10 C.F.R. 70.22(b), (c), (f), (g), (h), (i), (j), (k), (l), (m), and (n);

~~(k)(l)~~ 10 C.F.R. 70.23(a)(6), (a)(7), (a)(8), (a)(9), (a)(10), (a)(11), (a)(12), and (b);

~~(l)(m)~~ 10 C.F.R. 70.23a;

~~(m)(n)~~ 10 C.F.R. 70.24;

~~(n)(o)~~ 10 C.F.R. 70.25(a)(1);

~~(o)(p)~~ 10 C.F.R. 70.31(c), (d), and (e);

~~(p)(q)~~ 10 C.F.R. 70.32(a)(1), (a)(4), (a)(5), (a)(6), (a)(7), (b)(1), (b)(3), (b)(4), (c), (d), (e), (f), (g), (h), (i), (j), and (k);

~~(q)(r)~~ 10 C.F.R. 70.37;

~~(r)(s)~~ 10 C.F.R. 70.40;

~~(s)(t)~~ 10 C.F.R. 70.42(b)(6);

~~(t)(u)~~ 10 C.F.R. 70.44;

~~(u)(v)~~ 10 C.F.R. 70.52;

~~(v)(w)~~ 10 C.F.R. 70.55(c);

~~(w)(x)~~ 10 C.F.R. 70.59;

~~(x)(y)~~ 10 C.F.R. 70.60;

~~(y)(z)~~ 10 C.F.R. 70.61;

~~(z)(aa)~~ 10 C.F.R. 70.62;

~~(aa)(bb)~~ 10 C.F.R. 70.64;

~~(bb)(cc)~~ 10 C.F.R. 70.65;

~~(cc)(dd)~~ 10 C.F.R. 70.66;

~~(dd)(ee)~~ 10 C.F.R. 70.72;

~~(ee)(ff)~~ 10 C.F.R. 70.73;

~~(ff)(gg)~~ 10 C.F.R. 70.74;

~~(gg)(hh)~~ 10 C.F.R. 70.76;

~~(hh)(ii)~~ 10 C.F.R. 70.82; and

~~(ii)(jj)~~ 10 C.F.R. Appendix A to Part 70.

(2) ~~(a)~~ Reference to the NRC, the Commission, or an agreement state shall be deemed to reference the Cabinet for Health and Family Services, Department for Public Health, Radiation Health Branch ~~the NRC, or an agreement state~~.

~~(b) As used in 10 C.F.R. 70.19(a)(1) and 70.19(c)(3), reference to the "Commission" or "Atomic Energy Commission" shall remain and shall not be deemed to reference the cabinet.~~

~~(c) As used in 10 C.F.R. 70.42(b)(1) reference to "Department" shall be deemed to reference the U.S. Department of Energy.~~

(3) Each application for a specific license shall be filed pursuant to 902 KAR 100:0195.

(4) Notifications, reports, and correspondence required by 10 C.F.R. 70 shall be directed to the manager, Radiation Health Branch, at:

(a) 275 East Main Street, Mailstop HS1-C-A, Frankfort, Kentucky 40621;

(b) (502) 564-1492: Facsimile

(c) (502) 564-3700: Telephone, Monday through Friday, 8 a.m. to 4:30 p.m.; or

(d) (800) 255-2587: Telephone, for hours except those established in paragraph (c) of this subsection.

STEVEN J. STACK, Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: September 28, 2023

FILED WITH LRC: October 12, 2023 at 9:30 a.m.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This new administrative regulation establishes procedures and criteria for the issuance of licenses to receive title to, own, acquire, deliver, receive, possess, use, and transfer special nuclear material, and establishes and provides for the terms and conditions upon which the cabinet will issue such licenses. The amended after comment version removes reference to 10 C.F.R. 70.10(b) to maintain compatibility with the Nuclear Regulatory Commission and revises section 2(2) for clarity.

(b) The necessity of this administrative regulation: This new administrative regulation is necessary to protect the public from improper use and disposal of special nuclear material.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 211.844 requires the cabinet to provide by administrative regulation the requirements for the licensing, use, and disposal of radioactive materials.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This new administrative regulation ensures all those engaged in the licensing, use, transfer, and disposal of special nuclear material meet regulatory requirements.

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are two (2) licensees for the use of special nuclear material issued by the Radiation Health Branch (RHB) at this time.

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

(a) List the actions that each of the regulated entities identified in questions (3) will have to take to comply with this administrative regulation or amendment: There are no new actions required for compliance with this new administrative regulation. The RHB will need to modify the existing special nuclear material licenses.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the identities identified in question (3): There is no anticipated change in cost for the regulated entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): By adopting 10 C.F.R. Part 70, the state will put special nuclear material licensing and use in a single regulation instead of multiple regulations. This will reduce the amount of time needed to research applicable regulations and provide consistency with the methods used by the Nuclear Regulatory Commission (NRC). It will be easier for the licensee to review existing guidance documents for daily use of special nuclear material.

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

(a) Initially: This program is already operating. There is a minimal cost to implement this administrative regulation.

(b) On a continuing basis: This program is already operating. Adopting the new regulation will reduce cost in the long term.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This new administrative regulation does not affect funding.

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

(8) State whether or not this administrative regulation

establishes any fees or directly or indirectly increases any fees. There are no fees established in this new administrative regulation.

(9) TIERING: Is tiering applied? Tiering is not applied as all entities using radioactive source material must meet NRC requirements.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Radiation Health Branch in the Department for Public Health will be impacted by this new administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1) and 211.844.

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

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

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

(c) How much will it cost to administer this program for the first year? This new administrative regulation does not add costs to the agency.

(d) How much will it cost to administer this program for subsequent years? This new administrative regulation does not add costs to the agency.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? This new administrative regulation does not impact the costs of the regulated entities.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? This new administrative regulation does not impact the costs of the regulated entities.

(c) How much will it cost the regulated entities for the first year? This new administrative regulation will not result in cost to the regulated entities.

(d) How much will it cost the regulated entities for subsequent years? This new administrative regulation will not result in cost to the regulated entities.

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] This administrative regulation does not have a major economic impact.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. Atomic Energy Act of 1954, 42 U.S.C. 2021, as amended, and 10 C.F.R. Part 70.

(2) State compliance standards. As an agreement state with the Nuclear Regulatory Commission the state is required to have a program for the control of radiation hazards adequate to protect the public health and safety with respect to the materials within the state covered by the proposed agreement. The state is required to adopt compliance standards for the protection of the public health, safety, and the environment from hazards associated with such material which are equivalent, to the extent practicable, or more stringent than, standards adopted and enforced by the Commission for the same purpose.

(3) Minimum or uniform standards contained in the federal mandate. In accordance with 42 U.S.C. 2021(g), the commission is authorized and directed to cooperate with the states in the formulation of standards for protection against hazards of radiation to assure that state and commission programs for protection against hazards of radiation will be coordinated and compatible. Pursuant to 42 U.S.C. 2021(a)(3) the purpose of this standard is to promote orderly regulatory pattern between the commission and state governments with respect to nuclear development and use and regulation of byproduct, source, and special nuclear materials.

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

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable as there are no stricter standards, or additional or different responsibilities or requirements.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Public Health Protection and Safety
(Amended After Comments)

902 KAR 100:200. Licenses and radiation safety requirements for irradiators.

RELATES TO: KRS 194A.005(1), 211.180(1), 211.842-211.852, 211.990(4), 10 C.F.R. Part 36, 42 U.S.C. 2021(b)

STATUTORY AUTHORITY: KRS 194A.050(1), 211.844(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate the programs and fulfill the responsibilities vested in the cabinet. KRS 211.844(1) requires the cabinet to provide by administrative regulation for the registration and licensing of the possession or use of sources of ionizing or electronic product radiation and the handling and disposal of radioactive waste. This administrative regulation establishes procedures, criteria, terms, and conditions upon which the cabinet issues licenses for special nuclear material.

Section 1. Definitions. (1) "Agreement state" means a state that the United States Nuclear Regulatory Commission (NRC) or the United States Atomic Energy Commission has entered into an effective agreement under subsection 274 b. of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2021(b) et seq.)

(2) "Cabinet" is defined by KRS 194A.005(1)

(3) "Licensee" means a person who holds:

(a) A specific license issued by the cabinet pursuant to 902 KAR 100:040 and this administrative regulation;

(b) A specific license issued by the U.S. Nuclear Regulatory Commission or an agreement state; or

(c) A general license pursuant to 902 KAR 100:050 or equivalent regulations of the U.S. Nuclear Regulatory Commission or an agreement state.

Section 2. Applicability. This administrative regulation shall apply to a licensee. Except as established in subsections (1) through (4) of this section, the licensee shall comply with 10 C.F.R. Part 36.

(1) The licensee shall not be subject to:

(a) 10 C.F.R. 36.2, Definitions:

1. Commencement of Construction (2); and

2. Construction (9)(ii);

(b) 10 C.F.R. 36.8;

(c) 10 C.F.R. 36.91; and

(d) 10 C.F.R. 36.93.

(2)(a) Reference to the NRC, the Commission, or an agreement state shall be deemed to reference the Cabinet for Health and Family Services, Department for Public Health, Radiation Health Branch~~], the NRC, or an agreement state]~~.

(b) Reference to "NRC" or "agreement state" shall be deemed to be a reference to "Cabinet for Health and Family Services, Department for Public Health, Radiation Health Branch", the "NRC", or "agreement state".

(3) Each application for a specific license shall be filed pursuant to this administrative regulation.

(4) Notifications, reports, and correspondence required by 10 C.F.R. 36 shall be directed to the manager, Radiation Health Branch, at:

(a) 275 East Main Street, Mailstop HS1-C-A, Frankfort, Kentucky 40621;

(b) (502) 564-1492: Facsimile;

(c) (502) 564-3700: Telephone, Monday through Friday, 8 a.m. to 4:30 p.m.; or

(d) (800) 255-2587: Telephone, for hours except those established in paragraph (c) of this subsection.

STEVEN J. STACK, Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: September 28, 2023

FILED WITH LRC: October 12, 2023 at 9:30 a.m.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This new administrative regulation establishes the requirements for the issuance of a license authorizing the use of sealed sources containing radioactive materials in irradiators used to irradiate objects or materials using gamma radiation. This part also contains radiation safety requirements for operating irradiators. The amended after comments version amends section 2(2) for clarity.

(b) The necessity of this administrative regulation: This new administrative regulation is necessary to protect the public from improper use and disposal of radioactive source material.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 211.844 requires the cabinet to provide by administrative regulation the requirements for the licensing, use, and disposal of radioactive materials.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This new administrative regulation ensures all those engaged in the licensing, use, transfer, and disposal of radioactive source material meet the regulatory requirements.

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Radiation Health Branch within the Department for Public Health is the only entity affected by this new administrative regulation. There are no irradiators in Kentucky at this time, so no licensees will be affected.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: There will be no new actions required for compliance with this new administrative regulation. Adopting 10 C.F.R. Part 36 by reference will expedite the process if a company desires to site an irradiator in Kentucky. There will be no impact to existing radioactive materials licensees.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no anticipated change in cost for existing regulated entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Adopting 10 C.F.R. Part 36 by reference will expedite the application process a new company will have to follow to perform irradiator work in Kentucky.

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

(a) Initially: This new administrative regulation will not add cost to the agency.

(b) On a continuing basis: This new administrative regulation will not impact ongoing costs to the agency.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Radiation Health Branch is funded through a mix of state general fund dollars and the various fees associated with issuing licensees.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied. The requirements of this new administrative regulation are applied equally to all licensees.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Radiation Health Branch within the Department for Public Health will be impacted by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050 and 211.844.

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

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

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

(c) How much will it cost to administer this program for the first year? This new administrative regulation does not impact cost for the agency.

(d) How much will it cost to administer this program for subsequent years? This new administrative regulation does not impact cost for the agency.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? This new administrative regulation may result in minimal cost savings for the regulated entities. This new administrative regulation reduces the administrative burden of having to research and follow duplicative state and federal requirements.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? This new administrative regulation may result in minimal cost savings for the regulated entities. This new administrative regulation reduces the administrative burden of having to research and follow duplicative state and federal requirements.

(c) How much will it cost the regulated entities for the first year? This new administrative regulation will have no impact on cost for the regulated entities.

(d) How much will it cost the regulated entities for subsequent years? This new administrative regulation will have no impact on cost for the regulated entities.

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] This new administrative regulation does not have a major economic impact.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. Atomic Energy Act of 1954, 42 U.S.C. 2021, as amended, and 10 C.F.R. Part 36.

(2) State compliance standards. As an agreement state with the Nuclear Regulatory Commission the state is required to have a program for the control of radiation hazards adequate to protect the public health and safety with respect to the materials within the state covered by the proposed agreement. The state is required to adopt compliance standards for the protection of the public health, safety, and the environment from hazards associated with such material which are equivalent, to the extent practicable, or more stringent than, standards adopted and enforced by the Commission for the same purpose.

(3) Minimum or uniform standards contained in the federal mandate. In accordance with 42 U.S.C. 2021(g), the commission is authorized and directed to cooperate with the states in the formulation of standards for protection against hazards of radiation to assure that state and commission programs for protection against hazards of radiation will be coordinated and compatible. Pursuant to 42 U.S.C. 2021(a)(3) the purpose of this standard is to promote orderly regulatory pattern between the commission and state governments with respect to nuclear development and use and regulation of byproduct, source, and special nuclear materials.

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or

requirements, than those required by the federal mandate? No

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable as there are no stricter standard, or additional or different responsibilities or requirements in this administrative regulation.

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*.

FINANCE AND ADMINISTRATION CABINET
Kentucky Public Pensions Authority
(Amendment)

105 KAR 1:215. Administrative hearing.

RELATES TO: KRS 13B.010-13B170, 16.505-16.652, 61.510-61.705, 78.510-78.852

STATUTORY AUTHORITY: KRS 61.505(1)(g)[61.645(9)(e)]

NECESSITY, FUNCTION, AND CONFORMITY: KRS

61.505(1)(g) authorizes the Kentucky Public Pensions Authority to promulgate all administrative regulations on behalf of the Kentucky Retirement Systems and the County Employees Retirement System that are consistent with KRS 16.510 to 16.652, 61.510 to 61.705, and 78.510 to 78.852.[KRS 61.645(9)(e) authorizes the Board of Trustees of Kentucky Retirement Systems to promulgate all administrative regulations necessary or proper in order to carry out the provisions of KRS 61.515 to 61.705, 16.510 to 16.652, and 78.520 to 78.852.] KRS 61.645(16) and 78.782(16) provide[provides] that an affected person aggrieved by a decision of the agency[system], which is not a determination relating to disability retirement benefits, or an employer that is required to pay additional actuarial costs pursuant to KRS 61.598 and 78.545, may have the right to request an administrative hearing prior to the filing of an appeal in court. KRS 61.615(3), 61.665(3), 78.545 and 78.5528(3) provide that an affected person whose disability retirement benefits have been denied, reduced, discontinued, or denied for reinstatement may have the right to request an administrative hearing prior to filing of an appeal in court. This administrative regulation establishes the administrative appeal procedures.

Section 1. Definitions.[Definition.]

(1) "Administrative hearing" or "hearing" is defined by KRS 13B.010(2).

(2) "Administrative record" means the official record of hearing as defined by KRS 13B.130.

(3) "Affected person" means a member, retired member, beneficiary, or recipient[as defined in KRS 16.505, 61.510 and 78.510].

(4) "Agency portal" means an online portal which stores and tracks relevant information related to an administrative hearing held in accordance with KRS Chapter 13B, including:

(a) The evidentiary record;

(b) Notices of scheduled pretrial conferences, status conferences, or hearings; and

(c) Reports, findings, briefs, position statements, reply position statements, exceptions, and orders.

(5) "Authorized agency staff" means employees of the agency who are approved parties to access the agency portal.

(6) "Briefing order" means an order issued by the hearing officer that provides deadlines for the parties to file any of the following:

(a) Position statements and reply position statements; or

(b) Briefs containing procedural, factual, or legal arguments.

(7) "Claimant" means an affected person who has filed an appeal due to a substantial impairment or an employer that is required to pay additional actuarial costs pursuant to KRS 61.598 and 78.545, and whose matter is still pending at the administrative or appellate court levels.

(8) "Entry of appearance" means a written statement filed at the retirement office attesting that a claimant is represented by an attorney in an administrative hearing process held in accordance with KRS Chapter 13B.

(9) "Evidentiary record" means all evidence, including video recordings of the administrative hearing, received and considered by the agency pertaining to a specific claimant's administrative hearing held in accordance with KRS Chapter 13B.

(10) "Final order" is defined by KRS 13B.010(6).

(11) "Hearing officer" is defined by KRS 13B.010(7).

(12) "Party" is defined by KRS 13B.010(3).

(13) "Position statement" means a written statement each party may file to explain his or her arguments of fact and law based upon the evidentiary record and applicable statutory and case law.

(14) "Recommended order" is defined by KRS 13B.010(5).

(15) "Reply position statement" means a written statement each party may file to explain his or her rebuttal arguments of fact and law that address the factual and legal arguments in the opposing party's position statement.

(16) "Substantially impair" means:

(a)1. The denial, discontinuance, or reduction of an affected person's benefits;

2. The final determination by the agency that an affected person must repay overpaid benefits; or

3. The final determination by the agency that the affected person is not exempt from the reduction of creditable compensation in accordance with KRS 61.598 and 78.545; and

(b) Does not include calculation methodology found in KRS 16.505-16.652, 61.510-61.705, 78.510-78.852, and KAR Title 105.

Section 2. Agency Portal.

(1) The agency shall provide a unique method for approved parties to access the administrative record, including hearing recordings, memorandums, and any other relevant documentation related to administrative hearings held in accordance with KRS Chapter 13B for the matter in which they are directly involved, in the agency portal. Access shall be granted to the following:

(a) Members of the Administrative Appeals Committee (AAC) or Disability Appeals Committee (DAC) as applicable;

(b) The claimant or the claimant's attorney;

(c) The hearing officer assigned to the matter; and

(d) Authorized agency staff.

(2) If a request for an administrative hearing in accordance with Section 5 of this administrative regulation is received by the agency, the agency shall notify the claimant or the claimant's attorney, as indicated on the request or entry of appearance, of the use of the agency portal for administrative hearings. The notice shall include details concerning:

(a) The use of the affected person's personal email, or his or her attorney's email, and how to provide or update that email for access to the agency portal; and

(b) How to request an exemption from use of the agency portal in accordance with Section 3 of this administrative regulation.

(3)(a) The claimant or the claimant's attorney, the applicable hearing officer, and authorized agency staff shall receive notification when the following becomes available on the agency portal, as applicable:

1. The evidentiary record;

2. Additional documents when they are received and uploaded;

3. Details of scheduled pretrial conferences, status conferences, or hearings;

4. Any additional information related to the administrative record as it becomes available;

5. Reports, findings, briefs, position statements, reply position statements, exceptions and orders; and

6. Video recordings of the administrative hearing.

(b)1. The agency shall provide notification to the claimant, or the claimant's attorney, detailing how to file and view documentation for inclusion in the evidentiary record and any other relevant documentation related to administrative hearings held in accordance with KRS Chapter 13B, such as motions, briefs, and exceptions.

2. Documentation shall be filed through mail, electronic mail, in-person delivery, or fax as provided in the notice, and shall be considered in compliance with KRS 13B.080(2).

(4) AAC or DAC members shall receive notification when the evidentiary record is ready for review in the agency portal.

Section 3. Agency Portal Use Exemption.

(1)(a) A claimant may be exempt from use of the agency portal only if he or she files a completed request in accordance with subsection (2) of this section and meets one of the following criteria:

1. The claimant does not have internet access;
2. The claimant does not have access to a computer, smart phone, or tablet capable of allowing him or her to adequately use the agency portal; or
3. The claimant has an impairment or disability that limits his or her ability to use electronic communications.

(b) There is no agency portal use exemption available for hearing officers, DAC or AAC members, authorized agency staff, or attorneys.

(2)(a) To request an agency portal use exemption, the claimant shall complete and file a valid Form 2940, Agency Portal Exemption.

(b) Once a valid Form 2940 is on file with the agency, the affected person shall only be granted access to the agency portal if he or she completes and files a new valid Form 2940 electing to withdraw the previously filed exemption request and provides a valid email address.

(c) The last valid Form 2940 on file with the agency shall control whether the affected person has access to the agency portal.

Section 4.[Section 2.] Notification of the Right to Request an Administrative Hearing.

(1)(a) If the agency issues a final determination[system takes action] which substantially impairs an affected person's benefits or rights under KRS 16.505 to 16.652, 61.510 to 61.705 or 78.510 to 78.852, except as provided in subsection (2) of this section[action which relates to entitlement to disability benefits], the agency[system] shall notify the affected person of the opportunity to request an administrative hearing by the end of day thirty (30) calendar days from the date of the notice[a hearing]. The notification shall be contained in the notice of final determination.[action. An affected person may request a hearing by submitting the request in writing within thirty (30) days after the date of the notice of the opportunity to request a hearing. The request for hearing shall be filed with the executive director of the system at its office in Frankfort. The request for hearing shall contain a short and plain statement of the basis for request.]

(b) If the agency issues a final determination that an employer is required to pay additional actuarial costs pursuant to KRS 61.598 and 78.545, the agency shall notify the affected employer of the opportunity to request an administrative hearing by the end of day thirty (30) calendar days from the date of the notice. The notification shall be contained in the notice of the final determination.

(2)(a) If the agency issues a final determination which denies an affected person disability retirement benefits, the agency shall notify the affected person of the opportunity to request an administrative hearing by the end of day 180 calendar days from the date of the notice as prescribed by KRS 61.665(2) and 78.545.

(b) If the agency issues a final determination which reduces or discontinues an affected person's disability retirement benefits, or which denies reinstatement of the affected person's disability retirement benefit, the agency shall notify the affected person of the opportunity to request an administrative hearing by the end of day sixty (60) calendar days from the date of the notice as prescribed by KRS 61.615(3) and 78.5528(3).

(c) The notification shall be contained in the notice of the final determination.

Section 5.[Section 3.] Request for an Administrative Hearing.

(1) All requests for an administrative hearing shall be in writing and shall include a short and plain statement of the basis for the request. The request shall be filed as provided in the notice of the right to appeal and within the timeframes prescribed in Section 4 of this administrative regulation.

(2) Failure of the affected person to request a formal hearing within the prescribed timeframes[period of time specified] shall preclude the affected person from requesting an administrative[a] hearing at a later time.

(3) An entry of appearance may be filed with the request for an administrative hearing or at any time during the administrative hearing process.

Section 6.[Section 4.] Prehearing Conference.

(1) The prehearing conference shall be held telephonically. The agency shall provide notice to the affected person or his or her attorney of the date, time, and instructions for providing a phone number.[The system may, either through review of its records or conference with the affected person, recommend a favorable determination prior to scheduling a hearing. Upon notification of a favorable determination, the affected person may withdraw the hearing request or request that the hearing be scheduled.]

(2) The prehearing conference shall be initiated by agency staff and shall be presided over by the hearing officer in accordance with KRS 13B.070. During the prehearing conference, the parties shall prepare stipulations, clarify the issues to be decided, request issuance of subpoenas and orders, and address other matters that will promote the orderly and prompt conduct of the hearing.[The hearing officer may request a prehearing conference or may consider new evidence not already part of the affected person's file. The prehearing conference is an informal procedure, presided over by the hearing officer. Every effort shall be made by all parties to dispose of controversies, to narrow and define issues, and to facilitate prompt settlement of the claim.]

(3) If at the conclusion of the prehearing conference either party needs time to submit additional documentation, the hearing officer shall schedule a status conference for follow up[the parties have not reached an agreement on all the issues, the hearing officer shall schedule a hearing to be held within a reasonable time].

(4) If at the conclusion of the prehearing conference all documentation is submitted and all parties agree to proceed, an administrative hearing shall be scheduled.[If the parties agree upon a settlement after the prehearing conference but before the hearing, the settlement agreement shall be filed with the hearing officer. The hearing shall be cancelled and notice of the cancellation shall be served on all parties.]

Section 7. Status Conference.

(1) If held, a status conference shall be held telephonically. The agency shall provide notice to the affected person or his or her attorney of the date, time, and instructions for providing a phone number for the status conference.

(2) A status conferences may be held to discuss any outstanding issues or documentation from the prehearing conference or a previous status conference.

(3) Additional status conferences may be held until pending issues are resolved and the parties agree to proceed with the administrative hearing.

(4) A post administrative hearing status conference may be held to follow up on cases put on hold for further records in accordance with Section 10(5) of this administrative regulation.

Section 8. Agreed Orders and Motions to Dismiss.

(1) If at any time both parties agree to a settlement on the issue of the pending administrative appeal, a settlement agreement may occur through either an Agreed Order or a Motion to Dismiss filed with the hearing officer.

(2) Pursuant to KRS 13B.080(6), a Motion to Dismiss may be filed with the hearing officer if:

(a) The claimant or agency fails to appear at more than one (1) pre-hearing or status conference, and if the agency fails to reschedule or the claimant fails to contact the agency to reschedule, within fourteen (14) calendar days of the second missed conference;

(b) The claimant or agency fails to participate in any stage of the hearing process, or fails to comply with an order of the hearing officer; or

(c) The claimant decides to discontinue his or her appeal for any reason.

(3) The hearing officer may complete a Recommended Order of Dismissal in accordance with Section 13 of this administrative regulation based on the settlement agreement or Motion to Dismiss filed with him or her in accordance with subsection (1) and (2) of this

section.

Section 9. Notice of Administrative Hearing. The agency shall notify the affected person of the date, time, and location of the administrative hearing in accordance with KRS 13B.050(2). The notice shall provide the details about the hearing required by KRS 13B.050(3).

Section 10. Administrative Hearing.

(1) Administrative hearings shall be held at the retirement office in Frankfort or by secure video teleconference.

(2) Administrative hearings shall be conducted in accordance with KRS 13B.010-13B.170. Evidence, testimony, motions, and objections may be introduced during the administrative hearing, and shall be accurately and completely recorded by the agency. The hearing officer may issue subpoenas in accordance with KRS 13B.080(3).

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

(4) Decisions in administrative hearings shall be based on a preponderance of evidence in the record as it relates to the substantial impairment. The party's burden of proof shall be assigned as established in KRS 13B.090(7).

(a) For determinations pursuant to KRS 61.598(2), the agency shall bear the burden of proof to show the propriety of the agency's final determination that the member's creditable compensation should be reduced and that no exception as set forth in KRS 61.598(4) applies.

(b) For determinations pursuant to KRS 61.598(5), the employer shall bear the burden of proof to show that the increase in the employee's creditable compensation was the result of a bona fide promotion or career advancement.

(5)(a) The hearing officer may place the case on hold to allow either party additional time to submit further evidence discussed at the hearing. If this occurs, a deadline to file the additional evidence shall be provided by the hearing officer.

(b) The hearing officer may schedule a status conference to follow up on cases held for further evidence.

Section 11. Close of Evidentiary Record.

(1) The hearing officer shall close the evidentiary record once all evidence has been filed.

(2) After the evidentiary record has been closed, the hearing officer or DAC/AAC may order the evidentiary record reopened for the submission of additional evidence.

Section 12. Briefing Order.

(1)(a) After the close of the evidentiary record, each party shall have the opportunity to simultaneously file Position Statements. The parties shall further have the opportunity to simultaneously file a Reply Position Statement to the other party's Position Statement.

(b) The hearing officer shall issue a Briefing Order that details deadlines for filing each of the following:

1. Position Statements;
2. Reply Position Statements; and

3. The Recommended Order, the due date for which shall not exceed sixty (60) calendar days from the deadline for the Reply Position Statements.

(2) The hearing officer shall take the Position Statements and Reply Position Statements provided in accordance with subsection (1) of this section into consideration when completing the Recommended Order in accordance with Section 13 of this administrative regulation.

Section 13.[Section 5-] Recommended Order.

(1)(a) The hearing officer shall submit a Recommended Order to the board that contains a recitation of the evidence, the appropriate findings of fact, and conclusions of law.

(b) The hearing officer's findings of fact and conclusions of law shall be based upon the evidentiary record as a whole.

(c) The hearing officer's findings of fact shall include a finding concerning the credibility of each witness whose testimony is

included in the evidentiary record.[The hearing officer shall make a report and a recommended order to the board. The report and recommended order shall contain the appropriate findings of fact and conclusions of law. The hearing officer shall mail postage prepaid, a copy of his report and recommended order to all parties. The parties may file exceptions to the report and recommended order. There shall be no other or further submissions.]

(2)(a) The agency's Executive Director of the Office of Benefits shall approve or deny hearing officer requests for an extension time to file his or her Recommended Order.

(b) If any extension of time is granted for a hearing officer to complete his or her Recommended Order, the agency shall notify the claimant or his or her legal representative when the extension is granted. Each extension shall not exceed thirty (30) calendar days. The hearing officer may request multiple extensions in the same administrative case.

(3) A copy of the hearing officer's Recommended Order shall be mailed by first-class U.S. mail or, if permitted by law, electronically mailed through the agency portal to all parties.

(4) Each party may file written exceptions to the Recommended Order detailing any issue the party has with the Recommended Order no later than the end of day fifteen (15) calendar days from the date the Recommended Order was mailed by first class U.S. mail or, if permitted by law, electronically mailed through the agency portal.

Section 14.[Section 6-] Board Findings.

(1) The DAC and AAC shall have the authority to act upon the Recommended Order on behalf of the board pursuant to this section and in accordance with KRS 13B.120, 61.615, 61.645, 61.665, 78.545, 78.5528, and 78.782.[The board shall consider an act on the recommended order in accordance with KRS 13B.120-]

(2)(a) The DAC or AAC shall have ninety (90) calendar days from the date of the Recommended Order to provide a Final Order of the board.

(b) A Final Order of the board shall be based on substantial evidence appearing in the record as a whole and shall set forth the decision of the board and the facts and law upon which the decision is based.

(c) The DAC or AAC shall act in accordance with KRS 13B.120 regarding the Recommended Order.

Section 15.[Section 7-] Notification of Findings.

(1) All parties shall be provided with the Final Order of the board.

(2)(a) The Final Order of the board shall be provided to the claimant or his or her legal representative by certified mail in accordance with KRS 13B.120. The agency shall immediately enter the fact of mailing in the record.

(b) Service by certified mail is complete upon delivery of the envelope. The return receipt shall be proof of the time, place, and manner of service. The agency shall document and file the return receipt when it is received.

(c) If the envelope is returned with an endorsement showing failure of delivery, that fact shall be documented in the record, and the returned envelope shall be filed in the record. The agency shall make at least one (1) additional attempt to provide the Final Order of the board to the affected person or his or her legal representative by certified mail documenting and filing the outcome in accordance with this subsection.[The system shall mail the final decision of the board to the affected person or his legal representative. If any extension of time is granted by the board for a hearing officer to complete his report, the system shall notify the affected person or his legal representative when the extension is granted.]

Section 8. A final order of the board shall be based on substantial evidence appearing in the record as a whole and shall set forth the decision of the board and the facts and law upon which the decision is based.

Section 9. Formal hearings shall be held at the system's office in Frankfort unless another location is determined by the hearing officer.

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Section 10. All requests for a hearing pursuant to this section shall be made in writing.

Section 11. The board may establish an appeals committee whose members shall be appointed by the chairman and who shall have the authority to act upon the recommendations and reports of the hearing officer pursuant to this section on behalf of the board.]

Section 16. Supplemental Copies of an Administrative Record.

(1) A claimant, or his or her attorney, may request a supplemental paper copy of all or part of the administrative record at a rate of ten (10) cents per page, cost of postage, and staff time to process the request consistent with KRS 61.874, if the claimant, or his or her attorney:

(a) Originally received a paper copy of the administrative record;

(b) Met an exemption to receive a paper copy of the administrative record under Section 3 of this administrative regulation; or

(c) No longer has access to the agency portal.

(2) The claimant, or his or her attorney, may request a supplemental copy of all or part of the administrative record on an approved data storage device. Supplemental copies shall be provided at the following rates, if the claimant, or his or her attorney met one of the requirements identified in subsection (1)(a)-(c) of this section:

(a) Ten (10) dollars for each approved data storage device;

(b) Cost of postage; and

(c) Staff time to process the request consistent with KRS 61.874.

(3)(a) The supplemental copy of the administrative record shall not be mailed or otherwise provided to the claimant, or his or her attorney, until the applicable fees described in subsection (1) or (2) of this section are paid in full.

(b) The agency shall provide the amount of the cost for the applicable supplemental copy in accordance with subsection (1) or (2) of this section to the claimant, or his or her attorney.

(c) Payment for the supplemental copy shall be made by check or money order for the full amount owed and made payable to the Kentucky State Treasurer. The payment shall be mailed or delivered in-person to the retirement office.

Section 17.[Section 12:] Judicial Review. Any affected person aggrieved by a Final Order[final order] of the board may seek judicial review after all administrative appeals have been exhausted by filing suit in the Franklin Circuit Court within the time period prescribed in KRS 13B.140.

[Section 13. Any proposed order or order shall be served by one (1) of the following methods:

(1) The system may place a copy of the document to be served in an envelope, and address the envelope to the affected person to be served at the address of the affected person existing in the system files or at the address set forth in written instructions furnished by the affected person or his legal representative. The system shall affix adequate postage and place the sealed envelope in the United States mail as certified mail return receipt requested. The system shall immediately enter the fact of mailing in the record and make entry when the return receipt is received. If the envelope is returned with an endorsement showing failure of delivery, that fact shall be entered in the record. The system shall file the return receipt or returned envelope in the record. Service by certified mail is complete upon delivery of the envelope. The return receipt shall be proof of the time, place, and manner of service.

(2) The system may cause the document, with necessary copies, to be transferred for service to any person authorized by the board or by any statute or rule to deliver them, who shall serve the documents, and the endorsed return shall be proof of the time and manner of service.

(3) The methods of service specified in this section shall be supplemental to and shall be accepted as an alternative to any other method of service specified by other applicable law.]

Section 18. Incorporation by Reference.

(1) Form 2940, "Agency Portal Exemption", updated June 2023, is incorporated by reference.

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

DAVID L. EAGER Executive Director

APPROVED BY AGENCY: September 28, 2023

FILED WITH LRC: September 29, 2023 at 2:55 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing to allow for public comment on this administrative regulation shall be held on December 21, 2023, at 10:00 a.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 December 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. 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.

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 administrative appeal procedures for an affected person whose retirement benefits have been denied, reduced, or discontinued.

(b) The necessity of this administrative regulation: This amended administrative regulation is necessary in order to include policy and procedures that were not found in the previous version, and to require the use of the agency portal except when an affected individual meets an exemption.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 61.505(1)(g) authorizes the Kentucky Public Pensions Authority to promulgate all administrative regulations on behalf of the Kentucky Retirement Systems and the County Employee Retirement System that are consistent with KRS 16.510 to 16.652, 61.510 to 61.705, and 78.510 to 78.852. KRS 61.645(16) and 78.782(16) provide that an affected person aggrieved by a decision of the system, which is not a determination relating to disability retirement benefits, may have the right to request an administrative hearing prior to the filing of an appeal in court. KRS 61.615(3), 61.665(3), 78.545 and 78.5528(3) provide that an affected person whose disability retirement benefits have been denied, reduced, or discontinued may have the right to request an administrative hearing prior to filing of an appeal in court.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This amended administrative regulation will allow KPPA to effectively administer administrative hearings through an electronic agency portal, and for affected individuals to have a clear set of procedures.

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

FISCAL NOTE

(a) How the amendment will change this existing administrative regulation: This amended administrative regulation is adds procedures that were not found in the previous version and details on the use and requirements of the agency portal.

(b) The necessity of the amendment to this administrative regulation: This amended administrative regulation is necessary in order to include policy and procedures that were not found in the previous version, and to require the use of the agency portal except when an affected individual meets an exemption.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 61.505(1)(g) authorizes the Kentucky Public Pensions Authority to promulgate all administrative regulations on behalf of the Kentucky Retirement Systems and the County Employee Retirement System that are consistent with KRS 16.510 to 16.652, 61.510 to 61.705, and 78.510 to 78.852. KRS 61.645(16) and 78.782(16) provide that an affected person aggrieved by a decision of the system, which is not a determination relating to disability retirement benefits, may have the right to request an administrative hearing prior to the filing of an appeal in court. KRS 61.615(3), 61.665(3), 78.545 and 78.5528(3) provide that an affected person whose disability retirement benefits have been denied, reduced, or discontinued may have the right to request an administrative hearing prior to filing of an appeal in court.

(d) How the amendment will assist in the effective administration of the statutes: This amended administrative regulation will assist in the effective administration of KRS 61.615(3), 61.645(16), 61.665(3), 78.545, 78.5528(3), and 78.782(16) by detailing the administrative appeals process and procedures, and by providing the requirements for the agency portal.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation does not affect businesses, organizations, or state and local governments except for the KPPA. It is unknown how many individuals this administrative regulation affects because it is unknown how many individuals will file an appeal in the future.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: KPPA already has the agency portal built and in use. KPPA is already in compliance with this amended administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Nothing.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The reduction of paper and cost of mailing.

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

(a) Initially: Minimal.

(b) On a continuing basis: Minimal.

(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: An increase in fees of funding will not be necessary to implement this amended administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation establishes fees for requested supplemental copies of an administrative record in certain instances.

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

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? None except KPPA.

(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) authorizes the Kentucky Public Pensions Authority to promulgate all administrative regulations on behalf of the Kentucky Retirement Systems and the County Employee Retirement System that are consistent with KRS 16.510 to 16.652, 61.510 to 61.705, and 78.510 to 78.852.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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? Minimal.

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

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? Unknown.

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

(c) How much will it cost the regulated entities for the first year? 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 (+/-): Unknown.

Expenditures (+/-): Unknown.

Other Explanation: This administrative regulation as amended allows for the KPPA to utilize an agency portal for electronic records and notifications to the affected persons, hearing officers, Administrative Appeals Committee, Disability Appeals Committee and internally, and therefore reduces the use of paper and cost of mailing documents.

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) 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
(Amendment)**

**105 KAR 1:270. Federal tax withholding or direct rollover of
[funds for] eligible distributions.**

RELATES TO: KRS 16.505, 16.578, 16.645, 61.505(1)(g)(f), 61.510, 61.625, 61.635, 61.640, 61.690, 78.510, 78.545, 26 U.S.C. 72(t), 401(a), 402

STATUTORY AUTHORITY: KRS 61.505(1)(g)(f)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 61.505(1)(g)(f) 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 16.510 to 16.652, 61.515 to 61.705, [16.510 to 16.652,] and 78.520 to 78.852. 26 U.S.C. 402 establishes the federal taxation requirements regarding direct rollovers of distributions and the withholding of federal income tax on distributions that are not rolled over to an IRA or other qualified plan. This administrative regulation establishes the procedure for informing affected members, beneficiaries, and alternate payees of their rights with regard to federal taxation rules and provides forms for members, beneficiaries, and alternate payees to indicate their preference for federal tax withholding or direct rollover of eligible distributions [funds]. This administrative regulation also establishes a procedure to issue a check to an alternate payee of a qualified domestic relations order if the alternate payee does not file the form required for federal income tax purposes [at the retirement office] within a reasonable time, and a procedure in the event that an alternate payee cannot be located.

Section 1. Definitions.

(1) "Beneficiary" means a person designated by the member in accordance with KRS 61.542 and 78.545 to receive any available benefits in the event of the member's death. The "beneficiary" may be different from the person designated as the death benefit beneficiary.

(2) "Death benefit beneficiary" means a person designated by the member in accordance with KRS 61.705 and 78.5538 to receive the five thousand dollar (\$5,000) death benefit in the event of the member's death. The "death benefit beneficiary" may be different from the person designated as the beneficiary.

(3) "Eligible beneficiary" means a person who:

(a) Meets the eligibility qualifications for in-line-of-duty death benefits as provided by KRS 16.601(1)-(3) and 78.5534(1)-(3) or duty-related death benefits as provided by KRS 61.621(3) and 78.545; and

(b) Elects, or has a parent or guardian who elects on his or her behalf, the payment option for benefits that includes the one-time payment of ten thousand dollars (\$10,000) in accordance with KRS 16.601(1)(b) or (3) and 78.5534(1)(b) or (3) or 61.621(3)(b) and 78.545. [Definitions contained in KRS 16.505, 61.510, and 78.510 shall apply to this administrative regulation.

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

(3) "File" means the following methods for delivering or submitting a form to the retirement office: mail, fax, secure email, in-person delivery, and upload via Self Service on the Web site maintained by the agency (if available).

(4) "Provide" means the following methods for the agency to make a form available to a member, beneficiary, or alternate payee: mail, fax, secure email, and upload via Self Service on the Web site maintained by the agency (if available).]

Section 2. Application for Refund of Accumulated Account Balance.

(1)(a) To apply for [receive] a refund of an accumulated account balance in accordance with KRS 61.625 and 78.545, a member shall complete and file [apply for a refund on] a valid Form 4525, Application for Refund of Member Contributions and Direct Rollover/Direct Payment Selection, selecting the option for payment.

(b) If the member intends to have the funds from the refund of an accumulated account balance rolled over directly into an IRA or other qualified plan, the member shall have the trustee or institution relevant to the IRA or other qualified plan complete the applicable section of the Form 4525, Application for Refund of Member Contributions and Direct Rollover/Direct Payment Selection, certifying that the rollover will be accepted.

(c) The employer(s) may complete the applicable portion of the Form 4525, Application for Refund of Member Contributions and Direct Rollover/Direct Payment Selection, verifying termination of employment.

(2) Upon request by the member, the agency shall provide the Form 4525, Application for Refund of Member Contributions and Direct Rollover/Direct Payment Selection, and [along with] a copy of the Special Tax Notice Regarding Payments, to the member.

(c) Additionally, the agency may make the Form 4525, Application for Refund of Member Contributions and Direct Rollover/Direct Payment Selection, along with a copy of the Special Tax Notice Regarding Payments, available on its Web site.

(2)(a) The member shall complete the Form 4525, Application for Refund of Member Contributions and Direct Rollover/Direct Payment Selection, and file it at the retirement office.

(b) If the member intends to have the funds rolled over directly into an IRA or other plan, the member shall have the trustee or institution complete the applicable section of the Form 4525, Application for Refund of Member Contributions and Direct Rollover/Direct Payment Selection, certifying that the rollover will be accepted.

(c) The employer(s) participating in the agency from which the member has terminated employment may complete the applicable portion of the Form 4525, Application for Refund of Member Contributions and Direct Rollover/Direct Payment Selection, verifying termination of employment.]

(3)(a) The refund of the accumulated account balance [contributions] shall not be processed unless the member is eligible to receive a refund pursuant to KRS 61.625 and 78.545 and the valid Form 4525, Application for Refund of Member Contributions and Direct Rollover/Direct Payment Selection, is filed [by the member at the retirement office].

(b) The refund of the accumulated account balance [contributions] shall not be processed earlier than forty-five (45) calendar days from the date of the member's termination of employment with the participating employer(s) that previously employed the member.

