



ADMINISTRATIVE REGISTER OF KENTUCKY

The submission deadline for this edition of the *Administrative Register of Kentucky* was noon January 12, 2024.

MEETING NOTICES

[Administrative Regulation Review Subcommittee](#) - tentatively scheduled to meet on February 12, 2024, at 1:00 p.m. in room 149 Capitol Annex.

ARRS Tentative Agenda - [1645](#) - [Online agenda is updated as needed.](#)

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

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

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

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

ADMINISTRATIVE REGISTER OF KENTUCKY

(ISSN 0096-1493)

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

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

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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all of the administrative regulations that may be removed to complete the public comment process or deferred or withdrawn by promulgating agencies.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
Monday, February 12, 2024



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

OFFICE OF THE GOVERNOR

Department of Veterans' Affairs
Veterans' Programs

017 KAR 006:020. Kentucky Women Veterans Program and coordinating committee, administrative procedures. (Amended After Comments)

017 KAR 006:030. Kentucky Wounded or Disabled Veterans Program, administrative procedures. (Amended After Comments)

KENTUCKY COMMISSION ON HUMAN RIGHTS

Human Rights

104 KAR 001:010. Posting, distribution and availability of notices and pamphlets. (Deferred from September)

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)

FINANCE AND ADMINISTRATION CABINET

Kentucky Public Pensions Authority (KPPA)
General Rules

105 KAR 001:215. Administrative hearing. (Amended After Comments)

BOARDS AND COMMISSIONS

State Board of Accountancy

201 KAR 001:190. Examination sections, applications, and procedures.

Board of Medical Licensure

201 KAR 009:067. Professional standards and procedures for medicinal cannabis practitioners. (Amended After Comments)

Board of Nursing

201 KAR 020:057. Scope and standards of practice of advanced practice registered nurses. (Amended After Comments)

201 KAR 020:065. Professional standards for prescribing Buprenorphine-MonoProduct or Buprenorphine-Combined-with-Naloxone by ARNPs for medication assisted treatment for opioid disorder. (Not Amended After Comments)

201 KAR 020:067. Professional standards for medicinal cannabis. (Amended After Comments)

201 KAR 020:215. Continuing competency requirements. (Not Amended After Comments)

201 KAR 020:225. Reinstatement of license.

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

TOURISM, ARTS AND HERITAGE CABINET

Department of Fish and Wildlife Resources
Wildlife

301 KAR 004:021. Repeal of 301 KAR 004:020 and 301 KAR 004:050.

Licensing

301 KAR 005:001. Definitions for 301 Chapter 005.

301 KAR 005:010. License agent applications and agreements.

301 KAR 005:020. License agent requirements and responsibilities.

301 KAR 005:200. Special commission permits for incorporated nonprofit wildlife conservation organizations.

GENERAL GOVERNMENT CABINET

Department of Agriculture
General

302 KAR 002:010. Access to public records of the Kentucky Department of Agriculture.

Amusement Rides

302 KAR 016:150. Qualification and registration of persons designated to perform amusement safety inspections.

JUSTICE AND PUBLIC SAFETY CABINET

**Internal Investigations Branch
Abuse Investigation**

500 KAR 013:020. Internal Investigations Branch. (Amended After Comments)

PUBLIC PROTECTION CABINET

**Horse Racing Commission
Flat and Steeplechase Racing**

810 KAR 004:070. Jockeys and apprentices.

CABINET FOR HEALTH AND FAMILY SERVICES

**Office of Inspector General
State Health Plan**

900 KAR 005:020. State Health Plan for facilities and services. (Filed with Emergency) ("E" expires 01-08-2024) (Amended After Comments) (Deferred from August)

Certificate of Need

900 KAR 006:075. Certificate of need non-substantive review. (Filed with Emergency) ("E" expires 01-08-2024) (Amended After Comments) (Deferred from August)

Office of Data Analytics

Data Reporting and Public Use Data Sets

900 KAR 007:030. Data reporting by health care providers.

900 KAR 007:040. Release of public data sets for health facility and services data.

Office of Inspector General

Health Services and Facilities

902 KAR 020:048. Operation and services; nursing homes.

902 KAR 020:086. Operation and services; intermediate care facilities for individuals with intellectual disabilities.

Department for Medicaid Services

Medicaid Services

907 KAR 001:044. Coverage provisions and requirements regarding community mental health center behavioral health services.

907 KAR 001:061. Payments for ambulance transportation.

Payment and Services

907 KAR 003:066. Nonemergency medical transportation waiver services and payments.

Behavioral Health

907 KAR 015:005. Definitions for 907 KAR Chapter 015.

Department for Behavioral Health, Developmental and Intellectual Disabilities

Substance Abuse

908 KAR 001:410. Recovery housing.

Department for Community Based Services

Child Welfare

922 KAR 1:520. Supplements to per diem rates. (Amended After Comments)

Daycare

922 KAR 002:100. Certification of family child-care homes.

922 KAR 002:165. Employee Child Care Assistance Partnership.

3. REGULATIONS REMOVED FROM FEBRUARY'S AGENDA

BOARDS AND COMMISSIONS

Board of Social Work

201 KAR 023:170. Telehealth and social work practice. (Not Amended After Comments) (Deferred from December)

ENERGY AND ENVIRONMENT CABINET

Department for Environmental Protection

Special Waste

401 KAR 045:010. Definitions for 401 KAR Chapter 045. (Not Amended After Comments) (Deferred from February)

401 KAR 045:020. Types of special waste permits. (Not Amended After Comments) (Deferred from February)

401 KAR 045:025. Permit review and determination timetables. (Not Amended After Comments) (Deferred from February)

401 KAR 045:030. Obtaining a special waste site or facility permit. (Not Amended After Comments) (Deferred from February)