(c)1. The member's refund of the accumulated account balance shall not be processed if within forty-five (45) calendar days of the date of the member's termination of employment with the employer(s):

a. The member reemploys in any position, including a full-time, part-time, seasonal, temporary, emergency, interim, probationary, or intermittent position with one (1) or more employer(s) through which he or she has participated; or

b. The member participates in the system(s) from which his or her accumulated account balance refund has been requested.

2. A member whose accumulated account balance refund is not processed pursuant to subparagraph 1. of this paragraph may reapply for a refund in accordance with subsection (1) of this section if the member again becomes eligible to receive a refund of his or her accumulated account balance pursuant to KRS 61.625 and 78.545.

(4) The member shall be required to repay the accumulated account balance refund to the systems in compliance with KRS 61.685(1) and 78.545 if, at the time of the member's receipt of the accumulated account balance refund, the member is:

(a) Reemployed in any position, including a full-time, part-time, seasonal, temporary, emergency, interim, probationary, or

intermittent position, with one (1) or more employer(s) through which he or she participated; or

(b) Participating in the system from which the accumulated account balance refund was been requested.

Section 3. Required Form ~~for~~[following] Member Selection of an Actuarial Refund Retirement Payment Option, Lump-sum Refund of the accumulated account balance[Contributions], or Partial Lump-sum Retirement Payment Option.

(1)[(a)] Along with each [blank—]Form 6010, Estimated Retirement Allowance, the agency shall provide the member with the Form 6025, Direct Rollover/Direct Payment Election Form for a Member, Beneficiary, or Alternate Payee Regarding an Eligible Rollover Distribution, and[along with] the Special Tax Notice Regarding Payments[—to the member].

~~[(b) Additionally, the agency may make the Form 6025, Direct Rollover/Direct Payment Election Form for a Member, Beneficiary, or Alternate Payee Regarding an Eligible Rollover Distribution, along with a copy of the Special Tax Notice Regarding Payments, available on its Web site.]~~

(2)(a) If the member files a valid[completes the] Form 6010, Estimated Retirement Allowance, on which[and selects] an actuarial refund retirement payment option, lump-sum refund of the accumulated account balance[contributions], or partial lump-sum retirement payment option is selected, the member shall also file a valid[complete the] Form 6025, Direct Rollover/Direct Payment Election Form for a Member, Beneficiary, or Alternate Payee Regarding an Eligible Rollover Distribution, selecting the option for payment[—, and file both completed forms at the retirement office].

(b) If the member intends to have the funds rolled over directly into an IRA or other qualified plan, the member shall have the trustee or institution relevant to the IRA or other qualified plan complete the applicable section of the Form 6025, Direct Rollover/Direct Payment Election Form for a Member, Beneficiary, or Alternate Payee Regarding an Eligible Rollover Distribution, certifying that the rollover will be accepted.

(3) The agency shall not process payment of an actuarial refund retirement payment option, lump-sum refund of the accumulated account balance, or partial lump-sum retirement payment option to the member unless the following are on file:

(a) A valid Form 6010, Estimated Retirement Allowance, with the actuarial refund retirement payment option, lump-sum refund of the accumulated account balance, or partial lump-sum retirement option for payment selected; and

(b) A valid[The payment option selected by the member on the completed and filed Form 6010, Estimated Retirement Allowance, shall not be processed unless the completed] Form 6025, Direct Rollover/Direct Payment Election Form for a Member, Beneficiary, or Alternate Payee Regarding an Eligible Rollover Distribution[—is filed at the retirement office].

Section 4. Required Form ~~for~~[following] Beneficiary Selection of Lump-sum Payment Option or Sixty (60) Months Certain Payment Option, or if Beneficiary Eligible for Lump-sum Refund of the Accumulated Account Balance[Contributions] Only.

(1) Single beneficiary.

(a)1. Along with each Form 6010, Estimated Retirement Allowance, the agency shall provide the beneficiary with the Form 6025, Direct Rollover/Direct Payment Election Form for a Member, Beneficiary, or Alternate Payee Regarding an Eligible Rollover Distribution, and the Special Tax Notice Regarding Payments.[Upon receipt of a completed Form 6010, Estimated Retirement Allowance, on which the beneficiary of the deceased member has selected the lump-sum actuarial refund, lump-sum refund of the deceased member's accumulated account balance, or sixty (60) months certain payment option, the agency shall provide the Form 6025, Direct Rollover/Direct Payment Election Form for a Member, Beneficiary, or Alternate Payee Regarding an Eligible Rollover Distribution, along with the Special Tax Notice Regarding Payments, to the beneficiary of the deceased member.]

2. [(b)] If the beneficiary[of the deceased member] is only eligible for a lump-sum refund of the deceased member's accumulated account balance, the agency shall provide the Form 6025, Direct

Rollover, Direct Payment Election Form for a Member, Beneficiary, or Alternate Payee Regarding Eligible Rollover Distribution, and[along with] the Special Tax Notice Regarding Payments, to the beneficiary[~~of the deceased member~~].

~~[(c) Additionally, the agency may make the Form 6025, Direct Rollover/Direct Payment Election Form for a Member, Beneficiary, or Alternate Payee Regarding an Eligible Rollover Distribution, along with a copy of the Special Tax Notice Regarding Payments, available on its Web site.]~~

(b)1. [(2)]

(a) If the beneficiary files a valid Form 6010, Estimated Retirement Allowance, on which a lump-sum actuarial refund, lump-sum refund of the deceased member's accumulated account balance, or sixty (60) months certain payment option is selected, or if the beneficiary is only eligible for a lump-sum refund of the deceased member's accumulated account balance, the beneficiary shall also file a valid[The beneficiary of the deceased member shall complete the] Form 6025, Direct Rollover/Direct Payment Election Form for a Member, Beneficiary, or Alternate Payee Regarding an Eligible Rollover Distribution, selecting the option for payment[—, and file it at the retirement office].

2. [(b)] If the beneficiary[of the deceased member] intends to have the funds rolled over directly into an IRA or other qualified plan, the beneficiary[~~of the deceased member~~] shall have the trustee or institution relevant to the IRA or other qualified plan complete the applicable section of the Form 6025, Direct Rollover/Direct Payment Election Form for a Member, Beneficiary, or Alternate Payee Regarding an Eligible Rollover Distribution, certifying that the rollover will be accepted.

(c) The agency shall not process payment to the beneficiary of a lump-sum actuarial refund, lump-sum refund of the deceased member's accumulated account balance, or sixty (60) months certain payment option unless the following are on file:

1. A valid Form 6010, Estimated Retirement Allowance, with the actuarial refund retirement payment option, lump-sum refund of the accumulated account balance, or partial lump-sum retirement payment option selected; and

2. A valid Form 6025, Direct Rollover/Direct Payment Election Form for a Member, Beneficiary, or Alternate Payee Regarding an Eligible Rollover Distribution.

(2) Multiple beneficiaries.

(a) If there are multiple beneficiaries and the beneficiaries have elected a lump-sum actuarial refund, lump-sum refund of the deceased member's accumulated account balance, or sixty (60) months certain payment option, all beneficiaries must agree to the option for payment selected and file a single valid Form 6010, Estimated Retirement Allowance, indicating the selection agreed upon, and signed by all beneficiaries. Each beneficiary shall also file a valid Form 6025, Direct Rollover/Direct Payment Election Form for a Member, Beneficiary, or Alternate Payee Regarding an Eligible Rollover Distribution.

(b) If there are multiple beneficiaries and the beneficiaries are only eligible for a lump-sum refund of the deceased member's accumulated account balance, each beneficiary shall file a valid Form 6025, Direct Rollover/Direct Payment Election Form for a Member, Beneficiary, or Alternate Payee Regarding an Eligible Rollover Distribution.

(c) Any beneficiary that intends to have his or her portion of the funds rolled over directly into an IRA or other qualified plan shall have the trustee or institution relevant to the IRA or other qualified plan complete the applicable section of the Form 6025, Direct Rollover/Direct Payment Election Form for a Member, Beneficiary, or Alternate Payee Regarding an Eligible Rollover Distribution, certifying that the rollover will be accepted.

(d) The agency shall not process payment of a lump-sum actuarial refund, lump-sum refund of the deceased member's accumulated account balance, or sixty (60) months certain payment option to a beneficiary unless the following are on file for all beneficiaries:

1. A single valid Form 6010, Estimated Retirement Allowance, completed in accordance with paragraph (a) of this subsection, if applicable; and

2. A valid Form 6025, Direct Rollover/Direct Payment Election Form for a Member, Beneficiary, or Alternate Payee Regarding an Eligible Rollover Distribution, for each beneficiary completed in accordance with paragraphs (b) and (c) of this subsection.

(3) This section solely establishes the forms and requirements for beneficiaries related to direct rollovers of distributions and the withholding of federal income tax on distributions that are not rolled over to an IRA or other qualified plan. Beneficiaries subject to this section may also be subject to additional requirements under 105 KAR 1:180 and 105 KAR 1:240.

~~[(3)(a) The payment option selected by the beneficiary of the deceased member on a Form 6010, Estimated Retirement Allowance shall not be processed unless the completed Form 6025, Direct Rollover/Direct Payment Election Form for a Member, Beneficiary, or Alternate Payee Regarding an Eligible Rollover Distribution, is filed at the retirement office.~~

~~(b) If the beneficiary of the deceased member is only eligible for a lump-sum refund of the deceased member's accumulated account balance, payment to the beneficiary of the deceased member shall not be processed unless the completed Form 6025, Direct Rollover/Direct Payment Election Form for a Member, Beneficiary, or Alternate Payee Regarding an Eligible Rollover Distribution, is filed at the retirement office.]~~

Section 5. Required Form for Death Benefit Beneficiaries.

(1) Upon a member's death, the agency shall provide the Form 6025, Direct Rollover, Direct Payment Election Form for a Member, Beneficiary, or Alternate Payee Regarding Eligible Rollover Distribution, and the Special Tax Notice Regarding Payments, to the death benefit beneficiary.

(2)(a) The death benefit beneficiary shall file a valid Form 6025, Direct Rollover/Direct Payment Election Form for a Member, Beneficiary, or Alternate Payee Regarding an Eligible Rollover Distribution.

(b) If the death benefit beneficiary intends to have the funds rolled over directly into an IRA or other qualified plan, the death benefit beneficiary shall have the trustee or institution relevant to the IRA or other qualified plan complete the applicable section of the Form 6025, Direct Rollover/Direct Payment Election Form for a Member, Beneficiary, or Alternate Payee Regarding an Eligible Rollover Distribution, certifying that the rollover will be accepted.

(3) Payment to the death benefit beneficiary shall not be processed unless the member is deceased and the valid Form 6025, Direct Rollover/Direct Payment Election Form for a Member, Beneficiary, or Alternate Payee Regarding an Eligible Rollover Distribution, is filed.

(4) This section solely establishes the forms and requirements for death benefit beneficiaries related to direct rollovers of distributions and the withholding of federal income tax on distributions that are not rolled over to an IRA or other qualified plan. Death benefit beneficiaries subject to this section may also be subject to additional requirements under 105 KAR 1:240.

Section 6. Required Form for Eligible Beneficiaries.

(1) The agency shall provide the Form 6025, Direct Rollover, Direct Payment Election Form for a Member, Beneficiary, or Alternate Payee Regarding Eligible Rollover Distribution, and the Special Tax Notice Regarding Payments, to the eligible beneficiary.

(2)(a) The eligible beneficiary shall file a valid Form 6025, Direct Rollover/Direct Payment Election Form for a Member, Beneficiary, or Alternate Payee Regarding an Eligible Rollover Distribution.

(b) If the eligible beneficiary intends to have the funds rolled over directly into an IRA or other qualified plan, the eligible beneficiary shall have the trustee or institution relevant to the IRA or other qualified plan complete the applicable section of the Form 6025, Direct Rollover/Direct Payment Election Form for a Member, Beneficiary, or Alternate Payee Regarding an Eligible Rollover Distribution, certifying that the rollover will be accepted.

(3) Payment to the eligible beneficiary shall not be processed unless the member is deceased and the valid Form 6025, Direct Rollover/Direct Payment Election Form for a Member, Beneficiary, or Alternate Payee Regarding an Eligible Rollover Distribution, is filed.

(4) This section solely establishes the forms and requirements for eligible beneficiaries related to direct rollovers of distributions and the withholding of federal income tax on distributions that are not rolled over to an IRA or other qualified plan. Eligible beneficiaries subject to this section may also be subject to additional requirements under 105 KAR 1:457.

Section 7.[Section 5.] Required Form for Alternate Payee who is Eligible for Actuarial Refund or Partial Lump-sum Payment Option, or Eligible for a Portion of the Lump-sum Refund, Partial Lump-sum, or Actuarial Refund Retirement Payment Option selected by the Member.

(1)[(a)] If the alternate payee is eligible for a lump-sum portion of the member's accumulated account balance[contributions], actuarial refund, or partial lump-sum payment option pursuant to a qualified domestic relations order, or an actuarial refund or partial lump-sum payment option pursuant to a qualified domestic relations order, the agency shall provide the Form 6025, Direct Rollover/Direct Payment Election Form for a Member, Beneficiary, or Alternate Payee Regarding an Eligible Rollover Distribution, and[along with] the Special Tax Notice Regarding Payments, to the alternate payee.

[(b) If the alternate payee is eligible for an actuarial refund or partial lump-sum payment option pursuant to a qualified domestic relations order, the agency shall provide a Form 6025, Direct Rollover/Direct Payment Election Form for a Member, Beneficiary, or Alternate Payee Regarding an Eligible Rollover Distribution, along with the Special Tax Notice Regarding Payments, to the alternate payee.

(c) Additionally, the agency may make the Form 6025, Direct Rollover/Direct Payment Election Form for a Member, Beneficiary, or Alternate Payee Regarding an Eligible Rollover Distribution, along with a copy of the Special Tax Notice Regarding Payments, available on its Web site.]

(2)(a) To receive a lump-sum portion of the member's accumulated account balance, actuarial refund, or partial lump-sum payment option pursuant to a qualified domestic relations order, or to receive an actuarial refund or partial lump-sum payment pursuant to a qualified domestic relations order, the[The] alternate payee shall file a valid[complete the] Form 6025, Direct Rollover/Direct Payment Election Form for a Member, Beneficiary, or Alternate Payee Regarding an Eligible Rollover Distribution[, and file it at the retirement office].

(b) If the alternate payee intends to have the funds described in paragraph (2)(a) of this subsection rolled over directly into an IRA or other qualified plan, the alternate payee shall have the trustee or institution relevant to the IRA or other qualified plan complete the applicable section of the Form 6025, Direct Rollover/Direct Payment Election Form for a Member, Beneficiary, or Alternate Payee Regarding an Eligible Rollover Distribution, certifying that the rollover will be accepted.

(3) The payment to an alternate payee of an actuarial refund or lump-sum refund pursuant to a qualified domestic relations order, or a portion of the member's accumulated account balance, actuarial refund, or partial lump-sum payment option[, pursuant to the qualified domestic relations order shall not be processed until the valid[completed] Form 6025, Direct Rollover/Direct Payment Election Form for a Member, Beneficiary, or Alternate Payee Regarding an Eligible Rollover Distribution, is filed[at the retirement office].

(4)(a) If the alternate payee does not file[at the retirement office] the valid Form 6025, Direct Rollover/Direct Payment Election Form for a Member, Beneficiary, or Alternate Payee Regarding an Eligible Rollover Distribution, by the end of day[within] thirty (30) calendar days from[of receipt of] the date the form and the Special Tax Notice Regarding Payments were provided to the alternate payee, the alternate payee's payment shall be processed and treated for federal income tax purposes as if the alternate payee had made an election to directly receive the funds instead of rolling over the payment to an IRA or other qualified plan.

(b)1. The agency shall hold the amount payable to the alternate payee under this section for at least 180 calendar days after the payment becomes payable.

2.[4.] The agency shall make all reasonable efforts to locate the alternate payee during the 180 calendar days, and shall make payment to the alternate payee if he or she is located within that period.

3.[2.] If the alternate payee has not been located during the time period described in subparagraph 1. of this paragraph[within 180 days after the alternate payee's payment becomes payable] and the agency has exhausted all reasonable efforts to locate the alternate payee, the agency shall pay the payment held to the member and shall assign the federal tax liability for this payment to the member. Interest shall not accrue on this lump-sum payment during the 180 calendar day period or thereafter. If the alternate payee is subsequently located, any amounts already paid to the member shall no longer be payable to the alternate payee.

Section 8.[Section 6.] Optional Form for Qualified Public Safety Employee electing to receive an Actuarial Refund Retirement Payment Option, Lump-sum Refund, Partial Lump-sum Refund, or Ten (10) Year Certain Retirement Payment Option.

(1) A member who was last employed as a "qualified public safety employee" as defined in 26 U.S.C. Internal Revenue Code, Section 72(t), and who is electing to receive an actuarial refund, lump-sum refund of the accumulated account balance, partial lump-sum refund, or the ten (10) years certain option, shall not be subject to the ten (10) percent early distribution tax penalty [if electing to receive an actuarial refund, lump-sum refund, partial lump-sum refund, or the ten (10) years certain option] if the member files the following valid[completed] forms[at the retirement office]:

(a) The Form 4527, "Certification by a "Qualified Public Safety Employee" and Request for an Exception to the 10% Early Distribution Penalty in IRC 72(t); and

(b) The Form 4525, "Application for Refund of Member Contributions and Direct Rollover/Direct Payment Selection, or the Form 6025, "Direct Rollover/Direct Payment Election Form for a Member, Beneficiary, or Alternate Payee Regarding an Eligible Rollover Distribution.

(2)[(a)] Upon request by the member, the agency shall provide the Form 4527, "Certification by a "Qualified Public Safety Employee" and Request for an Exception to the 10% Early Distribution Penalty in IRC 72(t), to the member.

[(b)] Additionally, the agency may make the Form 4527, "Certification by a "Qualified Public Safety Employee" and Request for an Exception to the 10% Early Distribution Penalty in IRC 72(t), available on its Web site.]

Section 9. Optional Form for Greater Federal Tax Withholding.

(1)(a) If the member does not elect to have the refund of the accumulated account balance rolled over directly into an IRA or other qualified plan, except as provided in paragraph (b) of this subsection, twenty (20) percent for federal taxes shall be withheld from funds paid to a member who files a valid Form 4525, "Application for Refund of Member Contributions and Direct Rollover/Direct Payment Selection, in accordance with Section 2 of this administrative regulation.

(b) If the member wants to withhold more than the mandatory twenty (20) percent of the funds for federal taxes, the member shall file a valid Form 6028, "Withholding Certificate for Nonperiodic Payments and Eligible Rollover Distributions.

(2)(a) If the member, beneficiary, death benefit beneficiary, eligible beneficiary, or alternate payee does not elect to have the funds rolled over directly into an IRA or other qualified plan, except as provided in paragraph (b) of this subsection, twenty (20) percent for federal taxes shall be withheld from funds paid to the member, beneficiary, or alternate payee who files a valid Form 6025, "Direct Rollover/Direct Payment Election Form for a Member, Beneficiary, or Alternate Payee Regarding an Eligible Rollover Distribution, in accordance with Sections 3 through 7 of this administrative regulation.

(b) If the member, beneficiary, death benefit beneficiary, eligible beneficiary, or alternate payee wants to withhold more than the mandatory twenty (20) percent of the funds for federal taxes, the member, beneficiary, or alternate payee shall file a valid Form 6028, "Withholding Certificate for Nonperiodic Payments and Eligible

Rollover Distributions.

(c) If an invalid, incomplete, or incorrect Form 6028, "Withholding Certificate for Nonperiodic Payments and Eligible Rollover Distributions," is filed, the agency shall notify the person who filed the incomplete or incorrect Form 6028 that he or she has until the end of day forty-five (45) calendar days from the date of notification to file a corrected valid Form 6028, or the funds will be paid with the regular twenty (20) percent withholding for federal taxes.

Section 10.[Section 7.] Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Special Tax Notice Regarding Payments", July 2023;

(b) Form 4525, "Application for Refund of Member Contributions and Direct Rollover/Direct Payment Selection", April[February] 2021;

[(b)] "Special Tax Notice Regarding Payments", February 2021-;]

(c) Form 4527, "Certification by a "Qualified Public Safety Employee" and Request for an Exception to the 10% Early Distribution Penalty in IRC 72(t)", September 2023;

(d) Form 6010, "Estimated Retirement Allowance", April[February] 2021;

(e)[(d)] Form 6025, "Direct Rollover/Direct Payment Election Form for a Member, Beneficiary, or Alternate Payee Regarding an Eligible Rollover Distribution", April[February] 2021; and

(f) Form 6028, "Withholding Certificate for Nonperiodic Payments and Eligible Rollover Distributions", November 2022.

[(e)] Form 4527, "Certification by a "Qualified Public Safety Employee" and Request for an Exception to the 10% Early Distribution Penalty in IRC 72(t)", February 2021-.]

(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 a.m. to 4:30 p.m., or on the agency's Web site at kyret.ky.gov.

DAVID L. EAGER, Executive Director

APPROVED BY AGENCY: September 28, 2023

FILED WITH LRC: September 29, 2023 at 2:55 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing to allow for public comment on this administrative regulation shall be held on Thursday, December 21, 2023, at 10:00 a.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 December 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. 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.

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 procedure for informing affected members, beneficiaries, and alternate payees of their rights with regard to federal

taxation rules and provides forms for members, beneficiaries, and alternate payees to indicate their preference for federal tax withholding and/or direct rollover of funds. This administrative regulation also establishes a procedure to issue a check to an alternate payee of a qualified domestic relations order if the alternate payee does not file the form required for federal income tax purposes within a reasonable time, and a procedure for the event that an alternate payee cannot be located.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the procedure for informing affected members, beneficiaries, and alternate payees of their rights with regard to federal taxation rules and provides forms for members, beneficiaries, and alternate payees to indicate their preference for federal tax withholding or direct rollover of funds. This administrative regulation also is necessary to establish a procedure to issue a check to an alternate payee of a qualified domestic relations order if the alternate payee does not file the form required for federal income tax purposes within a reasonable time, and a procedure for the event that an alternate payee cannot be located.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the authorizing statute because it is necessary to carry out the provisions of KRS 16.510 to 16.652, 61.515 to 61.705, and 78.520 to 78.852 in accordance with KRS 61.505(1)(g).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the procedures and forms necessary to carry out the provisions of KRS 16.510 to 16.652, 61.515 to 61.705, and 78.520 to 78.852, and assists the Kentucky Public Pensions Authority, Kentucky Retirement Systems, and County Employees Retirement System with ensuring compliance with federal law.

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

(a) How the amendment will change this existing administrative regulation: The amendment removes language stating that the material incorporated by reference is available on the Kentucky Public Pensions Authority's website, as this is redundant in light of the current KRS Chapter 13A requirement that all material incorporated by reference be available on an agency's website. Additionally, the amendment incorporates a new form (Form 6028, Withholding Certificate for Nonperiodic Payments and Eligible Rollover Distributions), an updated notice (Special Tax Notice), and an updated form (Form 4527, Certification by a "Qualified Public Safety Employee" and Request for an Exception to the 10% Early Distribution Penalty in IRC 72(t)). The amendment also clarifies the existing administrative regulation.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to incorporate a new form (Form 6028, Withholding Certificate for Nonperiodic Payments and Eligible Rollover Distributions), an updated notice (Special Tax Notice), and an updated form (Form 4527, Certification by a "Qualified Public Safety Employee" and Request for an Exception to the 10% Early Distribution Penalty in IRC 72(t)). The amendment also is necessary to clarify the existing administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the authorizing statute because it is necessary to carry out the provisions of KRS 16.510 to 16.652, 61.515 to 61.705, and 78.520 to 78.852 in accordance with KRS 61.505(1)(g).

(d) How the amendment will assist in the effective administration of the statutes: The amendment establishes the procedures and forms necessary to carry out the provisions of KRS 16.510 to 16.652, 61.515 to 61.705, and 78.520 to 78.852, and assists the Kentucky Public Pensions Authority, Kentucky Retirement Systems, and County Employees Retirement System with ensuring compliance with federal law.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Three (3) state government entities are affected: the Kentucky Public Pensions Authority, the Kentucky Retirement Systems, and the County Employees Retirement System. An unknown number of individuals (the members, beneficiaries, and alternate payees of the Kentucky Retirement Systems and the County

Employees Retirement System) are affected.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: None. The Kentucky Public Pensions Authority, the Kentucky Retirement Systems, and the County Employees Retirement System are each already compliant with this amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no additional cost of compliance with this amendment. The Kentucky Public Pensions Authority, the Kentucky Retirement Systems, and the County Employees Retirement System are each already compliant with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The benefit accruing to the Kentucky Public Pensions Authority, the Kentucky Retirement Systems, and the County Employees Retirement System through this amendment is continued compliance with state and federal law.

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

(a) Initially: None.

(b) On a continuing basis: 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: 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: No fees are established or increased.

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

FISCAL NOTE

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

(a) How much 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? Negligible.

(d) How much will it cost to administer this program for subsequent years? 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 (+/-): Negligible

Other Explanation: The Kentucky Public Pensions Authority, the Kentucky Retirement Systems, and the County Employees Retirement System are each already compliant with this amendment.

(4) Estimate the effect of this 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? Negligible.

(d) How much will it cost the regulated entities for subsequent years? Negligible.

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 (+/-): Negligible.

Other Explanation: The Kentucky Public Pensions Authority, the Kentucky Retirement Systems, and the County Employees Retirement System are each already compliant with this amendment.

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)]. This amendment will not have a major economic impact because there will not be a five hundred thousand dollar (\$500,000) or more economic impact on the Kentucky Public Pensions Authority, the Kentucky Retirement Systems, or the County Employees Retirement System as a result of this amendment.

BOARDS AND COMMISSIONS **Kentucky Board of Pharmacy** **(Amendment)**

201 KAR 2:165. Transfer of prescription information.

RELATES TO: KRS 217.215(2), 315.191(1)(f), 21 C.F.R. 1306.08, 1306.25

STATUTORY AUTHORITY: KRS 217.215(2), 315.191(1)(a), (f)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 315.191(f) authorizes the Board of Pharmacy to promulgate administrative regulations to control the transfer of prescription drug orders between pharmacists and pharmacies. This administrative regulation establishes the procedures by which a prescription may be transferred between pharmacies in the Commonwealth or between a pharmacy and an establishment located in a state or United States Territory or District outside the Commonwealth and similarly credentialed as a pharmacy by that state or U.S. Territory or District for the purpose of dispensing.

Section 1. (1) The transfer of prescription information for any noncontrolled substance prescription for the purpose of new or refill dispensing may occur if:

(a) It is orally communicated directly between two (2) pharmacists or pharmacist interns in the Commonwealth or between a pharmacist and an individual located in a state or U.S. Territory or District outside the Commonwealth and similarly credentialed as a pharmacist by that state or U.S. Territory or District;

(b) It is made through an online real-time computer system that provides documentation of the presence of a pharmacist or an individual located in a state or U.S. Territory or District outside the Commonwealth and similarly credentialed as a pharmacist by that state or U.S. Territory or District when the information is transferred;

(c) It is made through the use of a facsimile machine and all the information required by this administrative regulation is provided to the sending and receiving pharmacist or an individual located in a state or U.S. Territory or District outside the Commonwealth and similarly credentialed as a pharmacist by that state or U.S. Territory or District; or

(d) It is made through the use of voice recording technology and all information required by this administrative regulation is provided to the sending and receiving pharmacist or an individual located in a state or U.S. Territory or District outside the Commonwealth and

similarly credentialed as a pharmacist by that state or U.S. Territory or District.

(2) If in the Commonwealth the transferring pharmacist shall record the following information:

(a) That the prescription is void;

(b) The name and address of the pharmacy or the establishment located in a state or U.S. Territory or District outside the Commonwealth that is similarly credentialed as a pharmacy by that state or U.S. Territory or District to which it was transferred and the name of the pharmacist or the individual located in a state or U.S. Territory or District outside the Commonwealth that is similarly credentialed as a pharmacist by that state or U.S. Territory or District receiving the prescription information; and

(c) The date of the transfer and the name of the pharmacist transferring the information.

(3) If in the Commonwealth the pharmacist receiving the transferred prescription shall record the following information:

(a) That the prescription is a transfer;

(b) The date of issuance of the original prescription;

(c) The refill authorization on the original prescription;

(d) The date of original dispensing, if applicable;

(e) The refill authorization remaining and the date of the last refill if applicable;

(f) The name and address of the pharmacy or the establishment located in a state or U.S. Territory or District outside the Commonwealth that is similarly credentialed as a pharmacy by that state or U.S. Territory or District and the original prescription number from which the prescription was transferred; and

(g) The name of the transferor pharmacist or the individual located in a state or U.S. Territory or District outside the Commonwealth that is similarly credentialed as a pharmacist by that state or U.S. Territory or District.

(4) Both the original prescription and the transferred prescription shall be maintained for a period of five (5) years from the date of the last refill.

(5) Pharmacies electronically accessing the same prescription record shall satisfy all information of a manual mode for a prescription transfer.

Section 2. (1) The transfer for an initial or new dispensing of an electronic of prescription for schedules II-V [information for a controlled substance prescription, except a Schedule II controlled substance, for the purpose of refill dispensing] may occur if the transfer complies with the requirements of 21 C.F.R. 1306.08[24 C.F.R. 1306.25].

(2) The transfer of prescription information for a controlled substance prescription for schedule III, IV, and V for the purposes of refill dispensing may occur if the transfer complies with the requirements of 21 C.F.F. 1306.25.

(3) Transfers The recordkeeping requirements in 201 KAR 2:171, Section 1

Section 3. Pharmacies shall maintain documentation, as required in 201 KAR 2:171, of transferred prescriptions for a period of five (5) years.

Section 4. Violation of a provision of this administrative regulation may constitute unethical or unprofessional conduct in accordance with KRS 315.121(2)(d), (f), and (g).

CHRISTOPHER HARLOW, Executive Director

APPROVED BY AGENCY: October 10, 2023

FILED WITH LRC: October 11, 2023 at 3:22 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 21, 2023, at 10:00 a.m. Eastern Time via zoom teleconference. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written

request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through December 31, 2023. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Christopher Harlow, Executive Director, Kentucky Board of Pharmacy, 125 Holmes Street, Suite 300, State Office Building Annex, Frankfort, Kentucky 40601, phone (502) 564-7910, fax (502) 696-3806, email Christopher.harlow@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Christopher Harlow

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for transferring prescription records for both controlled and non-controlled substances.

(b) The necessity of this administrative regulation: KRS 315.191(1)(a) authorizes the Board of Pharmacy to promulgate administrative regulations with minimum requirements for pharmacies to operate.

(c) (c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes the requirements for transferring prescription information.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes rules for the transfer of prescription information, as required when a patient wishes to have a different pharmacy from the originating pharmacy dispense their prescription drug order.

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

(a) How the amendment will change this existing administrative regulation: This amendment only clarifies, in accordance with new federal regulation, when controlled substances may be transferred and the rules around those transfers.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to ensure clarity on what is authorized amidst a change in federal law.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 315.191(1)(a) authorizes the board to promulgate administrative regulations pertaining to pharmacists and pharmacies.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will further promote, preserve, and protect public health through effective regulation of pharmacists and pharmacies by ensuring state law clearly demonstrates what is authorized under the application of the federal rule.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The board anticipates pharmacies and pharmacists will be affected minimally by this regulation amendment.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Pharmacies and pharmacists will have to familiarize themselves with amended language. The board will help to educate pharmacists and pharmacies in these changes.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Clarity about what is permitted for transfer of controlled substances.

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

(a) Initially: No costs will be incurred.

(b) On a continuing basis: No costs will be incurred.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Board revenues from pre-existing fees provide the funding to enforce the regulation.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied because the regulation is applicable to all special limited medical gas permit holders.

FISCAL NOTE

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 315.191(1)(a).

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

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

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

(c) How much will it cost to administer this program for the first year? This program does not contain a cost.

(d) How much will it cost to administer this program for subsequent years? It is built into operation of board operations and will not increase cost.

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

Revenues (+/-): n/a

Expenditures (+/-): n/a

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? Nothing.

(d) How much will it cost the regulated entities for subsequent years? Nothing.

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

Cost Savings (+/-): 0

Expenditures (+/-): 0

Other Explanation:

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated

entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] This regulation does not have major economic impact.

**KENTUCKY BOARD OF EMERGENCY MEDICAL SERVICES
(Amendment)**

202 KAR 7:030. Fees of the board.

RELATES TO: KRS 311A.145

STATUTORY AUTHORITY: KRS 311A.145

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311A.145 authorizes the board to promulgate administrative regulations establishing a reasonable schedule of fees for examinations, licensure, certification, inspections, applications, and other provided services and materials. This administrative regulation establishes those fees.

Section 1. Definitions. As used in this administrative regulation, the following terms have the following meanings:

(1) "Critical violation" means an inspection deficiency listed in the current Agency License & Vehicle Inspection Critical Violation List.

(2) "Non-critical violation" means any inspection deficiency that is not a critical violation as defined by subsection (1) of this section. [The skills evaluation fee shall be fifty (50) dollars. This fee shall be required of students from all disciplines.]

Section 2. EMS-TEI.

(1) EMS-TEI Initial Application fee shall be \$500. [This fee includes the licensing fee for the initial five (5)-year period.]

(2) EMS-TEI Renewal licensing of all levels shall be \$250 [\$500 which shall be valid for subsequent five (5)-year periods].

(3) In addition to the licensing fee, an EMS-TEI shall remit an additional fee for each course taught which has the potential to lead to state or national certification or licensure as follows:

(a) Emergency Medical [First] Responder [or First Responder] - \$100 [Fifty (50) dollars];

(b) Emergency Medical Technician [—or— EMT—Basic] - \$150 [Seventy (75) dollars];

(c) Advanced Emergency Medical Technician [—Advanced] - \$200 [\$150]; and

(d) Paramedic - \$300 [\$200].

[Section 3. Issuance of Certificates and Licenses.

(1) The certificate or license or EMS instructor application fee shall be ten (10) dollars.

(2) First responder initial certification fee shall be fifteen (15) dollars.

(3) EMT initial certification fee shall be thirty (30) dollars.

—(4) Advanced EMT initial certification fee shall be fifty (50) dollars.

(5) Paramedic initial licensure fee shall be sixty-five (65) dollars.

(6) Level I or II EMS instructor initial certification fee shall be eighty-five (85) dollars.

(7) Level III EMS instructor initial certification fee shall be eighty-five (85) dollars.

Section 3. [Section —4.] Certification and License Renewal. [Recertification and Relicensure.]

(1) EMR certification renewal [First responder recertification] fee shall be fifteen (15) dollars.

(2) EMT certification renewal [recertification] fee shall be twenty-five (25) dollars.

(3) AEMT certification renewal [Advanced EMT recertification] fee shall be forty (40) dollars.

(4) Paramedic license renewal [relicensure] fee shall be fifty (50) dollars. A paramedic shall not be required to pay the fee established in subsection (2) of this section.

(5) Advanced practice paramedic certification renewal fee shall be ten (10) dollars for each specialty certification.

(6) [(5)] EMS Educator certification renewal [Level III EMS

instructor recertification] fee shall be sixty (60) [ninety (90)] dollars. An EMS Educator shall not be required to pay the fees established in subsections (1) through (4) of this section.

[(6) Level I and II EMS instructors recertification fee shall be seventy (70) dollars.

(7) The recertification fee for an individual recertifying as a Level I, II, and III EMS Instructor shall be \$135.]

Section 4. Certification and License Reciprocity and Reinstatement.

(1) The fee for a reciprocal certification or license shall be \$100. A paramedic seeking reciprocity as an Advanced Practice Paramedic shall only be required to pay the \$100 fee for a reciprocal paramedic license. A reciprocity fee for an Advanced Practice Paramedic license or certification shall not be required.

(2) The fee to reinstate a certification or license shall be \$100.

[Section 5. Application for reciprocity or for a temporary certificate for all levels shall include a fee of \$125. This fee shall be in addition to the application fee and initial certification fee for each level.]

Section 5. [Section 6.] Ground Ambulance Service Licensing and License Renewal [Relicensing].

(1) Initial prelicense fee, to establish compliance with 202 KAR 7:501 shall be \$3,000 [\$2,500].

(2) Transfer of license fee shall be \$3,000 [\$1,500 dollars].

[(3) Additional units requiring inspection in excess of the five (5) units noted in subsection (4) of this section, and which are located at the same location shall be inspected for a fee of thirty (30) dollars each.]

[(3) [(4)] License renewal [Relicensure] fee [for up to, and including, the inspection of five (5) licensed units] shall be \$500.

(4) Inspection fee shall be fifty (50) dollars for each ambulance.

(5) Each [Reinspection required as the result of a] cited deficiency shall be a fee of \$100 per non-critical violation and \$500 per critical violation. [\$100 per cited deficiency. The maximum penalty shall not exceed the sum of \$500.]

(6) Inspection of additional or replacement ambulances [units] for an existing license [if inspected at the provider's site] shall be a fee of \$150 per ambulance [unit and if inspected at the inspector's site shall be a fee of \$100 per unit].

Section 6. [Section 7.] Administrative Fees.

(1) Late fee shall be \$100 [fifty (50) dollars] for any certification or license renewal [recertification or relicensure] applicant or any official document required to be received by the KBEMS office, which is postmarked after the due date or expiration date.

(2) A request for license or certification verification or other request for documentation to be forwarded to an out-of-state regulatory entity shall be \$100 dollars for each entity to which the verification or documentation is to be sent.

[(2) Duplicate card, certification, or license fee for each shall be twenty-five (25) dollars.

(3) Application for reinstatement for all levels shall be a fee of \$150. This fee is in addition to the application fee and initial certification fee for each level.]

Section 7. [Section 8.] Non-Transport Providers. [ALS Medical First Response Providers.]

(1) Initial license fee to establish compliance with 202 KAR 7:501 shall be \$3,000 [\$250].

(2) Transfer of license fee shall be \$3,000.

[(3) [(2)] License renewal fee [Relicensure inspection up to four (4) vehicles] shall be [a fee of] \$400 [\$200].

[(4) [(3)] Inspection fee [Each additional unit for inspection] shall be [a fee of] \$100 for each set of equipment [thirty (30) dollars].

(5) Each cited deficiency shall be a fee of \$100 per non-critical violation and \$500 per critical violation.

Section 8. [Section 9.] Air Ambulance Service Licensing and License Renewal [Relicensing].

(1) Initial prelicensing fee, to establish compliance with 202 KAR

7:510, shall be \$5,000.

(2) Transfer of license fee shall be ~~\$4,000~~[\$2,500].

(3) ~~License renewal~~[Relicensure] fee [for up to, and not including, the inspection of five (5) licensed aircraft] shall be \$1,000.

(4) ~~Inspection fee shall be \$400 dollars per air ambulance.~~[Reinspection required as the result of a cited deficiency shall be a fee of \$500 per cited deficiency. The maximum penalty shall not exceed \$2,500.]

(5) ~~Each cited deficiency~~[Inspection of additional or replacement units for an existing license] shall be a fee of ~~\$100 per non-critical violation and \$500 per critical violation~~[\$250 per unit and shall be inspected at the provider's site].

Section 9. Incorporation by Reference.

(1) "Agency License & Vehicle Inspection Critical Violation List", KBEMS OPS-11-1, available at kbems.ky.gov, is incorporated by reference.

(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, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available on the board's Web site at: kbems.ky.gov.

JOHN R. HOLDER, Chair

APPROVED BY AGENCY: October 10, 2023

FILED WITH LRC: October 12, 2023 at 3:15 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 21, 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 December 31, 2023. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: John K. Wood, Legal Counsel, Kentucky Board of Emergency Medical Services, 163 E. Main Street, Suite 200, Lexington, Kentucky 40507, phone (859) 225-4714, fax (859) 225-1493, email administrativeregulations@wgmfirm.com.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: John K. Wood

(1) Provide a brief summary of:

(a) What this administrative regulation does: KRS 311A.145 authorizes the Board to promulgate administrative regulations establishing a reasonable schedule of fees for examinations, licensure, certification, inspections, applications, and other provided services and materials. This administrative regulation establishes those fees.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the schedule of fees authorized by KRS 311A.145. This administrative regulation was certified in 2019, but has not been amended since 2009.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 311A.145 authorizes the Board to promulgate administrative regulations establishing a reasonable schedule of fees for examinations, licensure, certification, inspections, applications, and other provided services and materials. This administrative regulation conforms to the content of KRS 311A.145 by establishing fees for examinations, licensure, certification, inspections, applications, and other provided services and materials.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 311A.145 authorizes the Board to promulgate administrative regulations establishing a reasonable schedule of fees for examinations, licensure, certification, inspections, applications, and other provided services and materials. This administrative regulation will assist in the effective administration of this statute by establishing those fees.

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

(a) How the amendment will change this existing administrative regulation: This amendment changes the fees for examinations, licensure, certification, inspections, applications, and other services and materials provided by the Board. Specifically, this amendment increases most of the fees that agencies must pay, but either removes, retains, or decreases the existing fees for individual providers (*i.e.*, EMRs, EMTs, AEMTs, and paramedics).

(b) The necessity of the amendment to this administrative regulation: This administrative regulation has not been amended since 2009 and fee changes are necessary to promote the fiscal stability of the Board.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of KRS 311A.145 by establishing a reasonable schedule of fees for examinations, licensure, certification, inspections, applications, and other services and materials provided by the Board.

(d) How the amendment will assist in the effective administration of the statutes: KRS 311A.145 authorizes the Board to promulgate administrative regulations establishing a reasonable schedule of fees for examinations, licensure, certification, inspections, applications, and other provided services and materials. This amendment will assist in the effective administration of this statute by establishing those fees.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All Kentucky EMS agencies, applicants, and personnel 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 this amendment, all EMS agencies, applicants, and personnel will be required to pay the fees as established by this amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The costs to EMS agencies, applicants, and personnel will be the fees established by this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): All Kentucky EMS agencies, applicants, and personnel will benefit from the fiscal stability of the Board that the amended fees will promote and, as a result, the Board's ability to maintain its services to and regulatory oversight of EMS providers and personnel. Additionally, individual providers (*i.e.*, EMRs, EMTs, AEMTs, and paramedics) will benefit from the changes to existing fees for individual providers, which are either removed, retained, or decreased by this amendment.

(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 the funding to be used for the implementation and enforcement of this administrative regulation: No funding source is necessary to implement and enforce this administrative regulation.

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

amendment increases fees and increases in fees are necessary to implement this amendment.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation establishes fees for examinations, licensure, certification, inspections, applications, and other provided services and materials and directly increases certain fees as set forth in this amendment.

(9) TIERING: Is tiering applied? Tiering is not applied to this administrative regulation because this amendment applies to all Kentucky EMS agencies, applicants, and personnel.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The administrative regulation will impact all Kentucky EMS agencies, applicants, and providers.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 311A.145 authorizes the Board to promulgate administrative regulations establishing a reasonable schedule of fees for examinations, licensure, certification, inspections, applications, and other provided services and materials. This administrative regulation establishes those fees.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 is projected to increase the Board's revenue by approximately \$54,850 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 amendment is projected to increase the Board's revenue by approximately \$54,850 for each subsequent year.

(c) How much will it cost to administer this program for the first year? This administrative regulation will not impose any additional administrative costs on the Board.

(d) How much will it cost to administer this program for subsequent years? This administrative regulation will not impose any additional administrative costs on the Board.

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 is projected to increase the Board's annual revenue by approximately \$54,850.

Expenditures (+/-): This administrative regulation will impose additional costs on EMS agencies as set forth in this administrative regulation. The dollar amount of such expenditures will vary by provider.

Other Explanation: This amendment will decrease the costs to individual providers (*i.e.*, EMRs, EMTs, AEMTs, and paramedics).

(4) Estimate the effect of this 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. However, this amendment removes all initial licensure and certification fees for individual providers (*i.e.*, EMRs, EMTs, AEMTs, and paramedics). Additionally, this amendment either retains or decreases all other existing fees for individual providers.

(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. However, this amendment removes all initial licensure and certification fees for individual providers (*i.e.*, EMRs, EMTs, AEMTs, and paramedics). Additionally, this amendment either retains or

decreases all other existing fees for individual providers.

(c) How much will it cost the regulated entities for the first year? The costs to regulated entities will vary by agency. For example, ground agencies seeking initial licensure will be required to pay \$3,000, a \$500 increase. This amendment does increase any costs to individual providers (*i.e.*, EMRs, EMTs, AEMTs, and paramedics).

(d) How much will it cost the regulated entities for subsequent years? The costs to regulated entities for subsequent years will vary by provider. However, the fees will remain the same each year until this administrative regulation is amended.

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 impose additional costs on EMS agencies as set forth in this amendment.

Other Explanation: For example, ground agencies seeking initial licensure will be required to pay \$3,000, a \$500 increase. This amendment does increase any costs to individual providers (*i.e.*, EMRs, EMTs, AEMTs, and paramedics).

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five 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 as defined by KRS 13A.010(13). This administrative regulation currently generates revenue for the Board in excess of \$500,000 annually. This amendment is projected to increase the Board's annual revenue by approximately \$54,850. These funds are supplied by the regulated entities as fees for examinations, licensure, certification, inspections, applications, and other services and materials provided by the Board.

TOURISM, ARTS AND HERITAGE CABINET Department of Fish and Wildlife Resources (Amendment)

301 KAR 2:030. Commercial guide license.

RELATES TO: KRS 150.170, 150.412, 164.772

STATUTORY AUTHORITY: KRS 150.025, 150.175(11), 150.190

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025 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 statewide or to a limited area. KRS 150.175(11) authorizes the department to issue a commercial guide license, which authorizes the holder to guide hunting and fishing parties. KRS 150.190 authorizes the department to ensure that an applicant for a commercial guide license is qualified to act as a commercial guide. This administrative regulation establishes the requirements for a commercial guide license.

Section 1. Definitions.

(1) "Commercial guide" means a person who advertises, or offers their services for ~~profit[remuneration]~~, to aid others in the take of fish or[taking] wildlife, excluding land leasing for hunting access, tracking of wounded wildlife, club memberships, classroom instruction or seminars.

(2) "Fishing guide helper" means a person who assists a commercial guide and is in the same boat or is directly alongside of the commercial guide if standing on a stream or river bank and while guiding others in the taking of fish.

Section 2. Commercial Guide License Requirements and Application.

(1) A person shall possess a valid Kentucky commercial guide license in order to commercially guide others in the taking of fish or

wildlife.

(2) A commercial guide license shall be valid from March 1 through the last day of February.

(3) An applicant for a commercial guide license shall:

(a) Be eighteen (18) years of age or older;
(b) Have not been convicted of any state or federal fish or wildlife violation during the previous three (3) years;

(c) Have not been convicted of a felony;

(d) Possess a valid fishing license and trout permit if applicable; and

(e) Possess a valid hunting license and all applicable game permits.

(4) An elk permit shall not be required to be purchased by a commercial guide in order to guide clients in the taking of elk.

(5) Except as established in subsection (6) of this section, in order to obtain a commercial guide license, a person shall submit to the department:

(a) A completed Commercial Guide License Application Form to the Director's Office, Division of Law Enforcement, #1 Sportsman's Lane, Frankfort, Kentucky 40601;

(b) A Law Information Network of Kentucky National Crime Information Center (LINK/NCIC) background check obtained through the Kentucky State Police;

(c) Proof of a valid and current certification in:

1. Cardiopulmonary resuscitation (CPR); and

2. First aid;

(d) Proof of completion of a boater education course upon applying for a commercial guide license for fishing in a boat; ~~and~~

(e) Proof of completion of a hunter education course upon applying for a commercial guide license for hunting. A commercial guide applicant who guides hunters by boat shall also submit proof of completion of a boater education course; and

(f) The applicable fee.

(6) A commercial guide applicant who possesses a valid United States Coast Guard Captain's License, or Six-pack, and will guide on a United States Coast Guard regulated waterway may submit a copy of this license in lieu of the boater education course requirements established in subsection (5)(d) of this section and in lieu of the CPR and first aid requirements, as established in subsection (5)(c) of this section, upon applying for a commercial guide license.

(7) While guiding, a commercial guide shall have in possession all required licenses and permits.

(8) While guiding on private land, a commercial guide shall provide at the request of a conservation officer a name and phone number of the person granting the guide permission to be on the property.

(9) A commercial guide shall not facilitate, promote, or assist a client in the violation of any state or federal fish and wildlife law or regulation.

Section 3. Fishing Guide Helper.

(1) A commercial ~~[fishing-]~~guide may utilize fishing guide helpers.

(2) A fishing guide helper shall have in possession while assisting a commercial guide a valid Kentucky fishing license and applicable permits.

(3) A commercial ~~[fishing]~~ guide shall be responsible for any violation of this administrative regulation by a fishing guide helper who is registered by the commercial guide.

Section 4. Commercial Guide License Reporting, Prohibitions and Revocation.

(1) A commercial guide or fishing guide helper shall not participate in the taking of fish or game beyond the ~~[bag]~~daily limit ~~[or creel limit]~~ of the person or persons being guided, except that a commercial guide or fishing guide helper may take a daily ~~[bag or creel]~~ limit of fish or game, as applicable, while guiding.

(2) The department shall revoke and not renew the commercial guide license for a period of three (3) years, of a person convicted of any state or federal fish or game violation.

(3) The department shall permanently revoke the commercial guide license of a person convicted of a felony.

(4) A commercial guide license holder shall report their guiding activities via the online Commercial Guide Reporting Portal by submitting as follows, via online at <https://app.fw.ky.gov/commReport>:

(a) By the 15th day of every month for the previous month's guiding, if "I plan to be a fishing guide" or "Both hunting & fishing guide" is indicated on the commercial guide license holder's Commercial Guide License Application Form, even if no guiding occurred for fishing;

(b) Within thirty (30) days after closure of the hunting season for a species which commercial guiding for hunting occurred; or

(c) Within thirty (30) days after the end of the license year for a species that can be hunted year-round which commercial guiding for hunting occurred.

(5) The commercial guide shall submit all the following information, via the online commercial guide reporting portal, by each of the applicable deadlines established in subsection (4) of this section:

(a) For commercial guiding for fishing:

1. Commercial guide name;

2. Commercial guide license number;

3. Whether commercial guiding for fishing occurred during the month, and if so:

a. Dates fished or bowfished;

b. Waterbody fished per day fished or bowfished;

c. Fish species targeted each day;

d. Number of anglers or bowfishers guided per trip;

e. Hours fished or bowfished per trip; and

f. Fish species caught or shot and the number of each species that were;

(i) Released with number of specimens below legal harvest size and at or above legal harvest size; and

(ii) Harvested.

(b) For commercial guiding for hunting:

1. Commercial guide name;

2. Commercial guide license number;

3. Species targeted;

4. Total number of guided resident and nonresident clients per species targeted;

5. Number of animals harvested per species by sex of the animal;

6. Number of animals shot, but not recovered by sex of the animal for black bear, bobcat, deer, elk, and turkey;

7. Name of each county where guiding occurred per species;

8. Name of each public land area where guiding occurred per species; and

9. Indicate whether any guiding was performed for any pen-raised animals or at facilities that are permitted as a shooting facility.

(6) Failure to submit the required reporting information by the deadline established in subsection (4) of this section for commercial guiding for fishing will result in:

(a) Issuance of a courtesy reminder letter to a commercial guide who has once failed to properly submit the reporting information during the commercial guiding license year.

(b) Issuance of a warning letter to a commercial guide who has twice failed to properly submit the reporting information during the commercial guiding license year.

(c) Suspension of the commercial guide license of a commercial guide who has failed to properly submit the reporting information for three (3) or more months in a given commercial guiding license year until the commercial guide submits to the department all required reporting information.

(d) Suspension of the commercial guide license of a commercial guide for a period of three (3) months for failure to properly submit the reporting information four (4) or more times in a commercial guiding license year.

(e) Additional three (3) month suspensions of the commercial guide license of a commercial guide if a prior year's three (3) month suspension extends into a new commercial guiding license year and subsequent failures to properly submit the reporting information occur.

(7) Failure to submit the required reporting information after commercial guiding for hunting occurs will result in denial of future

license applications or renewals until all required reporting has been completed.

(8) The department shall deny a commercial guide license to a person who fails to meet the eligibility requirements, fails to properly complete the application process, or has not yet submitted all required reporting information from a prior license year.

Section 5. Administrative Hearings.

(1) An individual whose permit has been denied or revoked may request an administrative hearing pursuant to KRS Chapter 13B.

(2) A request for a hearing shall be in writing and postmarked or delivered in person to the department no later than thirty (30) days after notification of the denial or the revocation.

(3) Upon receipt of the request for a hearing, the department shall proceed according to the provisions of KRS Chapter 13B.

(4) The hearing officer's recommended order shall be considered by the commissioner, and the commissioner shall issue a final order, pursuant to KRS Chapter 13B. [An individual whose commercial guide license has been denied or revoked may request an administrative hearing pursuant to KRS Chapter 13B within fifteen (15) days of receipt of the notice of revocation or denial.]

Section 6. [Section 5.] Incorporation by Reference. (1) "Commercial Guide License Application Form", 2023[2019] edition, 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. or online at https://fw.ky.gov/Licenses/Documents/Commercial_Guide_License_Application_Form_2023.pdf for the "Commercial Guide License Application Form".

RICH STORM, Commissioner

APPROVED BY AGENCY: October 13, 2023

FILED WITH LRC: October 13, 2023 at 11:30 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 28, 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 December 31, 2023. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Jenny Gilbert, Legislative Liaison, Kentucky Department of Fish and Wildlife Resources, 1 Sportsman's Lane, phone (502) 564-3400, fax (502) 564-0506, email fwpubliccomments@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jenny Gilbert

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for commercial hunting and fishing guides.

(b) The necessity of this administrative regulation: This regulation is necessary to establish minimum regulatory standards and qualifications for commercial guides.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.025 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 statewide or to a limited area. KRS 150.175(11) authorizes the department to issue a commercial guide's license, which authorizes the holder to guide hunting and

fishing parties. KRS 150.190 authorizes the department to ensure that an applicant for a commercial guide license is qualified to act as a commercial guide.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the statutes by establishing the minimum standards and qualifications for commercial guides and ensures that an applicant is qualified to act as a commercial guide.

(2) If 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 creates a requirement that all commercial guide license holders report to the department information related to their guiding activity, establishes parameters for the revocation of the license if the report is not submitted, updates the commercial guide application that is incorporated by reference and clarifies the definition of a commercial guide.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to strengthen the definition of a commercial guide to ensure every individual who is engaged in commercial hunting and fishing activity is captured in the definition. Additionally, the creation of a commercial guide report will provide harvest and catch information to department staff to better able to understand harvest/catch rates which in turn helps the department to better manage the fish and wildlife populations of species commercial guides target.

(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 who commercially guide clients will be affected by this amendment. For the 2023-24 license year, a total of 402 commercial guide licenses have been sold.

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

(a) List 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 guide applicants will also need to fill out the amended commercial guide application. Additionally, all commercial guides will now be required to complete a report that details their guiding effort throughout the license year.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The commercial guide license will continue to cost \$150 for residents and \$400 for nonresidents.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): By complying with the reporting requirement, commercial guides will provide data that will be used by staff to better manage the fish and wildlife populations commercial guides pursue with their clients.

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

(a) Initially: The cost to the department to implement this administrative regulation amendment should be negligible.

(b) On a continuing basis: The amendment will not cost the department more 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 the commercial guide license fees.

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

(9) TIERING: Is tiering applied? Tiering was not applied because all individuals wishing to be a commercial guide are treated equally.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The department's Divisions of Fisheries, Wildlife, and Law Enforcement will be impacted by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.025, 150.175(11), and 150.190.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No additional revenue will be generated by the amendment to this regulation in the first year, however approximately \$70,800 will be generated from the issuance of the commercial guide license.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No additional revenue will be generated by the amendment to this regulation in subsequent years, however approximately \$70,800 will be generated annually from the issuance of the commercial guide license.

(c) How much will it cost to administer this program for the first year? It will not cost more to administer this program for the first year.

(d) How much will it cost to administer this program for subsequent years? It will not cost more to administer this program 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? 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.

JUSTICE AND PUBLIC SAFETY CABINET
Internal Investigations Branch
(Amendment)

500 KAR 13:020. Internal Investigations Branch.

RELATES TO: KRS 15A.020

STATUTORY AUTHORITY: KRS 15A.160

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.160 authorizes the Secretary to promulgate administrative regulations for the proper administration of the Cabinet and its programs. This administrative regulation establishes the procedures for investigations by the Internal Investigations Branch, Office of Legal Services.

Section 1. Definitions.

(1) "Excessive physical contact" means physical contact used or applied by an alleged offender against a juvenile that results in or creates a substantial risk of serious physical injury as defined by KRS 500.080(17) or death. [~~"Exonerated" means the incident occurred, but the accused's actions were justified or proper.~~]

(2) "Facility" means a group home, day treatment, residential treatment, youth development center, a detention center, any other entity or location for juvenile care operated by or contracted with the Department of Juvenile Justice for the placement of juveniles[youth], or any entity housing a juvenile[youth] placed by or committed to the Department of Juvenile Justice.

(3) "Findings" means that once an investigation is completed, an incident, whether a serious incident or special incident, will be classified as being resolved under one of the following categories:

(a) "Exonerated" means the incident occurred, but the offender's actions were not improper, not excessive, or were otherwise reasonable under the circumstances.

(b) "Not Substantiated" means, based on a preponderance of the evidence, there is insufficient evidence to determine if an incident occurred.

(c) "Pending further investigation" means a critical witness or offender cannot be located or refuses to cooperate with the initial investigation, or there is other interference with the investigation, beyond the control of IIB, that prevents IIB from making a final determination for its finding.

(d) "Substantiated" means an incident occurred, the actions of the offender were not justified, and the incident is proven by either the admission of the offender or by a preponderance of the evidence.

(e) "Unfounded" means the allegations against the offender are false because the incident did not occur; or the offender was not involved in the incident.

(4) "Inappropriate physical contact" means physical contact used or applied by an offender against a juvenile that has resulted or could result in physical injury as defined by KRS 500.080(15).

(5) "Internal Investigations Branch" or "IIB" means the investigation unit that is part of the Office of Legal Services within the [~~"IIB" means Internal Investigations Branch, Office of Legal Services,~~] Justice and Public Safety Cabinet.

(6)[(4)] "Initiation" means any action by the Internal Investigations Branch intended to ensure the immediate safety of the victim or to obtain evidence or information relevant to the investigation.

(7) "Juvenile" means a person who is under the custody, control, or supervision of the Department of Juvenile Justice as a result of a court order or interstate supervision.

(8)[(5)] "Not substantiated" means there is insufficient evidence to determine if an incident occurred or if the accused was involved in the incident.

(6)] "Offender" means a person:

(a) Who is employed at, volunteers in, visits, or contracts with a facility; and

(b) Against whom an allegation of a special incident has been made.

(9)[(7)] "Serious incident" means an act or omission committed by an offender that creates an imminent and substantial risk to, or

actually causes harm to the health, safety, or welfare of a juvenile, including:

(a) The use of excessive physical contact that results in injury or could have resulted in injury to a juvenile;

(b) Inappropriate physical contact that results in an injury or could have resulted in an injury to a juvenile;

(c) Sexual activity by an offender on, against, involving, or in the presence of a juvenile, including any contact or interaction, that uses, permits, disregards, or encourages the use or exploitation of a juvenile for the sexual gratification of the offender or another person;

(d) Permitting, inducing, assisting, or causing a juvenile to engage in:

1. An offense enumerated in KRS 530.064, 530.065, or 530.070;

or

2. Other illegal activity.

(10) "Special incident" means an act or omission committed by an offender that creates a risk to, or actually causes harm to the health, safety, or welfare of a juvenile, including:

(a) Failure to provide appropriate supervision, medical care, food, clothing, shelter, or education;

(b) Use of inappropriate consequences, such as exercise, harsh physical labor, or other physical consequences as punishment in violation of accepted practices in accordance with 505 KAR Chapter 1 and DJJ Policies and Procedures;

(c) Harassing a juvenile;

(d) Actual or attempted use by an offender of a juvenile for the offender's or any other person's personal gain or self-interest;

(e) Accepting or soliciting a bribe or other quid pro quo from a juvenile or their family or indicating to a juvenile or their family that the offender will accept a bribe or other quid pro quo;

(f) Use of humiliating, demeaning, profane, racially charged, or sexually explicit language directed at a juvenile or use of any language that discriminates against a juvenile based on a juvenile's status regarding race, color, religion or creed, national origin or ancestry, sex, gender, pregnancy, sexual orientation, or gender identity;

(g) Use by an offender of threats or otherwise communicating or indicating to a juvenile that by, either act or omission, an offender will cause or permit another person to physically harm that juvenile;
or

(h) Extending, offering, or agreeing to extend or offer any unearned special privileges to a juvenile in exchange for any money, tangible property, intangible property, services, or any other value paid, delivered, or agreed to be delivered to the offender or any other person by a juvenile.["Pending further investigation" means a critical witness or offender cannot be located or refuses to cooperate with the initial investigation, or there is other interference with the investigation, beyond the control of IIB, that prevents IIB from making a final determination for its finding.

(8) "Special incident" means an act in which the health or welfare of a youth is harmed or threatened with harm by an offender, including if an offender:

(a) Uses inappropriate or excessive force that results in injury;

(b) Uses inappropriate or excessive force that could result in an injury;

(c) Engages in any sexual activity to include any contact or interaction, which uses or allows, permits or encourages the use of a youth for the sexual gratification of the offender or another person;

(d) Uses inappropriate consequences as punishment such as exercise, harsh physical labor, or other physical consequences outside accepted practices in accordance with 505 KAR Chapters 1 and 2 of the Department for Juvenile Justice Policies and Procedures;

(e) Allows or encourages a youth to:

1. Use drugs or alcohol;

2. Gamble; or

3. Engage in other illegal activity;

(f) Does not provide appropriate supervision, medical care, food, clothing, shelter, or education;

(g) Uses humiliating, demeaning, profane, or racially charged language directed at a youth;

(h) Uses verbal threats of harm directed at a youth;

(i) Exhibits a pattern of harassing conduct directed at a youth;

(j) Uses or attempts to use a youth for personal gain;

(k) Accepts a bribe from a youth or indicates a bribe would be accepted;

(l) Enters into any unlawful transaction with a youth as set forth in KRS 530.064, 530.065, or 530.070;

(m) Enters into a business relationship with a youth; or

(n) Extends unearned special privileges to a youth in return for something.

(9) "Substantiated" means that an incident occurred:

(a) By an admission of the person responsible; or

(b) By a preponderance of the evidence.

(10) "Unfounded" means the charges are false or the offender was not involved in the incident.

(11) "Youth" means a person who is under the custody, control, or supervision of the Department of Juvenile Justice as a result of a court order or interstate supervision.]

Section 2. Receiving a Report.

(1) The Internal Investigations Branch shall accept reports alleging facts that may be serious or [of] special incidents.

[(1)](a) A toll-free number shall be made available to report an incident, which shall be answered by IIB during normal business hours, 8:00 a.m. to 4:30 p.m. Eastern Time, Monday to Friday [all staff and youth to report special incidents. A voice mailbox system shall be available for reporting special incidents after normal work hours].

(b) A voice mailbox system on the toll-free number shall be available for reporting an incident after normal business hours. IIB shall assign an individual on a rotating basis to check the messages after normal business hours. IIB shall take action immediately if the safety of a juvenile is involved. Otherwise, IIB shall take action on the call the next business day. [The investigator shall attempt to elicit from the person reporting the special incident as much information about the incident as possible, including:

1. The nature and extent of the special incident;

2. The causes of the special incident;

3. The location of the victim;

4. Any witnesses to the special incident;

5. The present danger to the victim;

6. The offender; and

7. The reporting person's identity and relationship to the victim.]

(2) Anonymous reports that [which] give sufficient information [and allege a special incident] shall be accepted.

(3) Referrals from any other source that [which] give sufficient information [and allege a special incident] shall be accepted.

(4) If IIB needs additional information to determine whether further investigation is warranted, it shall conduct a preliminary inquiry.

Section 3. Investigation of Reports of Serious Incidents and Special Incidents.

(1) If IIB receives a report of a serious incident, IIB shall conduct a preliminary inquiry or open an investigation. [special incident as defined by Section 1(8)(a) through (e) of this administrative regulation, IIB shall:

(a) Conduct an investigation in accordance with Sections 5 and 6 of this administrative regulation; or

(b) Conduct a preliminary inquiry to determine if further investigation is warranted.]

(2) If IIB receives a report of a special incident, IIB may conduct a preliminary inquiry, a full investigation, or forward the complaint to the Department of Juvenile Justice or another appropriate authority for an investigation. [as defined by Section 1(8)(f) through (n) of this administrative regulation, IIB may conduct an investigation.

(a) Any allegation of an alleged special incident not investigated by IIB shall be referred by IIB management to another appropriate individual or agency for investigation.

(b) If an allegation of a special incident is referred to the Department of Juvenile Justice pursuant to paragraph (a) of this subsection, IIB shall review the investigative report and any supporting documentation.]

(3) IIB may investigate a report or allegation [involving a person

who is employed at, volunteers in, visits, or contracts with a facility that does not meet the definition of a special incident] at the request of the commissioner of the Department of Juvenile Justice, the commissioner's designee, ~~Commissioner or~~ the secretary of the Justice and Public Safety Cabinet, or the secretary's designee.

(4) A report or allegation not investigated by IIB may be referred[by IIB management] to another appropriate individual or agency.

Section 4. Time Frames for Investigating Reports of Suspected Serious or Special Incidents. Following the receipt of the report, IIB shall complete an intake, and either open a preliminary inquiry or investigation or refer the report[the IIB-2 Special Incident Reporting Form shall be completed and the report investigated or referred] in accordance with Section 3 of this administrative regulation. IIB preliminary inquiries and investigations shall be conducted according to the time frames established in this section.

(1) If the report indicates the juvenile[youth] is in imminent danger of physical harm or injury, the preliminary inquiry or investigation shall be initiated immediately including ensuring the safety of the alleged victim and any other juvenile with whom the offender may have contact and the retention of evidence. Personal contact shall be made with the victim within twenty-four (24) hours, if possible. If the report indicates that the victim is no longer in a facility, the investigation shall be initiated within forty-eight (48) hours and every effort made to have personal contact with the victim within three (3) workdays.

(2) If evidence is obtained which warrants further investigation, a full investigation shall be initiated[within one (1) hour and personal contact made with the victim within twenty-four (24) hours].

(3)[(2)] If the report does not indicate imminent danger of physical harm or injury, the preliminary inquiry or investigation shall be initiated within twenty-four (24) hours and personal contact made with the victim within seventy-two (72) hours.

(4) Unsuccessful efforts to make personal contact shall be documented in the investigative file.

[(a) Issues to be considered in determining how soon personal contact is made shall include:

1. The nature of the allegation;
2. How recently the alleged incident occurred; and
3. The measures taken by the facility to ensure the safety of the youth.]

(5)[(b)] Any deviation from the time frames shall require supervisory approval and be documented in the investigative file.

(6)[(3)] If the report indicates that the victim is no longer in a facility, the investigation shall be initiated within forty-eight (48) hours and every effort made to have personal contact with the victim within three (3) workdays. Unsuccessful efforts to make personal contact shall be documented in the investigative file.

(4)] The time[frames] shall begin when the report is received by IIB staff.

Section 5. [Initial–]Investigation. The investigation of an allegation or report shall include the following:[If investigating an allegation or report, an IIB investigator shall:]

(1) A completed intake[Complete the IIB-2 form];

(2) Report of any special incidents as required by KRS 620.030 and 620.040;

(3) [Notify–]The Commissioner of the Department of Juvenile Justice or designee shall be notified of the report;

(4) Interviews with the following:

(a) [Interview–]The victim, who shall be interviewed privately, outside the presence of the offender, with no more than two (2) persons present in addition to the victim and IIB investigator;

(b)[(5) Interview] The alleged offender; and

(c)[(6) Interview] Appropriate witnesses;

(5)[(7)] A review of documentation relevant to the incident; and

(6)[(8)] Obtaining and preserving appropriate evidence.[Take possession of and preserve appropriate evidence.]

Section 6. Determining the Validity of the Report. [After the initial investigation–]The investigator shall:

(1) Complete a written report within thirty (30) days of receipt of the allegation, unless there are extenuating circumstances

that[which] are documented, such as law enforcement action, court proceedings, or investigator workload issues. The report shall contain:

(a) The information gathered during the investigation; and

(b) A finding regarding the allegation as exonerated, pending further investigation, substantiated, not substantiated, or unfounded[recommendation regarding the validity of the allegation as substantiated, unfounded, exonerated, not substantiated, or pending further investigation];

(2) Submit the report through supervisory channels within IIB and the Office of Legal Services[legal counsel] for the Justice and Public Safety Cabinet for review and approval;

(3) Forward all completed investigations to the Commissioner of the Department of Juvenile Justice or the commissioner's designee;

(4) Forward all completed investigations of substantiated special incidents that may involve abuse or neglect of a child, in accordance with KRS 620.030 to the:

(a) Cabinet for Health and Family Services; and

(b) Local commonwealth or county attorney, law enforcement, or the Kentucky State Police with the exception of all documents and evidence that are protected under Garrity v. New Jersey, 385 U.S. 493 (1967).

[Section 7. Incorporation by Reference.

(1) "IIB-2, Special Incident Reporting Form", 5/15, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Justice and Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.]

KERRY HARVEY, Secretary

APPROVED BY AGENCY: October 12, 2023

FILED WITH LRC: October 12, 2023 at 3:15 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 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 is received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until December 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: Nathan Goens, Attorney, Justice and Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-8216, fax (502) 564-6686, email Justice.RegContact@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Nathan Goens

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes the procedures for prompt and thorough investigations by the Internal Investigations Branch of alleged serious or special incidents in entities operated by or contracted with the Department of Juvenile Justice (DJJ) for the placement of juveniles, or any entity housing juveniles placed by or committed to the Department of Juvenile Justice.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to ensure protection of juveniles committed to DJJ.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 15A.160 authorizes the secretary 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 establishes the procedures for investigations.

(2) If 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 definitions for excessive physical contact, findings, inappropriate physical contact, and serious incident. Youth is changed to juvenile throughout. The phone reporting system is rewritten for clarity and to update practices in section 2. Section 3 is rewritten to address the new serious incidents as well as the prior special incidents. For a serious incident, IIB shall conduct a preliminary inquiry or open an investigation. For a special incident, IIB may conduct a preliminary inquiry, a full investigation, or forward the complaint to the Department of Juvenile Justice or another appropriate authority for an investigation. A designee of the DJJ commissioner or the secretary may request an investigation. The amendment establishes a new preliminary inquiry process and changes the initial investigation to the investigation. The times for initial contact with a victim are changed. Unsuccessful efforts to make personal contact shall be documented in the investigative file. A finding regarding the allegation as exonerated, pending further investigation, substantiated, not substantiated, or unfounded must be made. The form incorporated by reference is deleted.

(b) The necessity of the amendment to this administrative regulation: The amendment is needed to update investigation practices.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms with the authorizing statutes because KRS 15A.160 authorizes the secretary to promulgate administrative regulations for the proper administration of the cabinet and its programs.

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect all entities operated by or contracted with the Department of Juvenile Justice for the placement of juveniles, or any entity housing juveniles placed by or committed to the Department of Juvenile Justice.

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

(a) List 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 Internal Investigations Branch will have to comply with the new investigation requirements. The entities operated by or contracted with the Department of Juvenile Justice for the placement of juveniles, or any entity housing juveniles placed by or committed to the Department of Juvenile Justice will not have to take any additional actions.

(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.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Entities operated by or contracted with the Department of Juvenile Justice for the placement of youth, or any entity housing juveniles placed by or committed to the Department of Juvenile Justice will be better able to deal with employee conduct and better able to protect juveniles.

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

(a) Initially: The amendment is not expected to generate additional costs.

(b) On a continuing basis: The amendment is not expected to generate additional costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Funds budgeted to the Justice and Public Safety Cabinet 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: The amendment will not require an increase in fees or funding for implementation.

(8) State whether or not this administrative regulation establishes

any fees or directly or indirectly increases any fees: Fees are not directly or indirectly established by this administrative regulation.

(9) TIERING: Is tiering applied? Tiering is not appropriate in this instance because the regulation and its impact will not disproportionately impact any particular NO. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Juvenile Justice and the Internal Investigations Branch, both within the Justice and Public Safety Cabinet, and the Department of Community Based Services, within the Cabinet for Health and Family Services

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 15A.020, 15A.160

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

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

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

(c) How much will it cost to administer this program for the first year? The amendment is not expected to generate additional costs.

(d) How much will it cost to administer this program for subsequent years? The amendment is not expected to generate additional costs.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

(4) Estimate the effect of this 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 expected.

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

(c) How much will it cost the regulated entities for the first year? The amendment is not expected to generate additional costs.

(d) How much will it cost the regulated entities for subsequent years? The amendment is not expected to generate additional costs.

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)]. This administrative regulation will not have a major economic impact.

TRANSPORTATION CABINET
Department of Highways
Division of Maintenance
(Amendment)

603 KAR 5:155. Vegetation management.

RELATES TO: KRS 176.010(2), 176.050(1), 177.106, 177.830(5), 177.990(2)

STATUTORY AUTHORITY: KRS 176.050(1)(i)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 176.050(1)(i) requires the department to promulgate administrative regulations concerning the care and maintenance of roads in the Commonwealth. This administrative regulation establishes a vegetation management permitting process for the removal and pruning of vegetation on department right-of-way.

Section 1. Definitions.

- (1) "Advertising device" is defined by KRS 177.830(5).
- (2) "Department" is defined by KRS 176.010(2).
- (3) "Person" means any individual, firm, co-partnership, joint venture, association, social club, fraternal organization, corporation, estate, trust, business trust, receiver, syndicate, cooperative, or any other group or combination acting as an individual or unit.

Section 2. Vegetation Management Permit Eligibility.

(1) A permit for vegetation management to remove or prune vegetation, including vegetative obstructions to the visibility of an advertising device, located on public right-of-way under the jurisdiction of the Kentucky Transportation Cabinet, shall be obtained from the department, in accordance with this administrative regulation, prior to entry or disturbance of the right-of-way.

(2) An applicant shall apply to the department for a permit for vegetation management to remove or prune vegetation by submitting a completed Application for Encroachment Permit, TC 99-1A form, to the Transportation Cabinet district office that is responsible for the area of the proposed vegetation management.

(3) An application for a permit to remove or prune vegetation shall be considered by the department if the proposal:

- (a) Improves the safety of the traveling public;
- (b) Is necessary to eliminate hazards to personal property;
- (c) Enhances visibility for the travelling public;
- (d) Eliminates an unsightly condition and improves roadway aesthetics; or

(e) Removes undesirable vegetation listed on the department's Web site at www.transportation.ky.gov/permits/.

(4) A permit to remove or prune vegetation shall not be issued for the purpose of increasing visibility of ~~any~~an advertising device currently in violation of KRS Chapter 177 or KAR Title 603.

(5) Access to department right-of-way to perform vegetation management shall be from private property unless otherwise specified as part of the permit.

Section 3. General Requirements for Vegetation Management.

(1) An applicant requesting a permit for vegetation management to remove or prune vegetation shall submit:

(a) A completed Application for Encroachment Permit, TC 99-1A form;

(b) A general description of work to be performed;

(c) A location map;

(d) A detailed and scaled drawing showing the location of the vegetation proposed to be removed or pruned;

(e) The name, address, and phone number of the contractor that will be performing the work;

(f) A signed release from property owners whose property lines front the right-of-way where the vegetation management is proposed;

(g) A signed consent from a private property owner that gives the applicant access from the private property to the work site;

(h) A seeding and erosion control plan pursuant to the department's manual, Standard Specifications for Road and Bridge Construction;

(i) Evidence of bonding maintained until released by the

department; and

(j) Proof of liability insurance equal to or more than \$1 million.

(2) The following applicants are exempt from Section 3(1) (f), (g), (i), and (j) of this administrative regulation:

(a) Government agencies removing vegetation for purposes of installing or maintaining government facilities; or

(b) Public utility companies removing vegetation for purposes of installing or maintaining utility facilities.

(3) An applicant shall:

(a) Remove tree stumps and roots on a slope of 3:1 or less flush with the ground surface;

(b) Remove tree stumps and roots on a slope greater than 3:1 to a height of three (3) inches or less above the surrounding ground surface. The height shall be measured from the top of the stump or root to its base on the lowest side of the slope;

(c) Remove and dispose of cut material and debris from the state right-of-way as stated in the permit issued by the department;

(d) Fill, grade, and compact a hole or void created by the performed work with top soil;

(e) Use a seeding and erosion control plan;

(f) Not remove more than twenty-five (25) percent of the crown of each tree approved for pruning by the department;

(g) Perform work during the time frame stated in the permit; and

(h) Reimburse the department for any costs incurred associated with the vegetation removal and pruning permit.

(4) Work shall not be performed until a permit is issued by the department.

(5) If a tree approved to be pruned dies related to executing the permit for vegetation management, the department shall require the permittee to remove the dead tree from department right-of-way, mitigate for the loss of vegetation, and restore department right-of-way.

(6) If damage occurs to vegetation not included in the permit for vegetation management, the department shall require the permittee to mitigate for the loss of vegetation and restore department right-of-way.

(7) The permittee shall be solely responsible for damage or destruction to private property that occurs in the course of executing the permit for vegetation management.

(8) The permittee shall indemnify the department and the Transportation Cabinet pursuant to the permit if claims are brought against the department or Transportation Cabinet by third parties for damages sustained in the course of executing a permit for vegetation management.

(9) Tree removal or pruning shall not be performed from June 1 to July 31.

Section 4. Mitigation.

(1) An applicant shall be required to mitigate as part of a permit for vegetation management for removal of any tree with a five (5) inch or greater diameter at breast height (dbh), except:

(a) Government agencies removing vegetation for purposes of installing or maintaining government facilities; or

(b) Public utility companies removing vegetation for purposes of installing or maintaining utility facilities.

(2) For mitigation, the applicant shall make a ~~payment~~contribution to the Kentucky Transportation Cabinet (KYTC) where the funding shall be used by KYTC to re-plant native trees at KYTC Stream and Wetland Mitigation sites or KYTC Pollinator Plots~~Kentucky Natural Lands Trust (KNLT), www.knlt.org]. KYTC Stream and Wetland Mitigation sites are established in priority watersheds within Kentucky where aquatic threatened or endangered species are known to exist, and these sites exist to in-part protect the water quality of the streams in which these species occur. KYTC Pollinator Plots are established in an attempt to curb the listing of pollinator species on the Threatened or Endangered Species List.~~

(3) The department shall calculate the ~~payment~~contribution amount ~~based on the lesser amount of \$150 for each tree removed with a five (5) inch or greater diameter at breast height (dbh) or \$2,000 per acre~~pursuant to the department's Indiana Bat Conservation Memorandum of Agreement with the United States Fish and Wildlife Service.

(4) The department shall not approve a permit for vegetation removal prior to receiving proof of the required payment[contribution] from the applicant.

Section 5. Notice of Violation; Appeals.

(1) The department shall provide notification by certified letter if a violation of this administrative regulation has occurred.

(2) A person aggrieved by the findings of the department may request an administrative hearing pursuant to KRS Chapter 13B.

(a) The request shall be made in writing within thirty (30) days of the certified letter.

(b) A request for a hearing shall thoroughly describe the grounds on which the hearing is requested.

(c) The hearing request shall be addressed to the Transportation Cabinet, Office of Legal Services, 200 Mero Street, Frankfort, Kentucky 40622.

(3) If a request for an administrative hearing is not received by the department or the violation is not remedied within (30) days of notice, the department shall take action to impose penalties as established in Section 6 of this administrative regulation.

Section 6. Penalties.

(1) Any person who violates this administrative regulation shall:

(a) Be subject to a civil penalty as established in KRS 177.106;

(b) Mitigate for loss of vegetation in accordance with Section 4 of this administrative regulation; and

(c) Be responsible for all costs associated with the restoration of the department right-of-way to an acceptable condition including the required remedial measures provided for in Section 3(3) of this administrative regulation.

(2) The department shall deny or revoke a permit that contains false or misleading information.

Section 7. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Application for Encroachment Permit", TC 99-1(A), October 2020; and

(b) [~~"Indiana Bat Conservation Memorandum of Agreement", September 2012; and~~

(c)] "Standard Specifications for Road and Bridge Construction", June 1, 2019.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Transportation Cabinet, Department of Highways, 200 Mero Street, Frankfort, Kentucky 40622, Monday through Friday, 8 a.m. to 4:30 p.m.

(3) This material is also available on the Transportation Cabinet's Web sites at:

(a) <https://transportation.ky.gov/Permits>; and

(b) <https://transportation.ky.gov/Construction/Pages/Kentucky-Standard-Specifications.aspx>.

JIM GRAY, Secretary

JAMES BALLINGER, State Highway Engineer

APPROVED BY AGENCY: October 9, 2023

FILED WITH LRC: October 13, 2023 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Thursday, December 21, 2023 at 11:00 a.m. EST, at the Kentucky Transportation Cabinet, 200 Mero Street, Frankfort, Kentucky 40622. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through December 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 below.

CONTACT PERSON: Jon Johnson, Staff Attorney Manager / Assistant General Counsel, Transportation Cabinet, Office of Legal Services, 200 Mero Street, Frankfort, Kentucky 40622, phone (502)

782-8180, fax (502) 564-5238, email Jon.Johnson@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Jon Johnson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the guidelines and requirements of obtaining an encroachment permit to remove vegetation on Department of Highways right of way.

(b) The necessity of this administrative regulation: This administrative regulation is required by KRS 176.050(1)(i).

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to KRS 176.050(1)(i) by providing the requirements for vegetation removal encroachment permits.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statute: This administrative regulation will establish the regulatory requirements for vegetation removal encroachment permits as related to KRS 176.050(1)(i).

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

(a) How the amendment will change this existing administrative regulation: This amendment changes the mitigation recipient from Kentucky Natural Lands Trust (KNLT) to Kentucky Transportation Cabinet. This amendment also changes how the mitigation is calculated.

(b) The necessity of the amendment to this administrative regulation: Kentucky Natural Lands Trust (KNLT) has requested to be removed as the mitigation recipient.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to KRS 176.050(1)(i) by providing requirements for vegetation removal encroachment permits.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the effective administration of the statutes by providing a simplified mitigation process.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects the Transportation Cabinet, Department of Highways, Division of Maintenance, Permits Branch along with all individuals and businesses intending to apply for a vegetation removal encroachment permit.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Individuals and businesses seeking a vegetation removal encroachment permit will need to submit required documentation to the Transportation Cabinet for review. The Transportation Cabinet, Department of Highways, Division of Maintenance, Permits Branch will review the vegetation removal permit application and determine the required mitigation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Individuals and businesses seeking a vegetation removal encroachment permit will be responsible for paying the mitigation fee. There are no known direct costs for the Transportation Cabinet.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The benefits will improve compliance with KRS 176.050(1)(i).

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

(a) Initially: There are no additional costs associated with this amendment.

(b) On a continuing basis: There are no continuing costs associated with this amendment.

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

(7) Provide an assessment of whether an increase in fees or

funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding will be necessary.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This amendment does not directly or indirectly increase any fees, but does change the recipients of the fees.

(9) TIERING: Is tiering applied? No, all encroachment permit applications for vegetation removal will be treated equally.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The amendment will impact the Transportation Cabinet, Department of Highways, Division of Maintenance.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 176.050(1)(i), 177.106.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. There will be no effect on expenditures.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? Specific dollar estimates cannot be determined. Please see notes below.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? Specific dollar estimates cannot be determined. Please see notes below.

(c) How much will it cost to administer this program for the first year? No change in cost is anticipated to administer this program.

(d) How much will it cost to administer this program for subsequent years? No change in cost is anticipated to administer this program.

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

Revenues (+/-): The amount, if any, will depend on the number of vegetation removal encroachment permits requested by the applicant, and the specifics of work covered under each permit.

Expenditures (+/-): The amount, if any, will depend on the number of vegetation removal encroachment permits requested by the applicant, and the specifics of work covered under each permit.

Other Explanation:

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? There is potential for cost savings for the entities regulated with this administrative regulation.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? There is potential for cost savings for the entities regulated with this administrative regulation.

(c) How much will it cost the regulated entities for the first year? The amount, if any, will depend on the number of vegetation removal encroachment permits requested by the applicant, and the specifics of work covered under each permit.

(d) How much will it cost the regulated entities for subsequent years? The amount, if any, will depend on the number of vegetation removal encroachment permits requested by the applicant, and the specifics of work covered under each permit.

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

Cost Savings (+/-): The amount, if any, will depend on the number of vegetation removal encroachment permits requested by the applicant, and the specifics of work covered under each permit.

Expenditures (+/-): The amount, if any, will depend on the number

of vegetation removal encroachment permits requested by the applicant, and the specifics of work covered under each permit.

Other Explanation:

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] This administrative regulation will not have a major economic impact.

EDUCATION AND LABOR CABINET Kentucky Board of Education Department of Education (Amendment)

705 KAR 4:231. General program standards for secondary career and technical education programs.

RELATES TO: KRS 156.029, 156.802, 20 U.S.C. 2301-2414[2474]

STATUTORY AUTHORITY: KRS 156.029, 156.070, 156.802, 156.852, 20 U.S.C. 2301-2414[2474]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.802 requires the Kentucky Board of Education to establish program standards for [secondary area vocational education and technology centers. This administrative regulation establishes standards for] secondary career and technical education programs in local school districts and area centers essential for compliance with the Strengthening Career and Technical Education for the 21st Century Act, 20 U.S.C. 2301 2414 (Perkins V). Federal funds may be withheld from a local district for noncompliance with Perkins V law[Carl D. Perkins Career and Technical Education Improvement Act of 2006, 20 U.S.C. 2301-2474].