401 KAR 045:040. Modification, transfer or revocation of special waste permits. (Not Amended After Comments) (Deferred from February)

401 KAR 045:050. Public information procedures for special waste site or facility permits. (Not Amended After Comments) (Deferred from February)

401 KAR 045:080. Financial requirements and bonds for special waste facilities. (Not Amended After Comments) (Deferred from February)

401 KAR 045:100. Landfarming and composting of special waste. (Not Amended After Comments) (Deferred from February)

401 KAR 045:105. Land application of biosolids. (Amended After Comments) (Deferred from February)

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401 KAR 045:140. Conditions applicable to all special waste permits. (Not Amended After Comments) (Deferred from February)

401 KAR 045:160. Surface and groundwater monitoring and corrective action for special waste sites or facilities. (Amended After Comments) (Deferred from February)

401 KAR 042:250. Special waste permit fees. (Not Amended After Comments) (Deferred from February)

Merchant Electric Generating Facilities (MEGF)

401 KAR 103:005. Definitions related to 401 KAR Chapter 103. (Comments Received, SOC ext. due 02-15-2024)

401 KAR 103:010. Notification and transfer procedures for merchant electric generating facilities. (Comments Received, SOC ext. due 02-15-2024)

401 KAR 103:020. Decommissioning standards. (Comments Received, SOC ext. due 02-15-2024)

401 KAR 103:030. Financial requirements. (Comments Received, SOC ext. due 02-15-2024)

****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
201 KAR 36:100E

Pursuant to KRS 13A.190(1)(a)3. and KRS 335.560 SECTION 16.B.1, this emergency regulation is being promulgated to comply with the statutory requirements of the Board of Licensed Professional Counselors to review any rule adopted by the Counseling Compact pursuant to SECTION 11 of KRS 335.560 within sixty (60) days of adoption for the purpose of filing the rule as an emergency administrative regulation pursuant to KRS 13A.190 and for filing the rule as an accompanying ordinary administrative regulation pursuant to KRS Chapter 13A. This administrative regulation incorporates by reference the rules adopted by the Counseling Compact. KRS 335.560 Section 16.B.1. requires that this emergency regulation be promulgated, and therefore the filing of an ordinary administrative regulation alone is not sufficient. This emergency administrative regulation will be replaced by an ordinary administrative regulation. The ordinary administrative regulation filed with this emergency administrative regulation is identical.

DR. HANNAH COYT, LPCC-S, NCC, CCMHC, Certified EMDR Therapist, Board Chair
ANDY BESHEAR, Governor

BOARDS AND COMMISSIONS
Board of Licensed Professional Counselors
(New Emergency Administrative Regulation)

201 KAR 36:100E. Counseling compact.

EFFECTIVE: December 19, 2023

RELATES TO: KRS 335.560

STATUTORY AUTHORITY: KRS 335.515, 335.560

NECESSITY, FUNCTION, AND CONFORMITY: KRS 335.560, Section 16.B.1. requires the Board of Licensed Professional Counselors to review any rule adopted by the Counseling Compact pursuant to Section 11 of KRS 335.560 within sixty (60) days of adoption for the purpose of filing the rule as an emergency administrative regulation pursuant to KRS 13A.190 and for filing the rule as an accompanying ordinary administrative regulation pursuant to KRS Chapter 13A. This administrative regulation incorporates by reference the rules adopted by the Counseling Compact.

Section 1. The Board of Licensed Professional Counselors shall comply with all rules of the Counseling Compact, which includes the Counseling Compact Rules as of October 25, 2023.

Section 2. Incorporation by Reference.

(1) The following material is incorporated by reference: "The Counseling Compact Rules", October 25, 2023, and as revised.

(2)

(a) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Board of Licensed Professional Counselors, 500 Mero Street, 2 SC 32, Frankfort, Kentucky 40602, Monday through Friday, 8 a.m. to 4:30 p.m.; or

(b) This material may also be obtained on the Board of Licensed Professional Counselors' Web site at <https://lpc.ky.gov/>.

(3) This material may also be obtained at:

(a) The Counseling Compact Commission, 108 Wind Haven Drive, Suite A, Nicholasville, Kentucky 40356.

(b) <https://counselingcompact.org/contact-us/>.

DR. HANNAH COYT, Board Chair

APPROVED BY AGENCY: December 13, 2023

FILED WITH LRC: December 19, 2023 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on February 27, 2024, at 2:00 p.m. EST in Room 133CE, The Mayo-Underwood Building, 500 Mero Street, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing no later than five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until 11:59 p.m. on February 29, 2024. Written notification of intent to attend the public hearing or written comments on the proposed administrative regulation should be made by using the Public Protection Cabinet website at the follow address: https://ppc.ky.gov/reg_comment.aspx. 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: Sara Boswell Janes, Staff Attorney III, Department of Professional Licensing, Office of Legal Services, 500 Mero Street, 2 NC WK#2, phone (502) 782-2709 (office), fax (502) 564-4818, email Sara.Janes@ky.gov, link to public comment portal: https://ppc.ky.gov/reg_comment.aspx.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Sara Boswell Janes

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation implements KRS 335.560, the Counseling Compact.

(b) The necessity of this administrative regulation: This administrative regulation is necessary because KRS 335.560, SECTION 16.B.1. requires rules adopted by the Counseling Compact to be promulgated as administrative regulations pursuant to KRS Chapter 13A.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the specific requirements of the authorizing statute, KRS 335.560, SECTION 16.B.1. which requires rules adopted by the Counseling Compact to be promulgated as administrative regulations pursuant to KRS Chapter 13A.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation conforms to the content of KRS 335.560 which requires this promulgation.