Section 1. (1) Secondary career and technical education programs shall be designed to serve students enrolled in the following middle school and secondary program areas:

- (a) Agricultural education;
- (b) Business and marketing education;
- (c) Computer science;
- (d) Construction technology;
- (e) Education and training;
- (f)[(d)] Engineering [and] technology education;
- (g)[(e)] Family and consumer sciences education;
- (h)[(f)] Government and homeland security;
- (i)[(g)] Health science education;
- (j)[(h)] Information technology;
- (k) Law and public safety;
- (l)[(j)] Manufacturing technology;
- (m)[(k)] Media arts;
- (n)[(l)] Transportation education; and
- (m) Pathway to careers; and
- (n) Other new and emerging business and industry needs.

(2) Instructional programs shall not discriminate on the basis of race, color, national origin, age, religion, marital status, sex, or disability, in violation of state or federal statutes.

Section 2. [(4)] Instruction shall be designed to:

(1)[(a)] Assist students preparing for [school-to-work-]transition into[(in)] recognized occupations and new or emerging occupations[, including high technology industries];

(2)[(b)] Prepare students for advanced or highly skilled postsecondary technical education programs[or entrance into community and technical colleges or universities; and]

(3)[(c)] Provide career guidance and academic counseling in the development of the individual learning plan as established in 704 KAR 3:305.

[(2) If needed, instruction shall be provided to upgrade and update individuals in their present occupations and to retrain existing workers.]

Section 3. The content of the instruction in secondary career and technical education programs shall be:

- (1) Aligned with state or national occupational skill standards that have been recognized by business and industry to include an understanding of all aspects of an industry;
- (2) Developed and conducted in consultation with employers and other individuals having skills and knowledge of the occupational fields or industry included in the instruction;
- (3) Developed to include a coherent sequence of academic and career ~~and[er]~~ technical education courses for each program, aligned with career clusters and pathways;
- (4) Sufficiently extensive in duration and intensive within a scheduled unit of time to enable students to achieve the objectives of the instruction;
- (5) Structured to provide for the integration of technology and rigorous academic content relevant to the career area and aligned with the Kentucky Academic Standards, 704 KAR 3:303; and
- (6) Linked to postsecondary education ~~[in-order-]to~~ provide ~~a[smooth-and]~~ seamless transition to postsecondary education in related technical fields. If possible, articulation of credit from secondary to postsecondary education shall be provided for students, as well as dual credit opportunities.

~~[Section 4. A student completing the requirements for a career pathway may receive a Career Pathway Certificate. Requirements for a Career Pathway Certificate shall include the following:~~

- ~~(1) Successful completion of high school graduation requirements to include four (4) career-related credits relevant to a career cluster or pathway;~~
- ~~(2) Participation in a structured work-based learning experience related to the career cluster or pathway; and~~
- ~~(3) A culminating project related to the career cluster or pathway.]~~

Section 4.[Section–5.] A secondary career and technical education program shall provide opportunities for students to participate in high-quality work-based learning experiences related to the program in which they are enrolled and shall comply with 705 KAR 4:041. These work-based learning experiences may include the following:

- (1) Job shadowing;
- (2) Mentoring;
- (3) Service Learning;
- (4) School-based enterprises;
- (5) Entrepreneurship;
- (6) Internships;
- (7) Cooperative education; or
- (8) Registered apprenticeship~~[Pre-apprenticeship]~~.

Section 5.[Section–6.] A secondary career and technical education program shall be designed to accommodate students with special learning needs, i.e., the disadvantaged, the disabled, and individuals with limited English proficiency.

Section 6.[Section–7.] A secondary career and technical education program shall provide a variety of learning experiences. Programs in grades six (6) through eight (8) shall be designed to allow students to become aware of and explore clusters of occupations. Programs in grades nine (9) through twelve (12) shall provide in-depth exploration, specialized skill development, and preparation for advanced education. Students enrolled in public or private schools shall be permitted to enroll in a state-operated career and technical program consistent with that school district's enrollment quota.

Section 7.[Section–8.] A career and technical preparation program shall provide a curriculum of sufficient length to permit students to secure entry level skills in the occupation for which they are training.

~~Section 8.[Section–9.]~~ Recognized career and technical student organizations shall be a co-curricular component~~[an integral part]~~ of a career and technical education program and shall be supervised by qualified career and technical education personnel. All career and technical education programs shall be aligned to the appropriate career and technical student organization as identified by the Kentucky Department of Education Office of Career and Technical Education. All students shall be provided an opportunity to participate in leadership development activities.

Section 9.[Section–10.] Instructional and administrative personnel shall meet the certification requirements as specified by the Education Professional Standards Board in KAR Title 16~~[KAR]~~.

Section 10.[Section–11.] Opportunities in secondary career and technical education programs shall be provided for students to receive an industry-recognized ~~[skill standard]~~ certificate or credential approved by the Kentucky Workforce Innovation Board (KWIB) or a Kentucky Department of Education (KDE) Career and Technical Education End-of-Program Assessment pursuant to KRS 158.6455.~~[based on skill standards and assessments.]~~

Section 11.[Section–12.] A career and technical education program area shall have an active program advisory committee comprised of business and industry representatives, a parents, a student, a teacher, a school administrator~~[education representatives]~~, and, if applicable to the program area, a labor organization~~[organizations]~~ representative~~[representatives]~~ to assist in planning, implementing, and evaluating programs.

Section 12.[Section–13.] Career and technical education pathways shall comply with the state-approved four (4)-course sequence. Requests for exceptions to pathway course sequencing or to any standards for career and technical instructional programs shall be submitted in writing by the local educational agency to the Office of Career and Technical Education~~[chief state school officer]~~.

Section 13.[Section–14.] (1) Assessment of ~~[the]~~ career and technical education programs shall be conducted in accordance with requirements and instruments approved by the Office of Career and Technical Education, which are based upon indicators of quality programming including curriculum and assessment alignment with industry standards, the academic and technical skill attainment of students, work-based learning opportunities, career and technical student organizations, active advisory committees and industry partnerships, and the successful transition of students to postsecondary opportunities.

(2) Staff from the Office of Career and Technical Education shall conduct annual evaluations of career and technical education programs, based on state and federal accountability data, and identify programs for technical assistance and continuous improvement visits.

Section 14.[Section–15.] (1) The maximum number of students per class shall be based on the class setting.

(a) For a classroom setting, the maximum enrollment shall be thirty-one (31).

(b) For a laboratory or shop setting, the maximum enrollment shall not exceed the appropriate number of students that the laboratory or shop can safely maintain, based upon the number of available workstations, dimensions of the room, and safety protocols~~[the number of students enrolled in a class shall not exceed the number of work stations available in the facility]~~.

(2)(a) A program shall provide classrooms, laboratories, and other facilities including instructional equipment, supplies, teaching aids, and other materials in sufficient quantity and quality to meet the objectives of the instructional programs.

(b) Equipment used in career and technical education programs shall be similar to that used in business and industry.

(c) An inventory of all equipment with an original purchase price of \$500 or more shall be maintained by the local school district or area technology center.

(d) The facilities for each program shall be:

1. In compliance with 702 KAR 4:180 and be of adequate size to accommodate the activities and the number of work stations unique to the program; and
2. Approved by the chief state school officer or designee.

Section 15.~~[Section 16.]~~ (1) A career and technical education program shall meet the performance indicators in accordance with the requirements of the Strengthening Career and Technical Education for the 21st Century Act, 20 U.S.C. 2301 2414 (Perkins V)~~[Carl Perkins Career and Technical Education Improvement Act of 2006, 20 U.S.C. 2301-2471]~~, which include the following:

- (a) ~~[State established]~~ Academic attainment~~[and vocational technical skill achievement]~~;
- (b) Graduation rate~~[Attainment of a secondary diploma]~~;
- (c) Placement in postsecondary education, military or employment;
- (d) Nontraditional training~~[and employment]~~; and
- (e) Achievement of a postsecondary credential such as a valid industry certification or Kentucky Department of Education End-of-Program assessment.~~[Issuance of a Career Pathway Certificate or Career and Technical Certificate of Achievement to students.]~~

(2) The performance indicators shall be used to determine the effectiveness of the program in terms of its objectives and shall include annual follow-up data as well as annual enrollment reports.

(3) Monitoring~~[An audit]~~ of the utilization of federal and state funds shall be conducted by the Kentucky Department of Education to assure that eligible recipients meet the requirements for each approved career and technical education program.

~~[Section 17. Federal funds to be received by a local school district under the Carl D. Perkins Career and Technical Education Improvement Act of 2006, 20 U.S.C. 2301-2471, may be withheld for noncompliance with this administrative regulation or with the Carl D. Perkins Career and Technical Education Improvement Act of 2006.]~~

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

ROBIN KINNEY, Interim Commissioner of Education
SHARON PORTER ROBINSON, Chair

APPROVED BY AGENCY: October 11, 2023

FILED WITH LRC: October 11, 2023 at 1:30 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 21, 2023 at 10:00 a.m. ET, in the State Board Room, Fifth Floor, 300 Sower Boulevard, Frankfort, Kentucky 40601. Individuals interested in being heard at this meeting shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend in writing by five workdays prior to the hearing. 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 want to submit written comments on the proposed administrative regulation. Written comments shall be accepted through December 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: Todd G. Allen, General Counsel, Kentucky Department of Education, 300 Sower Boulevard, 5th Floor, Frankfort, Kentucky 40601, phone 502-564-4474, fax 502-564-9321, email regcomments@education.ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Todd G. Allen

- (1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the general program standards for secondary

career and technical education programs. The necessity of this administrative regulation: This administrative regulation is essential for compliance with the Strengthening Career and Technical Education for the 21st Century Act, 20 U.S.C. 2301 2414 (Perkins V) by career and technical education programs in local school districts and state-operated area technology centers.

(b) The necessity of this administrative regulation: This administrative regulation provides specific details for the minimum program standards necessary for compliance with federally required Perkins V standards.

(c) How this administrative regulation conforms to the content of the authorizing statutes:

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation currently assists the Kentucky Department of Education (KDE) Office of Career and Technical Education (OCTE) to hold local school districts and state-operated area technology centers in compliance with Perkins V so that our state will be eligible to receive and distribute federal CTE funding to secondary CTE programs.

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

(a) How the amendment will change this existing administrative regulation: This amendment changes the existing administrative regulation to reflect the reauthorization of the Carl D. Perkins Career and Technical Education Improvement Act of 2006, 20 U.S.C 2301-2471 to the Strengthening Career and Technical Education for the 21st Century Act, 20 U.S.C. 2301 2401 (Perkins V) in 2018. This amendment makes updates to indicate the current structure of Kentucky-specific CTE program areas. It reflects a name change from Information Technology to Computer Science, adds Education and Training as a CTE program area, and removes Pathway to Careers as an individual program area as middle school career studies standards have been made available and newly developed CTE Academic and Employability Skills Standards have been published with the intent that they be embedded into all CTE program areas. This amendment also aligns sections with the new requirements of Perkins V and the performance indicators in our state Perkins V plan in addition to cleaning up language.

(b) The necessity of the amendment to this administrative regulation: Without an amendment to this administrative regulation the regulation would not be indicative of current practices required by Perkins V or reference current federal legislation.

(c) How the amendment conforms to the content of the authorizing statutes: Pursuant to KRS 156.802, except for the duties that the Kentucky Board of Education must retain pursuant to 20 U.S.C. sec. 2341, the Kentucky Board of Education shall be authorized to delegate all of the other duties and responsibilities of the eligible agency to the Office of Career and Technical Education within the Department of Education, including but not limited to the administration, operation, and supervision of the Perkins program and the authority to receive, hold, and disburse funds awarded under the state plan.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will make changes that assist the KDE OCTE in holding local school districts and state-operated area technology centers in compliance with Perkins V so that our state will be eligible to receive and distribute federal CTE funding to secondary CTE programs.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All public schools in Kentucky that offer CTE pathway(s) and supporting staff in the KDE OCTE.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Each LEA and school that provides CTE programs shall maintain compliance with the federal Perkins V indicators identified in this regulation to be eligible for federal CTE funding.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The minimum program standards for career and technical education

require no additional direct costs to the LEAs and schools. LEAs and schools may choose to implement new services in response to the minimum program standards, however, this would be a locally determined decision. All costs to administer the Perkins V state plan are provided to the KDE by federal Perkins V funding.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance with this regulation, LEAs remain eligible for Perkins V funding. In addition, the performance indicators identified in this amendment are proven to indicate high-quality CTE programs and improved student outcomes in transition to postsecondary.

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

(a) Initially: N/A

(b) On a continuing basis: N/A

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: All costs associated with the implementation of this administrative regulation are paid out of Kentucky's Perkins V allocation, of which the approximate annual allocation is twenty-one million dollars (\$21 million). The KDE OCTE currently employs four (4) staff to implement Perkins V for a total of \$341, 175 in salary and fringe benefits. This amendment does not require additional personnel.

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

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

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all schools and LEAs.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Public Local Education Agencies (LEAs), public schools, and state-operated Area Technology Centers (ATCs).

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 156.029, 156.802, 20 U.S.C. 2301-2441

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

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

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

(c) How much will it cost to administer this program for the first year? The administration of the minimum program standards for career and technical education requires no additional cost to the Kentucky Department of Education (KDE).

(d) How much will it cost to administer this program for subsequent years? There is no annual cost to the KDE to administer this program, which is federally funded according to 20 U.S.C. 2301-2441.

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

Revenues (+/-): non-applicable

Expenditures (+/-): non-applicable

Other Explanation: non-applicable

(4) Estimate the effect of this 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 public LEAs or schools.

(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 public LEAs or schools.

(c) How much will it cost the regulated entities for the first year? This administrative regulation requires no additional costs to LEAs or schools.

(d) How much will it cost the regulated entities for subsequent years? This administrative regulation requires no additional costs to LEAs or schools.

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

Cost savings (+/-): non-applicable

Expenditures (+/-): non-applicable

Other Explanation: non-applicable

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on a state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] This administrative regulation is not anticipated to have major economic impact on state or local government or regulated entities.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 20 U.S.C. 2301 2414

(2) State compliance standards. KRS 156.029, 156.070, 156.802, 156.852

(3) Minimum or uniform standards contained in the federal mandate. General program standards for secondary career and technical education programs.

(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.

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. N/A

CABINET FOR HEALTH AND FAMILY SERVICES

Department for Medicaid Services

Division of Health Care Policy

(Amendment)

907 KAR 9:010. Reimbursement for non-outpatient Level I and II psychiatric residential treatment facility services.

RELATES TO: KRS 205.520, 216B.450, 216B.455, 42 U.S.C. 1395u[216B.459]

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 42 C.F.R. 440.160, 42 U.S.C. 1396a-d

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services has responsibility to administer the Medicaid Program. KRS 205.520(3) empowers the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds. This administrative regulation establishes Medicaid reimbursement policies for non-outpatient Level I and Level II psychiatric residential treatment facility services provided to a Medicaid recipient who is not enrolled in a managed care organization.

Section 1. Definition (1) "Department" means the Department for Medicaid Services or its designee.

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

(3) "Level I PRTF" means a psychiatric residential treatment facility that meets the criteria established in KRS 216B.450(5)(a).

(4) "Level II PRTF" means a psychiatric residential treatment facility that meets the criteria established in KRS 216B.450(5)(b).

(5) "Managed care organization" means an entity for which the department has contracted to serve as a managed care organization as defined in 42 C.F.R. 438.2.

(6) "Medicare Economic Index" or "MEI" means the economic index referred to in 42 U.S.C. 1395u(b)(3)(L).

(7) "Percentage increase in the MEI" is defined in 42 U.S.C. 1395u(i)(3).

(8) "Per diem rate" means a Level I or II PRTF's total daily reimbursement as calculated by the department.

(9) [(7)] "Recipient" is defined by KRS 205.8451(9).

Section 2. Reimbursement for Level I PRTF Services and Costs.

(1) To be reimbursable under the Medicaid Program, Level I PRTF services and associated costs, respectively, shall be provided to or associated with a recipient receiving Level I PRTF services in accordance with 907 KAR 9:005.

(2) The department shall reimburse for Level I PRTF services and costs referenced in subsection (4) of this section for a recipient not enrolled in a managed care organization:

(a) At the lesser of:

1. A per diem rate of \$500[\$274.01]; or
2. The usual and customary charge; and

(b) An amount not to exceed the prevailing charges, in the locality where the Level I PRTF is located, for comparable services provided under comparable circumstances.

(3) The per diem rate referenced in subsection (2) of this section shall be increased annually[each biennium] by the percentage increase in the MEI[2.22 percent].

(4) The reimbursement referenced in subsection (2) of this section shall represent the total Medicaid reimbursement for Level I PRTF services and costs:

- (a) Including all care and treatment costs;
- (b) Including costs for all ancillary services;
- (c) Including capital costs;
- (d) Including room and board costs; and
- (e) Excluding the costs of drugs as drugs shall be:

1. Covered in accordance with 907 KAR 23:010; and

2. Reimbursed via the department's pharmacy program in accordance with 907 KAR 23:020.

Section 3. Reimbursement for Level II PRTF Services and Costs. (1) To be reimbursable under the Medicaid program, Level II PRTF services and associated costs, respectively, shall be provided to or associated with a recipient receiving Level II PRTF services in accordance with 907 KAR 9:005.

(2) The department shall reimburse at the lesser of the usual and customary charge or a per diem rate of \$600[as follows] for Level II PRTF services and costs for a recipient not enrolled in a managed care organization[:

(a) \$345 for Level II PRTF services to a recipient who meets the rate group one (1) criteria established in subsection (3)(a) of this section;

(b) \$365 for Level II PRTF services to a recipient who meets the rate group two (2) criteria established in subsection (3)(b) of this section;

(c) \$385 for Level II PRTF services to a recipient who meets the rate group three (3) criteria established in subsection (3)(c) of this section; or

(d) \$405 for Level II PRTF services to a recipient who meets the rate group four (4) criteria established in subsection (3)(d) or (e) of this section.

(3)(a) Rate group one (1) criteria shall be for a recipient who:

1. Is twelve (12) years of age or younger; and
- 2.a. Is sexually reactive; or

b.(i) Has a severe and persistent aggressive behavior;

(ii) Does not have an intellectual or a developmental disability; and

(iii) Has an intelligence quotient higher than seventy (70).

(b) Rate group two (2) criteria shall be for a recipient who:

1. Is twelve (12) years of age or younger; and

2.a. Is sexually reactive; and

b.(i) Has a severe and persistent aggressive behavior;

(ii) Does not have an intellectual or a developmental disability;

and

(iii) Has an intelligence quotient higher than seventy (70).

(c) Rate group three (3) criteria shall be for a recipient who:

1. Is thirteen (13) years of age or older; and

2.a. Is sexually reactive; or

b.(i) Has a severe and persistent aggressive behavior;

(ii) Does not have an intellectual or a developmental disability;

and

(iii) Has an intelligence quotient higher than seventy (70).

(d) Rate group four (4) criteria shall be for a recipient who:

1. Is thirteen (13) years of age or older; and

2.a. Is sexually reactive; and

b.(i) Has a severe and persistent aggressive behavior;

(ii) Does not have an intellectual or a developmental disability;

and

(iii) Has an intelligence quotient higher than seventy (70).

(e) Rate group four (4) criteria shall be for a recipient who:

1. Is under twenty-two (22) years of age; and

2.a. Is sexually reactive; or

b.(i) Has a severe and persistent aggressive behavior;

(ii) Has an intellectual or a developmental disability; and

(iii) Has an intelligence quotient lower than seventy (70)].

(3) [(4)] The per diem rate[rates] referenced in subsection (2) of this section, or the usual and customary charge if less than the per diem rate, shall represent the total Medicaid reimbursement for Level II PRTF services and costs:

(a) Including all care and treatment costs;

(b) Including costs for all ancillary services;

(c) Including capital costs;

(d) Including room and board costs; and

(e) Excluding the costs of drugs as drugs shall be:

1. Covered in accordance with 907 KAR 23:010; and

2. Reimbursed via the department's pharmacy program in accordance with 907 KAR 23:020.

(4) [(5)(a)] The per diem rate referenced in subsection (2) of this section shall be increased annually by the percentage increase in the MEI[(The department shall annually evaluate each per diem rate for Level II PRTF services and costs by reviewing the most recent, reliable claims data and cost report data to analyze treatment patterns, technology, and other factors that may alter the cost of efficiently providing Level II PRTF services.

(b) ~~The department shall use the evaluation, review, and analysis referenced in paragraph (a) of this subsection to determine if an adjustment to the Level II PRTF reimbursement would be appropriate].~~

Section 4. Cost Reports and Audits. (1)(a) A Level I or II PRTF shall annually submit to the department, within ninety (90) days of the closing date of the facility's fiscal year end, a legible and completed Form CMS 2552-96.

(b) The department shall grant a thirty (30) day extension for submitting a legible and completed Form CMS 2552-96 to the department if an extension is requested by a Level I or II PRTF.

(2)(a) A Form CMS 2552-96 shall be subject to review and audit by the department.

(b) The review and audit referenced in paragraph (a) of this subsection shall be to determine if the information provided is accurate.

Section 5. Access to Level I and II PRTF Fiscal and Services Records. A Level I or II PRTF shall provide, upon request, all fiscal and service records relating to services provided to a Kentucky recipient, to the:

(1) Department;

(2) Cabinet for Health and Family Services, Office of Inspector

General:

- (3) Commonwealth of Kentucky, Office of the Attorney General;
- (4) Commonwealth of Kentucky, Auditor of Public Accounts;
- (5) Secretary of the United States Department of Health and Human Services; or
- (6) United States Office of the Attorney General.

Section 6. Bed Reserve and Therapeutic Pass Reimbursement.

(1) The department's reimbursement for a bed reserve day which qualifies as a bed reserve day pursuant to 907 KAR 9:005 for a recipient not enrolled in a managed care organization shall be:

(a) Seventy-five (75) percent of the rate established in Section 2 or 3 of this administrative regulation if the Level I or II PRTF's occupancy percent is at least eighty-five (85) percent; or

(b) Fifty (50) percent of the rate established in Section 2 or 3 of this administrative regulation if the Level I or II PRTF's occupancy percent is less than eighty-five (85) percent.

(2) The department's reimbursement for a therapeutic pass day which qualifies as a therapeutic pass day pursuant to 907 KAR 9:005 for a recipient not enrolled in a managed care organization shall be:

(a) 100 percent of the rate established in Section 2 or 3 of this administrative regulation if the Level I or II PRTF's occupancy percent is at least fifty (50) percent; or

(b) Fifty (50) percent of the rate established in Section 2 or 3 of this administrative regulation if the Level I or II PRTF's occupancy percent is below fifty (50) percent.

(3)(a) A Level I or II PRTF's occupancy percent shall be based on a midnight census.

(b) An absence from a Level I or II PRTF that is due to a bed reserve day for an acute hospital admission, a state mental hospital admission, a private psychiatric hospital admission, or an admission to a psychiatric bed in an acute care hospital shall count as an absence for census purposes.

(c) An absence from a Level I or II PRTF that is due to a therapeutic pass day shall not count as an absence for census purposes.

Section 7. Outpatient Services Reimbursement Established in 907 KAR 9:020. The department's reimbursement provisions and requirements regarding outpatient behavioral health services provided by a Level I or II PRTF shall be as established in 907 KAR 9:020.

Section 8. Federal Financial Participation. The department's reimbursement for services pursuant to this administrative regulation shall be contingent upon:

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

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

Section 9. Appeals. A provider may appeal a decision by the department regarding the application of this administrative regulation in accordance with 907 KAR 1:671.

Section 10. Not Applicable to Managed Care Organizations. A managed care organization shall not be required to reimburse in accordance with this administrative regulation for a service covered pursuant to:

- (1) This administrative regulation; or
- (2) 907 KAR 9:005.

Section 11. Incorporation by Reference. (1) "Form CMS 2552-96", August 2010 edition, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8:00 a.m. to 4:30 p.m.

LISA D. LEE, Commissioner

ERIC FRIEDLANDER, Secretary

APPROVED BY AGENCY: September 22, 2023

FILED WITH LRC: October 4, 2023 at 2:45 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on December 27, 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 December 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 December 31, 2023. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the Department for Medicaid Services' (DMS's) reimbursement provisions and requirements regarding non-outpatient Level I and II psychiatric residential treatment facility services.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish DMS's reimbursement provisions and requirements regarding non-outpatient Level I and II psychiatric residential treatment facility services.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing DMS's reimbursement provisions and requirements regarding non-outpatient Level I and II psychiatric residential treatment facility services.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the authorizing statutes by establishing DMS's reimbursement provisions and requirements regarding non-outpatient Level I and II psychiatric residential treatment facility services.

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

(a) How the amendment will change this existing administrative regulation: The amendments to the administrative regulation establish new per diem rates of \$500 for Level I and \$600 for Level II PRTF services. In addition, the administrative regulation removes a stratified reimbursement structure for Level II PRTF services and implements a uniform daily rate. Finally, future inflation increases will be linked to the Medicare economic index and calculated annually instead of once each biennium.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation is needed to implement improved reimbursement for PRTFs and to implement an approved state plan amendment.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment implements a federal approval concerning enhanced PRTF rates.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will allow for continued operation and sustainability for PRTFs.

(3) List the type and number of individuals, businesses,

organizations, or state and local governments affected by this administrative regulation: Level I and II PRTFs will be affected by the amendment. Currently, there are eighteen (18) Level I PRTFs enrolled in the Medicaid Program and one (1) Level II PRTF enrolled in the Medicaid Program.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No action is required.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): A sustainable provider reimbursement structure will be in place for PRTFs.

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

(a) Initially: The department shall meet its budget obligations pursuant to HB 1 of the 2022 Regular Session.

(b) On a continuing basis: The department shall meet its budget obligations pursuant to HB 1 of the 2022 Regular Session.

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

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

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

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

FISCAL NOTE

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

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

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

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

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

(c) How much will it cost to administer this program for the first year? The department shall meet its budget obligations pursuant to HB 1 of the 2022 Regular Session.

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

subsequent years? The department shall meet its budget obligations pursuant to HB 1 of the 2022 Regular Session.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? DMS anticipates that the increased revenue created by these amendments will allow for PRTFs to be sustainable.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? DMS anticipates that the increased revenue created by these amendments will allow for PRTFs to be sustainable in subsequent years.

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

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

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] The administrative regulation will not have a major economic impact – as defined by KRS 13A.010 – on regulated entities.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 42 U.S.C. 1396a(a)(30)(A).

(2) State compliance standards. To qualify as a Level I or II PRTF, a facility must meet the criteria established in KRS 216B.450 through 457.

(3) Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 1396a(a)(30)(A) requires Medicaid state plans to: "...provide such methods and procedures relating to the utilization of, and the payment for, care and services available under the plan (including but not limited to utilization review plans as provided for in section 1903(i)(4)) as may be necessary to safeguard against unnecessary utilization of such care and services and to assure that payments are consistent with efficiency, economy, and quality of care and are sufficient to enlist enough providers so that care and services are available under the plan at least to the extent that such care and services are available to the general population in the geographic area."

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

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

**CABINET FOR HEALTH AND FAMILY SERVICES
Department for Income Support
Division of Child Support
(Amendment)**

921 KAR 1:410. Child support collection and enforcement.

RELATES TO: KRS 13B.010(2), 15.055, ~~[67A.620, 95.620(1), 95.878,]~~ 131.570, ~~205.712(3)-205.795, [161.700(1), 186.570(2), 205.594, 205.595, 205.710-205.802,]~~ 237.110(4), ~~[403.211-403.215, 405.060(2), (3), [405.405-405.991, 407.5401-407.5902,]~~ ~~427.005, [427.425,]~~ 31 C.F.R. 285.1, 285.3, 45 C.F.R. ~~[302.32-302.36, 302.60-302.80, 303.3, 303.6, [303.31, 303.32, 303.35, 303.70, 303.72, 303.100-303.102, 303.104,]15 U.S.C. 1673, 42 U.S.C. 652, [653, 653A,]654, [659,]664, 666(a)(1)-(4), (6)-(12), (14)-(19), (b), (c), 669a~~

STATUTORY AUTHORITY: KRS 15.055(2), 186.570(2), 194A.050(1), 205.712(3)(2)(a), 205.712(17)(46), 205.745(9), 205.795, 405.411(2), 405.520, 42 U.S.C. ~~[652, 653, 654,]656, 659, 666(a), [-(b), -(c), 669a]~~

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary to promulgate administrative regulations necessary to implement programs mandated by federal law or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. 42 U.S.C. 666 requires states to have laws that prescribe procedures to improve effectiveness of child support enforcement. KRS 205.712(3)(2)(a) requires the Cabinet for Health and Family Services to collect and enforce child support obligations and authorizes the cabinet to promulgate administrative regulations to implement its duties. This administrative regulation establishes procedures for collection and enforcement of child support.

Section 1. Definition. "Lump sum payment of any kind" means a lump sum payment of earnings as defined in KRS 427.005.

Section 2. Collection.

(1) Income withholding shall be used for the collection of a support obligation or health insurance coverage in an order being enforced by the Child Support Enforcement (CSE) program.

(2) The cabinet shall issue the CS-89, Income Withholding for Support, and CS-72, National Medical Support Notice, to an employer or other income source:

(a) Within fifteen (15) calendar days of a request for income withholding; or

(b) Within two (2) working days after entry of an obligor into the State Directory of New Hires.

(3) The employer or other income source shall:

(a) Implement income withholding no later than the first pay period that occurs after fourteen (14) working days following the date of the CS-89; and

(b) Transfer the CS-72 to the employer's health plan administrator within twenty (20) business days after receipt of the notice.

(4) The employer or other income source, in accordance with KRS 405.465(4) and (6)(a), may deduct the sum of one (1) dollar for each payment made pursuant to the order.

(5) The total amount to be withheld shall not exceed the maximum amount allowed under 15 U.S.C. 1673(b).

(6) In the case of an initial withholding, the cabinet shall send the obligor a copy of the CS-89 in order to notify the obligor that the income withholding:

(a) May be contested by requesting an administrative hearing pursuant to 921 KAR 1:430, in accordance with KRS 405.467(5)(4); and

(b) Shall apply to the current and any subsequent employer.

(7) The health plan administrator shall notify the obligor and the cabinet of the health insurance coverage within forty (40) working days of receipt of the CS-72.

(8) If an obligor terminates employment, the employer or other income source shall notify the cabinet of the obligor's last known address and name of the new employer, if known, in accordance

with KRS 405.465(5).

(9) An obligor shall inform the cabinet of any changes in:

(a) A current employer or source of income;

(b) Access to health insurance; and

(c) Residential or mailing address.

(10) If an obligor transfers or assigns income or income-producing property after receipt of notification of a child support obligation, the cabinet shall take action pursuant to KRS 405.060.

(11) If an arrearage only amount is subject to withholding, the arrearage payment and frequency of payment shall be equal to the payment and frequency last designated by court or administrative order.

(12) The employer or other income source shall forward:

(a) The support obligation payment to the state disbursement unit in the child support agency within seven (7) working days from the date an amount is withheld; or

(b) The medical insurance premium to the health insurance carrier or notify the cabinet prior to payment if more than one (1) option is available under a plan within twenty (20) business days.

(13) The employer or other income source shall include on the transmittal to the cabinet the obligor's:

(a) Name;

(b) Social Security number; and

(c) Cabinet-assigned identification number.

(14) The employer or other source of income shall not be required to change payroll frequency but shall withhold:

(a) At least once monthly; and

(b) May combine withheld amounts from more than one (1) obligor's income in a single payment to the cabinet, if the amount attributable to each obligor is identified by:

1. Name;

2. Social Security number; and

3. Cabinet-assigned identification number.

(15)

(a) An employer with twenty (20) or more employees shall provide written notification of a lump sum payment of any kind of \$150 or more to be made to an employee who is currently under an income withholding order, in accordance with KRS 405.465.

1. The written notice to the cabinet shall include the following:

a. Name of the employee;

b. Social Security number of the employee;

c. Amount of the lump sum payment; and

d. Intended payment date.

2. The notice may include multiple employees on one (1) written notification if the information in accordance with subparagraph 1 of this paragraph is provided for each employee.

(b) Upon receipt of notification of a lump sum payment, Child Support Enforcement shall determine if the employee owes an arrearage on a support obligation enforced by the cabinet.

(c) If the employee owes no arrearage, Child Support Enforcement or its designee shall notify the employer to release the lump sum payment to the employee.

(d) If the employee owes an arrearage, pursuant to paragraph (b) of this subsection, Child Support Enforcement or its designee shall initiate:

1. A court order to the employer in accordance with KRS 405.465; or

2. An administrative order in accordance with KRS 405.470.

(e) If Child Support Enforcement or its designee does not contact the employer, the employer shall:

1. Hold the lump sum for thirty (30) calendar days, in accordance with KRS 405.465(6)(a), from the projected date of its release; and

2. Release the lump sum payment to the employee after the 30th calendar day, unless the employer has received from Child Support Enforcement or its designee a court order or an administrative order to withhold any portion of the lump sum payment.

(16) If an obligor receives unemployment compensation benefits, the cabinet shall:

(a) Through an agreement with the Education Cabinet, Office of Employment and Training, submit a CS-76, Unemployment Insurance Notice of Withholding, to the Department of Unemployment Insurance within the Education Cabinet to collect a child support payment from an obligor receiving unemployment

compensation; and

(b) Notify an obligor with a CS-73, Unemployment Insurance Letter, along with a copy of the CS-76, Unemployment Insurance Notice of Withholding that:

1. Current child support obligation or delinquency is owed;
2. The cabinet has completed a CS-76 to order withholding of:
 - a. Fifty (50) percent of the unemployment benefit; or
 - b. The amount of the assigned support obligation, whichever is less; and

3. The obligor may contest the withholding by requesting an administrative hearing as specified in 921 KAR 1:430.

Section 3. Support Collection by Methods Other than Collection through Income Withholding.

(1) Federal income tax refund offset and federal administrative offset.

(a) A public assistance case shall qualify for offset if there is:

1. A court-ordered or administratively-established support obligation;
2. An assignment of support to the cabinet;
3. An arrearage of at least \$150; and
4. Cabinet verification of the accuracy of the obligor's name and Social Security number.

(b) A nonpublic assistance case, for which the cabinet is providing services, involving past-due child support, a specific dollar amount of medical support, or spousal support shall qualify for offset if the:

1. Cabinet is enforcing a court-ordered or administratively-established support obligation;
2. Cabinet verifies accuracy of the obligor's name and Social Security number;
3. Nonpublic assistance arrearage owed is equal to or greater than \$500, exclusive of fees, court costs, or other non-child support debt; and
4. Cabinet has the following:
 - a. A copy of the current support order;
 - b. A copy of the payment record; and
 - c. The custodial parent's last known address.

(c)

1. If a case is submitted for federal tax refund offset, the case may be subject to federal administrative offset of nonexempt federal payments pursuant to 42 U.S.C. 664 and 31 C.F.R. 285.1 and 285.3.

2. Nonexempt federal payments shall be denied to individuals owing a child support arrearage as defined in paragraphs (a) and (b) of this subsection.

(d) An Advance Notice of Intent to Collect Past Due Support, Form CS-122, shall be sent to the obligor of the intent to intercept the tax refund and the administrative offset to be applied to the obligor's account. The notice shall inform noncustodial parents:

1. Of their right to contest the fact that past due support is owed or the amount of past due support by requesting an administrative hearing;
2. Of the procedures and timeframe for contacting CSE to request an administrative hearing;
3. That the hearing shall be conducted by the submitting state unless the noncustodial parent requests the hearing be conducted by the state with the order upon which the referral for offset is based; and
4. That, in the case of a joint return, the Secretary of the U.S. Treasury shall notify the noncustodial parent's spouse at the time of offset regarding the steps to take to protect the share of the refund which may be payable to that spouse.

(2) State income tax refund offset.

(a) A public assistance case and nonpublic assistance case shall qualify for offset if there is:

1. A court-ordered or administratively-established support obligation;
2. An assignment of support to the cabinet or the Child Support Enforcement program is providing services involving past due child support, a specific dollar amount of medical support, or spousal support;
3. An arrearage of at least \$150; and
4. Cabinet verification of the accuracy of the obligor's name and

Social Security number.

(b) In accordance with KRS 131.570, an advance written notice shall be sent to the obligor that he or she may contest the accuracy of a past due amount by requesting an administrative hearing as specified in 921 KAR 1:430.

(3) Tort claim settlements and state administrative offset. The cabinet shall:

(a) Identify a child support case for state administrative offset, including tort claim settlements, if a child support case meets the criteria specified in subsection (2)(a) or (b) of this section; and

(b) Notify the Finance and Administration Cabinet to offset administrative payments, including tort claim settlements, in accordance with KRS 205.712(18)(17), for a case identified in paragraph (a) of this subsection.

(4) Financial Institution Data Match (FIDM). The cabinet shall:

(a) Use the following criteria to identify a case for seizure of assets:

1.
 - a. Assignment of support is made to the cabinet; or
 - b. Child Support Enforcement program is providing support services; and
2. The obligor owes past-due support in an amount equal to or greater than one (1) month's support obligation;

(b) Issue a CS-68, Order to Withhold and Deliver, and CS-69, Answer to Withhold and Deliver, to a financial institution holding the obligor's account or accounts;

(c) Issue a CS-68 and CS-121, Noncustodial Parent's Answer to Withhold and Deliver, to the obligor within two (2) working days:

1. After both of the forms specified in paragraph (b) of this subsection are issued to the financial institution; and
2. To notify the obligor that the funds in the account with the financial institution may be retained by requesting an administrative hearing to contest the Order to Withhold and Deliver in accordance with 921 KAR 1:430;

(d) Notify an obligor that to retain the funds in the account with the financial institution, an obligor shall take one (1) of the following actions within twenty (20) calendar days from the date of receipt of a CS-68:

1. Pay the total arrearage;
2. Request an administrative hearing to contest the CS-68; or
3. Post a bond satisfactory to the cabinet; and

(e) To release or amend an Order to Withhold and Deliver, send a CS-70, Release/Amendment of Order to Withhold and Deliver to:

1. The obligor; and
2. The financial institution.

(5) If a seizure of assets request is identified, as specified in subsection (4)(a) of this section, and is initiated from outside the commonwealth as a result of a FIDM, pursuant to 42 U.S.C. 666(a)(17), the cabinet shall comply with KRS 205.712, 407.5305, and 407.5507 to issue:

(a) A CS-68 and a CS-69 to a financial institution holding the obligor's account or accounts;

(b) A CS-68 and a CS-121, Noncustodial Parent's Answer to Withhold and Deliver, to the obligor within two (2) working days after both of the forms specified in paragraph (a) of this subsection are issued to the financial institution; and

(c) A CS-70 to the financial institution if the initiating state's request is withdrawn.

Section 4. Enforcement Actions.

(1) Liens.

(a) The cabinet shall file a lien on an obligor's interest in personal or real property, in accordance with KRS 205.745, if:

1. The obligor owes an arrearage equal to or greater than one (1) month's obligation;
2. The child support has been assigned to the cabinet;
3. The property has been identified and located; and
4. The value of the property exceeds the costs related to filing the lien.

(b) To file a lien, the cabinet shall:

1. Issue a CS-85, Notice of Lien, for property within or outside Kentucky in accordance with KRS 205.745 or 205.7785; and
2. Provide a CS-119, Noncustodial Parent's Notice of Lien,

along with a copy of the CS-85 to the obligor notifying him that:

a. The obligor may contest the lien as specified in 921 KAR 1:430;

b. A transfer of property in order to avoid payment shall be considered an act of fraud, in accordance with KRS 405.060(2); and

c. If the obligor makes full payment of the arrearage, including interest, penalties, and fees, a lien release shall be provided to the obligor using the CS-85, Notice of Lien~~[CS-120, Release of Lien, shall be provided to the obligor]~~.

(c) To release a lien, the cabinet shall provide a CS-85~~[CS-120, Notice/Release] of Lien~~, to the obligor.

(2) License and certificate denial, suspension, or revocation.

(a) If an obligor owes an arrearage equal to or greater than six (6) months of an assigned support obligation or fails to comply with a subpoena or warrant relating to paternity or child support proceedings, as established in KRS 205.712~~(10)~~~~(9)~~:

1. The cabinet shall forward the name of the individual to a board of licensure or board of certification for the notification of the denial, revocation, or suspension of a driver's license, professional license or certification, occupational license or certification, recreational license, or sporting license.

2. The denial or suspension shall remain in effect until:

a. The obligor makes full payment of the arrears;

b. Payments on the past due child support are made in accordance with a court order or~~[-or]~~ an administrative order~~[-or]~~ Payment Agreement~~, CS-78~~;

c. The obligor complies with the subpoena or a warrant relating to paternity or child support proceedings has been removed;

d. The obligor provides supporting documentation of extenuating circumstances that is accepted by the cabinet; or

e. The appeal of the denial or suspension is upheld and the license is reinstated.

3. The cabinet shall send to the obligor a CS-44, Notice of Intent to Request Denial or Suspension, which includes:

a. A section for an Answer to Notice of Intent providing the obligor with notice of the obligor's right to request an administrative hearing contesting the action as specified in 921 KAR 1:430; and

b. Notification that the CS-63, Notice to Licensing/Certification Board or Agency shall be rescinded if an action specified in paragraph (a) 2 of this subsection has been taken.

4. The cabinet shall send to the issuing agency or board of licensure or certification a CS-63, if an action in subparagraph 2 of this paragraph has not been taken.

5. The cabinet shall send to the issuing agency or board of licensure or certification a CS-63, within twenty (20) calendar days of the date of administrative hearing decision, if an administrative hearing results in a finding that the case qualifies for:

a. A license or certificate denial;

b. Suspension; or

c. Revocation.

6. The cabinet shall notify the issuing board or agency that the obligor is no longer subject to denial, suspension, or revocation, if the obligor, in accordance with KRS 205.712~~(12)~~~~(11)~~:

a. Has eliminated the child support arrearage;

b. Is making payments on the child support arrearage in accordance with a court or administrative order; or

c. Complies with a subpoena or warrant relating to paternity or child support proceedings.

(b) If an obligor owes an arrearage equal to or greater than one (1) year's obligation, the cabinet shall take action against a license to carry a concealed deadly weapon as specified in KRS 237.110(4).

(3) Vehicle booting.

(a) If an obligor owes an arrearage equal to or greater than six (6) months obligation of an assigned support obligation and fails to comply with a subpoena or warrant relating to a child support proceeding, the cabinet may enforce a lien on a vehicle registered to the obligor by immobilization with a vehicle boot as established in KRS 205.745(9).

(b) The cabinet shall:

1. Verify with the Department of Vehicle Regulation that the vehicle identification number for the vehicle to be booted is registered~~[register]~~ in the obligor's name;

2. Verify the vehicle to be booted is solely owned by the obligor,

co-owned by the obligor and current spouse, or owned by a business in which the obligor is the sole proprietor;

3. Send a notice of intent to the obligor, unless there is reason to believe that the obligor will leave town or hide the vehicle;

4. File a lien in the county where the vehicle is kept; and

5. Set a target date for booting the vehicle, if the obligor does not contact the cabinet within ten (10) days of notice to negotiate a settlement.

(c) The cabinet shall send a cancellation notice to the obligor and to the appropriate local law enforcement personnel to terminate the booting of the vehicle.

(4) Newspaper publication of a list of delinquent obligors. If an obligor owes an arrearage equal to or greater than six (6) months of an assigned support obligation or fails to comply with a subpoena or warrant relating to paternity or child support proceedings, as established in KRS 405.411, a cabinet designee under 205.712~~(7)~~~~(6)~~ may:

(a) Compile and furnish a list to a newspaper of general circulation in that county for publication; and

(b) Include the name, last known address, and the past due amount owed by the obligor.

(5) Passport denial, revocation, or limitation. If the obligor owes an arrearage of \$2,500 or more, in accordance with 42 U.S.C. 652(k) and 654(31), the cabinet shall:

(a)1. Provide the Advance Notice of Intent to Collect Past Due Support, CS-122, to the obligor of the determination to be referred for passport denial, revocation, or limitation; and

2. Include in the notice the consequences of the referral and the right to contest the action by requesting a hearing in accordance with KRS 205.712~~(9)~~~~(8)~~;

(b) Provide the U.S. Secretary of Health and Human Services the names of individuals and supporting documentation for the denial, revocation, or limitation of the obligor's passport; and

(c) Notify the Secretary of the U.S. Department of Health and Human Services that the cabinet requests the release of the passport of an obligor that had been denied if any of the following criteria are met:

1. There was an erroneous submittal of a Social Security number;

2. There is a case of mistaken identity and the cabinet has verified this information;

3. The obligor is required to pay the past due support in full;

4. The obligor provides documentation on company letterhead verifying travel for employment or business purposes and makes alternate payment arrangements acceptable to the cabinet; or

5. There are extenuating circumstances in which the reason for travel is a family emergency and supporting documentation is provided to and accepted by the cabinet.

(6) Delinquent list.

(a) The cabinet shall provide to the Office of the Attorney General a list of names of delinquent obligors for publication on the Internet, as established in KRS 15.055 and 205.712~~(17)~~~~(16)~~.

(b) The cabinet shall send the obligor ~~[meeting the criteria in 40 KAR 1:080]~~a CS-175, Notice of Intent to Place Noncustodial Parent's Name on Delinquent Listing notifying him or her of his or her right to contest by requesting a hearing.

Section 5. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "CS-44 Notice of Intent to Request Denial or Suspension", 10/23~~[9/40]~~;

(b) "CS-63 Notice to Licensing/Certification Board or Agency", 10/23~~[9/40]~~;

(c) "CS-68 Order to Withhold and Deliver", 10/23~~[9/40]~~;

(d) "CS-69 Answer to Withhold and Deliver", 9/10;

(e) "CS-70 Release/Amendment of Order to Withhold and Deliver", 9/16;

(f) "CS-72 National Medical Support Notice", 10/23~~[3/45]~~;

(g) "CS-73 Unemployment Insurance Letter", 9/10;

(h) "CS-76 Unemployment Insurance Notice of Withholding", 9/10;

(i) ~~["CS-78 Payment Agreement", 9/10;~~

~~]]~~ "CS-85 Notice of Lien", 10/23~~[8/48]~~;

(j)(4) "CS-89 Income Withholding for Support", 10/23[4/24];
 (k)(h) "CS-119 Noncustodial Parent's Notice of Lien", 9/10;
 (l)(m) "CS-120 Release of Lien", 09/16;
 (n) "CS-121 Noncustodial Parent's Answer to Withhold and Deliver", 10/23[9/10];
 (m)(e) "CS-122 Advance Notice of Intent to Collect Past-Due Support", 10/12; and
 (n)(p) "CS-175 Notice of Intent to Place Noncustodial Parent's Name on Delinquent Listing", 4/09.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Income Support, Child Support Enforcement, 730 Schenkel Lane, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. and available online at <https://csws.chfs.ky.gov/csws>.

STEVEN P. VENO, Commissioner
 ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: September 22, 2023

FILED WITH LRC: October 9, 2023 at 3:10 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on December 27, 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 December 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 December 31, 2023. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes procedures for collection and enforcement of child support.

(b) The necessity of this administrative regulation:

This administrative regulation is necessary to implement requirements to collect and enforce child support obligations in accordance with 31 C.F.R. 285.1, 285.3, 45 C.F.R. 303.6, 15 U.S.C. 1673, 42 U.S.C. 652, 654, 664, 666(a)(1)-(4), (6)-(12), (14)-(19), (b), (c).

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 205.712(3) requires the Cabinet for Health and Family Services to collect and enforce child support obligations and authorizes the cabinet to promulgate administrative regulations to implement its duties. This administrative regulation establishes procedures for collection and enforcement of child support.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist with further establishing procedures to ensure effective administration of child support programs mandated by federal law and conforming to KRS 194A.050.

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

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation updates material incorporated by reference: CS-44 Notice of Intent to Request Denial or Suspension, CS-63 Notice to Licensing/Certification Board or Agency, CS-68 Order to Withhold and Deliver, CS-72 National Medical Support Notice, CS-85 Notice of Lien, and CS-121 Noncustodial Parent's Answer to Withhold and Deliver. It removes CS-78 Payment Agreement and CS-120 Release of Lien from regulation because these two forms are no longer used by the agency. It also updates statutory references.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to update material incorporated by reference and update statutory references.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by clarifying the criteria used by the cabinet in collecting and enforcing child support and medical support orders. This amendment clarifies that the arrearage amount on the CS-44 Notice of Intent to Request Denial or Suspension, CS-63 Notice to Licensing/Certification Board or Agency, CS-68 Order to Withhold and Deliver, and the CS-121 Noncustodial Parent's Answer to Withhold and Deliver may not reflect the total amount due. It conforms the CS-72 National Medical Support Notice, and the CS-85 Notice of Lien to federal requirements. It removes the CS-120 Release of Lien from regulation as it is no longer used by the agency and replaces it with the CS-85 Notice of Lien as a lien release is now incorporated in that form. It removes the CS-78 from regulation as it is no longer used by the agency.

(d) How the amendment will assist in the effective administration of the statutes: The forms being revised have been updated to reflect policy and federal changes implemented by the Office of Child Support Services and to assist in the collection and enforcement of child support and medical support orders.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The type and number of affected individuals, businesses, organizations, or state and local governments are 657 child support enforcement attorneys and staff and 503,000 participants in the child support program.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Child Support Enforcement attorneys and staff will receive guidance from the Child Support Program regarding the revised forms. Participants with cases will access or be provided the revised forms by a child support office.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The amendment to this administrative regulation will create no new or additional costs to regulated entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The amendment to this administrative regulation will not increase accrued benefits to regulated entities.

(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 will be implemented with no associated additional costs.

(b) On a continuing basis: The administrative regulation has no associated additional costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of funding include state general funds and federal funds under 42 U.S.C. 401-419, Title IV-D of the Social Security Act.

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

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

(9) TIERING: Is tiering applied? Tiering is not applicable as compliance with this administrative regulation applies equally to all individuals or entities.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 31 C.F.R. 285.1, 285.3, 45 C.F.R. 303.6, 15 U.S.C. 1673, 42 U.S.C. 652, 654, 664, 666(a)(1)-(4), (6)-(12), (14)-(19), (b), (c)

(2) State compliance standards. KRS 13B.010(2), 15.055, 131.570, 205.712(3)-205.795, 237.110(4), 405.060(2), (3), 427.005

(3) Minimum or uniform standards contained in the federal mandate. The provisions of the administrative regulation comply with 15 U.S.C. 1673, 42 U.S.C. 652, 654, 664, 666(a)(1)-(4), (6)-(12), (14)-(19), (b), (c)

(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.

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

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Cabinet for Health and Family Services and the Department for Income Support, Child Support Enforcement Program, are 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 13B.010(2), 15.055, 131.570, 205.712(3)-205.795, 237.110(4), 405.060(2), (3), 427.005, 31 C.F.R. 285.1, 285.3, 45 C.F.R. 303.6, 15 U.S.C. 1673, 42 U.S.C. 652, 654, 664, 666(a)(1)-(4), (6)-(12), (14)-(19), (b), (c), 15 U.S.C. 1673, 42 U.S.C. 652, 654, 664, 666(a)(1)-(4), (6)-(12), (14)-(19), (b), (c)

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

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

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

(d) How much will it cost to administer this program for subsequent years? No new or additional costs are necessary to administer this program in any 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 regulated entities 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 the 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 the 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 as defined above.

CABINET FOR HEALTH AND FAMILY SERVICES

Department for Community Based Services

Division of Family Support

(Amendment)

921 KAR 3:027. Technical requirements.

RELATES TO: KRS 205.2005, 7 C.F.R. Parts 271-285, 273.4, 273.5, 273.7, 273.11, 45 C.F.R. 261.2, 7 U.S.C. 2011, 2014, 2015(d), 2015(o)(3)(A), 19 U.S.C. 2296, 20 U.S.C. 28 Part F, 21 U.S.C. 862(a), 42 U.S.C. 681, Pub.L. 116-260 Section 702(e), Pub.L. 118-5 Section 311

STATUTORY AUTHORITY: KRS 194A.050(1), 7 C.F.R. 271.4, Part 272, Part 273

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to implement programs mandated by federal law or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. 7 C.F.R. 271.4 requires the cabinet to administer a Supplemental Nutrition Assistance Program (SNAP) within the state. 7 C.F.R. Parts 272 and 273 establish requirements for the cabinet to participate in the SNAP. In addition, 7 U.S.C. 2014 establishes that an otherwise-qualified immigrant who is blind or receiving a disability benefit, who has lived in the United States for at least five (5) years, or who is under eighteen (18) years of age shall be eligible to participate in SNAP regardless of the date he or she entered the United States. This administrative regulation establishes the technical eligibility requirements used by the cabinet in the administration of SNAP. Pursuant to Section 702(e) of Pub.L. 116-260, the Consolidated Appropriations Act of 2021, SNAP eligibility was temporarily expanded for qualifying students. Pursuant to Section 311 of Pub.L. 118-5, the Fiscal Responsibility Act of 2023, modification was made to time limits of work requirement exemptions applicable to individuals of specific ages, homeless individuals, veterans, and former foster youth.

Section 1. Definitions.

(1) "Exempt" means excused by the department from participation in the Supplemental Nutrition Assistance Program Employment and Training Program (E&T).

(2) "Qualified immigrant" has the same meaning as "qualified

alien", as defined by 7 C.F.R. 273.4.

(3) "Student" means a person who is between the ages of eighteen (18) and forty-nine (49), physically and mentally fit, and enrolled at least half-time in an institution of higher education.

Section 2. Technical Eligibility. In accordance with 7 C.F.R. Parts 271 through 285 promulgated by the Food and Nutrition Service (FNS), of the United States Department of Agriculture, the cabinet shall utilize national uniform requirements of technical eligibility for SNAP.

Section 3. Technical Eligibility Criteria. Technical eligibility requirements shall apply to all households and consist of the criteria established in this section.

(1) Residency. A household:

(a) Shall reside in the county in which the household receives benefits; and

(b) May apply for benefits in any county in accordance with 921 KAR 3:030, Section 3.

(2) Identity.

(a) The applicant's identity shall be verified; and

(b) If an authorized representative applies for the household, the applicant's and the authorized representative's identities shall be verified.

(3) Citizenship and immigration status.

(a) An individual shall satisfy the citizenship and immigration status requirement if the individual is a:

1. Citizen of the United States;
2. U.S. noncitizen national; or
3. Qualified immigrant who is lawfully residing in Kentucky.

(b) Except as provided in paragraph (c) of this subsection, an individual whose status is questionable shall be ineligible to participate until verified.

(c) An individual whose status is pending verification from a federal agency shall be eligible to participate for up to six (6) months from the date of the original request for verification.

(d) A single household member shall attest in writing to the citizenship or immigration status requirements as established in 921 KAR 3:030 for each household member.

(4) Household size. If information is obtained by the Department for Community Based Services (DCBS) that household size differs from the household's stated size, the size of household shall be verified through readily available documentary evidence or through a collateral contact.

(5) Students. A student shall be ineligible to participate unless the student is:

(a) 1. Engaged in paid employment for an average of twenty (20) hours per week; or

2. If self-employed, employed for an average of twenty (20) hours per week and receiving weekly earnings at least equal to the federal minimum wage multiplied by twenty (20) hours;

(b) Participating in a state or federally financed work study program during the regular school year;

(c) Responsible for the care of a dependent household member under the age of six (6);

(d) Responsible for the care of a dependent household member who has reached the age of six (6), but is under age twelve (12) and for whom the cabinet has determined that adequate child care is not available to enable the individual to attend class and to satisfy the work requirements of paragraphs (a) or (b) of this subsection;

(e) Receiving benefits from the Kentucky Transitional Assistance Program (KTAP)(K-TAP);

(f) Assigned to or placed in an institution of higher learning through a program pursuant to:

1. 7 C.F.R. 273.5(a);
2. 45 C.F.R. 261.2; or
3. 19 U.S.C. 2296;

(g) Enrolled in an institution of higher learning as a result of participation in a work incentive program pursuant to 42 U.S.C. 681;

(h) Enrolled in an institution of higher learning as a result of participation in E&T in accordance with 921 KAR 3:042;

(i) A single parent with responsibility for the care of a dependent household member under age twelve (12); or

(j) Enrolled at least half-time in an institution of higher education and:

1. Eligible to participate in a state or federally financed work study program during the regular school year; or

2. Has an expected family contribution of \$0 in the current academic year pursuant to 20 U.S.C. 28 Part F.

(6) Social Security number (SSN).

(a) Households applying for or participating in SNAP shall comply with SSN requirements by providing the SSN of each household member or applying for a number prior to certification.

(b) Failure to comply without good cause shall be determined for each household member and shall result in an individual's disqualification from participation in SNAP until this requirement is met.

(7) Work registration. All household members, unless exempt, shall be required to comply with the work registration requirements established in Section 4 of this administrative regulation.

(8) Work requirement.

(a) Except for individuals who may be eligible for up to three (3) additional months in accordance with paragraph (e) of this subsection, an individual shall not be eligible to participate in SNAP as a member of a household if the individual received SNAP for more than three (3) countable months during any three (3) year period, during which the individual did not:

1. Work eighty (80) hours or more per month;

2. Participate in and comply with the requirements of the E&T component pursuant to 7 U.S.C. 2015(d) for twenty (20) hours or more per week;

3. Participate in and comply with the requirements of a program pursuant to:

a. 7 C.F.R. 273.5(a); or

b. 19 U.S.C. 2296;

4. Participate in and comply with the requirements established in 921 KAR 3:042; or

5. Receive SNAP benefits pursuant to paragraph (b), (c), or (d) of this subsection.

(b) Paragraph (a) of this subsection shall not apply to an individual if the individual is:

1. Within the age ranges established in 7 U.S.C. 2015(o)(3)(A)[Under eighteen (18) or fifty (50) years of age or older];

2. Physically or mentally unfit for employment as determined by the cabinet;

3. A parent or other adult member of a household containing a dependent child under the age of eighteen (18);

4. Exempt from work registration pursuant to Section 4(4) of this administrative regulation; ~~or~~

5. Pregnant;

6. A homeless individual;

7. A veteran; or

8. An individual who is twenty-four (24) years of age or younger and was in foster care on the date of attaining eighteen (18) years of age.

(c) Paragraph (a) of this subsection shall not apply if, pursuant to an approved waiver by FNS, the county or area in which the individual resides:

1. Has an unemployment rate of over ten (10) percent; or

2. Does not have a sufficient number of jobs to provide employment.

(d) Subsequent eligibility.

1. An individual denied eligibility pursuant to paragraph (a) of this subsection shall regain eligibility to participate in SNAP if, during a thirty (30) day period, the individual meets one of the conditions of paragraph (a)1. through 4. of this subsection, or the individual was not meeting the work requirements in accordance with paragraph (b) of this subsection.

2. An individual who regains eligibility pursuant to subparagraph 1. of this paragraph shall remain eligible as long as the individual meets the requirements of subparagraph 1. of this paragraph.

(e) Loss of employment or training.

1. An individual who regains eligibility pursuant to paragraph (d)1. of this subsection and who no longer meets the requirements of paragraph (a)1. through 4. of this subsection shall remain eligible for a consecutive three (3) month period, beginning on the date the

individual first notifies the cabinet that the individual no longer meets the requirements of paragraph (a)1. through 4. of this subsection.

2. An individual shall not receive benefits pursuant to subparagraph 1. of this paragraph for more than a single three (3) month period in any three (3) year period.

(f) If the individual does not meet all other technical and financial eligibility criteria pursuant to 7 U.S.C. 2011, nothing in this section shall make an individual eligible for SNAP benefits.

(9) Quality control. Refusal to cooperate in completing a quality control review shall result in termination of the participating household's benefits.

(10) Drug felons. An individual convicted under federal or state law of an offense classified as a felony by the law of the jurisdiction involved and that has an element of possession, use, or distribution of a controlled substance as defined in 21 U.S.C. 862(a), may remain eligible for SNAP benefits if the individual meets the requirements established in KRS 205.2005.

(11) Child support arrears.

(a) In accordance with 7 C.F.R. 273.11(q) to disqualify a noncustodial parent for refusing to cooperate, a noncustodial parent of a child under the age of eighteen (18) shall not be eligible to participate in SNAP if the individual is delinquent in payment of court-ordered support as determined by the Department for Income Support, Child Support Enforcement, unless the individual:

1. Is enrolled in a drug treatment program;

2. Is participating in a state or federally funded employment training program;

3. Meets good cause for nonpayment. Good cause shall include temporary situations resulting from illness, job change, or pendency of unemployment benefits;

4. Is a member of a household containing a child under the age of eighteen (18);

5. Is a member of a household containing an individual who is pregnant or three (3) months post-partum; or

6. Is:

a. Within twelve (12) months of incarceration for a period of at least thirty (30) days; and

b. Cooperating with the Department for Income Support, Child Support Enforcement.

(b) The disqualification of an individual in accordance with paragraph (a) of this subsection shall be in place as long as the individual remains delinquent as determined by Department for Income Support, Child Support Enforcement.

(c) The income, expenses, and resources of an individual disqualified in accordance with paragraph (a) of this subsection shall be processed in accordance with 921 KAR 3:035, Section 5(4).

Section 4. Work Registration.

(1) Unless a household member is exempt from work requirements as established in subsection (4) of this section, a household member shall register for work:

(a) At the time of initial application for SNAP; and

(b) Every twelve (12) months following the initial application.

(2) Work registration shall be completed by the:

(a) Member required to register; or

(b) Person making application for the household.

(3) Unless otherwise exempt, a household member excluded from the SNAP case shall register for work during periods of disqualification. An excluded person shall be an:

(a) Ineligible immigrant; or

(b) Individual disqualified for:

1. Refusing to provide or apply for a Social Security number; or

2. An intentional program violation.

(4) An individual meeting the criteria of 7 C.F.R. 273.7(b)(1) shall be exempt from work registration requirements.

(5) A household member who loses exemption status due to a change in circumstances shall register for work in accordance with 7 C.F.R. 273.7(b)(2).

(6) After registering for work, a nonexempt household member shall:

(a) Respond to a cabinet request for additional information regarding employment status or availability for work;

(b) In accordance with 7 C.F.R. 273.7(a)(1)(vi), accept a bona

fide offer of suitable employment pursuant to 7 C.F.R. 273.7(h), at a wage not lower than the state or federal minimum wage; or

(c) In accordance with 7 C.F.R. 273.7(a)(1)(ii), participate in the E&T Program as assigned by the cabinet.

(7) A household member making a joint application for SSI and SNAP in accordance with 921 KAR 3:035 shall have work requirements waived in accordance with 7 C.F.R. 273.7(a)(6).

(8) The cabinet's E&T worker shall explain to the SNAP applicant the:

(a) Work requirements for each nonexempt household member;

(b) Rights and responsibilities of the work-registered household members; and

(c) Consequences of failing to comply.

Section 5. Determining Good Cause.

(1) A determination of good cause shall be undertaken if a:

(a) Work registrant has failed to comply with work registration requirements as established in Section 4 of this administrative regulation; or

(b) Household member has, pursuant to Section 7 of this administrative regulation, voluntarily:

1. Quit a job; or

2. Reduced the household member's work effort.

(2) In accordance with 7 C.F.R. 273.7(i)(2), good cause shall be granted for circumstances beyond the control of the individual, such as:

(a) Illness of the individual;

(b) Illness of another household member requiring the presence of the individual;

(c) A household emergency;

(d) Unavailability of transportation; or

(e) Lack of adequate care for a child who is six (6) to twelve (12) years of age for whom the individual is responsible.

(3) Good cause for leaving employment shall be granted if:

(a) A circumstance established in subsection (2) of this section exists;

(b) The employment became unsuitable in accordance with 7 C.F.R. 273.7(h); or

(c) A circumstance established in 7 C.F.R. 273.7(i)(3) exists.

Section 6. Disqualification.

(1) A participant shall be disqualified from the receipt of SNAP benefits if the participant:

(a) Fails to comply with the work registration requirements; or

(b) Is determined to have voluntarily, without good cause, quit a job or reduced the work effort as established in Section 5 of this administrative regulation.

(2) An individual disqualified from participation in SNAP shall be ineligible to receive SNAP benefits until the latter of the:

(a) Date the individual complies; or

(b) Lapse of the following time periods:

1. Two (2) months for the first violation;

2. Four (4) months for the second violation; or

3. Six (6) months for the third or a subsequent violation.

(3) Ineligibility shall continue until the ineligible member:

(a) Becomes exempt from the work registration; or

(b)

1. Serves the disqualification period established in subsection (2)(b) of this section; and

2. Complies with the work registration requirements.

(4) A disqualified household member who joins a new household shall:

(a) Remain ineligible for the remainder of the disqualification period established in subsection (2)(b) of this section;

(b) Have income and resources counted with the income and resources of the new household; and

(c) Not be included in the household size in the determination of the SNAP allotment.

Section 7. Disqualification for Voluntary Quit or Reduction in Work Effort.

(1) Within thirty (30) days prior to application for SNAP or any time after application, an individual shall not be eligible to participate

in SNAP if the individual voluntarily, without good cause:

- (a) Quits a job:
 1. Of thirty (30) hours or more per week; and
 2. With weekly earnings at least equal to the federal minimum wage times thirty (30) hours; or
- (b) Reduces the individual's work effort:
 1. To less than thirty (30) hours per week; and
 2. So that after the reduction, weekly earnings are less than the federal minimum wage times thirty (30) hours.
- (2) The cabinet shall impose a disqualification period established in Section 6(2)(b) of this administrative regulation on an individual meeting subsection (1)(a) or (1)(b) of this section.

Section 8. Curing Disqualification for Voluntary Quit or Reduction in Work Effort.

- (1) Eligibility and participation may be reestablished by:
 - (a) Securing new employment with salary or hours comparable to the job quit;
 - (b) Increasing the number of hours worked to the amount worked prior to the work effort reduction and disqualification; or
 - (c) Serving the minimum period of disqualification imposed pursuant to Section 6(2)(b) of this administrative regulation.
- (2) If the individual applies again and is determined to be eligible, an individual may reestablish participation in SNAP.
- (3) If an individual becomes exempt from work registration, the disqualification period shall end, and the individual shall be eligible to apply to participate in SNAP.

Section 9. Hearing Process. If aggrieved by a cabinet action or inaction that affects participation, a SNAP participant may request a hearing in accordance with 921 KAR 3:070.

LESA DENNIS, Commissioner
ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: September 22, 2023

FILED WITH LRC: October 9, 2023 at 3:10 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on December 27, 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 December 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 December 31, 2023. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Krista Quarles

- (1) Provide a brief summary of:
 - (a) What this administrative regulation does: This administrative regulation establishes the technical requirements to receive Supplemental Nutrition Assistance Program (SNAP), which is assistance for low-income households in purchasing eligible food products.
 - (b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the technical

requirements for eligibility to receive SNAP assistance.

- (c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes through its establishment of technical requirements for SNAP eligibility.

- (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing technical requirements for SNAP.

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

- (a) How the amendment will change this existing administrative regulation: The Fiscal Responsibility Act (F.R.A.) of 2023 (Pub. L. 118-5) amended the age of individuals receiving SNAP who are exempted from time limits without meeting work requirements. Previously, individuals aged fifty (50) or older were exempted from these time limits to receive SNAP. The Act included that this age will increase gradually over time, lessening the number of individuals who meet this exemption. The age increases from 50 to 52 in FFY24, 54 years of age in FFY24, and 56 years of age in FFY25 until Oct 1, 2030, when the Act temporary expansions end. The F.R.A. also made SNAP more accessible to homeless individuals, veterans, and former foster youth through age 24.

- (b) The necessity of the amendment to this administrative regulation: This amendment is necessary to conform to federal law.

- (c) How the amendment conforms to the content of the authorizing statutes: The amendment increases the age range of SNAP individuals subject to work requirement time limits in order to comply with federal requirements of the newly-passed F.R.A. of 2023. The amendment includes an exemption from this time limit for specific individuals.

- (d) How the amendment will assist in the effective administration of the statutes: The amendment will allow Kentucky to be in compliance with federal SNAP rules and requirements.

- (3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All SNAP recipients subject to work time limits will be affected. In August 2023, there were 40,497 active SNAP recipients subject to these rules.

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

- (a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Currently, 40,497 individuals aged 18–49 years old meeting the criteria of being an Able-Bodied Adult Without Dependents (ABAWD) cannot receive SNAP more than three (3) months unless they participate in an approved work component. This age will increase over the next few years as a result of recently-passed federal legislation. There will be an increase in ABAWDs that have to comply with work requirements; however, homeless individuals, veterans, and former foster youth through age 24 are being included in the time limit exemption.

- (b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no cost to identified entities unless individuals incur personal transportation costs to participate in work activities.

- (c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Affected entities may continue to receive SNAP benefits by complying with work requirements.

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

- (a) Initially: \$100,000 or less for system design and staff training.
- (b) On a continuing basis: There is no ongoing cost for implementation.

- (6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: SNAP benefits are 100% federally funded by the U.S. Department of Agriculture. Program administrative costs are funded 50% federal and 50% state and have been appropriated in the enacted budget.

- (7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative

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regulation, if new, or by the change if it is an amendment: There are no increases in fees or funding required with 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 any fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering is not applied as this administrative regulatory amendment will be applied in a like manner on a statewide basis.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. Public Law 118-5, the Fiscal Responsibility Act of 2023

(2) State compliance standards. KRS 194A.050(1), 205.2005

(3) Minimum or uniform standards contained in the federal mandate. 7 C.F.R. 271.4, 272, 273

(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 will not impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate.

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation will not impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Cabinet for Health and Family Services, Department for Community Based Services, will be impacted by the administrative regulation amendment by implementing federal amendments.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. Public Law 118-5, the Fiscal Responsibility Act of 2023, KRS 194A.050(1) and 205.2005, 7 C.F.R. 271.4, 272, 273.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 the administrative regulation will not generate revenue.

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

(c) How much will it cost to administer this program for the first year? There will be a one-time agency cost for design changes to the web-based eligibility system used for SNAP. This is estimated to be less than \$100,000.

(d) How much will it cost to administer this program for subsequent years? This amendment does not affect the on-going cost of administering the SNAP program.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? No savings will

be generated by this amendment.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? No savings are anticipated from this amendment.

(c) How much will it cost the regulated entities for the first year? There is no cost to affected entities in the first year.

(d) How much will it cost the regulated entities for subsequent years? There are no ongoing costs to affected entities.

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)]. No major economic impact is anticipated.

NEW ADMINISTRATIVE REGULATIONS

Public comment periods ordinary, non-emergency regulations are at least two months long. For other regulations with open comment periods, please also see last month's *Administrative Register of Kentucky*.

**FINANCE AND ADMINISTRATION CABINET
Kentucky Public Pensions Authority
Kentucky Retirement Systems
(New Administrative Regulation)**

105 KAR 1:148. Merged, split, new, separate, or separated employers or entities.

RELATES TO: KRS 61.520, 61.522, 61.565, 61.645, 61.675, 61.685, 212.132

STATUTORY AUTHORITY: KRS 61.645(9)(e)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 61.645(9)(e) authorizes the Board of Trustees of the Kentucky Retirement Systems to promulgate all administrative regulations necessary or proper in order to carry out the provisions of KRS 16.505 to 16.652 and 61.510 to 61.705, and to conform to federal statutes and regulations. As required by KRS 61.565(1)(d)4., this administrative regulation establishes the procedures and requirements for the process of assigning actuarially accrued liability contributions for a Kentucky Employees Retirement System employer that, on or after March 23, 2021, merges with another employer or entity, forms a new or separate employer or entity, or splits or separates operations into multiple employers or entities.

Section 1. Definitions.

(1) "Actuarially accrued liability" means a prorated annual dollar contribution amount for employers with employees that have participated in or are participating in the system on or after July 1, 2021, that is based on the individual employer's percentage of the system's total actuarially accrued liability as of June 30, 2019, and determined pursuant to KRS 61.565(1)(d)1.

(2) "Assign" means the transfer of legal and financial responsibility for paying the actuarially accrued liability to another participating or non-participating employer.

(3) "Inactive employer" means a participating employer that ceases to have any employees in a regular full-time position participating in the system.

(4) "Merged employer" means one or more participating employers with an actuarially accrued liability that have merged or have plans to merge with one (1) or more participating or non-participating employers into a new single entity or under the name of one (1) of the participating or non-participating employers that are part of the merger.

(5) "New or separate employer" means:

(a) A participating employer with an actuarially accrued liability that forms, becomes, or is bought out by a non-participating employer; or

(b) A participating employer with an actuarially accrued liability that dissolves or becomes an inactive employer and another distinct entity is formed and assumes responsibility for a portion or all of the business.

(6) "Non-participating employer" means an entity that does not participate in the system.

(7) "Participating employer" means an employer that participates in the system.

(8) "Split or separated employer" means a participating employer with an actuarially accrued liability that divides into two (2) or more distinct entities.

(9) "Submit" means an employer 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.

(10) "System" means the Kentucky Employees Retirement System.

Section 2. Retroactive Effective Date of Application. This administrative regulation applies to the actuarially accrued liability of

any participating employer that on or after March 23, 2021 pursuant to KRS 61.565(1)(d)4., merges with another employer or entity, forms a new or separate employer or entity, or splits or separates operations into multiple employers or entities.

Section 3. Actuarially Accrued Liability Assignment.

(1)(a) Except as provided in paragraphs (b) and (c) of this subsection, when, on or after March 23, 2021, a participating employer that has an actuarially accrued liability becomes a merged employer, new or separate employer, or split or separated employer, the agency shall have full authority to assign a portion or all of the total actuarially accrued liability of the participating employer to:

1. The merged, new, split, separate, or separated participating employer or the merged non-participating employer; or

2. Another participating employer that voluntarily requests assignment of a portion or all of the total actuarially accrued liability of the participating employer under Section 8(2)(c) of this administrative regulation.

(b) Employers that pay the costs to cease participation in the system as provided by KRS 61.522 are not subject to the provisions of paragraph (a) of this subsection.

(c) In the case of a district health department that ceases to operate or that has a county or counties that withdraw from the district health department, the agency shall assign the total actuarially accrued liability contribution based upon the proportion of taxable property of each county as certified by the Department for Public Health in the Cabinet for Health and Family Services in accordance with KRS 212.132.

(2) The effective date of the new assignment of actuarially accrued liability shall be the latter of:

(a) The first day of the month following the completion of the merger, split, separation, or formation of a new participating employer; or

(b) March 23, 2021.

(3) If a merged, new, split, separate, or separated participating employer or the merged non-participating employer fails to pay in full an actuarially accrued liability assigned to it pursuant to this administrative regulation and KRS 61.565, the agency may pursue all available remedies, including, but not limited to, actions set forth in KRS 61.675(4), and civil payments, legal fees, and costs in accordance with KRS 61.685(3).

Section 4. Notification of Merge, Split, Separating, or New Entity.

(1)(a) Prior to beginning the formal process or merging, splitting, separating, or becoming a new entity, a participating employer that has an actuarially accrued liability shall submit a written notification of the participating employer's intended merger, split, separation, or formation of a new entity. The written notification shall be on the participating employer's official letterhead.

(b) Following receipt of the notification required by paragraph (a) of this subsection, the agency shall make the relevant determination under Sections 5 through 9 of this administrative regulation.

(2) If the agency becomes aware, through any means, that a participating employer that has an actuarially accrued liability has merged, split, separated, or become a new or separate entity, and the participating employer failed to submit a written notification in compliance with subsection (1)(a) of this section, the agency shall make the relevant determination under Sections 5 through 9 of this administrative regulation.

Section 5. Merged Employers.

(1) The agency shall determine whether two (2) or more participating employers, or one (1) or more participating employer and one (1) or more non-participating employer, have become a merged employer on or after March 23, 2021.

(2) When two (2) or more participating employers with an actuarially accrued liability combine into a new single merged

employer, then:

(a) The merged employer shall take the necessary steps to participate in the system in accordance with KRS 61.520; and

(b) The entire actuarially accrued liability shall be assigned to the merged employer.

(3)(a) When one (1) or more participating employers with an actuarially accrued liability combines with one (1) or more non-participating employer into a new single merged employer, then:

1. The merged employer may be required to take the necessary steps to participate in the system in accordance with KRS 61.520, as determined by the agency; and

2. The entire actuarially accrued liability shall be assigned to the merged employer.

(b) The agency shall have the authority to determine whether a merged employer as described in paragraph (a) of this subsection shall be required to take the necessary steps to participate in the system in accordance with KRS 61.520.

Section 6. New or Separate Employers.

(1) The agency shall determine whether a new or separate employer has been created on or after March 23, 2021.

(2) The entire actuarially accrued liability of the original participating employer that becomes the new or separate employer shall be assigned to the new or separate employer.

(3) The agency shall have the authority to determine whether a new or separate employer as described in subsection (1) of this section shall be required to or may take the necessary steps to participate in the system in accordance with KRS 61.520.

Section 7. Split or Separated Employers.

(1) The agency shall determine whether split or separated employers have been created on or after March 23, 2021.

(2) Split or separated employers shall be required to take the necessary steps to participate in the system in accordance with KRS 61.520.

(3) The actuarially accrued liability calculated for the original participating employer shall be split between the split or separated employers based on the percentage of participating employees with each split or separated employer.

Section 8. Inactive Employers.

(1) The agency shall determine whether a participating employer is an inactive employer.

(2) Except as provided in paragraphs (a) through (c) of this subsection, the actuarially accrued liability calculated for the inactive employer shall remain assigned to the inactive employer.

(a) If the inactive employer becomes part of a merged employer on or after March 23, 2021, the actuarially accrued liability of the inactive employer shall be assigned as described in Section 5 of this administrative regulation.

(b) If, relevant to the inactive employer, a new or separate employer is created on or after March 23, 2021, the actuarially accrued liability of the inactive employer shall be assigned as described in Section 6 of this administrative regulation.

(c) If any other participating employer with an actuarially accrued liability voluntarily requests that the agency assign it the actuarially accrued liability of the inactive employer, the actuarially accrued liability of the inactive employer shall be assigned by the agency to the other participating employer with an actuarially accrued liability.

Section 9. Other Similar Circumstances. Employers whose circumstances do not fit exactly into merged, new, split, separate, or separated participating employer, or merged non-participating employer as identified in Sections (5) through (8) of this administrative regulation, but have similar circumstances, shall be individually evaluated by the agency. The agency shall determine which section of this administrative regulation closest matches the employer circumstances and shall administer in accordance with the identified section.

JOHN CHILTON, CHIEF EXECUTIVE OFFICER

APPROVED BY AGENCY: September 29, 2023

FILED WITH LRC: October 11, 2023 at 3:05 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing to allow for public comment on this administrative regulation shall be held on December 21, 2023, at 10:00 a.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 December 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. 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.

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 the process of assigning actuarially accrued liability contributions for a Kentucky Employees Retirement System employer that, on or after March 23, 2021, merges with another employer or entity, forms a new or separate employer or entity, or splits or separates operations into multiple employers or entities.

(b) The necessity of this administrative regulation: To establish the procedures and requirements for the process of assigning actuarially accrued liability contributions for a Kentucky Employees Retirement System employer that, on or after March 23, 2021, merges with another employer or entity, forms a new or separate employer or entity, or splits or separates operations into multiple employers or entities.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 61.565(1)(d)4. requires the establishment of administrative regulation outlining the assignment of the actuarially accrued liability contribution for a Kentucky Employees Retirement System employer that, on or after March 23, 2021, merges with another employer or entity, forms a new or separate employer or entity, or splits or separates operations into multiple employers or entities. KRS 61.645(9)(e) authorizes the Board of Trustees of the Kentucky Retirement Systems to promulgate all administrative regulations necessary or proper in order to carry out the provisions of KRS 16.505 to 16.652 and 61.510 to 61.705, including KRS 61.565(1)(d)4.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the procedures and requirements for the process of assigning actuarially accrued liability contributions for a Kentucky Employees Retirement System employer that, on or after March 23, 2021, merges with another employer or entity, forms a new or separate employer or entity, or splits or separates operations into multiple employers or entities.

(2) If 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: 325 employers that participate in the Kentucky Employees Retirement System. These employers include county attorney offices, health departments, master commissioners, Non-P1 state agencies, other retirement systems, P1 state agencies, regional mental health boards, and universities. In addition, an unknown number of non-participating employers may be impacted in the event of a split, separated, newly formed, or merged employer as described in the administrative regulation. Finally, the Kentucky Public Pensions Authority is tasked with administering 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: Regulated entities will be required to notify the Kentucky Public Pensions Authority via written statement on official letterhead of its intended merger, split, separation, or formation of a new entity. Regulated entities will be required to pay the actuarially accrued liability contribution as described in the administrative regulation. Finally, regulated entities may be required to comply with the participation determinations and requirements as described in the administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Unknown

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): There are no additional benefits for those identified entities.

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

(a) Initially: Unknown

(b) On a continuing basis: Unknown

(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 related to this administrative regulation.

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

(9) TIERING: Is tiering applied? Tiering is not applied. All 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? 325 county attorney offices, health departments, master commissioners, Non-P1 state agencies, other retirement systems, P1 state agencies, regional mental health boards, and universities that participate in the Kentucky Employees Retirement System. In addition, non-participating employers may be impacted in the event of a split, separated, newly formed, or merged employer as described in the administrative regulation. Finally, the Kentucky Public Pensions Authority is tasked with administering 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 61.565(1)(d)4. and 61.645(9)(e)

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

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

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

(c) How much will it cost to administer this program for the first year? Unknown

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: The cost of administration of this administrative regulation depends on whether impacted entities that participate in the Kentucky Employees Retirement System split, separate, form a new entity, or merge as described in 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? This administrative regulation will not generate a 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 a cost savings.

(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 (+/-):

Expenditures (+/-):

Other Explanation: The fiscal impact of this administrative regulation depends on whether impacted entities that participate in the Kentucky Employees Retirement System split, separate, form a new entity, or merge as described in 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 is not expected to have an overall "negative or adverse" economic impact on the regulated entities.

KENTUCKY BOARD OF MEDICAL LICENSURE (New Administrative Regulation)

201 KAR 9:067. Professional standards and procedures for medicinal cannabis practitioners.

RELATES TO: KRS 218B.015, 218B.050, 218B.202, 311.592, 311.595, 311.599

STATUTORY AUTHORITY: KRS 218B.050(10), 311.565(1)(a)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311.565(1)(a) authorizes the board to promulgate administrative regulations to regulate the conduct of its licensees. KRS 218B.050(10) requires that the board promulgate administrative regulations to establish procedures for applying for authorization to provide written certifications; the conditions that must be met to be eligible for authorization to provide written certifications; the process and procedures for renewing authorization to provide written certifications; continuing education requirements for medicinal

cannabis practitioners; reasons for which authorization to provide written certifications for the use of medicinal cannabis may be suspended or revoked; and the minimal standards of care, including record maintenance and follow up care requirements.

Section 1. Definitions. (1) "Board" means the Kentucky Board of Medical Licensure.

(2) "Bona fide practitioner-patient relationship" is defined by KRS 218B.010(1).

(3) "Cabinet" is defined by KRS 218B.010(2).

(4) "Good standing" means a license that is at the time of initial application or renewal:

(a) Active;

(b) Not the subject of a pending board investigation;

(c) Not probated, limited, restricted, suspended, revoked, or subject to peer assistance; and

(d) Not held by a person who has ever been subject to disciplinary action by a licensing entity of any jurisdiction, including the board or the U.S. Drug Enforcement Administration (DEA), that was based, in whole or in part, on the person's inappropriate prescribing, dispensing, diverting, administering, supplying or selling a controlled substance or other dangerous drug.

(5) "Immediate family member" means husband or wife; natural or adoptive parent; child or sibling; stepparent, stepchild, stepbrother or stepsister; father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law or sister-in-law; grandparent or grandchild; spouse of a grandparent or grandchild; or any person residing in the same residence as the medicinal cannabis practitioner.

(6) "Licensee" means a person licensed by the board to practice medicine or osteopathy in the Commonwealth of Kentucky.

(7) "Medicinal cannabis" is defined by KRS 218B.010(15).

(8) "Medicinal cannabis practitioner" means a medical or osteopathic physician who is authorized to prescribe controlled substances and who is authorized to by the board to provide written certifications pursuant to KRS 218B.050 and this administrative regulation.

(9) "Minor" is defined by KRS 218B.010(19).

(10) "PDMP" means the electronic prescription drug monitoring program system for monitoring scheduled controlled substances and medicinal cannabis currently in use in Kentucky pursuant to KRS 218A.202, including the Kentucky All Schedule Prescription Electronic Reporting (KASPER) System.

(11) "Qualified patient" is defined by KRS 218B.010(25).

(12) "Qualifying medical condition" is defined by KRS 218B.010(26).

(13) "Telehealth" is defined by KRS 211.332(5).

(14) "Use of medicinal cannabis" is defined by KRS 218B.010(37).

(15) "Written certification" is defined by KRS 218B.010(39).

Section 2. Applicability. The procedures and standards established in this administrative regulation shall not apply to a licensee who recommends treatment with cannabis or a drug derived from cannabis in accordance with KRS 218B.050(11).

Section 3. Eligibility for Authorization to Provide Written Certifications. A licensee shall be eligible to provide written certifications for the use of medicinal cannabis, pursuant to KRS 218B.050 within the Commonwealth of Kentucky, if the licensee:

(1) Holds a license issued by the board to practice medicine or osteopathy in the Commonwealth of Kentucky in good standing;

(2) Holds a valid DEA permit;

(3) Is registered to use any and all PDMP currently in use in the Commonwealth of Kentucky pursuant to KRS 218A.202;

(4) Holds no ownership or investment interest in or compensation agreement with a cannabis business licensed under KRS Chapter 218B;

(5) Pursuant to Section 6 of this administrative regulation, has completed the required number of hours of education in a course or courses approved by the board specific to the following:

(a) Diagnosing qualifying medical conditions;

(b) Treating qualifying medical conditions with medicinal

cannabis; and

(c) The characteristics of medicinal cannabis and possible drug interactions; and

(6) Has submitted an initial or renewal application for authorization to provide written certifications for the use of medicinal cannabis and received confirmation of its process pursuant to Sections 4 and 5 of this administrative regulation.