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect the 4429 active and 66 inactive licensees in some capacity, and will also affect new applicants for licensure.

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

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

(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 additional cost imposed by this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will be in compliance with the regulation.

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

(a) Initially: There is no additional cost.

(b) On a continuing basis: There is no additional cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operations are funded by fees paid by credential holders and applicant.

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

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

(9) TIERING: Is tiering applied? Tiering was not applied as the changes apply to all equally.

(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 (+/-): N/A

Expenditures (+/-): N/A

Other Explanation:

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

FISCAL NOTE

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 335.515, 335.560. Interstate compacts are specifically authorized under the federal constitution (Article 1, Section 10, Clause 3- the Compacts Clause) and take precedence over any conflicting state law pursuant to the Compacts Clause and the Contracts Clause, U.S. Constitution, Article 1, Section 10, Clause 1.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. 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? No additional cost.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: There is no cost associated with the 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? Nothing.

AMENDED IN-PROCESS EMERGENCY ADMINISTRATIVE REGULATIONS

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

**FINANCE AND ADMINISTRATION CABINET
Kentucky Public Pensions Authority
(Emergency As Amended at ARRS, January 8, 2024)**

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

EFFECTIVE: January 8, 2024

Prior versions: 50 Ky.R. 1014

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

STATUTORY AUTHORITY: KRS 61.565(1)(d)4., 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 (1) 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 one (1) or more[another] distinct entities[entity is formed and] assumes responsibility for a portion or all of the business of the inactive employer or participating employer that has dissolved.

(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, ~~if[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) ~~if[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 such as those 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) ~~If[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) ~~If[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 one (1) or more[a] new or separate ~~employers have[employer has]~~ been created on or after March 23, 2021.

(2)(a) Except as provided in paragraph (b) of this subsection, 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.

(b) If multiple new or separate employers have been created on or after March 23, 2021, the actuarially accrued liability calculated for the original participating employer shall be divided by the number of new or separate employers and an equal portion of the actuarially accrued liability shall be assigned to each new or separate employer.

(3) The agency shall have the authority to determine whether each[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) Each split or separated employer shall be assigned a share of 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 ~~of[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 one (1) or more other entities~~[any other participating employer with an actuarially accrued liability]~~ voluntarily requests that the agency assign it all or part of 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 ~~entities[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.

Section 10. Enforcement. Any participating employer or non-participating employer that has been assigned an actuarially accrued liability pursuant to this administrative regulation shall be subject to KRS 61.675(4) for the purposes of the actuarially accrued liability.

FILED WITH LRC: January 8, 2024

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ADMINISTRATIVE REGULATIONS AS AMENDED BY PROMULGATING AGENCY
AND REVIEWING SUBCOMMITTEE

ARRS = Administrative Regulation Review Subcommittee
IJC = Interim Joint Committee

FINANCE AND ADMINISTRATION CABINET
Kentucky Public Pensions Authority
(As Amended at ARRS, January 8, 2024)

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 61.565(1)(d)4., 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 (1) 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 one (1) or more[another] distinct entities[entity is formed and] assumes responsibility for a portion or all of the business of the inactive employer or participating employer that has dissolved.

(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, ~~if[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) ~~If[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 such as those 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) ~~If[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) ~~If[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 one (1) or more[a] new or separate ~~employers have[employer has]~~ been created on or after March 23, 2021.

(2)(a) Except as provided in paragraph (b) of this subsection, 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.

(b) If multiple new or separate employers have been created on or after March 23, 2021, the actuarially accrued liability calculated for the original participating employer shall be divided by the number of new or separate employers and an equal portion of the actuarially accrued liability shall be assigned to each new or separate employer.

(3) The agency shall have the authority to determine whether each[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) Each split or separated employer shall be assigned a share of 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 ~~of[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 one (1) or more other entities[any other participating employer with an actuarially accrued liability] voluntarily requests that the agency assign it all or part of 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 ~~entities[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.

Section 10. Enforcement. Any participating employer or non-participating employer that has been assigned an actuarially accrued liability pursuant to this administrative regulation shall be subject to KRS 61.675(4) for the purposes of the actuarially accrued liability.

FILED WITH LRC: January 8, 2024

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FINANCE AND ADMINISTRATION CABINET Kentucky Public Pensions Authority (As Amended at ARRS, January 8, 2024)

105 KAR 1:270. Federal tax withholding or direct rollover of [funds for] eligible distributions.

RELATES TO: KRS 16.505, 16.578, 16.601, 16.645, 61.505(1)(g)[(f)], 61.510, 61.542, 61.621, 61.625, 61.635, 61.640, 61.685, 61.690, 61.705, 78.510, 78.545, 78.5534, 78.5538, 395.455, 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 16.505[16.510] to 16.652, 61.505, 61.510[61.545] to 61.705, [16.510 to 16.652], and 78.510[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 if[in the event that] an alternate payee cannot be located.

Section 1. Definitions.

(1) "Beneficiary" means:

(a) 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; or

(b) A person to whom the member's assets are ordered to be transferred pursuant to KRS 395.455.[The "beneficiary" may be different from the person designated as the death benefit beneficiary.]

(2) "Death benefit beneficiary" means:

(a) 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; or

(b) A person to whom the member's assets are ordered to be transferred pursuant to KRS 395.455.[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:

1. KRS 16.601(1)(b) or (3) and 78.5534(1)(b) or (3); or

2. KRS 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 or employers[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.

[(e)] [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 or employers[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 or employers[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 employers[employer(s)] through which he or she has participated; or

b. The member participates in the system or systems [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 employers[employer(s)] through which he or she participated; or

(b) Participating in the system from which the accumulated account balance refund ~~has~~[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 **shall/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.[1.] 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", June 2023[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.

FILED WITH LRC: January 8, 2024

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.

BOARDS AND COMMISSIONS

Board of Nursing

(As Amended at ARRS, January 8, 2024)

201 KAR 20:700. Medication aide training programs and credentialing of medication aides.

RELATES TO: KRS 194A.705(2)(c), 216.510(1), 216.590, 314.011, 314.133

STATUTORY AUTHORITY: KRS 314.131 (1), 314.133

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.131 (1) and 314.133 require[requires] the ~~[Kentucky-]board [of Nursing (KBN)]~~ to promulgate administrative regulations to establish requirements for the credentialing of medication aides, including educational requirements, standards for training programs including delegation of the administration of oral or topical medications and preloaded insulin injection, credentialing requirements, and fees for initial, renewal, and reinstatement of credentials, and any other necessary fees. This administrative regulation establishes requirements for board[KBN] approval of medication aide training programs and requirements for the credentialing of medication aides.

Section 1. Definitions.

(1) "Board" is defined by KRS 314.011(1)[means the Kentucky Board of Nursing].

(2) ["Certified medication aide I" or "CMA I" means a person who:

(a) Has received specialized training under the supervision of a nurse; and

(b) Is permitted to administer oral or topical medications under the delegation of a nurse upon successful completion of a board approved examination.

(3) "Certified medication aide II" or "CMA II" means a person who:

(a) Meets the requirements of a CMA I; and

(b) Receives additional specialized training under the supervision of a nurse to administer only insulin via preloaded insulin pen upon successful completion of a board approved examination.

(4)] "Didactic" means the component of a medication aide training program that includes lecture, verbal instruction, or other means of exchanging theoretical information between the instructor and students, including a classroom setting or distance learning technology.

(3)[(5)] "Kentucky medication aide" means a state registered nurse aide (SRNA) who:

(a) Has successfully completed the medication aide examination administered by the Kentucky Community and Technical College System (KCTCS);

(b) Administers oral or topical medications under the delegation of a nurse to a resident of a long-term care facility; and

(c) Is accepted by the board as having a credential that shall be equivalent to a CMA I.

~~(6)]~~ "Long-term care facility" is defined by KRS 216.510(1).

~~(4)](7)]~~ "Mentor" means a didactic instructor with teaching experience.

~~(5) "Nursing facility" means a facility defined by 42 C.F.R. 483.5.~~

~~(6)](8)]~~ "Training program" means formal specialized medication aide training provided by an individual, facility, third party vendor[vendor], college, or school.

Section 2. Certified Medication Aide Requirements.

(1) A Certified Medication Aide (CMA) I:

(a) Shall have met the requirements of Section 7(2), (3), (4), and (5) of this administrative regulation; and

(b) May administer oral or topical medications under the delegation of a nurse upon successful completion of a board approved examination that validates the competency of the topics covered by the CMA curriculum under Section 7(5) of this administrative regulation.

(2) A Certified Medication Aide (CMA) II:

(a) Shall have met the requirements of Section 7(6), (7), and (8) of this administrative regulation; and

(b) May administer only insulin via preloaded insulin pen upon successful completion of a board approved examination that validates the competency of administration of insulin via preloaded insulin pen and the topics covered by the CMA II curriculum under Section 7(7) of this administrative regulation.

(3) A Kentucky Medication Aide (KMA) shall:

(a) Be a State Registered Nurse Aide (SRNA);

(b) Successfully complete the medication aide examination administered by the Kentucky Community and Technical College System (KCTCS);

(c) Administer oral or topical medications under the delegation of a nurse to a resident of a long-term care facility; and

(d) Be accepted by the board as having a credential that shall be equivalent to a CMA I.

Section 3. Medication Aide Training Program Approval.

(1) A KMA medication aide training and testing program administered by a college within KCTCS shall:

(a) Be determined as[deemed] compliant with the requirements of this administrative regulation; and

(b) Not be required to submit an application to the board unless the KMA program provides training to individuals seeking a CMA II credential.

(2) Unless exempt under subsection (1) of this section, a training program shall not admit an individual until the program has been approved by the board.

(3) A training program that[The following] may request approval from the board to provide medication aide training for an individual[individuals] seeking a CMA I or CMA II credential shall be:

(a) A long-term care facility that has a license in good standing and offers medication aide training to:

1. Its own employees; or
2. Employees of a long-term care facility owned by the same company;

(b) A Kentucky university or college program; or

(c) Other proprietary education program located in Kentucky.

(4) In-state training programs.

(a) An in-state entity seeking board approval of its training program shall:

1. Submit a completed Application for Medication Aide Training Program (CMA I) or an Application for Medication Aide Training Program (CMA I or CMA II) via the portal at www.kbn.ky.gov accompanied by a fee of:

- a. \$200 for initial approval of a CMA I training program; or
- b. \$300 for initial approval of a CMA I and CMA II training program;

2. Prepare each candidate seeking a CMA I credential to pass:

- a. The Medication Aide Competency Examination (MACE) administered by National Council of State Boards of Nursing; or
- b. Other competency examination approved by the board; and

3. If the training program prepares a candidate seeking a CMA II credential, it shall prepare the candidate to pass a competency examination approved by the board.

(b) If the training program administers a proprietary competency examination to candidates seeking a CMA I or CMA II credential, the program shall submit a copy of the examination to the board for prior approval.

(5) Out-of-state training.

(a) An individual who completes a medication aide training program provided by an out-of-state training provider shall:

1. As a condition of obtaining the CMA I credential, pass the MACE or other competency examination approved by the board; or
2. As a condition of obtaining the CMA II credential:

a. Complete an out-of-state training program that meets the requirements of Section 7(6)](7) and (8) of this administrative regulation; and

b. Pass a competency examination approved by the board.