Section 4. Procedures for Submitting an Initial Application for Authorization to Provide Written Certifications.

(1) To become a medicinal cannabis practitioner an initial applicant shall:

(a) Submit to the board a completed Initial Application for Authorization to Provide Written Certifications for the Use of Medicinal Cannabis;

(b) Submit proof of completion of six (6) hours of education established in Section 6 of this administrative regulation; and Submit payment of a non-refundable fee of \$100.

(2) Upon receipt of an initial application, the board shall review all application materials submitted and determine whether the licensee meets qualifications to become a medicinal cannabis practitioner.

(a) The board may contact individuals, agencies, or organizations for information about the licensee.

(b) If deemed appropriate by the board or its staff, the board may require a licensee to appear before the board to answer questions or provide additional information deemed appropriate for the board to make an informed decision about the licensee's qualifications.

(c) If the board or its staff determines that the licensee is not qualified to become a medicinal cannabis practitioner or if the board or its staff is unable to independently verify whether the licensee meets the qualifications to become a medicinal cannabis practitioner, the board shall notify the licensee of the grounds upon which the initial application cannot be approved.

(3) A licensee shall become an authorized medicinal cannabis practitioner effective upon written or electronic notification from the board the initial application has been processed and approved.

(4) Unless initially issued or annually renewed between January 1 and March 1 in accordance with Section 5 of this administrative regulation, the authorization to provide written certifications for the use of medicinal cannabis shall expire on March 1.

(5) If a medicinal cannabis practitioner fails to renew before March 1 of any subsequent year, the practitioner may apply as an initial applicant in accordance with the procedures established in this section.

Section 5. Process and Procedures for Renewing Authorization to Provide Written Certifications.

(1) If a medicinal cannabis practitioner fails to renew his or her medical license and authorization by March 1 of any calendar year following the calendar year of initial application, the authorization shall become inactive.

(2) On or about January 1 of each calendar year after initial issuance, the board shall send notification to all medicinal cannabis practitioners that annual renewal of their authorization must be executed on or before March 1. The notification shall indicate the annual renewal fee and shall advise the medicinal cannabis practitioner that failure to timely renew by March 1 shall cause his or her authorization to become inactive.

(3)(a) All notifications required to be sent by this administrative regulation shall be sent either:

1. By mail to the medicinal cannabis practitioner's last known address of which the board has record; or

2. Electronically to the medicinal cannabis practitioner's last known email address of which the board has record.

(b) Failure of the medicinal cannabis practitioner to receive notice if sent to the last known address or last known email address shall not excuse the medicinal cannabis practitioner from compliance with KRS Chapter 218B or this administrative regulation.

(4) To renew an authorization to provide written certifications, a medicinal cannabis practitioner shall:

(a) Submit to the board a completed Renewal Application for Authorization to Provide Written Certifications for the Use of

Medicinal Cannabis;

- (b) Attest to the completion of three (3) hours of education established in Section 6 of this administrative regulation; and
- (c) Submit payment of a non-refundable fee of \$100.

Section 6. Continuing Education. (1) A medicinal cannabis practitioner shall not issue a written certification for use of medicinal cannabis to any patient unless that licensee has completed the minimum hours of continuing medical education established in this section.

(2) Within the immediate twelve (12) months prior to submitting an initial application, a medicinal cannabis practitioner shall complete at least six (6) hours of continuing medical education certified in Category I specific to the following:

- (a) Diagnosing qualifying medical conditions;
- (b) Treating qualifying medical conditions with medicinal cannabis; and
- (c) The characteristics of medicinal cannabis and possible drug interactions.

(3) Within the immediate twelve (12) months prior to submitting a renewal application, a medicinal cannabis practitioner shall complete at least three (3) hours of continuing medical education certified in Category I specific to the following:

- (a) Diagnosing qualifying medical conditions;
- (b) Treating qualifying medical conditions with medicinal cannabis; and
- (c) The characteristics of medicinal cannabis and possible drug interactions.

Section 7. Reasons for which Authorization to Provide Written Certifications for the Use of Medicinal Cannabis may be Suspended or Revoked.

(1) The board may probate, restrict, suspend, or revoke a medicinal cannabis practitioner's authorization to provide written certifications upon proof that the medicinal cannabis practitioner has violated any of the provisions established in KRS 311.595 or violations in accordance with KRS 218B.015(3)(b).

(2) The board may probate, restrict, suspend, or revoke a medicinal cannabis practitioner's authorization to provide written certifications upon proof that the medicinal cannabis practitioner has provided a written certification to an immediate family member of the medicinal cannabis practitioner.

(3) Notwithstanding subsections (1) and (2) of this section, the board may issue an emergency order, in accordance with KRS 311.592 and KRS 13B.125, suspending, limiting, or restricting a medicinal cannabis practitioner's authorization to provide written certifications at any time that the board has probable cause to believe that:

- (a) In accordance with KRS 218B.015(3)(b), the medicinal cannabis practitioner has violated any provision of KRS Chapter 218B;
 - (b) The medicinal cannabis practitioner has actively engaged in the practice of medicine or osteopathy or operated a motor vehicle while under the influence of or while consuming medicinal cannabis;
 - (c) The medicinal cannabis practitioner has become impaired by or otherwise abused medicinal cannabis;
 - (d) The medicinal cannabis practitioner has a medically diagnosable disease that is characterized by chronic, habitual or periodic use of medicinal cannabis resulting in interference with his or her professional, social, or economic functions in the community or the loss of powers of self-control regarding the use of medicinal cannabis;
 - (e) The medicinal cannabis practitioner has violated the terms of an agreed order or a disciplinary order; or
 - (f) The medicinal cannabis practitioner's practice constitutes a danger to the health, welfare, and safety of patients or the general public.
- (4) A medicinal cannabis practitioner may be ordered by the board to submit to a mental or physical examination, including impairment evaluation, in accordance with KRS 311.599.

Section 8. Minimal Standards of Care for Providing Written Certifications. (1) A medicinal cannabis practitioner shall only

provide a patient with a written certification after the medicinal cannabis practitioner has complied with the requirements established by KRS 218B.050(4).

(2) A bona fide practitioner-patient relationship may be established pursuant to KRS 218B.050(5).

(3) A medicinal cannabis practitioner shall comply with the written certification requirements established by KRS 218B.050(6).

(4) A medicinal cannabis practitioner shall comply with the professional standards established in this subsection.

(a) Prior to providing a written certification, the medicinal cannabis practitioner shall obtain and document all relevant information in a patient's medical record in a legible manner and in sufficient detail to enable the board to determine whether the licensee is conforming to the requirements of KRS Chapter 218B and this administrative regulation. Relevant information shall include as appropriate:

1. The patient's medical history, including:
 - a. The patient's mental health and psychiatric history;
 - b. The patient's history of drug use, including a documented review of the patient's current medication to identify possible drug interactions, including benzodiazepines and opioids;
 - c. Prior treatments; and
 - d. Diagnostic, therapeutic, and laboratory results;
2. A focused physical examination relevant to the patient's medical condition;
3. Evaluations and consultations;
4. Diagnosis of the patient's qualifying medical condition;
5. Treatment objectives with use of medicinal cannabis;
6. Discussion of risk, benefits, limitations, and alternatives to the use of medicinal cannabis;
7. Written informed consent;
8. Instructions and agreements;
9. Periodic reviews of the patient's file;
10. Follow up evaluations; and
11. Results and analysis of the patient's PDMP information.

(b) Prior to providing an initial written certification or renewing a written certification, the medicinal cannabis practitioner shall query and review a PDMP report for the patient for the twelve (12) month period immediately preceding the written certification and appropriately utilize that information in the evaluation and treatment of the patient.

(c) If the patient is a female of childbearing potential and age, the medicinal cannabis practitioner shall require the patient to submit to a pregnancy test and shall factor the results of that test into the clinical decision as to the appropriateness of the use of medicinal cannabis.

(d) Based on evidence or behavioral indications of addiction or drug abuse, the medicinal cannabis practitioner shall obtain a drug screen on the patient. It shall be within the medicinal cannabis practitioner's discretion to decide the nature of the screen and which type of drug to be screened.

(e) A medicinal cannabis practitioner shall be available to provide follow-up care and treatment to the patient, including physical examinations relevant to the patient's condition to determine the efficacy of medicinal cannabis in treating the patient's qualifying medical condition. If the qualifying condition was indicated as a terminal illness in the prior six (6) months, the medicinal cannabis practitioner shall confirm whether the patient's condition continues to be a terminal illness.

(f) A medicinal cannabis practitioner shall terminate or decline to issue a new written certification to a patient, and shall notify the cabinet in writing of the patient's name, under any of the following circumstances:

1. The patient no longer has the diagnosis of or symptoms of the qualifying medical condition;
2. The medicinal cannabis practitioner is not authorized to issue a written certification;
3. The medicinal cannabis practitioner's has reason to believe that the patient or a caregiver is abusing or diverting medicinal cannabis; or
4. The patient is deceased.

(g) If the medicinal cannabis practitioner is unable to conform to professional standards established in this administrative regulation

due to circumstances beyond the licensee's control, or the medicinal cannabis practitioner makes a professional determination that it is not appropriate to comply with a specific standard established in this administrative regulation based upon the individual facts applicable to a specific patient's diagnosis and treatment, the medicinal cannabis practitioner shall document those circumstances in the patient's record and only provide a written certification to the patient if the patient record appropriately justifies the use of medicinal cannabis under the circumstances.

Section 9. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Initial Application for Authorization to Provide Written Certifications for the Use of Medicinal Cannabis"; and

(b) "Renewal Application for Authorization to Provide Written Certifications for the Use of Medicinal Cannabis."

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Medical Licensure, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222, Monday through Friday, 8:00 a.m. to 4:30 p.m. This material is also available on the board's Web site at <http://kbml.ky.gov>.

WILLIAM C. THORNBURY, JR., M.D., Board President

APPROVED BY AGENCY: October 5, 2023

FILED WITH LRC: October 9, 2023 at 10:10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 21, 2023 at 9:30 a.m. at the offices of the Kentucky Board of Medical Licensure, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222. Individuals interested in being heard at this hearing shall notify this agency in writing by December 14, 2023, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who 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 December 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: Leanne K. Diakov, General Counsel, Kentucky Board of Medical Licensure, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222, phone (502) 429-7943, fax (502) 429-7118, email leanne.diakov@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Leanne K. Diakov

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the qualifications, continuing education requirements, sanctions, and professional standards for physicians (MD/DO) authorized to practice as medicinal cannabis practitioners.

(b) The necessity of this administrative regulation: This regulation is being promulgated as mandated by the General Assembly to establish standards for physicians (MD/DO) authorized to practice as medicinal cannabis practitioners in the Commonwealth of Kentucky pursuant to KRS Chapter 218B.

(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 qualifications, continuing education requirements, sanctions, and professional standards for physicians (MD/DO) authorized to practice as medicinal cannabis practitioners.

(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 setting forth the qualifications, continuing education requirements, sanctions, and professional standards for physicians (MD/DO) authorized to practice as medicinal cannabis practitioners.

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

(a) How the amendment will change this existing administrative regulation: Not applicable.

(b) The necessity of the amendment to this administrative regulation: Not applicable.

(c) How the amendment conforms to the content of the authorizing statutes: Not applicable.

(d) How the amendment will assist in the effective administration of the statutes: Not applicable.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation may affect physicians with a Drug Enforcement Administration (DEA) registration and who choose to become authorized to practice as medicinal cannabis practitioners. At this time, the number is unknown.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No action is required. Physicians who wish to be authorized to practice as medicinal cannabis practitioners will have to submit an application, attest and provide documentation that they satisfy qualifications, and pay a fee.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): If a physician wishes to be authorized to practice as a medicinal cannabis practitioner there will be a \$100 initial fee, as well as a \$100 renewal fee each licensure period.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The physician will be authorized to practice as a medicinal cannabis practitioner.

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

(a) Initially: None

(b) On a continuing basis: None

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: 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: An increase in fees is not required; however, new fees are established.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: An initial and renewal fee is established. The fee for each \$100.

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals 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 Board of Medical Licensure 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 311.565(1)(a) and KRS Chapter 218B.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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? The initial application fee is \$100.

(d) How much will it cost the regulated entities for subsequent years? The annual renewal application fee is \$100.

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.

KENTUCKY BOARD OF EMERGENCY MEDICAL SERVICES (New Administrative Regulation)

202 KAR 7:410. Advanced practice paramedics.

RELATES TO: KRS 12.355, 72.020, 311A.025, 311A.050-311A.100, 311A.120-311A.135, 311A.142, 311A.170, 311A.185, 311A.190, 446.400

STATUTORY AUTHORITY: KRS 311A.020, 311A.025, 311A.120, 311A.125, 311A.135, 311A.170

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311A.070 requires the Kentucky Board of Emergency Medical Services to promulgate administrative regulations establishing the educational requirements, testing requirements, credentialing, and licensure requirements of advanced practice paramedics. This administrative regulation establishes those requirements.

Section 1. Licensure of Advanced Practice Paramedics. The board office shall issue an advanced practice paramedic license to an individual certified in accordance with this administrative regulation as a community paramedic or wilderness paramedic.

Section 2. Certification of Community Paramedics. (1) An individual shall be eligible to enroll as a student in a community paramedic education and training program if the applicant:

(a) Holds a current unrestricted license as a paramedic in Kentucky or holds a current unrestricted certification with the NREMT as a Nationally Registered Paramedic (NRP);

(b) Is not currently subject to disciplinary action pursuant to KRS Chapter 311A that would prevent certification; and

(c) Meets all additional requirements established by the EMS-TEI.

(2) Individuals desiring initial board certification as a community paramedic shall:

(a) Hold a current unrestricted license as a paramedic in Kentucky;

(b) Successfully complete all EMS-TEI requirements for the community paramedic education and training program, which shall

include all requirements of the International Board of Specialty Certification (IBSC) to test for IBSC certification as a community paramedic (CP-C);

(c) Obtain certification as a community paramedic (CP-C) by the International Board of Specialty Certification (IBSC); Individuals operating under a board-approved community paramedic pilot program shall obtain IBSC certification as a community paramedic by no later than January 1, 2026; and

(d) Submit a completed Advanced Practice Paramedic—Community Paramedic Certification Application in KEMSIS.

(3) To be eligible for renewal of a community paramedic certification, a community paramedic shall:

(a) Meet the requirements for paramedic licensure renewal in accordance with 202 KAR 7:401;

(b) Submit a completed Advanced Practice Paramedic—Community Paramedic Certification Renewal Application in KEMSIS;

(c) Pay the renewal fee pursuant to 202 KAR 7:030; and

(d) Submit to the board written evidence of:

1. Current certification by the International Board of Specialty Certification (IBSC) as a community paramedic (CP-C); or

2. At least fifteen (15) hours of continuing education on the following subject areas unique to community paramedicine:

a. Community based needs;

b. Interdisciplinary collaboration;

c. Patient centric care;

d. Wellness and safety;

e. Preventative care and education for patient/client and caregiver; or

f. Ethical and legal consideration preventative care and patient education.

(4) An application for renewal of community paramedic certification shall be denied if:

(a) Prior to the certification expiration date, the applicant has not met the requirements of this section; or

(b) The applicant has been subjected to disciplinary action that prevents certification renewal at the time of application.

(5) An individual seeking reciprocity as a community paramedic shall:

(a) Meet the requirements for paramedic reciprocity in accordance with 202 KAR 7:401;

(b) Have a current certification from the International Board of Specialty Certification (IBSC) as a community paramedic (CP-C); and

(c) Submit to the board a completed Advanced Practice Paramedic—Community Paramedic Certification Application in KEMSIS.

Section 3. Certification of Wilderness Paramedics.

(1) An individual shall be eligible to enroll as a student in a wilderness paramedic education and training program if the applicant:

(a) Holds a current unrestricted license as a paramedic in Kentucky or holds a current unrestricted certification with the NREMT as a Nationally Registered Paramedic (NRP);

(b) Is not currently subject to disciplinary action pursuant to KRS Chapter 311A that would prevent certification; and

(c) Meets all additional requirements established by the EMS-TEI.

(2) Individuals desiring initial board certification as a wilderness paramedic shall:

(a) Hold a current unrestricted license as a paramedic in Kentucky;

(b) Successfully complete all EMS-TEI requirements for the wilderness paramedic education and training program, which shall include all requirements of the International Board of Specialty Certification (IBSC) to test for IBSC certification as a wilderness paramedic (WC-P), or, successfully complete a wilderness medicine upgrade course equivalent to Wilderness First Responder or higher from an organization approved by the board that provides certification in wilderness medicine;

(c) Obtain a certification as a wilderness paramedic (WP-C) from the International Board of Specialty Certification (IBSC); and

(d) Submit a completed Advanced Practice Paramedic-Wilderness Paramedic Certification Application in KEMSIS.

(3) To be eligible for renewal of a wilderness paramedic certification, a wilderness paramedic shall:

(a) Meet the requirements for paramedic licensure renewal in accordance with 202 KAR 7:401;

(b) Submit a completed Advanced Practice Paramedic-Wilderness Paramedic Certification Renewal Application in KEMSIS;

(c) Pay the renewal fee pursuant to 202 KAR 7:030; and

(d) Submit to the board written evidence of current certification by the International Board of Specialty Certification (IBSC) as a wilderness paramedic (WP-C).

(4) An application for renewal of a wilderness paramedic certification shall be denied if:

(a) Prior to the certification expiration date, the applicant has not met the requirements of this section; or

(b) The applicant has been subjected to disciplinary action the prevents certification renewal at the time of application.

(5) An individual seeking reciprocity as a wilderness paramedic shall:

(a) Meet the requirements for paramedic reciprocity in accordance with 202 KAR 7:401;

(b) Have a current certification from the International Board of Specialty Certification (IBSC) as a wilderness paramedic (WP-C);

(c) Satisfy the requirements of subsection (2) of this section; and

(d) Submit to the board a completed Advanced Practice Paramedic-Wilderness Paramedic Certification Application in KEMSIS.

Section 4. Expiration of Advanced Practice Paramedic License and Certification. (1) A board-issued advanced practice paramedic license and a board-issued certification as a community paramedic or wilderness paramedic shall lapse or expire upon lapse or expiration of the individual's board-issued paramedic license pursuant to KRS 311A.095.

(2) An individual whose board-issued advanced practice paramedic license and board-issued certification as a community paramedic or wilderness paramedic has lapsed or expired shall cease providing the specialty care authorized by the lapsed or expired license and certification.

Section 5. Scope of Practice. (1) An advanced practice paramedic shall provide care consistent with the skills, procedures, and techniques established in the current EMS Advanced Practice Paramedic Scope of Practice document.

(2) Assessment of techniques, skills, and procedures of an advanced practice paramedic shall be subject to the board-approved agency medical protocols adopted by the advance practice paramedic's agency.

Section 6. Exemptions to this Administrative Regulation. The advanced practice paramedic licensure and certification requirements established by this administrative regulation shall not apply to: United States military members, National Guard personnel, or employees of the United States government if the individual provides services:

(1) On land owned by the United States government;

(2) In facilities owned by the United States government;

(3) In the performance of official duties under federal law; or

(4) As part of assistance for a mass casualty or disaster incident pursuant to federal law or an official state assistance request.

Section 7. Public Notice of Negative Action. The board office shall cause to be published on the board's Web site the name of an advanced practice paramedic who:

(1) Is fined;

(2) Is placed on probationary status;

(3) Is placed on restricted status;

(4) Is suspended; or

(5) Has had their license or certification revoked.

Section 8. Surrender of Advanced Practice Paramedic License

and Certification. (1) An advanced practice paramedic surrendering his or her license as an advanced practice paramedic and certification as a community paramedic or wilderness paramedic shall submit a completed Advanced Practice Paramedic License and Certification Surrender Application in KEMSIS.

(2) Upon surrendering an advanced practice paramedic license and applicable certification, the surrendering individual shall immediately give notice to his or her agency's director.

Section 9. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Advanced Practice Paramedic - Community Paramedic Certification Application", in KEMSIS, <http://kemsis.ky.gov>;

(b) "Advanced Practice Paramedic - Community Paramedic Certification Renewal Application", in KEMSIS, <http://kemsis.ky.gov>;

(c) "Advanced Practice Paramedic License and Certification Surrender Application", in KEMSIS, <http://kemsis.ky.gov>;

(d) "Advanced Practice Paramedic - Wilderness Paramedic Certification Application", in KEMSIS, <http://kemsis.ky.gov>;

(e) "Advanced Practice Paramedic - Wilderness Paramedic Certification Renewal Application", in KEMSIS, <http://kemsis.ky.gov>; and

(f) "EMS Advanced Practice Paramedic Scope of Practice", document, kbems.ky.gov.

(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, Monday through Friday, 8 a.m. to 4:30 p.m.

JOHN R. HOLDER, Chair

APPROVED BY AGENCY: October 10, 2023

FILED WITH LRC: October 12, 2023 at 3:15 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 21, 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 December 31, 2023. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: John K. Wood, Legal Counsel, Kentucky Board of Emergency Medical Services, 163 E. Main Street, Suite 200, Lexington, Kentucky 40507, phone (859) 225-4714, fax (859) 225-1493, email administrativeregulations@wgmfirm.com.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: John K. Wood

(1) Provide a brief summary of:

(a) What this administrative regulation does: KRS 311A.070 requires the board to promulgate administrative regulations establishing the educational requirements, testing requirements, credentialing, and licensure requirements of advanced practice paramedics. This administrative regulation establishes those requirements.

(b) The necessity of this administrative regulation: KRS 311A.070 requires the board to promulgate administrative regulations establishing the educational requirements, testing requirements, credentialing, and licensure requirements of advanced practice paramedics. This administrative regulation is necessary to establishes those requirements.

(c) How this administrative regulation conforms to the content of

the authorizing statutes: This administrative regulation conforms to the content of KRS 311A.070 and 311A.030 by establishing the educational requirements, testing requirements, credentialing, and licensure requirements of advanced practice paramedics.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 311A.070 requires the board to promulgate administrative regulations establishing the educational requirements, testing requirements, credentialing, and licensure requirements of advanced practice paramedics. This administrative regulation will assist in the effective administration of the foregoing statute by establishing those 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: Not applicable. This is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: Not applicable. This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: Not applicable. This is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: Not applicable. This is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect advanced practice paramedics and paramedics seeking licensure and certification as an advanced practice paramedic.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Paramedics will be required to satisfy all requirements of this administrative regulation to obtain and maintain an advanced practice paramedic license and a community paramedic or wilderness paramedic certification. Advanced practice paramedics will be required to comply with the requirements of this administrative regulation to maintain their advanced practice paramedic license and certification(s).

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Compliance with this administrative regulation will cost advanced practice paramedics seeking to renew their specialty certification(s) \$10 for each certification, as established in the amendment to 202 KAR 7:030 filed contemporaneously with this new administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation will enable paramedics to become licensed advanced practice paramedics and certified community paramedics and/or wilderness paramedics if the requirements of this administrative regulation are satisfied. Paramedics will benefit from being able to obtain specialty certifications. The board intends to amend this administrative regulation in the future to allow paramedics to obtain additional specialty certifications to become a critical care, tactical, and/or flight paramedic.

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

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

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

(6) What is the source of the 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: There will be no fee for initial licensure and certification as an advanced practice paramedic. However, this administrative regulation and the amendment to 202 KAR 7:030 filed contemporaneously with this administrative regulation establish a \$10 renewal fee for each advanced practice paramedic certification. No additional 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: By referencing the renewal fee established in the amendment to 202 KAR 7:030 filed contemporaneously with this administrative regulation, this regulation indirectly establishes a \$10 renewal fee for each advanced practice paramedic certification.

(9) TIERING: Is tiering applied? Tiering is not applied to this administrative regulation because this amendment applies equally to all advanced practice paramedics and paramedics seeking licensure and certification as an advanced practice paramedic.

FISCAL NOTE

(1) What 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 advanced practice paramedics and paramedics seeking licensure and certification as an advanced practice paramedic.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 311A.070 requires the board to promulgate administrative regulations establishing the educational requirements, testing requirements, credentialing, and licensure requirements of advanced practice paramedics.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 cost savings.

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

(c) How much will it cost the regulated entities for the first year? Compliance with this amendment will not impose any costs on the regulated entities during the first year.

(d) How much will it cost the regulated entities for subsequent years? For subsequent years, advanced practice paramedics will be

required to pay a \$10 renewal fee for each of their specialty advanced practice paramedic certifications.

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

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

Expenditures (+/-): This administrative regulation will require an expenditure of \$10 to renew each advanced practice paramedic certification.

Other Explanation:

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

**ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Waste Management
(New Administrative Regulation)**

401 KAR 103:005. Definitions related to 401 KAR Chapter 103.

RELATES TO: KRS 224.10-100, 224.10-285, 224.43-345, 278.700 - 278.716

STATUTORY AUTHORITY: KRS 224.10-100(28), 224.10-100(30), (31), 224.10-285, 224.43-345, 278.710(3), (4), (5), (7) - (10)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-285 requires the Energy and Environment Cabinet to establish monitoring and enforcement requirements for the obligation set for in KRS 278.710(3), (4), (5), (7) through (10) and 224.10-100(30) and (31). This administrative regulation defines essential terms that are used in this chapter.

Section 1. Definitions. Unless otherwise specifically defined in KRS Chapter 224 and Chapter 278, terms in 401 KAR Chapter 103 shall have the meanings given in this section.

(1) "Abandon" or "Abandonment" means the relinquishment of all rights, title, or claim to the merchant electric generating facility.

(2) "Above-ground facilities" means any portion of a system or structure located on the surface of the site.

(3) "Annual report" means a yearly document that describes all operational activities in the previous year.

(4) "Applicant" means any person who received a construction certificate pursuant to KRS 278.710, or who is seeking the transfer of a construction certificate, controlling rights, or ownership of a merchant electric generating facility.

(5) "Cabinet" is defined by KRS 224.1-010.

(6) "Commence to construct" is defined by KRS 278.700.

(7) "Components" means either the solar panel or ancillary equipment of a solar array or solar panel system, or a constituent part.

(8) "Construction certificate" means a formal certification approved and issued by the Kentucky State Board on Electric Generation and Transmission Siting ("Siting Board") to an owner-operator, or persons who have controlling rights, of a merchant electric generating facility that authorizes persons to construct and operate a merchant generating facility.

(9) "Control" is defined by KRS 278.010.

(10) "Current net salvage value" means the value of an asset expressed in current US dollars after it has become useless to the owner or the amount expected to be obtained when a fixed asset is disposed of at the end of its useful life and pursuant to KRS 278.706.

(11) "Decommission" means the process of removal or closing of solar panel system at the end of the useful life.

(12) "Decommission bond" or "Decommissioning bond" means an approved financial assurance mechanism used to guarantee the

land used for a merchant electric generating facility will be returned to a substantially similar state upon decommissioning or abandonment of the project, unless otherwise requested by the landowner.

(13) "Decommission costs" or "Decommissioning costs" means the amount of all costs and expenses incurred in connection with the dismantlement, removal, and disposal of structures, systems, and components of a merchant electric generating facility at the time of decommissioning pursuant to KRS 278.706.

(14) "Decommission plan" or "Decommissioning plan" means a plan to retire physical facilities of a merchant electric generating facility, pursuant to KRS 278.706.

(15) "Disposal" is defined by KRS 224.1-010.

(16) "Facility" is defined by KRS 278.010.

(17) "Hazardous substance" is defined by KRS 224.1-400.

(18) "Land disposal" is defined by KRS 224.1-010.

(19) "Landowner" means a person who has legal ownership of land where a merchant electric generating facility is located.

(20) "Megawatt" means a unit of power equal to one million watts, measure of output of electrical power.

(21) "Merchant electric generating facility" is defined by KRS 278.700.

(22) "Mitigation measures" means an act or requirement established by the siting board pursuant to KRS 278.708.

(23) "Modification" means a change in existing order or certificate, necessary to cure an error.

(24) "Monitoring" is defined as the act of systematically inspecting and collecting data on operational parameters or on the quality of a merchant electric generating facility.

(25) "Municipal government" means a city, town, or other local authority with an elected governing body.

(26) "Net present value" means the difference between the present value inflow and outflow over a period of time and pursuant to KRS 278.706.

(27) "Ordinance" means an official written act of a local government, the effect of which is general and permanent in nature, which is enforceable by the enacting local government as a local law within its jurisdiction.

(28) "Owner-operator" is defined as any person who owns a merchant electric generating facility or is responsible for overall operation of a merchant electric generating facility, including any contractor conducting operational activities.

(29) "Person" is defined by KRS 278.700.

(30) "Professional Engineer" is defined by KRS 322.010; an independent, professional engineer shall be registered in Kentucky pursuant to KRS 322.040 and shall be experienced to engage in the decommissioning of solar electric generating facilities.

(31) "Recycling" is defined by KRS 224.1-010.

(32) "Secretary" is defined by KRS 224.1-010.

(33) "Service" is defined by KRS 278.700.

(34) "Solar panel" means a panel or device containing photovoltaic cells designed to absorb and convert sunlight into a source of generating electricity.

(35) "Successor" means one who succeeds to the rights to own or control a merchant electric generating facility.

(36) "Useful life" means the estimated length of time that depreciable property will generate income.

(37) "Waste" is defined by KRS 224.1-010.

Section 2. Acronyms and Abbreviations. Unless otherwise specifically indicated by context, acronyms and abbreviations used in 401 KAR Chapter 103 shall have the meaning as identified in Table 1 of this administrative regulation.

Table 1. Acronyms and Abbreviations	
KAR	Kentucky Administrative Regulations
KRS	Kentucky Revised Statutes
MEGF	Merchant Electric Generating Facility
MW	Megawatt

JOHN LYONS, Deputy Secretary

For REBECCA GOODMAN, Secretary

APPROVED BY AGENCY: September 27, 2023

FILED WITH LRC: September 27, 2023 at 2:30 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 21, 2023, at 10:00 a.m. Eastern Standard Time. The public hearing can be accessed at the following website address: <https://us05web.zoom.us/j/81334701532?pwd=eVJhA2kT9l6PWurOirAnFpuYads2k.1> using access code M00m5c. Please note that registration is required to participate in this hearing. You must either email your name and mailing address to Tyler.Shields@ky.gov or mail this information to Tyler Shields, Department for Environmental Protection, Division of Waste Management, 300 Sower Boulevard, Frankfort, Kentucky 40601. Please put "401 KAR 103:005" as the subject line, and state in the body of the message if you plan to speak during the hearing. Individuals interested in being heard at this hearing shall register to speak by December 14, 2023. If no one registers to speak 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 December 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. The hearing facility is accessible to persons with disabilities. Requests for reasonable accommodations, including auxiliary aids and services necessary to participate in the hearing, may be made to the contact person at least five (5) workdays prior to the hearing.

CONTACT PERSON: Tyler Shields, Environmental Control Supervisor, Department for Environmental Protection, Division of Waste Management, 300 Sower Boulevard, Frankfort, Kentucky 40601, phone (502) 782-5325, fax (502) 564-4245, email Tyler.Shields@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Tyler Shields

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes definitions for Title 401 KAR Chapter 103, for which have not been established in KRS Chapter 224 or KRS Chapter 278.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish definitions for the chapter.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10-100(28) authorizes the cabinet to promulgate administrative regulations not inconsistent with the provisions of law administered by the cabinet. KRS 224.10-285 authorizes the cabinet to promulgate administrative regulations to establish the monitoring and enforcement requirements for the obligations set forth in KRS 278.710(3), (4), (5), (7) through (10), and KRS 224.10-100(30) and (31).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes definitions for Title 401 KAR Chapter 103 to assist in the comprehension of proposed administrative regulations.

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation. This administrative regulation will affect owners-operators, persons who control or own rights to control a

MEGF, organizations who represent landowners of which a MEGF is located, landowners where a MEGF is located, and state and local governing bodies who operate under the proposed chapter (401 KAR Chapter 103) of administrative regulations.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The entities identified will not have actions to comply with in relation to 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): This administrative regulation will not have a cost for the entities identified.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The entities identified will not accrue benefits from this administrative regulation.

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

(a) Initially: The agency will not incur any additional costs for the implementation of this administrative regulation.

(b) On a continuing basis: The agency will not incur any continuing costs for the implementation of this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The merchant electric generating facility monitoring and enforcement fund.

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

(9) TIERING: Is tiering applied? No. This administrative regulation establishes definitions for the chapter.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. Not applicable.

(2) State compliance standards. KRS 224.10-100(28), 224.10-100(30) and (31), 224.10-285, 224.43-345, KRS 278.710(3), (4), (5), (7) through (10)

(3) Minimum or uniform standards contained in the federal mandate. Not applicable.

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation imposes stricter requirements as there is no federal mandate for the decommissioning of merchant electric generating facilities.

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. HB-4 mandated the Cabinet to promulgate administrative regulations for the monitoring and enforcement requirements for the obligations set forth in KRS 278.710(3), (4), (5), (7), (8), (9), and (10) and KRS 224.10-100(30) and (31).

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will impact state or local governments that have, own, or operate a merchant electric generating facility in their jurisdiction, as well as the Energy and Environment Cabinet and Public Service Commission.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 224.10-100(28), KRS 224.10-100(30), and KRS 224.10-285

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 affect the expenditures and revenues of a state or local government agency.

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

(c) How much will it cost to administer this program for the first year? The cost to administer the program for the currently approved thirty-five (35) facilities is \$278,000 annually. This total is the sum cost of hiring an Environmental Engineer II within the Solid Waste Branch for review of decommissioning plans and financial assurance documents, and an Environmental Scientist Advisor within the Field Operations Branch for site inspections. At the time of drafting this regulation, only three (3) of the thirty-five (35) facilities were under construction. Pursuant to KRS 278.710, the cabinet does not obtain authority over these facilities until the facility is constructed and generating electricity. Therefore, the cabinet cannot receive the annual fee until the facility is generating electricity. With no timetable of when these facilities will be constructed and begin generating electricity it is challenging to estimate the total costs in the first year of the program.

(d) How much will it cost to administer this program for subsequent years? The cost to administer the program for the currently approved thirty-five (35) facilities is \$278,000 annually. This total is the sum cost of hiring an Environmental Engineer II within the Solid Waste Branch for review of decommissioning plans and financial assurance documents, and an Environmental Scientist Advisor within the Field Operations Branch for site inspections. At the time of drafting this regulation, only three (3) of the thirty-five (35) facilities were currently under construction. Pursuant to KRS 278.710, the cabinet does not obtain authority over these facilities until the facility is constructed and generating electricity. Therefore, the cabinet cannot receive the annual fee until the facility is generating electricity. With no timetable of when these facilities will be constructed and begin generating electricity it is challenging to estimate the total costs for subsequent years of the program. KRS 224.10-285 was implemented with the intention to make this a self-supported program, with revenue being generated from the merchant electric generating facility monitoring and enforcement fund.

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

Revenues (+/-): There is no known cost savings.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: This administrative regulation only establishes definitions for the chapter.

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

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

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

(c) How much will it cost the regulated entities for the first year? There is no known cost to the regulated entities in the first year.

(d) How much will it cost the regulated entities for subsequent years? There is no known cost to the regulated entities in subsequent years.

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

Cost Savings (+/-): There is no known cost savings.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: This administrative regulation only establishes definitions for the chapter.

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] This proposed administrative regulation will not have a major economic impact.

**ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Waste Management
(New Administrative Regulation)**

401 KAR 103:010. Notification and transfer procedures for merchant electric generating facilities.

RELATES TO: KRS 224.10-100, 224.10-285, 224.43-345, 278.700 - 278.716

STATUTORY AUTHORITY: KRS 224.10-100(28), 224.10-100(30), (31), 224.10-285, 224.43-345, 278.710(3), (4), (5), (7) - (10)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(28) authorizes the cabinet to promulgate administrative regulations not inconsistent with the provisions of law administered by the cabinet. KRS 224.10-285 requires the Energy and Environment Cabinet to establish monitoring and enforcement requirements for the obligation set for in KRS 278.710(3), (4), (5), (7) through (10) and 224.10-100(30) and (31). KRS 224.10-100(30) requires the Energy and Environment Cabinet to monitor and enforce compliance of a merchant electric generating entity to which a construction certificate has been issued and has generated pursuant to obligations set forth in KRS 278.710(3), (4), (5), (7) through (10). This administrative regulation establishes procedures for requirements concerning notifications, transfers of ownership, annual fees, and reporting.

Section 1. Notification Procedures. An applicant or person who has received a construction certificate for a merchant electric generating facility shall:

(1) File with the cabinet MEGF Construction-Operating Notification Form, DWM 4658, on or prior to the date upon which:

- (a) Construction commences;
- (b) Generation of electricity for sale begins;
- (c) Permanent cessation of electric generation;
- (d) Start of decommissioning plan implementation; and
- (e) Facility ceases construction or generation for thirty (30) consecutive days after the MEGF commencement of construction.

(2) A MEGF that received a construction certificate prior to June 29, 2023, shall be subject to requirements of subsection one (1) of this section. The notice shall be submitted no later than ten (10) days after these administrative regulations take effect.

(3) Provide all filings pursuant to Section 3 of KRS 278.710.

Section 2. Ownership Transfer Procedures.

(1) The applicant and existing owner-operator shall file the MEGF Notice of Ownership Transfer Form, DW4652, including all required attachments, to provide notice to the cabinet of any pending or final transaction pursuant to KRS 278.710(3)(d) no later than ten (10) days prior to completing the transaction.

(2) Pursuant to KRS 278.710, upon transfer or sale of ownership, control, or the right to control the MEGF, a successor

shall submit an updated or revised copy of the decommissioning plan, if applicable, pursuant to KRS 278.710(8).

(3) Transfer pursuant to KRS 278.710 shall not cause a lapse in financial assurance for the approved decommissioning plan.

(a) If the existing financial assurance previously filed with the cabinet pursuant to KRS 278.710 will continue to secure the approved decommissioning plan after transfer occurs, the applicant and successor shall jointly execute a certification of financial assurance denoted on the form in subsection (1) of this section; or

(b) Tender a proposed replacement financial assurance pursuant to 401 KAR 103:030, the existing financial assurance.

(4) A check, money order, or electronic funds transfer for annual fees in accordance with Section 4 of this administrative regulation, made payable to the Kentucky State Treasurer.

(5)(a) The owner-operator shall remain responsible pursuant to the decommissioning plan until the cabinet deems that both the owner-operators and successors MEGF Notice of Ownership Transfer Form, DW4652, including all required attachments, submitted pursuant to subsections (1) and (2) of this section are complete and any replacement financial assurance is deemed adequate to cover decommissioning cost.

(b) The cabinet shall have sixty (60) days to review and accept all submissions required of this section.

(c)1. If the cabinet determines that any submissions required of this section are deficient, it shall send the owner-operator and successor a written notice describing the deficiencies and stating the transfer is not accepted as complete, pursuant to KRS 278.710(5); and

2. The owner-operator and successor shall have thirty (30) calendar days from the date the cabinet issues a written deficiency to respond with information that will cure the deficiency. Failure to respond to the notice of deficiency shall be grounds for the cabinet to withhold the original financial assurance until the deficiency is addressed and accepted by the cabinet.

3. The timetable specified in paragraph (b) of this subsection shall toll from the date the cabinet issues a written notice of deficiency pursuant to subparagraph 1. of this paragraph until the owner-operator and successor submit a response required by subparagraph 2. of this paragraph.

Section 3. Decommissioning Notification.

(1) Upon permanent cessation of the generation of electricity, the owner-operator, person who controls or owns the right to control the MEGF shall file MEGF Construction-Operating Notification Form, DWM 4658, notifying the cabinet within thirty (30) days of cessation. This notification shall serve as the start date for decommissioning to begin.

(2) Pursuant to 401 KAR 30:020(2), unless a written request is submitted to the cabinet, failure to fully implement the decommissioning plan within eighteen (18) months will be considered abandonment.

Section 4. Annual Fee. (1) Fees collected pursuant to this section shall be used for administrative, compliance, and enforcement purposes specified in this Chapter and in KRS 224.10-285.

(2) The cabinet will provide the applicant with the MEGF Annual Fee Form, DWM 4656.

(a) Based on the manufacturer's nameplate-rated capacity in the approved construction certificate, the annual fee is established pursuant to the table in paragraph (b) of this subsection.

(b)

MEGF Generating Capacity	Annual Fee
≥10 MW up to and including 75 MW	\$4,000
>75 MW up to and including 150 MW	\$8,000
>150 MW	\$12,000

(c) If the owner-operator, or person who controls or owns the right to control fails to submit the annual fee required, may be subject to civil penalties pursuant to KRS 224.99-010.

(3) The owner-operator, or person who controls or owns the right to control the MEGF shall submit the annual fee no later than May 31 of each year for each MEGF in operation or decommissioning status.

(4)(a) The applicant, owner-operator, or person who controls or owns the right to control the MEGF may request an extension to the annual fee deadline.

(b) The extension request shall be in writing stating the reasons therefore, and shall be received by the Solid Waste Branch of the Division of Waste Management ten (10) days prior to the deadline.

(c) If granted, the extension shall not exceed thirty (30) days.

Section 5. Reports. The owner-operator, or person who controls or owns the right to control the MEGF shall submit an annual report for a recordkeeping and reporting system. The annual report shall meet the following requirements:

(1) The MEGF shall submit to the cabinet, no later than the first anniversary of commencement of construction and every year thereafter no later than May 31. The report shall be submitted with the Merchant Electric Generating Facility Annual Report or Decommissioning Plan Update Form, DWM 4657, including all required attachments, and shall contain the following:

(a) Description of construction activities during the year;

(b) Description of compliance with mitigation measures;

(c) Description of operation maintenance activities;

(d) The date and quantity of system components taken out of service;

(e) The date of when and where system components disposed or recycled; and

(f) The quantity of system components disposed or recycled.

(2) The annual report shall be certified by the owner-operator, ensuring the MEGF is in compliance with all mitigation measures and requirements outlined in the construction certificate and decommissioning plan.

(3) The owner-operator, or person who controls or owns the right to control the MEGF shall retain records of all required monitoring information, mitigation measures, copies of site assessment reports and annual reports, and records of all data used to complete the application for the construction certificate and decommissioning plan updates, for a period of at least three (3) years from the date of the sample, measurement, report, certification, or application. This period may be extended by request of the cabinet at any time.

(4) The owner-operator, or person who controls or owns the right to control the MEGF shall keep records of the source, approved disposal location, and quantity of any release of a hazardous substance, pollutant or contaminant, or a waste that is listed or characterized as hazardous pursuant to KRS 224.1-400 and Chapter 39. These records shall be available for cabinet inspection.

(5) Owners-operators, or persons who control or own the right to control a merchant electric generating facility who fail to meet the requirements established in this administrative regulation may be subject to penalties established in KRS 224.99-010.

Section 6. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "MEGF Construction-Operating Notification" Form, DWM 4658, September 2023.

(b) "MEGF Notice of Ownership Transfer" Form, DW4652, September 2023.