(b) An out-of-state medication aide training program shall be exempt from the application requirements of subsection (4)1. of this section.

Section 4.[Section—3.] Medication aide training program administration.

(1) The training program shall:

(a) Appoint a program administrator who shall be responsible for the administrative oversight of the program; and

(b)](2)] Submit the following in writing to the board:

1.](a)] Name of the program administrator;

2.](b)] Date the program administrator will assume responsibility for administrative oversight of the program; and

3.](c)] A copy of the program administrator's curriculum vitae.];]

(2)](3)](a) The training program shall notify the board in writing of a change of a program administrator[administrators] within thirty (30) days of the personnel change; and

(b)](4)] Develop and implement a plan of organization and administration that clearly establishes the lines of authority, accountability, and responsibility for each training program location.]; and]

(3)](5)] The program administrator shall maintain a system of official records and reports essential to the operation of the training program according to the program's written policies that~~[-shall]:~~

(a) Addresses[Address] how the program's records shall[will] be maintained in a secure manner to protect from loss or unauthorized distribution or use;

(b) Ensures[Ensure] that all records shall be retained for at least five (5) years;

(c) Ensures[Ensure] that each trainee roster includes:

1. The nurse instructor's name and licensure information;
2. Each trainee's:
 - a. Name;
 - b. Date of birth;
 - c. Last four (4) digits of the trainee's Social Security number; and
 - d. Program activity and completion dates;

(d) Documents[Document] how the program will conduct a periodic and systematic plan of evaluation; and

(e) Ensures[Ensure] that a list of successful graduates of the training program is maintained.

Section 5.[Section—4.] Program Administrator. The program administrator shall be:

(1) The facility administrator on record for each facility; or

(2) A registered nurse who has the following qualifications:

- (a) An unencumbered Kentucky nursing license or multistate privilege to practice; or
- (b) A temporary work permit as nurse in Kentucky.

Section 6.[Section—5.] Instructors.

(1) The number of instructors shall be adequate to implement the training program as determined by:

- (a) Program outcomes;
- (b) Instruction objectives; and
- (c) The educational technology utilized.

(2) The program administrator shall be responsible for approving

the instructors.

(3) Didactic instructors.

(a) The training program's didactic instructor shall have the following qualifications:

1. An unencumbered Kentucky nursing license or multistate privilege to practice; or

2. A temporary work permit as nurse in Kentucky.

(b) If the didactic instructor does not have prior teaching experience, the program administrator shall assign a mentor to the didactic instructor for the purpose of assisting with implementation of an educational development plan.

(4) Clinical instructors and preceptors.

(a) A clinical instructor shall hold a current:

1. Unencumbered Kentucky nursing license or multistate privilege to practice; or

2. Temporary work permit as nurse in Kentucky.

(b) A preceptor shall:

1. Meet the clinical instructor requirements in paragraph (a) of this subsection; ~~and~~ **or**

2. ~~a~~ Hold a current medication aide certification; and

~~b.~~ **3.** Have a minimum of six (6) months experience ~~administering~~ **passing** medications.

(5) Each training program shall maintain records in accordance with Section ~~4(3)~~ **4(3)** of this administrative regulation to document that each clinical instructor has been oriented to the:

(a) Course;

(b) Program outcomes;

(c) Student learning objectives;

(d) Evaluation methods used by the instructors; and

(e) Role expectations.

Section ~~7~~ **Section 6**. Standards for Training Programs and Medication Aide Certification.

(1) A training program shall conduct an evaluation as required by Section ~~4(3)(3.5)(d)~~ **4(3)(3.5)(d)** of this administrative regulation to:

(a) Validate that identified program outcomes have been achieved; and

(b) Provide evidence of improvement based on an analysis of the results.

(2) As a condition of admission to a training program for a CMA I credential, the applicant shall:

(a) Be able to read, write, and speak English;

(b) Have basic math skills;

(c) Have a high school diploma or equivalent; and

(d)

1. Have at least six (6) months of continuous work experience as a State registered nurse aide (SRNA) in a nursing facility ~~[that is certified under Title XVIII or XIX of the Social Security Act]~~ **[that is certified under Title XVIII or XIX of the Social Security Act]**; or

2. ~~Be a~~ direct care staff member of a:

a. Long-term care facility that is not certified under ~~42 C.F.R. Part 483~~ **Title XVIII or XIX of the Social Security Act**;

b. Facility operated by the Department of Juvenile Justice; or

c. Residential facility licensed by the Cabinet for Health and Family Services if authorized under the facility's scope of licensure.

(3) A training program that prepares an individual for a CMA I credential shall:

(a) Include at least:

1. Forty (40) clock hours of didactic course work;

2. Twenty (20) clock hours of skills laboratory; and

3. Forty (40) clock hours of direct patient contact with a clinical instructor;

(b) Ensure that the didactic course work and skills laboratory shall be completed in no shorter than a two (2) week course;

(c) Ensure that the candidate is precepted for a minimum of sixty (60) clock hours; and

(d) Maintain a log of clinical hours for each trainee in which the instructor and preceptor document completion of the clock hours required by ~~paragraphs (a) through (c) of this subsection~~ **paragraphs (a) through (c) of this subsection** ~~[subparagraphs 1. to 3. of this paragraph]~~.

(4)

(a) Upon completion of CMA I training, a candidate shall complete the MACE or other board approved examination within sixty (60) days.

(b) If the candidate does not pass the examination after two (2) attempts or if more than sixty (60) days have elapsed since completion of the CMA I training, the candidate shall provide documentation of repeating the CMA I training to be eligible to retake the examination.

(5) The curriculum for a CMA I training program shall include the following topics:

(a) Medication orders, documentation, storage, and disposal;

(b) Mathematics, weights, and measures;

(c) Forms of medications;

(d) Medication basics, including terms, abbreviations, dosage, and actions;

(e) Safety and rights of medication administration;

(f) Preparation and actual medication administration;

(g) Prevention of medication errors;

(h) Causes and reporting of medication errors;

(i) Building of relationships;

(j) Reporting of symptoms or side effects;

(k) Reporting of changes from the resident's normal condition, status, or routine;

(l) Documentation of medication administration;

(m) Routes of administration;

(n) Factors affecting how the body uses medication;

(o) Classes of medications related to body systems and common actions;

(p) Location of resources and references;

(q) Rights of individuals;

(r) Specific legal and ethical issues;

(s) Knowledge of infection control related to medication administration;

(t) Roles of the supervising nurse;

(u) Role of the medication aide; and

(v) Responsibility of the medication aide when accepting delegated tasks.

(6) As a condition of admission to a training program for a CMA II credential, the applicant shall have successfully completed the CMA I ~~[specialized]~~ **[specialized]** training and passed the board approved CMA I examination.

(7) A training program that prepares an individual for a CMA II credential shall include:

(a) A minimum of sixteen (16) clock hours of didactic course work in insulin administration via a prefilled insulin pen;

(b) A minimum of eight (8) clock hours of clinical training with continuous, direct, on-site supervision by a nurse to be completed within sixty (60) days of completion of the didactic course work;

(c) A minimum of twenty (20) documented insulin injections via prefilled insulin pen that shall be:

1. Directly supervised by a nurse; and

2. Completed within sixty (60) days of completion of the didactic course work; and

(d) A board approved competency examination.

1. Upon completion of the CMA II training, a candidate shall complete a board approved examination within sixty (60) days.

2. If the candidate does not pass the examination after two (2) attempts or if more than sixty (60) days have elapsed since completion of the CMA II training, the candidate shall provide documentation of repeating the CMA II training to be eligible to retake the examination.

(8) The curriculum for a CMA II training program shall include the following topics:

(a) Pathophysiology of diabetes;

(b) Diabetes disease management;

(c) Blood glucose testing and use of equipment;

(d) Understanding the meaning of glucose levels;

(e) Insulin administration procedure;

(f) Potential complications and adverse reactions; and

(g) Role and responsibility.

(9) Implementation of the curriculum.

(a) A training program shall be developed to include outcomes, planned instruction, learning activities, and methods of evaluation.

(b) The instruction methods and activities of both instructor and trainee shall be specified. The activities shall be congruent with stated objectives, and content shall reflect adult learning principles.

(c) A copy of the training program's curriculum shall be on file and available to the board upon request.

(d) Didactic instruction may be offered through distance learning technologies. The instruction offered through the use of distance learning technologies shall be comparable to that offered in an in-person program.

(10) Substantive changes to the training program's standards for medication training or certification shall be:

(a) Submitted to the board portal at www.kbn.ky.gov with a completed Application for Medication Aide Training Program (CMA I and II) within thirty (30) days of implementation; and

(b) Subject to a change of status fee of:

1. \$200 for a CMA I training program; or
2. \$300 for a CMA II training program.

(11) A training program shall respond to a written request from the board for documentation within thirty (30) days of the date of the board's request.

(12) The board ~~may[shall have the authority to]~~ amend a program's standards for medication training or certification if it fails to comply with the requirements of the administrative regulation. Upon written notification, the training provider shall comply with the requirements within thirty (30) days.

(13) The board may deny, suspend, or revoke approval or the change of status of a medication aide training program, based upon the following:

(a) Failure to meet or maintain the requirements set forth in this administrative regulation; or

(b) Submitting false, misleading or deceptive statements, information, or documentation to the board or its designees.

(14) If approval of the training program is denied, suspended, or revoked, the board shall do so in writing stating the reasons for the adverse action.

Section ~~8~~ [Section 7.] Program Completion Requirements and Recertification.

(1) Each individual who successfully completes a board approved medication aide training program and passes the medication aide training and competency evaluation shall register for certification via the board's nursing portal at www.kbn.ky.gov.

(2) The training program shall submit to the board:

- (a) The name of the certified individual;
 - (b) Title of training program, date of completion, and location;
 - (c) A program code number issued by the board; and
 - (d) Name and signature of the program administrator;
- (3) A training program shall:

- (a) Maintain a record of graduates for at least five (5) years; and
- (b) Provide a copy of the training program's graduate records to the board upon request.

(4) Recertification.

(a) The credential for a CMA I or CMA II shall expire one (1) year from the date of initial certification or recertification.

(b) To recertify as a CMA I or CMA II, the medication aide shall provide the board with:

1. Documentation of a yearly evaluation and validation of competency;
2. Proof of at least four (4) clock hours of medication-specific education; and
3. A minimum of forty (40) hours worked prior to expiration of certification; ~~and~~

(5)[4.] The [A certification] fee for initial certification and recertification shall be [of] twenty-five (25) dollars.

Section ~~9~~ [Section 8.] Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Application for Medication Aide Training Program (CMA I)", 09/23/05/23; and

(b) "Application for Medication Aide Training Program (CMA I and II)", 09/23/05/23.

(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 40222-5172, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also

available on the board's Web site at:
<https://kbn.ky.gov/document-library/Pages/default.aspx> [<https://kbn.ky.gov/General/Pages/Document-Library.aspx>].