(c) "MEGF Annual Report or Decommissioning Plan Update" Form, DWM 4657, September 2023; and

(d) "MEGF Annual Fee" Form, DWM 4656, September 2023.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Division of Waste Management, 300 Sower Boulevard, 2nd floor, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 5:00 p.m., from the Web site at eec.ky.gov/environmental-protection/waste.

JOHN LYONS, Deputy Secretary

For REBECCA GOODMAN, Secretary

APPROVED BY AGENCY: September 27, 2023

FILED WITH LRC: September 27, 2023 at 2:30 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 21, 2023, at 10:00 a.m. Eastern Standard Time. The public hearing can be accessed at the following website address: <https://us05web.zoom.us/j/81334701532?pwd=eWJhA2kP9l6PW>

urOirAnFpuYads2k.1 using access code M00m5c. Please note that registration is required to participate in this hearing. You must either email your name and mailing address to Tyler.Shields@ky.gov or mail this information to Tyler Shields, Department for Environmental Protection, Division of Waste Management, 300 Sower Boulevard, Frankfort, Kentucky 40601. Please put "401 KAR 103:010" as the subject line, and state in the body of the message if you plan to speak during the hearing. Individuals interested in being heard at this hearing shall register to speak by December 14, 2023. If no one registers to speak 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 December 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. The hearing facility is accessible to persons with disabilities. Requests for reasonable accommodations, including auxiliary aids and services necessary to participate in the hearing, may be made to the contact person at least five (5) workdays prior to the hearing.

CONTACT PERSON: Tyler Shields, Environmental Control Supervisor, Department for Environmental Protection, Division of Waste Management, 300 Sower Boulevard, Frankfort, Kentucky 40601, phone (502) 782-5325, fax (502) 564-4245, email Tyler.Shields@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Tyler Shields

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes procedures to monitor and enforce the decommissioning of Merchant Electric Generating Facilities (MEGF) including notifications for construction, generation of electricity, permanent cessation of generation of electricity, decommissioning implementation, and cessation of construction or generation beyond thirty (30) days, transfers of ownership, annual fee requirements, and reporting requirements.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the procedures to monitor and enforce responsibilities over a qualified MEGF pursuant to KRS 224.10-285.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10-100(28) authorizes the cabinet to promulgate administrative regulations not inconsistent with the provisions of law administered by the cabinet. KRS 224.10-285 requires the establishment of the procedures to monitor and enforce requirements obligations set forth in 278.710(3), (4), (5), (7) through (10) and KRS 224.10-100(30) and (31).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes procedures to monitor and enforce mitigation measures approved in a construction certificate, as well as the decommissioning of a MEGF pursuant to KRS 224.10-285.

(2) If 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 statutes: N/A

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation. This administrative regulation will affect existing owners-operators, and successors of merchant electric generating facilities. There are currently thirty-five (35) approved MEGF construction certificates issued by the Public Service Commission (PSC), three (3) of which are currently under construction. Each MEGF that is or has been approved will be required to adhere to the requirements established in this regulation. As of August 16, 2023, nineteen (19) counties or local municipal governments have established ordinances for decommissioning and financial assurance requirements. Pursuant to KRS 278.718, these local ordinances shall have primacy over KRS 278.704 through 278.708.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Entities will have to submit the forms incorporated for notification, transfer, and reporting procedures.

(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 a tiered annual fee that each MEGF will be charged pursuant to the manufacturer's nameplate-rated capacity in megawatts (MW) documented in the approved construction certificate. $\geq 10\text{MW}$ through $\leq 75\text{MW}$ will be charged \$4,000 annually $\geq 76\text{MW}$ through $\leq 150\text{MW}$ will be charged \$8,000 annually, $\geq 151\text{MW}$ will be charged \$12,000 annually

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Entities will not accrue benefits as a result of compliance with this administrative regulation.

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

(a) Initially: The agency will not incur any additional costs for the implementation of this administrative regulation initially.

(b) On a continuing basis: The agency will not incur any continuing costs for the implementation of this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Implementation and enforcement of this administrative regulation would be achieved by the merchant electric generating facility monitoring and enforcement fund established in KRS 224.10-285. It should be noted that this fund consists of fees collected from the annual fee requirement within this administrative regulation, as well as monies collected pursuant to enforcement actions taken by the cabinet in the course of performing its monitoring and enforcement responsibilities.

(7) Provide an assessment of whether an 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 the tiered annual fee within this administrative regulation is necessary to defray the costs of the cabinet's monitoring and enforcement responsibilities for merchant electric generating facilities.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation establishes a tiered annual fee that each MEGF will be charged upon generation of electricity pursuant to KRS 224.10-285.

(9) TIERING: Is tiering applied? Yes. This administrative regulation establishes a tiered annual fee that each MEGF will be charged upon generation of electricity, pursuant to the manufacturer's nameplate-rated capacity in megawatts (MW) documented in the approved construction certificate. $\geq 10\text{MW}$ through $\leq 75\text{MW}$ will be charged \$4,000 annually, $\geq 76\text{MW}$ through

≤150MW will be charged \$8,000 annually, ≥150MW will be charged \$12,000 annually. The fee structure is tiered in order to adequately disperse funding responsibilities amongst each MEGF.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. Not applicable.

(2) State compliance standards. KRS 224.10-100, KRS 224.10-285, KRS 224.43-345, and KRS 278.700 through 278.716

(3) Minimum or uniform standards contained in the federal mandate. Not applicable.

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation imposes stricter requirements as there is no federal mandate for the decommissioning of merchant electric generating facilities.

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. HB-4 mandated the Cabinet to promulgate administrative regulations for the monitoring and enforcement requirements for the obligations set forth in KRS 278.710(3), (4), (5), (7), (8), (9), and (10) and KRS 224.10-100(30) and (31).

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will impact state or local governments that have, own, or operate a merchant electric generating facility in their jurisdiction, as well as the Energy and Environment Cabinet and Public Service Commission.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 224.10-100(28), 224.-10-100(30), 224.10-285, 224.43-345, 278.710(3), (4), (5), (7) through (10).

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 affect the expenditures of the Energy and Environment Cabinet as the merchant electric generating facility program is established by this regulation. The division will implement a tiered annual fee structure pursuant to KRS 224.10-285 to cover the entire useful life of each facility for which the cabinet has monitoring and enforcing responsibilities.

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

(c) How much will it cost to administer this program for the first year? The cost to administer the program for the currently approved thirty-five (35) facilities is \$278,000 annually. This total is the sum cost of hiring an Environmental Engineer II within the Solid Waste Branch for review of decommissioning plans and financial assurance documents, and an Environmental Scientist Advisor within the Field Operations Branch for site inspections. At the time of drafting this regulation, only three (3) of the thirty-five (35) facilities were under construction. Pursuant to KRS 278.710, the cabinet does not obtain authority over these facilities until the facility is constructed and generating electricity. Therefore, the cabinet cannot receive the annual fee until the facility is generating electricity. With no timetable of when these facilities will be constructed and begin generating electricity it is challenging to estimate the total costs in the first year of the program.

(d) How much will it cost to administer this program for subsequent years? The cost to administer the program for the

currently approved thirty-five (35) facilities is \$278,000 annually. This total is the sum cost of hiring an Environmental Engineer II within the Solid Waste Branch for review of decommissioning plans and financial assurance documents, and an Environmental Scientist Advisor within the Field Operations Branch for site inspections. At the time of drafting this regulation, only three (3) of the thirty-five (35) facilities were currently under construction. Pursuant to KRS 278.710, the cabinet does not obtain authority over these facilities until the facility is constructed and generating electricity. Therefore, the cabinet cannot receive the annual fee until the facility is generating electricity. With no timetable of when these facilities will be constructed and begin generating electricity it is challenging to estimate the total costs for subsequent years of the program. KRS 224.10-285 was implemented with the intention to make this a self-supported program, with revenue being generated from the merchant electric generating facility monitoring and enforcement fund.

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

Revenues (+/-): +\$16,000 collected from annual fees of the three (3) MEGFs that are currently under construction once they are constructed and generating electricity for sale. Two (2) of these facilities fall within the first tier of nameplate-rated capacity, with one (1) falling in the second tier. If all thirty-five (35) of the approved facilities were constructed and generating electricity within the first year of this administrative regulation taking effect, revenues generated from annual fees would total roughly \$272,000.

Expenditures (+/-): -\$278,000 cost of hiring the two positions stated above in 3(c)/3(d).

Other Explanation: There is no other explanation.

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

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

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

(c) How much will it cost the regulated entities for the first year? Any MEGF that is generating electricity in the first year that this administrative regulation becomes effective will be subject to the annual fee pursuant to the manufacturer's nameplate-rated capacity in the approved construction certificate.

(d) How much will it cost the regulated entities for subsequent years? Any MEGF that is generating electricity will be subject to the annual fee pursuant to the manufacturer's nameplate-rated capacity in the approved construction certificate.

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

Cost Savings (+/-): There is no known cost savings.

Expenditures (+/-): Expenditures will be between \$4,000-\$12,000 annually, depending on the manufacturer's nameplate-rated capacity within the approved construction certificate.

Other Explanation: This administrative regulation establishes an annual fee pursuant to KRS 224.10-285, to defray the costs of the cabinet's monitoring and enforcement responsibilities to each MEGF.

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] This proposed administrative regulation will not have a major economic impact.

ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Waste Management
(New Administrative Regulation)

401 KAR 103:020. Decommissioning standards.

RELATES TO: KRS 224.10-100, 224.10-285, 224.43-345, 278.700 - 278.716

STATUTORY AUTHORITY: KRS 224.10-100(28), 224.10-100(30), (31), 224.10-285, 224.43-345, 278.710(3), (4), (5), (7) - (10)
 NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(28) authorizes the cabinet to promulgate administrative regulations not inconsistent with the provisions of law administered by the cabinet. KRS 224.10-285 requires the Energy and Environment Cabinet to establish monitoring and enforcement requirements for the obligation set for in KRS 278.710(3), (4), (5), (7) through (10) and 224.10-100(30) and (31). KRS 224.10-100(30) requires the Energy and Environment Cabinet to monitor and enforce compliance of a merchant electric generating entity to which a construction certificate has been issued and has generated pursuant to obligations set forth in KRS 278.710(3), (4), (5), (7) through (10). This administrative regulation establishes procedures for decommissioning plan technical requirements, decommissioning plan updates, decommissioning cost estimate updates, and cases of abandonment.

Section 1. Technical Requirements of Decommissioning Plan. The owner-operator, or person who controls or owns right to control any MEGF are subject to decommissioning requirements and mitigation measures outlined in KRS 278.704 through 278.710.

(1) This plan shall be certified by an independent professional engineer prior to submission to the cabinet.

(2) Unless otherwise stated in an accommodation contained within a lease agreement with the affected landowner, the decommissioning plan shall be designed to return the land to a substantially similar state as it was prior to the commencement of construction.

(3) Decommissioning plans filed with the cabinet shall minimally meet the following technical requirements:

- (a) Provide an estimated lifespan of the MEGF, including an estimated period of useful life for system components;
- (b) Identify the party responsible for decommissioning;
- (c) Define conditions upon which decommissioning will be initiated, including a statement defining how notification will be made of intent to start the decommissioning process;
- (d) The timeframe for commencement and completion of decommissioning activities;
- (e) Include a revegetation plan, with native seed mixes, excluding any invasive species;
- (f) Cost itemization of all estimated costs that factor into decommissioning the MEGF;
- (g) Include the financial assurance mechanisms, in accordance with KRS 278.706 and 401 KAR 103:030;
- (h) Describe any agreement with landowners regarding decommissioning, including any special accommodations made to any affected landowner.

1. Incorporate the accommodations as requirements into the lease agreement with landowners and the decommissioning plan; or

2. Deny the request to accommodate and submit a detailed correspondence to the landowner, county or municipal government, and cabinet.

3. The owner-operator or person who controls or owns the right to control shall provide the landowner, county or municipal government, and cabinet with a timeline of any agreed upon accommodated request from the landowner or county or municipal government in accordance with paragraph (h) of this subsection.

(i) Removal of any MEGF owned equipment and facilities, including:

- 1. Structures;
- 2. Fencing;
- 3. Roads;
- 4. Foundations or pads;

- 5. Erosion, sediment, and water control measures;
- 6. Modules or solar panels;
- 7. Racks;
- 8. Cables or wires;
- 9. Conduit;
- 10. Inverters; and
- 11. Transformers.

(j) Remove any underground components and foundations of above-ground facilities. Underground components and facilities under this paragraph shall be removed to a depth of three (3) feet below the surface grade of the land in or on which the component was installed.

Section 2. Decommissioning Plan Updates.

(1) Pursuant to KRS 278.710 all MEGFs shall submit an updated decommissioning plan at least once every five (5) years. Decommissioning plan updates shall be submitted no later than 180 days prior to the fifth anniversary of the commencement of generation of electricity unless permission for a later date has been granted in writing by the cabinet. The cabinet may, at any time, request updated information necessary for reevaluating the decommissioning plan updates. Requests for updates shall include:

- (a) Additional construction of equipment or facilities;
- (b) Removal of equipment or facilities; or
- (c) Changes in the facilities estimated decommissioning costs.

(2) Decommissioning plan updates shall:

(a) Be submitted in conjunction with a notarized MEGF Annual Report or Decommissioning Plan Update Form, DWM 4657, including all required attachments;

(b) Include an updated estimation of decommissioning costs in accordance with Section 3 of this administrative regulation and 401 KAR 103:030; and

(c) Include any proposed measures to mitigate adverse impacts pursuant to KRS 278.710.

(3) Any engineering evaluation procured by the cabinet or at the cabinet's request and referred to the secretary to inform a final decision shall be considered preliminary, confidential, and not open for public inspection until after final action by the secretary.

(4) Decommissioning plan updates that require new construction will be subject to standards in KRS 278.704 through 278.714.

(5) Upon review and approval of the updated decommissioning plan by the cabinet, the owner-operator, or person who controls or owns the right to control the MEGF shall file with the cabinet an updated copy of the decommissioning bond or other similar security, in accordance with 401 KAR 103:030, to reflect changes to the estimated cost of effectuating the decommissioning plan or to the net present value or the net salvage value of the facility or its components.

Section 3. Decommissioning Cost Estimates. (1) The applicants, owner-operator, or person who controls or owns the right to control a merchant electric generating facility shall have a detailed, written estimate, in current US dollar, of the cost to decommission the MEGF in accordance with KRS 278.706 and 278.710.

(2) The estimated cost shall equal the cost of completing the decommissioning plan of the MEGF at the end of the useful life pursuant to the approved decommissioning plan. The cost estimate shall include:

(a) Itemized costs for implementing, dismantling, removing, or disposing of all structures, systems, components, and requirements described in Section 1 of this administrative regulation;

(b) Incorporate an estimated decommissioning cost per megawatt valuation;

(c) Be recalculated at least once every five (5) years to accommodate for inflation or depreciation;

(d) Include a defined useful life period of the MEGF; and

(e) Be certified by an independent, licensed engineer pursuant to KRS 278.706.

Section 4. Abandonment. In the event of abandonment or failure to complete decommissioning obligations by the responsible party, pursuant to KRS 224.10-100, the cabinet will draw upon the

decommissioning bond and implement the decommissioning plan. Pursuant to KRS 278.706, if any party makes a successful claim on the approved financial assurance, that party shall be responsible for the requirements set forth in the decommissioning plan.

Section 5. Incorporation by Reference.

(1) "MEGF Annual Report or Decommissioning Plan Update" Form, DWM 4657, September 2023, is incorporated by reference.

(2) This material may be inspected, copies, or obtained, subject to applicable copyright law, at Division of Waste Management, 300 Sower Boulevard, 2nd floor, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 5:00 p.m., from the Web site at eec.ky.gov/environmental-protection/waste.

JOHN LYONS, Deputy Secretary
REBECCA GOODMAN, Secretary

APPROVED BY AGENCY: September 27, 2023

FILED WITH LRC: September 27, 2023 at 2:30 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 21, 2023, at 10:00 a.m. Eastern Standard Time. The public hearing can be accessed at the following website address: <https://us05web.zoom.us/j/81334701532?pwd=eWJhA2kT9l6PWuOirAnFpuYads2k.1> using access code M00m5c. Please note that registration is required to participate in this hearing. You must either email your name and mailing address to Tyler.Shields@ky.gov or mail this information to Tyler Shields, Department for Environmental Protection, Division of Waste Management, 300 Sower Boulevard, Frankfort, Kentucky 40601. Please put "401 KAR 103:020" as the subject line, and state in the body of the message if you plan to speak during the hearing. Individuals interested in being heard at this hearing shall register to speak by December 14, 2023. If no one registers to speak 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 December 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. The hearing facility is accessible to persons with disabilities. Requests for reasonable accommodations, including auxiliary aids and services necessary to participate in the hearing, may be made to the contact person at least five (5) workdays prior to the hearing.

CONTACT PERSON: Tyler Shields, Environmental Control Supervisor, Department for Environmental Protection, Division of Waste Management, 300 Sower Boulevard, Frankfort, Kentucky 40601, phone (502) 782-5325, fax (502) 564-4245, email Tyler.Shields@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Tyler Shields

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes procedures to monitor and enforce the cabinet's responsibilities for merchant electric generating facilities including technical requirements of a decommissioning plan, decommissioning plan updates, decommissioning cost estimates, and abandonment of a MEGF.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish procedures of decommissioning a MEGF site, as well as decommissioning update requirements pursuant to KRS 278.710.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10-100(28) authorizes the cabinet to promulgate administrative regulations not inconsistent with the provisions of law administered by the cabinet. KRS 224.10-285 requires the establishment of the procedures to monitor and enforce requirements obligations set forth in 278.710(3), (4), (5), (7) through

(10) and KRS 224.10-100(30) and (31).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes procedures to monitor and enforce decommissioning plans, updates, and abandonment of a MEGF pursuant to KRS 224.10-285.

(2) If 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 statutes: N/A

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation. This administrative regulation will affect existing owners-operators, and successors of merchant electric generating facilities. There are currently thirty-five (35) approved MEGF construction certificates issued by the Public Service Commission (PSC), three (3) of which are currently under construction. Each MEGF that is or has been approved will be required to adhere to the requirements established in this regulation. As of August 16, 2023, nineteen (19) counties or local municipal governments have established ordinances for decommissioning and financial assurance requirements. Pursuant to KRS 278.718, these local ordinances shall have primacy over KRS 278.704 through 278.708.

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

(a) List 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 own-operate MEGFs within cities/counties that has not established decommissioning requirements will be held to requirements within this administrative regulation. Entities will have to submit the forms incorporated for updates to a decommissioning plan.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This administrative regulation will not have a cost for the entities identified.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The entities identified will not accrue benefits as a result of compliance to these administrative regulations.

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

(a) Initially: The agency will not incur any additional costs for the implementation of this administrative regulation initially.

(b) On a continuing basis: The agency will not incur any continuing costs for the implementation of this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Implementation and enforcement of this administrative regulation would be achieved by the annual fee payment provided by MEGFs, in addition to potential penalties collected under KRS 224.99-010.

(7) Provide an assessment of whether an 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 but does establish procedures for updating the costs of decommissioning the facility.

(9) TIERING: Is tiering applied? No tiering is not applied to this administrative regulation. There is no driving force to tier the

decommissioning plan requirements, updates, or cost estimates within this administrative regulation.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. Not applicable.

(2) State compliance standards KRS 224.10-100, KRS 224.10-285, KRS 224.43-345, and KRS 278.700 through 278.716

(3) Minimum or uniform standards contained in the federal mandate. Not applicable.

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation imposes stricter requirements as there is no federal mandate for the decommissioning of merchant electric generating facilities.

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. HB-4 mandated the Cabinet to promulgate administrative regulations for the monitoring and enforcement requirements for the obligations set forth in KRS 278.710(3), (4), (5), (7), (8), (9), and (10) and KRS 224.10-100(30) and (31).

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will impact state or local governments that own or operate a merchant electric generating facility as well as the Division of Waste Management. Local governments who have not established decommissioning requirements for MEGFs within their jurisdiction will be held to standards and requirements within 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 224.10-100(28), 224.10-100(30), 224.10-285, 224.43-345, 278.710(3), (4), (5), (7) through (10).

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

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

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

(c) How much will it cost to administer this program for the first year? The cost to administer the program for the currently approved thirty-five (35) facilities is \$278,000 annually. This total is the sum cost of hiring an Environmental Engineer II within the Solid Waste Branch for review of decommissioning plans and financial assurance documents, and an Environmental Scientist Advisor within the Field Operations Branch for site inspections. At the time of drafting this regulation, only three (3) of the thirty-five (35) facilities were under construction. Pursuant to KRS 278.710, the cabinet does not obtain authority over these facilities until the facility is constructed and generating electricity. Therefore, the cabinet cannot receive the annual fee until the facility is generating electricity. With no timetable of when these facilities will be constructed and begin generating electricity it is challenging to estimate the total costs in the first year of the program.

(d) How much will it cost to administer this program for subsequent years? The cost to administer the program for the currently approved thirty-five (35) facilities is \$278,000 annually. This total is the sum cost of hiring an Environmental Engineer II within the Solid Waste Branch for review of decommissioning plans

and an Environmental Scientist Advisor within the Field Operations Branch for site inspections. At the time of drafting this regulation, only three (3) of the thirty-five (35) facilities were currently under construction. Pursuant to KRS 278.710, the cabinet does not obtain authority over these facilities until the facility is constructed and generating electricity. Therefore, the cabinet cannot receive the annual fee until the facility is generating electricity. With no timetable of when these facilities will be constructed and begin generating electricity it is challenging to estimate the total costs for subsequent years of the program. KRS 224.10-285 was implemented with the intention to make this a self-supported program, with revenue being generated from the merchant electric generating facility monitoring and enforcement fund.

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

Revenues (+/-): +\$16,000 collected from annual fees of the three (3) MEGFs that are currently under construction once they are constructed and generating electricity for sale. Two (2) of these facilities fall within the first tier of nameplate-rated capacity, with one (1) falling in the second tier. If all thirty-five (35) of the approved facilities were constructed and generating electricity within the first year of this administrative regulation taking effect, revenues generated from annual fees would total roughly \$272,000 (13 facilities within the first tier, 11 facilities within the second tier, and 11 facilities within the third tier). It should be noted that the Cabinet has authority to hire an independent engineer to review any assessment reports at the cost of the entity, pursuant to KRS 278.710.

Expenditures (+/-): -\$278,000 cost of hiring the two positions stated above in 3(c)/3(d).

Other Explanation: There is no other explanation.

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

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

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

(c) How much will it cost the regulated entities for the first year? There is no known cost to the regulated entities in the first year.

(d) How much will it cost the regulated entities for subsequent years? There is no known cost to the regulated entities in subsequent years.

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

Cost Savings (+/-): There is no known cost savings.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: This administrative regulation establishes procedures for technical requirements of a decommissioning plan, updates to the decommissioning plan, and estimating decommissioning costs. Potential costs for the entity include the Cabinet's hiring of an independent engineer for the review of decommissioning plan updates.

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] This proposed administrative regulation will not have a major economic impact.

**ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Waste Management
(New Administrative Regulation)**

401 KAR 103:030. Financial requirements.

RELATES TO: KRS 224.10-100, 224.10-285, 224.43-345, 278.700 - 278.716

STATUTORY AUTHORITY: KRS 224.10-100(28), 224.10-100(30), (31), 224.10-285, 224.43-345, 278.710(3), (4), (5), (7) - (10)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(28) authorizes the cabinet to promulgate administrative regulations not inconsistent with the provisions of law administered by the cabinet. KRS 224.10-285 requires the Energy and Environment Cabinet to establish monitoring and enforcement requirements for the obligation set for in KRS 278.710(3), (4), (5), (7) through (10) and 224.10-100(30) and (31). KRS 224.10-100(30) requires the Energy and Environment Cabinet to monitor and enforce compliance of a merchant electric generating entity to which a construction certificate has been issued and has generated pursuant to obligations set forth in KRS 278.710(3), (4), (5), (7) through (10). KRS 224.10-100(31) authorizes the cabinet to draw upon the financial assurance for which it is named as a beneficiary and decommission a merchant generating facility in accordance with its approved decommissioning plan. This administrative regulation establishes procedures to administer the financial assurance mechanisms for the decommissioning responsibilities of merchant electric generating facilities.

Section 1. Applicability. The financial assurance criteria and requirements apply to all applicants, owner-operators, or person who controls or owns the right to control a merchant electric generating facility, except as stated in KRS 278.706 and 278.710.

Section 2. Financial Assurance Criteria.

(1) Applicants, owners-operators, or person who controls or owns the right to control a merchant electric generating facility shall:

(a) Ensure the financial assurance mechanisms is sufficient to cover the costs of decommissioning pursuant to KRS 278.706;

(b) Ensure the financial assurance mechanisms be available no later than thirty (30) days after the issuance of a cabinet demand letter.

(c) Complete and notarize a revised financial assurance mechanism form, in accordance with Section 3 of this administrative regulation, for the revised financial assurance mechanism; and

(d) Ensure the coverage of the financial assurance mechanism does not lapse, in accordance with KRS 278.710(4).

(e) Meet the requirements pursuant to KRS 278.706 and 278.710.

(2) The applicant, owner-operator, or person who controls or owns the right to control a merchant generating facility shall execute and submit a performance agreement for decommissioning, as established in Section 3 of this administrative regulation, with one (1) or more of the financial mechanisms established in Section 3 of this administrative regulation that satisfy the following criteria:

(a) The amount of the financial assurance provided by a single surety provider shall not exceed the limits of the most current United States Department of the Treasury's Circular 570.

(b) Upon receiving notice from the surety of the impending cancellation or lapse of the financial assurance mechanism, the cabinet shall seek agreement of any landowners who have not previously agreed pursuant so paragraph (c) below to make a demand on the financial assurance mechanism.

(c) The cabinet may seek agreement of the landowners to allow it to make a demand on the bond prior to receiving notice of impending cancellation or lapse.

(d) A landowner's agreement to allow the cabinet to make a demand on a bond pursuant to clause a. of this subparagraph may only be revoked in writing bearing a notarized signature of the landowner.

(3) Pursuant to Section 3 of this administrative regulation, financial assurance mechanism shall be:

- (a) Submitted;
- (b) Reviewed; and

1. Approved by the cabinet if the applicant, owner-operator, or person who controls or owns the right to control a merchant electric generating facility is in compliance with the requirements of this administrative regulation; or

2. Denied by the cabinet if the updated or replacing financial assurance mechanism does not meet the requirements stated KRS 278.706, 278.710, and this administrative regulation.

(4) Applicants, owners-operators, or person who controls or owns the right to control a merchant electric generating facility who fail to meet the requirements established in this section, KRS 278.706, and KRS 278.710 may be subject to penalties established in KRS 224.99-010.

Section 3. Financial Assurance Mechanisms. The mechanisms used to demonstrate financial assurance in accordance with this administrative regulation shall ensure that the funds necessary to meet the costs of decommissioning the merchant generating facility upon the expiration of its useful life.

(1) Before the cabinet approves an updated or replacement financial assurance mechanism, the successor shall:

(a) Complete and notarize a performance agreement of decommissioning pursuant to paragraph (c) of this section;

(b) Post at least one (1) of the following financial assurance mechanisms pursuant to KRS 278.706:

1. A surety bond as established in subsection (2) of this section;

2. An escrow agreement as established in subsection (3) of this section; or

3. Other similar security pursuant to KRS 278.706.

(c) A performance agreement, guaranteeing performance of decommissioning to allowable limits, shall be completed, and notarized on MEGF Performance Agreement Form, DWM 4651.

(2) A surety bond shall: Be completed and notarized on MEGF Surety Bond Form, DWM 4653. The requirements contained in the surety bond are incorporated in this administrative regulation by reference.

(3) An escrow agreement shall:

(a) Be completed on MEGF Escrow Agreement Form, DWM 4654. The requirements contained in the escrow agreement are incorporated in this administrative regulation by reference.

(b) If a certificate of deposit is used in conjunction with the escrow agreement, it shall be made payable to the financial institution as the escrow agent.

(4) Other financial assurance as specified in KRS 278.706 and 278.710.

(5) The applicant, owner-operator, or person who controls or owns the right to control a merchant electric generating facility by establishing more than one (1) financial mechanism shall be limited to the following:

(a) Surety bonds;

(b) Escrow agreements;

(c) Other financial assurance, pursuant to subsection (4) of this section.

(d) A combination of mechanisms established in this administrative regulation, rather than each single mechanism, that shall provide financial assurance for an amount at least equal to the financial assurance requirements established in KRS 278.706.

Section 4. Release of Financial Assurance.

(1) Financial assurance mechanisms posted to assure the proper decommissioning of the MEGF shall be released by the cabinet when the owner-operator, or person who controls or owns the right to control the MEGF demonstrates to the satisfaction of the cabinet that all decommissioning requirements pursuant to the decommissioning plan are complete in conformance with KRS 278.706, 278.710, and 401 KAR 103:020.

(2) To demonstrate that all decommissioning requirements have been satisfied, the owner-operator, or person who controls or owns the right to control the MEGF shall submit an assessment report certifying the facility is fully decommissioned pursuant to subsection (1) of this section.

Section 5. Incorporated by Reference.

(1) The following material is incorporated by reference:

- (a) "MEGF Performance Agreement" Form, DWM 4651, September 2023;
- (b) "MEGF Surety Bond" Form, DWM 4653, September 2023; and
- (c) "MEGF Escrow Agreement" Form, DWM 4654, September 2023.

(2) This material may be inspected, copies, or obtained, subject to applicable copyright law, at Division of Waste Management, 300 Sower Boulevard, 2nd floor, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 5:00 p.m., from the Web site at eec.ky.gov/environmental-protection/waste.

JOHN LYONS, Deputy Secretary

For REBECCA GOODMAN, Secretary

APPROVED BY AGENCY: September 27, 2023

FILED WITH LRC: September 27, 2023 at 2:30 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 21, 2023, at 10:00 a.m. Eastern Standard Time. The public hearing can be accessed at the following website address: <https://us05web.zoom.us/j/81334701532?pwd=eWJHA2kT9l6PWurOirAnFpuYads2k.1> using access code M00m5c. Please note that registration is required to participate in this hearing. You must either email your name and mailing address to Tyler.Shields@ky.gov or mail this information to Tyler Shields, Department for Environmental Protection, Division of Waste Management, 300 Sower Boulevard, Frankfort, Kentucky 40601. Please put "401 KAR 103:030" as the subject line, and state in the body of the message if you plan to speak during the hearing. Individuals interested in being heard at this hearing shall register to speak by December 14, 2023. If no one registers to speak 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 December 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. The hearing facility is accessible to persons with disabilities. Requests for reasonable accommodations, including auxiliary aids and services necessary to participate in the hearing, may be made to the contact person at least five (5) workdays prior to the hearing.

CONTACT PERSON: Tyler Shields, Environmental Control Supervisor, Department for Environmental Protection, Division of Waste Management, 300 Sower Boulevard, Frankfort, Kentucky 40601, phone (502) 782-5325, fax (502) 564-4245, email Tyler.Shields@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Tyler Shields

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes procedures for the financial assurance of MEGFs, including applicability, criteria, mechanisms of financial assurance, and conditions on which financial assurance will be released.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the procedures for assuring entities provide adequate financial assurance to decommission the MEGF upon the end of its useful life.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10-100(28) authorizes the cabinet to promulgate administrative regulations not inconsistent with the provisions of law administered by the cabinet. KRS 224.10-285 requires the establishment of the procedures to monitor and enforce requirements obligations set forth in 278.710(3), (4), (5), (7) through (10) and KRS 224.10-100(30) and (31).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes procedures to ensure MEGFs have adequate financial assurance for decommissioning responsibilities, pursuant to requirements set for in KRS 278.710.

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation. This administrative regulation will affect existing owners-operators, and successors of merchant electric generating facilities. There are currently thirty-five (35) approved MEGF construction certificates issued by the Kentucky State Board on Electric Generation and Transmission Siting (Siting Board), three (3) of which are currently under construction. Each MEGF that is or has been approved will be required to adhere to the requirements established in this regulation. As of August 16, 2023, nineteen (19) counties or local municipal governments have established ordinances for decommissioning and financial assurance requirements. Pursuant to KRS 278.718, these local ordinances shall have primacy over KRS 278.704 through 278.708.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Entities will have to comply with procedures within this administrative regulation for a MEGF that is constructed and operating within a city or county that has not established financial assurance requirements. Entities will have to submit the new forms incorporated in this administrative regulation, as well as provide copies of financial assurance, pursuant to KRS 278.710.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This administrative regulation has financial assurance costs pursuant to KRS 278.706 and 278.710, equaling, at a minimum, the cost of decommissioning the facility.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Benefits to compliance with this administrative regulation include the release of the financial assurance upon completion of the decommissioning plan.

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

(a) Initially: The agency will not incur any additional costs for the implementation of this administrative regulation initially.

(b) On a continuing basis: The agency will not incur any continuing costs for the implementation of this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Implementation and enforcement of this administrative regulation would be achieved by the annual fee payment provided by MEGFs, in addition to potential penalties collected under KRS 224.99-010.

(7) Provide an assessment of whether an 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 but does establish procedures for financial assurance mechanisms for the costs of decommissioning the facility.

(9) TIERING: Is tiering applied? No tiering is applied to this administrative regulation. There is no driving need to tier the

applicability, criteria, or the potential financial mechanisms described in this administrative regulation.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. Not applicable.

(2). State compliance standards. KRS 224.10-100, KRS 224.10-285, KRS 224.43-345, and KRS 278.700 through 278.716

(3) Minimum or uniform standards contained in the federal mandate. Not applicable.

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation imposes stricter requirements as there is no federal mandate for the decommissioning of merchant electric generating facilities.

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. HB-4 mandated the Cabinet to promulgate administrative regulations for the monitoring and enforcement requirements for the obligations set forth in KRS 278.710(3), (4), (5), (7), (8), (9), and (10) and KRS 224.10-100(30) and (31).

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will impact state or local governments that own or operate a merchant electric generating facility as well as the Division of Waste Management. Local governments who have not established financial assurance requirements for MEGFs within their ordinance(s) will be held to standards and requirements within 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 224.10-100, KRS 224.10-285, 224.43-345, KRS 278.706 and KRS 278.710

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

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

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

(c) How much will it cost to administer this program for the first year? The cost to administer the program for the currently approved thirty-five (35) facilities is \$278,000 annually. This total is the sum cost of hiring an Environmental Engineer II within the Solid Waste Branch for review of decommissioning plans and financial assurance documents, and an Environmental Scientist Advisor within the Field Operations Branch for site inspections. At the time of drafting this regulation, only three (3) of the thirty-five (35) facilities were under construction. Pursuant to KRS 278.710, the cabinet does not obtain authority over these facilities until the facility is constructed and generating electricity. Therefore, the cabinet cannot receive the annual fee until the facility is generating electricity. With no timetable of when these facilities will be constructed and begin generating electricity it is challenging to estimate the total costs in the first year of the program.

(d) How much will it cost to administer this program for subsequent years? The cost to administer the program for the currently approved thirty-five (35) facilities is \$278,000 annually. This total is the sum cost of hiring an Environmental Engineer II within the Solid Waste Branch for review of decommissioning plans and financial assurance documents, and an Environmental Scientist

Advisor within the Field Operations Branch for site inspections. At the time of drafting this regulation, only three (3) of the thirty-five (35) facilities were currently under construction. Pursuant to KRS 278.710, the cabinet does not obtain authority over these facilities until the facility is constructed and generating electricity. Therefore, the cabinet cannot receive the annual fee until the facility is generating electricity. With no timetable of when these facilities will be constructed and begin generating electricity it is challenging to estimate the total costs for subsequent years of the program. KRS 224.10-285 was implemented with the intention to make this a self-supported program, with revenue being generated from the merchant electric generating facility monitoring and enforcement fund.

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

Revenues (+/-): +\$16,000 collected from annual fees of the three (3) MEGFs that are currently under construction once they are constructed and generating electricity for sale. Two (2) of these facilities fall within the first tier of nameplate-rated capacity, with one (1) falling in the second tier. If all thirty-five (35) of the approved facilities were constructed and generating electricity within the first year of this administrative regulation taking effect, revenues generated from annual fees would total roughly \$272,000 (13 facilities within the first tier, 11 facilities within the second tier, and 11 facilities within the third tier).

Expenditures (+/-): -\$278,000 cost of hiring the two positions stated above in 3(c)/3(d).

Other Explanation: There is no other explanation.

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

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

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

(c) How much will it cost the regulated entities for the first year? This administrative regulation will present a financial assurance cost to the regulated entity, at a minimum, equal to the cost of decommissioning the facility.

(d) How much will it cost the regulated entities for subsequent years? There is potential for the cost of financial assurance to rise or decline in subsequent years, depending on modifications to the facility, equipment, or decommissioning plans. As technology within the industry advances, advancements could potentially raise or lower costs required for financial assurance. Inflation could also cause financial assurance costs to rise or decline in subsequent years.

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

Cost Savings (+/-): There is no known cost savings.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: This administrative regulation establishes financial assurance procedures for the decommissioning of MEGFs. The cost of the financial assurance shall, at a minimum, equal the cost of decommissioning the facility. The financial assurance can change over the life of the facility, depending on modifications to the facility, equipment, or decommissioning plans. KRS 278.706 establishes how decommissioning costs are calculated.

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] This proposed administrative regulation will not have a major economic impact.

**EDUCATION AND LABOR CABINET
Board of Education
Department of Education
(New Administrative Regulation)**

702 KAR 3:330. Liability insurance.

RELATES TO: KRS 161.212

STATUTORY AUTHORITY: KRS 156.070, 156.160

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.160 and 156.070 require the Kentucky Board of Education to promulgate administrative regulations concerning the management of the school districts. KRS 160.105 requires the Kentucky Board of Education to promulgate regulations to require school districts to provide each certified employee with primary liability insurance coverage. KRS 161.212 requires the Kentucky Board of Education to promulgate administrative regulations to implement requirements for the Educators Employment Liability Insurance Program.

Section 1. School District Certified Employee Liability Insurance. Beginning with the 2024-2025 school year, each school district shall provide each certified district employee with primary liability insurance coverage for the protection of the employee from liability arising in the course and scope of pursuing the duties of employment in an amount not less than one million dollars (\$1,000,000).

Section 2. Educators Employment Liability Insurance Program.

(1) By October 1 of each year, each school district shall provide the Kentucky Department of Education, in the format determined by the department, with the following:

(a) The name of the district's insurance carrier providing primary liability insurance coverage for each certified employee for liability arising in the course and scope of employment;

(b) Verification that the amount of liability coverage provided to each certified employee is at least equal to one million dollars (\$1,000,000);

(c) The number of covered certified employees under the district's primary liability insurance policy;

(d) Whether there has been any change in coverage from the previous reporting year; and

(e) If the district has excess liability insurance to the primary liability insurance for certified employees, the name of the carrier and the amount of excess coverage.

(2) The school district shall immediately notify the Kentucky Department of Education if the district's primary liability insurance policy that provides coverage to certified employees is cancelled during the policy term.

(3) In the event, the school district's primary liability insurance policy that provides coverage to certified employees is canceled during the policy term, the district shall procure alternative liability insurance coverage for each certified employee and shall notify the Kentucky Department of Education of the terms of the replacement liability insurance, including the name of the carrier, the amount of coverage and the number of certified employees covered under the policy.

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

ROBIN KINNEY, Interim Commissioner of Education
SHARON PORTER ROBINSON, Chair

APPROVED BY AGENCY: October 11, 2023

FILED WITH LRC: October 11, 2023 at 1:30 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 21 at 10:00 a.m., ET, in the State Board Room, Fifth Floor, 300 Sower Boulevard, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by 5 workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be 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 through December 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 G. Allen, General Counsel, Kentucky Department of Education, 300 Sower Boulevard, 5th Floor, Frankfort, Kentucky 40601, phone 502-564-4474, fax 502-564-9321, email regcomments@education.ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Todd G. Allen

(1) Provide a brief summary of:

(a) What this administrative regulation does: The proposed regulation requires school districts to provide certified employees with primary liability insurance pursuant to KRS 160.105, and sets forth the requirements of the Educators Employment Liability Insurance Program established in KRS 161.212.

(b) The necessity of this administrative regulation: The proposed regulation is required pursuant to KRS 160.105 and 161.212.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The proposed regulation requires school districts to provide primary liability insurance for all certified employees as required by KRS 160.105. It further sets forth the information reporting necessary for the Educators Employment Liability Insurance Program which provides certified employees with excess liability insurance coverage.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will require school districts to provide certified employees with primary liability insurance and creates the program requirements necessary for the Kentucky Department of Education to provide excess liability insurance for school district certified employees.

(2) If 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: School district certified employees, local school districts and the Kentucky Department of Education.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Local school districts will have to provide certified employees with primary liability insurance coverage. It is believed that most districts currently provide certified employees with liability insurance coverage. Any district that does not will have to procure coverage compliant with the KRS 161.105 and this regulation. Further, the Kentucky Department of Education will procure excess liability insurance for school district certified employees through a competitive process. The regulation establishes the information reporting necessary for the Kentucky Department of Education to procure the excess coverage.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Local school districts will bear the cost of procuring the primary liability insurance. It is believed that most, if not all districts provide such coverage to certified employees. The Kentucky Department of Education will incur the cost of providing excess insurance for certified employees. The costs of providing the insurance is unknown at

present.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3):

School district certified employees will have liability insurance protection from liability arising in the course and scope of their employment.

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

(a) Initially: There will be an unknown initial cost to all local school districts in providing the primary insurance coverage to certified employees. Many school districts currently provide liability insurance coverage to employees. Thus, there may be no new cost to districts. There will be an unknown initial cost to the Kentucky Department of Education to provide the excess liability insurance.

(b) On a continuing basis: There will be an unknown continuing cost to all local school districts in providing the primary insurance coverage to certified employees. Many school districts currently provide liability insurance coverage to employees. Thus, there may be no new cost to districts. There will be an unknown continuing cost to the Kentucky Department of Education to provide the excess liability insurance.

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

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Additional funding to the Kentucky Department of Education will be necessary to provide the excess liability insurance required pursuant to KRS 161.212.

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

(9) TIERING: Is tiering applied? Tiering is not applied. The proposed regulation is uniformly applicable to all school districts.

FISCAL NOTE

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 160.105 and 161.212.

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

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

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

(c) How much will it cost to administer this program for the first year? The costs are currently unknown.

(d) How much will it cost to administer this program for subsequent years? The costs are currently unknown.

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: Local school districts will incur costs associated with procuring and providing primary liability insurance for certified employees. It is believed that many, if not all, districts provide such insurance for employees. As a result, districts may incur no new costs to provide the liability insurance. The Kentucky Department of Education will incur costs associated with providing the excess insurance for covered employees. The department does not yet know the costs of excess insurance but expects to have a better idea once

a solicitation process is conducted.

(4) Estimate the effect of this 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 expected.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? No cost savings are expected.

(c) How much will it cost the regulated entities for the first year? Unknown. Most districts carry liability coverage for their employees. The costs to districts will depend on whether they currently carry certified employee coverage and whether the policy limits meet the statutory requirements.