FILED WITH LRC: January 8, 2024

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BOARDS AND COMMISSIONS

Board of Social Work

(As Amended at ARRS, December 11, 2023 and January 8, 2024)

201 KAR 23:160. Temporary permission to practice.

RELATES TO: KRS 335.080, 335.090, 335.100

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

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

Section 1. Temporary Permits without the Examination.

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

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

(a) Include a certification by the applicant that ~~[the]~~:

1. The information in the application is true, correct, and complete to the best of their knowledge and belief; and
2. The applicant is aware that the board may take disciplinary action if the application contains a misrepresentation or falsification; and

(b) Be accompanied by payment of the application fee that shall:

1. Be made payable to the Kentucky State Treasurer if the application is processed through the board; or
2. Be made to the online application management system as directed by the board.

(3) A person practicing social work under a temporary permit as a licensed social worker or a certified social worker shall be under the supervision of a certified social worker or licensed clinical social worker licensed in Kentucky, who becomes the supervisor of record.

(4) A supervisor of record for a temporary permit holder not practicing clinical social work shall[must] have been licensed in Kentucky for two (2) years.

(5) Any changes to the terms of the temporary permit shall be submitted to the board and approved by the board before the temporary permit holder continues social work practice.

(6)(a) Unless renewed, a temporary permit shall not extend for more than 180 days after the temporary permit is approved by the board ~~[unless renewed]~~.

(b) A person may re-apply for a temporary permit before the issued permit expires, and this permit shall not extend for more than 180 days after the temporary permit is approved by the board for a maximum of 360 days.

(7) Temporary permit holders shall not practice telehealth outside of Kentucky, which means that the location of the temporary permit holder and the client at the time of service shall[must] be in Kentucky.

(8) The applicant shall pay the required fee for the permit and any renewal fees as established by 201 KAR 23:020.

(9) Receipt of applications, contracts, and notification of approvals may[can] be done by mail or electronically.

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

(1) In addition to the requirements established in Section 1(1), (2), (6), and (7) through (9) of this administrative regulation, a certified social worker who seeks to practice clinical social work under a temporary permit shall be under the supervision of a licensed clinical social worker who qualifies to provide supervision under 201 KAR 23:070[Section 1(1), (2), (7), (8), and (9) are the same for this section].

(2) [A certified social worker who seeks to practice clinical social work under a temporary permit shall be under the supervision of a licensed clinical social worker who qualifies to provide supervision under 201 KAR 23:070.

(3) A person practicing under a temporary permit as a certified social worker to provide clinical social work shall not accumulate hours toward[towards] the supervision requirements of KRS 335.100(1)(b).

(3) (4) The application for a temporary permit to practice clinical social work shall include a contract or [/] letter signed by the proposed supervisor acknowledging the responsibility for supervision and for the practice of the person holding the temporary permit.

(4) (5) A licensee shall not serve as the supervisor for more than two (2) persons holding a temporary permit at any one (1) time.

(5) (6) A licensed clinical social worker who qualifies to provide supervision under 201 KAR 23:070 shall[must] include temporary permit persons in the required limit of six (6) supervisees as supervisor of record.

(6) (7) Supervision during the period of temporary permission to practice shall be a minimum of one (1) hour of individual[, face-to-face, or virtual] supervision per week and in compliance with 201 KAR 23:070.

(7) (8) A person practicing under a temporary permit as a certified social worker to provide clinical social work shall be valid until the applicant for the Certified[Certifies] Social Work license is denied under the provisions of KRS 335.080, or the temporary permit expires.

(8) (9) The temporary permit to practice clinical social work shall only be issued with an approved contract as required in KRS 335.080(3).

(a) The temporary permit applicant shall[must] complete the temporary permit application that includes a contract with an approved supervisor.

(b) The temporary permit remains in effect until a new contract is approved after the Certified Social Work license is issued under KRS 335.080, even when the maximum of 360 days of the permit is exceeded.

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

1. Supervisor of record; or
2. Place of employment.

(9) (10) A temporary permit holder shall cease and desist the practice of clinical social work if:

- (a) The supervisor of record terminates supervision; or
- (b) The temporary permit holder ceases employment listed on the application.

(10) (11) Any changes to the terms of the temporary permit to practice clinical social work shall be submitted to the board and approved by the board before the temporary permit holder continues social work practice.

(11) (12) Temporary permit holders who violate the provisions of this[the] section shall be[are] subject to disciplinary action by the board.

(12) A temporary permit holder and his or her supervisor shall comply with the supervision requirements of 201 KAR 23:070.

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

(1) A temporary permit to provide clinical social work in Kentucky may be granted for not more than ninety (90) consecutive days in one (1) calendar year from the date the[of] application is approved.

(2) [A temporary permit to provide clinical social work in Kentucky may be granted for not more than ninety consecutive days in one (1) calendar year from the date of application is approved.

(3) A temporary permit holder under this section[provision] shall be[is] subject to the complaint procedures of the Kentucky Board of Social Work. [Any.] Complaints shall be[are] reportable to the license board of the jurisdiction where the temporary permit holder or [/] applicant is licensed.

(3) (4) The temporary permit applicant shall[is] not be a resident of Kentucky.

(4) (5) The temporary permit holder shall inform clients[informs the client] of the limited nature of his or her[their] services and that he or she[the person] is not currently licensed in Kentucky.

(5) (6) The temporary permit holder or applicant shall have[has] no complaints filed against their license in their current jurisdiction or in the National Practitioner Database or the Public Protection Database.

(6) (7) A temporary permit holder or applicant may be required to submit billing records or other records to demonstrate compliance with the requirements of this section.

(7) (8) The temporary permit holder applicant shall[must] pay the required fee for the permit.

(8) (9) The temporary permit holder[applicant] shall maintain licensure in the other jurisdiction during the time period of the temporary license.