(d) How much will it cost the regulated entities for subsequent years? Unknown. Most districts carry liability coverage for their employees. The continuing costs to districts will depend on whether they already carry certified employee coverage and whether the policy limits meet the statutory requirements.

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 proposed regulation is required pursuant to KRS 160.105 and 161.212. It requires local school districts to purchase primary liability insurance of not less than one million dollars (\$1,000,000) for all certified employees for liability within the course and scope of employment. It is believed that most, if not all, districts already provide employees with this coverage. As such, districts may not experience any additional costs in procuring the required coverage. The financial costs to districts in requiring obtaining this insurance is unknown but believed to exceed \$500,000. Further, KRS 161.212 requires the Kentucky Department of Education to purchase excess liability in the amount of one million dollars per occurrence and three million dollars (\$3,000,000) for each covered certified employee. The insurance is to be obtained through contract with an insurance agency. While the cost to the department is currently unknown, it is expected that it will exceed five hundred thousand dollars (\$500,000).

CABINET FOR HEALTH AND FAMILY SERVICES

Department for Community Based Services

Division of Family Support

(New Administrative Regulation)

921 KAR 3:100. Transitional benefit alternative.

RELATES TO: 7 C.F.R. 273.26 - 273.32

STATUTORY AUTHORITY: KRS 194A.050(1), 205.1783(1)(a), 7 C.F.R. 271.4

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to implement programs mandated by federal law or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. KRS 205.1783(1)(a) requires the cabinet to establish a transitional benefit alternative as described in 7 C.F.R. 273.26 to 273.32. 7 C.F.R. 271.4 delegates the administration of the Supplemental Nutrition Assistance Program (SNAP) to the state agency. This administrative regulation establishes a SNAP transitional benefit alternative.

Section 1. Definitions.

(1) "Kentucky Transitional Assistance Program" or "KTAP" means the program established in 921 KAR 2:006.

(2) "Regular SNAP benefits" means SNAP benefits received in accordance with the procedures established in:

- (a) 921 KAR 3:020, Financial requirements;
- (b) 921 KAR 3:027, Technical requirements;
- (c) 921 KAR 3:030, Application process; and
- (d) 921 KAR 3:035, Certification process.

(3) "Transitional benefit alternative" or "transitional benefits" means a consistent SNAP benefit amount received for a period of up to five (5) months during which a household transitions out of KTAP.

Section 2. Transitional Benefit Alternative Program Procedures. Unless a different procedure or process for a SNAP requirement is specified in this administrative regulation, all SNAP requirements specified in 921 KAR Chapter 3 shall apply to transitional benefits, including the process for:

- (1) A fair hearing;
- (2) An administrative disqualification hearing;
- (3) An appeal;
- (4) A disqualification;
- (5) A claim and collection of a claim; and
- (6) EBT issuance.

Section 3. Eligibility for a Transitional Benefit Alternative.

(1) An individual shall qualify for transitional benefits if the individual:

(a) Resides in a household where all members were receiving KTAP; and

(b) KTAP eligibility ends due to the addition of earned income.

(2) An individual may apply for regular SNAP benefits at any time in accordance with 921 KAR 3:030.

(3) The cabinet shall not provide transitional benefits to an individual who is no longer eligible for KTAP because:

- (a) Of a full-family TANF sanction; or
- (b) All household members are ineligible to receive SNAP benefits because they are:

- 1. Disqualified for an intentional program violation;
- 2. Ineligible for failure to comply with a work requirement;
- 3. Ineligible students;
- 4. Ineligible immigrants;
- 5. Disqualified for failing to provide information necessary for making a determination of eligibility or for completing any subsequent review of eligibility;
- 6. Disqualified for knowingly transferring resources for the purpose of qualifying or attempting to qualify for the program;
- 7. Disqualified for receipt of multiple SNAP benefits;
- 8. Disqualified for being a fleeing felon; or
- 9. An able-bodied adult without dependents who failed to comply with work reporting requirements.

(4) An individual shall not receive transitional benefits and regular SNAP benefits at the same time.

Section 4. Transitional Benefit Alternative Recertification Process.

(1) The individual shall be required to recertify for regular SNAP benefits in the fifth (5th) month of receiving transitional benefits.

(2) A SNAP certification period may be extended in order to provide up to five (5) months of transitional benefits.

(3) If an individual receiving transitional benefits becomes eligible to receive KTAP during the transitional period, the cabinet shall use the information from a KTAP application to redetermine continued SNAP eligibility and benefits while the KTAP application is being processed.

LESA DENNIS, Commissioner
ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: September 22, 2023

FILED WITH LRC: October 9, 2023 at 3:15 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on December 27, 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 December 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 December 31, 2023. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes a SNAP transitional benefit period for households who lose KTAP assistance due to being ineligible as a result of increased earnings. This transition will help households and individuals overcome a benefits cliff as they increase or obtain earned income.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to conform to KRS 205.1783(1)(a), originally passed as House Bill 7 in the 2022 Regular Session.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by implementing programs necessary for the proper administration of the cabinet and its programs. KRS 205.1783(1)(a) requires the cabinet to establish a transitional benefit alternative, established in this administrative regulation.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation fulfills a statutory requirement and ensures compliance with state law.

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All KTAP participants who become financially ineligible to continue in the program due to the addition of earnings will be able to participate in this transitional program if requirements are met. In June 2023, there were 3,083 households that could potentially be affected by this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No action is required of affected individuals and households, the cabinet will identify eligibility for the program through automated systems.

(b) In complying with this administrative regulation or amendment,

how much will it cost each of the entities identified in question (3): There is no cost to identified individuals and households.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Affected individuals and households may continue to receive a set SNAP benefit amount for up to five (5) months after becoming ineligible for the KTAP program due to increased earned income. This transition will help households and individuals overcome a benefits cliff as they increase or obtain earned income.

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

(a) Initially: \$100,000 or less for system design and staff training.

(b) On a continuing basis: There is no ongoing costs for implementation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: SNAP benefits are 100% federally funded by the U.S. Department of Agriculture. Program administrative costs are funded 50% federal and 50% state and have been appropriated in the enacted budget.

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

(9) TIERING: Is tiering applied? Tiering is not applied as this administrative regulation will be applied in a like manner on a statewide basis.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 7 C.F.R. 271.4

(2) State compliance standards. KRS 194A.050(1), 205.1783(1)(a)

(3) Minimum or uniform standards contained in the federal mandate. 7 C.F.R. 271.4

(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 will not impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate. This program is a federal option.

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation will not impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Community Based Services will be impacted by the administrative regulation as the administrator of SNAP and KTAP.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1), 205.1783(1)(a), 7 C.F.R. 271.4.

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

(a) How much 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 the administrative regulation will not generate revenue.

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

(c) How much will it cost to administer this program for the first

year? There will be a one-time agency cost for design changes to the web-based eligibility system used for SNAP. This is estimated to be less than \$100,000.

(d) How much will it cost to administer this program for subsequent years? This administrative regulation does not have an on-going 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? No savings will be generated by this amendment.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? No savings are anticipated from this amendment.

(c) How much will it cost the regulated entities for the first year? There is no cost to affected entities in the first year.

(d) How much will it cost the regulated entities for subsequent years? There are no ongoing costs to affected entities.

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)]. No major economic impact is anticipated.

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
Minutes of October 10, 2023

Call to Order and Roll Call

The October meeting of the Administrative Regulation Review Subcommittee was held on Tuesday, October 10, 2023 at 1:00 p.m. in Room 149 of the Capitol Annex. Representative Lewis, Co-Chair, called the meeting to order, the roll call was taken.

Present were:

Members: Representative Derek Lewis, Co-Chair; Senators Julie Raque Adams, Damon Thayer, and David Yates; Representatives Randy Bridges, Deanna Frazier Gordon, and Daniel Grossberg.

LRC Staff: Sarah Amburgey, Stacy Auterson, Emily Caudill, Ange Darnell, Emily Harkenrider, Karen Howard, Anna Latek, and Carrie Nichols.

Guests: Becky Gilpatrick, Miles Justice, Kentucky Higher Education Assistance Authority; Travis Powell, Council on Postsecondary Education; Cassie Trueblood, Education Professional Standards Board and Board of Education; Jennifer Scutchfield, Secretary of State; Leslie Saunders, John Steffen, Registry of Election Finance; Stafford Easterling, Personnel Board; Carrie Bass, Jessica Beaubein, Kentucky Public Pension Authority; Eden Davis, Juliana Swiney, Board of Pharmacy; Kelly Jenkins, Jeffrey Prather, Board of Nursing; Mary Haynes, Joe Jurgensen, Nazareth Homes; Stephen Curley, Board of Physical Therapy; Samuel Thorner, Kentucky Housing Corporation; Dave Dreves, Jenny Gilbert, Department of Fish and Wildlife Resources; Michael Kennedy, Energy and Environment Cabinet; Chad Collins, Kentucky Higher Education Assistance Authority; Abigail Gall, Public Protection Cabinet, Jamie Eads, Hans Stokke, Jennifer Wolsing, Horse Racing Commission; Stephanie Brammer-Barnes, Laura Begin, Adam Mather, Valerie Moore, Misty Sammons, Cabinet for Health and Family Services; and Caroline Ruschell, Children's Advocacy Centers of Kentucky.

Administrative Regulations Reviewed by this Subcommittee:

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY: Division of Student and Administrative Services: KHEAA Grant Programs

011 KAR 005:001. Definitions pertaining to 11 KAR Chapter 5. Becky Gilpatrick, director of student aid, and Miles Justice, general counsel, represented the authority.

A motion was made and seconded to approve the following amendments: to amend Section 1 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

011 KAR 015:110. Scholarships for Registered Apprenticeship and Qualified Workforce Training programs.

A motion was made and seconded to approve the following amendments: to amend Sections 1, 3, and 4 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

COUNCIL ON POSTSECONDARY EDUCATION: Healthcare

013 KAR 005:010. Healthcare training scholarships. Travis Powell, vice president and general counsel, represented the council.

In response to a question by Representative Frazier Gordon, Mr. Powell stated that this administrative regulation implemented House Bill 200 from the 2023 Regular Session of the General Assembly, which created a scholarship fund and an incentive fund for establishing partnerships between postsecondary educational institutions and healthcare providers. Students in targeted healthcare workforce areas would be trained by the institution and work for the health care provider. If a student completed a two (2) year service requirement with the provider, the scholarship would not have to be repaid by the student.

In response to a question by Senator Thayer, Mr. Powell stated that the council had been working with the sponsor of House Bill 200 from the 2023 Regular Session of the General Assembly to communicate with the Interim Joint Committee on Appropriations and Revenue concerning a budget request to implement the bill.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 2 and 5 to comply with the drafting requirements of KRS Chapter 13A; (2) to amend Section 1 to add a definition for "eligible entity" and delete the definition for "eligible

postsecondary institution"; and (3) to amend and update the corresponding language of Section 3. Without objection, and with agreement of the agency, the amendments were approved.

013 KAR 005:020. Healthcare program incentives.

In response to a question by Representative Frazier Gordon, Mr. Powell stated that this administrative regulation provided criteria for high-performing health care programs to receive incentives, in accordance with House Bill 200 from the 2023 Regular Session of the General Assembly.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 1 and 5 to comply with the drafting requirements of KRS Chapter 13A; (2) to amend Section 1 to add a definition for "eligible entity" and delete the definition for "eligible postsecondary institution"; and (3) to amend and update the corresponding language of Section 2. Without objection, and with agreement of the agency, the amendments were approved.

EDUCATION PROFESSIONAL STANDARDS BOARD: Teaching Certificates

016 KAR 002:240. Interim certificate. Cassie Trueblood, counsel, represented the board.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs to comply with KRS Chapter 13A; and (2) to amend Sections 1 and 2 to make changes consistent with the emergency regulation, as amended on August 1, 2023 by the Interim Joint Committee on Education. Without objection, and with agreement of the agency, the amendments were approved.

SECRETARY OF STATE: Address Confidentiality Program

030 KAR 006:012. Repeal of 030 KAR 006:011. Jennifer Scutchfield, assistant secretary of state and general counsel, represented the secretary of state.

In response to a question from Co-Chair Lewis, Ms. Scutchfield stated that the administrative regulation expanded the address confidentiality program to victims of domestic abuse and masked a victim's address on public-facing state or county agency Web sites.

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Senator Thayer congratulated Senator Julie Raque Adams on the implementation of her bill through these administrative regulations.

Safe at Home Program

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

A motion was made and seconded to approve the following amendments: to amend the RELATES TO, STATUTORY AUTHORITY, and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Section 1 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

030 KAR 010:020. Application and certification.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO, STATUTORY AUTHORITY, and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1 and 2 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

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

A motion was made and seconded to approve the following amendments: to amend the RELATES TO, STATUTORY AUTHORITY, and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 2 and 3 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

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

A motion was made and seconded to approve the following amendments: to amend the RELATES TO, STATUTORY AUTHORITY, and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1 and 3 through 5 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

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

A motion was made and seconded to approve the following amendments: to amend the RELATES TO, STATUTORY AUTHORITY, and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1 through 4 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

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

A motion was made and seconded to approve the following amendments: to amend the RELATES TO, STATUTORY AUTHORITY, and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1 and 2 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

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

A motion was made and seconded to approve the following amendments: to amend the RELATES TO, STATUTORY AUTHORITY, and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Section 1 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

030 KAR 010:080. Substitute address.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO, STATUTORY AUTHORITY, and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Section 1 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

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

A motion was made and seconded to approve the following amendments: to amend the RELATES TO, STATUTORY AUTHORITY, and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Section 1 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

030 KAR 010:100. Attaining age of majority.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO, STATUTORY AUTHORITY, and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Section 1 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

030 KAR 010:110. Service of process.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO, STATUTORY AUTHORITY, and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Section 1 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

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

A motion was made and seconded to approve the following amendments: to amend the RELATES TO, STATUTORY AUTHORITY, and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1 and 2 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

REGISTRY OF ELECTION FINANCE: Reports and Forms

032 KAR 002:020. General provisions. Leslie Saunders, general counsel, and John Steffen, executive director, represented the registry.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Section 2 to comply with KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

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

A motion was made and seconded to approve the following amendments: to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1 and 3 through 6 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

032 KAR 002:040. Investigatory procedures.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1, 3, 4, 6, and 8 to comply with the drafting and formatting requirements of KRS

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Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

032 KAR 002:050. Conciliation.

032 KAR 002:060. Advisory opinions.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 3 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

032 KAR 002:221. Repeal of 032 KAR 002:220.

032 KAR 002:230. Processing of records requests.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO, STATUTORY AUTHORITY, and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1 and 2 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

PERSONNEL BOARD

101 KAR 001:365E. Appeal and hearing procedures. Stafford Easterling, general counsel and hearing officer, represented the board.

101 KAR 001:365. Appeal and hearing procedures.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 3 and 5 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

FINANCE AND ADMINISTRATION CABINET: Kentucky Public Pension Authority: General Rules

105 KAR 001:457. In-line-of-duty survivor benefits. Carrie Bass, staff attorney supervisor, and Jessica Beaubien, policy specialist, represented the cabinet.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 4 and 6 through 9 to comply with the drafting requirements of KRS Chapter 13A; and (2) to amend the STATUTORY AUTHORITY paragraph and Section 2 to reference KRS 61.505(3)(d) as authorizing the agency to contract with third-party vendors to act on its behalf throughout the in-line-of-duty survivor benefit application and review process. Without objection, and with agreement of the agency, the amendments were approved.

Board of Pharmacy

201 KAR 002:020. Examination. Juliana Swiney, deputy executive director, and Eden Davis, general counsel, represented the board.

In response to a question by Co-Chair Lewis, Ms. Davis stated that the board did not increase fees between 1999 and 2021. In 2021, the fees were increased by twenty-five (25) dollars, and the current administrative regulation increased fees by another twenty-five (25) dollars. In surrounding states, the average fee for a pharmacy, third-party logistic provider, and wholesaler was \$278, \$616, and \$278, respectively. This administrative regulation increased the fees for a pharmacy, third-party logistic provider, and wholesaler to \$150, \$400, and \$150, respectively.

A motion was made and seconded to approve the following amendments: to amend Sections 6 through 8 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 002:050. Licenses and permits; fees.

A motion was made and seconded to approve the following amendments: to amend Sections 1 and 2 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 002:105. Requirements for wholesalers, medical gas wholesalers, wholesale distributors, and virtual wholesale distributors.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO paragraph and Sections 1 through 5 and 7 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 002:205. Pharmacist-in-charge.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph and Section 2 to comply with the drafting requirements of KRS Chapter 13A; and (2) to amend Section 2 to add the Cabinet for Health and Family Services to the filing of a report list for the pharmacist-in-charge of reporting any theft or loss. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 002:225. Special limited pharmacy permit-Medical gas.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 2, 4, and 5 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (2) to amend and update the nonresident application forms for consistency with the changes made to the forms in the amended after comments version of 201 KAR 2:050. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 002:240. Special limited pharmacy permit - charitable.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 1, 3, and 4 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (2) to amend and update the nonresident application forms for consistency with the changes made to the forms in the amended after comments version of 201 KAR 2:050. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 002:320. Requirements for manufacturers and virtual manufacturers.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO paragraph and Sections 1 through 5 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 002:340. Special limited pharmacy permit-clinical practice.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 2, 4, and 5 to comply with the drafting and formatting requirements of KRS Chapter 13A and (2) to amend and update the nonresident application forms for consistency with the changes made to the forms in the amended after comments version of 201 KAR 2:050. Without objection, and with agreement of the agency, the amendments were approved.

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201 KAR 002:390. Requirements for third-party logistics providers.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO paragraph to comply with KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Board of Nursing

201 KAR 020:620. Licensing requirements for licensed certified professional. Kelly Jenkins, executive director; and Jeff Prather, general counsel, represented the board.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO paragraph and Sections 2, 3, 8, 9, and 11 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Board of Physical Therapy

201 KAR 022:170. Physical Therapy Compact Commission. Stephen Curley, executive director, represented the board.

Kentucky Housing Corporation

202 KAR 002:020. Rural Housing Trust Fund. Samuel Thorner, general counsel, represented the corporation.

A motion was made and seconded to approve the following amendments: to amend (1) the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs to comply with the drafting requirements of KRS Chapter 13A; and (2) Sections 1 and 2 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

TOURISM, ARTS AND HERITAGE CABINET: Department of Fish and Wildlife Resources: Fish

301 KAR 001:122. Importation, possession, and prohibited aquatic species. Dave Dreves, director of fisheries, and Jenny Gilbert, legislative liaison, represented the department.

In response to a question from Senator Thayer, Mr. Dreves stated that this administrative regulation allowed goldfish to be used as bait, provided that invasive carp may be re-released after being caught, and restricted the transportation and sale of tilapia for food consumption only.

ENERGY AND ENVIRONMENT CABINET: Department for Environmental Protection: Division for Air Quality: National Ambient Air Quality Standards

401 KAR 051:010. Attainment status designations. Michael Kennedy, division director, represented the division.

In response to a question by Senator Yates, Mr. Kennedy stated that there were various ambient air monitors around the state that collected data over a three (3) year period. The cabinet analyzed the data to determine if an area meets the national ambient air quality standards for the 2015, eight (8) hour ground-level ozone.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET: Board of Education: School Terms, Attendance and Operation

702 KAR 007:065. Designation of agent to manage middle and high school interscholastic athletics. Chad Collins, general counsel, Kentucky High School Athletics Association, and Cassie Trueblood, counsel, represented the board.

A motion was made and seconded to approve the following amendments: to amend (1) the KHSAA Board of Control Adopted

Policies to: (a) update the required components of the emergency action plans; (b) revise provisions for heat index monitoring; and (c) change requirements regarding air quality concerns for local district consideration; and (2) to amend the RELATES TO paragraph and Sections 3 and 7 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

PUBLIC PROTECTION CABINET: Department of Insurance: Agents, Consultants, Solicitors and Adjusters

806 KAR 009:400. Public adjuster filings. Abigail Gall, executive advisor, represented the department

A motion was made and seconded to approve the following amendments: to amend Sections 1 through 5 and the material incorporated by reference to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

806 KAR 017:290. Independent External Review Program.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO and STATUTORY AUTHORITY paragraphs and Sections 1 through 3 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Kentucky Horse Racing Commission: Sports Wagering

809 KAR 001:002E. Service provider licensing. Jamie Eads, executive director; Hans Stokke, director; and Jennifer Wolsing, general counsel, represented the commission.

Senator Thayer congratulated the commission on the speedy implementation of sports wagering.

In response to a question by Senator Thayer, Mr. Stokke stated there had been promising results from the implementation of sports wagering.

809 KAR 001:003E. Occupational licenses.

809 KAR 010:001E. General provisions.

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

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

809 KAR 010:004E. Sports wagering accounts.

809 KAR 010:005E. Licensed premises.

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

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

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

Kentucky Horse Racing Commission: Licensing

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

CABINET FOR HEALTH AND FAMILY SERVICES: Office of Inspector General: Certificate of Need

900 KAR 006:080. Certificate of Need emergency circumstances. Adam Mather, inspector general, and Valerie Moore, regulation coordinator, represented the office.

In response to a question by Co-Chair Lewis, Mr. Mather confirmed that the administrative regulation provided a temporary solution for emergency circumstances and was a response to an

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instance in eastern Kentucky of a county that experienced an immediate loss of ambulance services.

Co-Chair Lewis stated that he had deep concerns with upcoming certificate of need regulations. The legislature created the Certificate of Need Task Force, and the cabinet was encouraged to address the questions of the task force going forward.

Division of Health Care

902 KAR 020:300. Operation and services; nursing facilities. Adam Mather, inspector general, and Valerie Moore, regulation coordinator, represented the office.

In response to a question by Senator Yates, Mr. Mather stated that the medication aides were certified, rather than licensed.

Department for Community Based Services

922 KAR 001:360E. Private child care placement, levels of care, and payment. Laura Begin, regulation coordinator, and Misty Sammons, division director, represented the department. Caroline Rochelle, CEO, Children's Advocacy Centers of Kentucky, appeared in favor of this administrative regulation.

In response to a question by Co-Chair Lewis, Ms. Rochelle stated these administrative regulations were designed to bring Kentucky in line with national standards. Ms. Begin stated the emergency and ordinary administrative regulations increased rates for private providers, who used the new rates to provide more services and to add staff. Ms. Sammons stated that the cost study to determine rates was conducted every two (2) years with the budget cycle.

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

922 KAR 001:580. Standards for children's advocacy centers.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 2 through 4 to specify a delayed compliance date of July 1, 2024; (2) to amend Section 3(4) to require an executive director to have, at a minimum, a master's degree from an accredited college or university and three years of post-bachelor's degree experience in administration; and (3) to amend Section 3(6) to require a forensic interviewer to have, at a minimum, a master's degree from an accredited college or university in a mental health, education, human services, or criminal justice field and two (2) years of post-bachelor's degree direct service experience. Without objection, and with agreement of the agency, the amendments were approved.

922 KAR 002:245. Kentucky infant and toddler credential.

A motion was made and seconded to approve the following amendments: (1) to amend Section 1(1)(b)1. and 2. for consistency with the Amended After Comments version of 922 KAR 2:225; and (2) to amend Section 9 to update incorporated material. Without objection, and with agreement of the agency, the amendments were approved.

922 KAR 002:255. Kentucky school-aged youth development credential.

Other Business: Representative Grossberg appealed for the support of Israel during recent international strife. He stated that all forms of terrorism should be condemned.

Senator Thayer agreed with Representative Grossberg's statements.

The following administrative regulations were deferred or removed from the October 10, 2023 subcommittee agenda:

STATE BOARD OF ELECTIONS: Forms and Procedures

031 KAR 004:196E. Consolidation of precincts and precinct election officers.

KENTUCKY COMMISSION ON HUMAN RIGHTS: Human Rights

104 KAR 001:010. Posting, distribution and availability of notices and pamphlets.

104 KAR 001:040. Guidelines for advertising employment or licensing opportunities.

104 KAR 001:050. Standards and procedures for providing equal employment opportunities.

104 KAR 001:080. Guidelines on fair housing.

104 KAR 001:100. Nondiscrimination on the basis of disability by a place of public accommodations, licensing agencies and trade organizations.

BOARDS AND COMMISSIONS: Board of Veterinary Examiners.

201 KAR 016:550. Authorization for animal control agencies to apply for a restricted controlled substances certificate from DEA.

201 KAR 016:552. Responsibilities for certified animal control agencies; limitations on drugs.

201 KAR 016:560. Certification as an animal euthanasia specialist.

201 KAR 016:701. Standards for medical records.

201 KAR 016:702. Standards for veterinary surgery.

201 KAR 016:750. Licensed veterinary technicians (LVTs) – Scope of practice and supervisory requirements.

Board of Nursing

201 KAR 020:700. Medication aide training programs and credentialing of medication aides. Stephanie Brammer-Barnes, regulation coordinator for Cabinet for Health and Family Services: Office of Inspector General; Kelly Jenkins, executive director; and Jeff Prather, general counsel, represented the board. Mary Haynes, registered nurse and nursing home administrator, and Joe Jurgenson, director of operations for Management Systems of Kentucky, appeared in opposition to this administrative regulation.

In response to a question by Co-Chair Lewis, Ms. Haynes stated that she was requesting an exclusion from the nursing requirement for personal care homes, which currently were not required to employ nurses. Mr. Jurgenson stated that there was not a way, currently, to fund the addition of a minimum of two (2) nurses, which would be needed to comply with the requirement in a 24/7, 365 day- per-year environment.

In response to a question by Co-Chair Lewis, Mr. Mather stated that the cabinet was working internally to resolve concerns related to 200 KAR 20:700 and the implementation of the statute.

A motion was made and seconded to defer consideration of 201 KAR 20:700 to the November meeting of this subcommittee. Without objection, and with the agreement of the agency, the administrative regulation was deferred.

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Board of Social Work

201 KAR 023:055. Inactive status of license.

201 KAR 023:160. Temporary permission to practice.

201 KAR 023:170. Telehealth and social work practice.

INDEPENDENT ADMINISTRATIVE BODIES: Board of Emergency Medical Services

202 KAR 007:550. Required equipment and vehicle standards.

TOURISM, ARTS AND HERITAGE CABINET: Department of Fish and Wildlife Resources: Fish

301 KAR 001:115. Propagation of aquatic organisms.

301 KAR 001:125. Transportation of fish.

Game

301 KAR 002:172. Deer hunting seasons, zone, and requirements.

DEPARTMENT OF AGRICULTURE: Livestock, Poultry, and Fish

302 KAR 022:150. Cervids.

JUSTICE AND PUBLIC SAFETY CABINET: Department of Justice: Capital Punishment

501 KAR 016:310. Pre-execution medical actions.

Kentucky Law Enforcement Council

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

Department of Juvenile Justice: Child Welfare

505 KAR 001:010. Definitions.

505 KAR 001:100. Admissions.

505 KAR 001:110. Intake and orientation.

505 KAR 001:180. Day treatment admissions.

505 KAR 001:185. Day treatment programs.

505 KAR 001:210. Restraints and control methods.

505 KAR 001:220. Transportation of juveniles.

505 KAR 001:240. Dietary services.

505 KAR 001:250. Drug screening and testing.

505 KAR 001:260. Education.

505 KAR 001:270. Grievances.

505 KAR 001:280. Hair and grooming.

505 KAR 001:290. Juvenile allowance and work detail.

505 KAR 001:300. Juvenile records and information.

505 KAR 001:310. Leave, releases, and furloughs.

505 KAR 001:320. Library services.

505 KAR 001:330. Personal property, dress, and clothing and bedding supply.

505 KAR 001:340. Recreation.

505 KAR 001:350. Religious practice.

505 KAR 001:360. Searches.

505 KAR 001:370. Treatment.

505 KAR 001:380. Mail, visiting, and telephone use.

505 KAR 001:390. Juvenile Accounts and Youth Activity Fund Account.

505 KAR 001:400. Behavior management and progressive discipline.

505 KAR 001:410. Isolation and protective custody.

505 KAR 001:420. Youthful offenders.

PUBLIC PROTECTION CABINET: Kentucky Horse Racing Commission: Sports Wagering

809 KAR 001:002. Service provider licensing.

809 KAR 001:003. Occupational licenses.

Sports Wagering: Technical Criteria

809 KAR 010:001. General provisions.

809 KAR 010:002. Standards for sports wagering.

809 KAR 010:003. Technical requirements and oversight.

809 KAR 010:004. Sports wagering accounts.

809 KAR 010:005. Licensed premises.

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

809 KAR 010:007. Responsible gaming and advertising.

809 KAR 010:008. Disciplinary actions and hearings.

Horse Racing: General

810 KAR 002:020. Thoroughbred and flat racing officials.

810 KAR 002:070. Thoroughbred and other flat racing associations.

810 KAR 002:100. Self-exclusion.

Horse Racing: Licensing

810 KAR 003:010. Licensing of racing associations.

Horse Racing: Flat and Steeplechase Racing

810 KAR 004:001. Definitions for 810 Chapter 4.

810 KAR 004:010. Horses.

810 KAR 004:030. Entries, subscriptions, and declarations.

810 KAR 004:040. Running of the race.

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CABINET FOR HEALTH AND FAMILY SERVICES: Office of
Inspector General: State Health Plan

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

Certificate of Need

900 KAR 006:075. Certificate of need non-substantive review.

Department for Public Health: Food and Cosmetics

902 KAR 045:190E. Hemp-derived cannabinoid products;
packaging and labeling requirements.

Radiology

902 KAR 100:019. Standards for protection against radiation.

902 KAR 100:040. General provisions for specific licenses.

902 KAR 100:050. General licenses.

902 KAR 100:058. Specific licenses to manufacture, assemble,
repair, or distribute products.

902 KAR 100:065. Reciprocal recognition.

902 KAR 100:165. Notices, reports, and instructions to
employees.

902 KAR 100:185. Standards for protection against radiation
from radioactive materials.

902 KAR 100:195. Licensing of special nuclear material.

902 KAR 100:200. Licenses and radiation safety requirements
for irradiators.

Department of Medicaid Services: Payment and Services

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

Department for Behavioral Health, Developmental and
Intellectual Disabilities: Division of Behavioral Health: Mental Health

908 KAR 002:300E. Kentucky problem gambling assistance
account.

The subcommittee adjourned at 2:17 p.m. The next meeting of this
subcommittee was tentatively scheduled for November 9, 2023, at 2
p.m.

OTHER COMMITTEE REPORTS

COMPILER'S NOTE: In accordance with KRS 13A.290(11), the following reports were forwarded to the Legislative Research Commission by the appropriate jurisdictional committees and are hereby printed in the Administrative Register. If a quorum was present and the regulation was not deferred, administrative regulations listed in each report became effective upon adjournment of the committee meeting at which they were considered.

INTERIM JOINT COMMITTEE ON HEALTH SERVICES
Meeting of September 27, 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 September 27, 2023, having been referred to the Committee on September 6, 2023, pursuant to KRS 13A.290(6):

September 6, 2023

201 KAR 020:240
201 KAR 021:025
201 KAR 021:041
201 KAR 021:042
201 KAR 021:075
201 KAR 021:095
201 KAR 021:105
201 KAR 022:045
202 KAR 007:510
202 KAR 007:555
900 KAR 014:010
902 KAR 020:018
906 KAR 001:210
907 KAR 003:190
907 KAR 020:010E
907 KAR 020:010
907 KAR 020:045E
907 KAR 020:045
907 KAR 020:075E
907 KAR 020:075
907 KAR 020:10 E
907 KAR 020:100
910 KAR 003:030

The following administrative regulation was deferred pursuant to KRS 13A.300:

902 KAR 055:015

Committee activity in regards to review of the above-referenced administrative regulations is reflected in the minutes of the September 27, 2023 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

INTERIM JOINT COMMITTEE ON FAMILIES & CHILDREN
Meeting of September 27, 2023

The following administrative regulations were available for consideration and placed on the agenda of the Interim Joint Committee on Families & Children for its meeting on September 27, 2023, having been referred to the Committee on August 8, 2023, pursuant to KRS 13A.290(6):

August 8, 2023
921 KAR 001:400
922 KAR 002:180

Committee activity regarding the review of the above-referenced administrative regulations is reflected in the minutes of the September 27, 2023 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

INTERIM JOINT COMMITTEE ON AGRICULTURE
Meeting of October 19, 2023

The Interim Joint Committee on Agriculture met on October 19, 2023, and a quorum was present. The following administrative regulations were available for consideration having been referred to the Committee on October 4, 2023, pursuant to KRS 13A.290(6):

302 KAR 016:071
302 KAR 016:030
302 KAR 016:020
302 KAR 016:010
302 KAR 033:010
302 KAR 016:111
302 KAR 016:072

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 October 19, 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 October 19, 2023

The Interim Joint Committee on Natural Resources and Energy met on October 19, 2023, and a quorum was present. The following administrative regulations were available for consideration having been referred to the Committee on October 4, 2023, pursuant to KRS 13A.290(6):

301 KAR 001:410
301 KAR 001:201

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.

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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 October 19, 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 October 25, 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 October 25, 2023, having been referred to the Committee on September 6, 2023 and October 4, 2023, pursuant to KRS 13A.290(6):

September 6, 2023

902 KAR 055:015

October 4, 2023

201 KAR 002:076

202 KAR 007:555

900 KAR 006:080E

902 KAR 020:500

907 KAR 001:025

Committee activity in regards to review of the above-referenced administrative regulations is reflected in the minutes of the October 25, 2023 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

CUMULATIVE SUPPLEMENT

Unless otherwise noted, information contained in these indexes relates only to administrative regulations printed in this, the 50th year of the *Administrative Register of Kentucky*, from July 2022 through June 2023.

Locator Index - Effective Dates

E - 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

E - 10

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

E - 16

A list of administrative regulations for which certification letters have been filed pursuant to KRS 13A.3104 during this *Register* year.

Technical Amendment Index

E - 17

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

E - 18

A general index of administrative regulations published during this *Register* year, and is primarily broken down by agency.

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	Ky.R. Page No.	Effective Date	Regulation Number	Ky.R. Page No.	Effective Date
Administrative regulations published in previous Register years may appear in this index if a regulation had not completed the KRS Chapter 13A review process by the beginning of <i>Register</i> year 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 <i>Register</i> year, the new Ky.R. number will appear next to the page number entry. To view versions of regulations published in prior <i>Registers</i> , please visit our online Administrative Registers of Kentucky .					
SYMBOL KEY:			701 KAR 008:010E	49 Ky.R. 984	10-13-2022
* Statement of Consideration not filed by deadline			Replaced	1924	7-5-2023
** Withdrawn, deferred more than twelve months (KRS 13A.300(2)(e) and 13A.315(1)(d))			701 KAR 008:020E	49 Ky.R. 989	10-13-2022
*** Withdrawn before being printed in Register			Replaced	1928	7-5-2023
IJC Interim Joint Committee			701 KAR 008:030E	49 Ky.R. 998	10-13-2022
(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.			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
			Replaced	1216	7-5-2023
			787 KAR 001:090E	49 Ky.R. 1571	12-22-2022
			Replaced	2096	8-1-2023
			787 KAR 001:100E	49 Ky.R. 1575	12-22-2022
			806 KAR 017:570E	49 Ky.R. 2215	5-15-2023
			As Amended	50 Ky.R.	8-8-2023
			809 KAR 001:002E	50 Ky.R. 339	7-10-2023
			809 KAR 001:003E	50 Ky.R. 341	7-10-2023
			Replaced	2097	8-1-2023
			809 KAR 010:001E	50 Ky.R. 346	7-10-2023
			Am Comments	775	9-15-2023
			809 KAR 010:002E	50 Ky.R. 349	7-10-2023
			Am Comments	778	9-15-2023
			809 KAR 010:003E	50 Ky.R. 354	7-10-2023
			Am Comments	783	9-15-2023
			809 KAR 010:004E	50 Ky.R. 358	7-10-2023
			Am Comments	786	9-15-2023
			809 KAR 010:005E	50 Ky.R. 362	7-10-2023
			809 KAR 010:006E	50 Ky.R. 369	7-10-2023
			Am Comments	791	9-15-2023
			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
			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
			Replaced	2164	9-27-2023
			902 KAR 020:490E	49 Ky.R. 1576	12-29-2022
			Replaced	2307	6-21-2023
			902 KAR 045:190E	50 Ky.R. 584	8-1-2023
			Am Comments	1021	10-12-2023
			902 KAR 055:015E	49 Ky.R. 2054	3-23-2023
			Replaced	50 Ky.R. 2171	10-25-2023
			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 009:010E	50 Ky.R. 1017	10-4-2023
			907 KAR 020:010E	49 Ky.R. 2234	5-15-2023
			Replaced	50 Ky.R. 695	9-27-2023
			907 KAR 020:045E	49 Ky.R. 2237	5-15-2023
			Replaced	50 Ky.R. 697	9-27-2023
			907 KAR 020:075E	49 Ky.R. 2240	5-15-2023
			Replaced	50 Ky.R. 698	9-27-2023
			907 KAR 020:100E	49 Ky.R. 2243	5-15-2023
			Replaced	50 Ky.R. 700	9-27-2023
			908 KAR 002:300E	.	592
			Am Comments	50 Ky.R. 1030	10-12-2023
016 KAR 002:240E	50 Ky.R. 302	6-29-2023			
As Amended IJC	595	8-1-2023			
016 KAR 009:080E	49 Ky.R. 2200	4-26-2023			
As Amended	50 Ky.R. 596	8-8-2023			
016 KAR 009:100E	49 Ky.R. 2205	4-26-2023			
As Amended	50 Ky.R. 599	8-8-2023			
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			
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030 KAR 010:110E	50 Ky.R. 320	6-29-2023			
030 KAR 010:120E	50 Ky.R. 321	6-29-2023			
031 KAR 004:196E	50 Ky.R. 582	8-15-2023			
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			
101 KAR 002:210E	50 Ky.R. 772	9-15-2023			
105 KAR 001:148E	50 Ky.R. 1014	10-11-2023			
201 KAR 023:016E	49 Ky.R. 976	10-3-2022			
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201 KAR 023:160E	50 Ky.R. 326	6-28-2023			
201 KAR 023:051E	49 Ky.R. 1239	11-15-2022			
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202 KAR 002:020E	50 Ky.R. 329	7-5-2023			
202 KAR 007:555E	50 Ky.R. 5	5-22-2023			
Replaced	816	10-25-2023			
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			
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505 KAR 001:140E	49 Ky.R. 1569	1-13-2023			
Am Comments	1888	3-6-2023			
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505 KAR 001:200E	49 Ky.R. 2208	5-15-2023			
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505 KAR 001:210E	49 Ky.R. 2211	5-15-2023			
505 KAR 001:220E	49 Ky.R. 2213	5-15-2023			

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011 KAR 008:030 Amended	50 Ky.R. 853		As Amended	1044	
011 KAR 015:040 Amended	50 Ky.R. 69		032 KAR 002:030 Amended	50 Ky.R. 403	
011 KAR 015:110 Amended	50 Ky.R. 71		As Amended	1045	
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013 KAR 005:010 As Amended	50 Ky.R. 486		As Amended	1046	
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013 KAR 005:020 As Amended	50 Ky.R. 488		032 KAR 002:060 Amended	50 Ky.R. 409	
016 KAR 002:240 As Amended	50 Ky.R. 490		As Amended	1048	
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016 KAR 004:060 Amended	49 Ky.R. 1810	9-5-2023	032 KAR 002:230 As Amended	50 Ky.R. 512	
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017 KAR 006:020 As Amended	50 Ky.R. 984		As Amended	50 Ky.R. 19	10-3-2023
017 KAR 006:030 As Amended	50 Ky.R. 986		101 KAR 001:365 Amended	50 Ky.R. 411	
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030 KAR 010:020 As Amended	50 Ky.R. 494		101 KAR 002:095 Amended	49 Ky.R. 1966	
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031 KAR 004:196 Amended	50 Ky.R. 717				
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105 KAR 001:390			Amended	50 Ky.R. 721	
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105 KAR 001:457	50 Ky.R. 514		Amended	50 Ky.R. 724	
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106 KAR 004:020			Amended	50 Ky.R. 726	
As Amended	800		201 KAR 016:516		
109 KAR 017:010	49 Ky.R. 2031		Amended	50 Ky.R. 729	
As Amended	50 Ky.R. 19	9-26-2023	201 KAR 016:550		
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SYMBOL KEY:

- * Statement of Consideration not filed by deadline
- ** Withdrawn, deferred more than twelve months (KRS 13A.300(2)(e) and 13A.315(1)(d))
- *** Withdrawn before being printed in Register
- IJC Interim Joint Committee
- (r) Repealer regulation: KRS 13A.310(3)-on the effective date of an administrative regulation that repeals another, the regulations compiler shall delete the repealed administrative regulation and the repealing administrative regulation.

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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
201 KAR 023:055	09-06-2023	To be amended, going through process now 9-6-2023
201 KAR 043:110	10-07-2023	Remain in Effect without Amendment
301 KAR 002:122	07-14-2023	To be amended, filing deadline 01-04-2025
301 KAR 005:040	08-03-2023	To be amended, filing deadline 02-03-2025
705 KAR 004:231	10-11-2023	To be amended, In process
780 KAR 007:060	08-07-2023	Remain in Effect without Amendment
803 KAR 002:307	08-31-2023	Remain in Effect without Amendment
803 KAR 002:318	08-31-2023	Remain in Effect without Amendment
803 KAR 002:421	08-31-2023	Remain in Effect without Amendment
806 KAR 018:020	06-13-2023	Remain in Effect without Amendment
902 KAR 002:060	08-10-2023	Remain in Effect without Amendment
902 KAR 010:085	08-10-2023	Remain in Effect without Amendment
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902 KAR 100:080	06-12-2023	Remain in Effect without Amendment
902 KAR 100:085	06-12-2023	Remain in Effect without Amendment
921 KAR 001:410	10-11-2023	To be amended, in process, filed 10-9-2023
921 KAR 001:420	10-11-2023	To be amended, in process, filed 8-14-2023
922 KAR 002:020	06-19-2023	To be amended, filing deadline 12-19-2024

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The Technical Amendment Index is a list of administrative regulations that have had technical, nonsubstantive amendments made during the 50th year of the *Administrative Register of Kentucky*. These technical changes have been made by the Regulations Compiler pursuant to KRS 13A.040(9) and (10), 13A.2255(2), 13A.312(2), or 13A.320(1)(d). Since these changes were not substantive in nature, administrative regulations appearing in this index will NOT be published to show the technical corrections in the *Register*. NOTE: Technical amendments may be available online for a short period of time. To view regulations on the Legislative Research Commission Web site, go to <https://apps.legislature.ky.gov/law/kar/titles.htm>.

‡ - A technical change was made to this administrative regulation during the promulgation process, pursuant to KRS 13A.320(1)(e).

† - A nonsubstantive change was made by the Compiler pursuant to KRS 13A.040(9).

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705 KAR 004:041	08-23-2023		
806 KAR 009:025	08-11-2023		
806 KAR 012:140	06-20-2023		
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