(9) (10) The person informs the client of the limited nature of their services and that the person is not currently licensed in Kentucky.

(11) The temporary permit holder shall inform clients[person informs the client] of how to make a complaint to the board for improper practice.

(10) (12) The temporary permit holder shall be[is] allowed to practice telehealth in Kentucky if[so long as] the permit holder:

- (a) Provides evidence to the board of appropriate training for telehealth practice;
- (b) Is complying with all telehealth laws and regulations of Kentucky; and
- (c) Has written consent for telehealth with clients.

Section 4. Temporary Permits for Out-of-state Independent Non-Clinical License Holders[Social Workers]. If requested, a temporary permit may[can] be issued for social work practice in Kentucky[this state, if requested,] for not more than ninety (90) consecutive days during any one (1) calendar year from the date of application approval [as prescribed when:]

(1) A temporary permit for an out-of-state social worker may be granted to a person who is currently licensed, certified, or regulated pursuant to another jurisdiction or pursuant to the laws of a federally recognized tribe and who provides social work services within the person's scope of practice [.]

(2) A temporary permit holder under this section[provision] shall be[is] subject to the complaint procedures of the Kentucky Board of Social Work. [Any.] Complaints shall be[are] reportable to the license board of the jurisdiction where the permit holder or [/] applicant is licensed.

(3) The temporary permit applicant shall seek[person seeks] permission to practice social work within the state of Kentucky.

(4) The temporary permit applicant shall not be[person is not] a resident of Kentucky.

(5) The temporary permit applicant shall pay~~[person pays]~~ the required fee.

(6) The temporary permit applicant shall complete~~[person completes]~~ the required application and be~~[is]~~ approved.

(7) The temporary permit holder shall cease~~[practicing/person ceases practice]~~ when the permit expires.

(8) The temporary permit holder shall have~~[person has]~~ no disciplinary actions against their license in their current jurisdiction.

(9) ~~[A temporary permit holder under this provision is subject to the complaint procedures of the Kentucky Board of Social Work. Any complaints are reportable to the license board of the jurisdiction where the permit holder/applicant is licensed.]~~

~~(10)]~~ The temporary permit holder shall provide~~[person provides]~~ evidence to the board of appropriate training for social work telehealth practice.

~~(10)]~~~~(11)]~~ The temporary permit holder shall inform~~[person informs the client]~~ of the limited nature of his or her~~[their]~~ services and that he or she~~[the person]~~ is only temporarily licensed in Kentucky.

~~(11)]~~~~(12)]~~ The temporary permit holder shall inform~~[person informs the client]~~ of how to make a complaint to the board for improper practice.

(12) A temporary permit holder shall not practice clinical social work.

(13) The temporary permit holder shall be allowed to practice telehealth in Kentucky if the permit holder:

(a) Provides evidence to the board of appropriate training for telehealth practice;

(b) Is complying with all telehealth laws and regulations of Kentucky; and

(c) Has written consent for telehealth with clients.

Section 5. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Temporary Non-Clinical Social Work Application", 6/15/2023;

(b) "Temporary Clinical Social Work Application", 12/27/23~~[6/15/2023]~~;

(c) "Temporary Non-Resident Social Work Application", 12/27/23~~[6/15/2023]~~; ~~[and]~~

(d) "Temporary Social Work Non-Clinical and Non-Resident Application", 12/27/23~~[6/15/2023]~~; ~~and~~ [6/15/2023].

(e) "Application for Temporary License Renewal", 7/19/2023.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Social Work, 125 Holmes Street, Suite 310, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m., or from its Web site at <https://telehealth.ky.gov>.

FILED WITH LRC: January 8, 2024

CONTACT PERSON: Marc Kelly, Executive Director, Kentucky Board of Social Work, 125 Holmes Street, Suite 310, Frankfort, Kentucky 40601, phone (502) 564-2350 or (502) 782-2856, or email marc.kelly@ky.gov.

BOARDS AND COMMISSIONS Board of Licensed Professional Counselors (As Amended at ARRS, January 8, 2024)

201 KAR 36:005. Definitions for 201 KAR Chapter 36.

RELATES TO: KRS 335.500, 335.535(1)

STATUTORY AUTHORITY: KRS 335.515(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 335.515(3) requires the board to promulgate administrative regulations necessary to carry out and enforce the provisions of KRS 335.500 to 335.599. This administrative regulation establishes the definitions used in 201 KAR Chapter 36.

Section 1. Definitions. (1) "Academic course offered by an accredited postsecondary institution" means:

(a) A professional counseling course designated by a professional counseling title or content; or

(b) An academic course relevant to the practice of professional counseling.

(2) "Approved" means recognized by the Kentucky Board of Licensed Professional Counselors.

(3) "Chair"~~["Chairman"]~~ means the chair~~[chairman]~~ or vice-chair~~[vice-chairman]~~ of the board.

(4) "Charge" means a specific allegation contained in a formal complaint, as established in 201 KAR 36:050, issued by the board alleging a violation of a specified provision of KRS 335.500 to 335.599 or the administrative regulations promulgated thereunder.

(5) "Client" means:

(a) An individual, family, or group for whom the licensee provides services within the context of the licensee's practice of professional counseling;

(b) A corporate entity or other organization if the licensee provides a service of benefit directly to the corporate entity or organization; or

(c) A legal guardian who is responsible for making decisions relative to the provision of services for a minor or legally incompetent adult.

(6) "Complaint" means any written allegation of misconduct by a credentialed individual or other person, which might constitute a violation of KRS 335.500 to 335.599 or the administrative regulations promulgated thereunder.

(7) "Complaint screening committee" means a committee that:

(a) Consists of three (3) persons appointed by the chair~~[chairman]~~ of the board and may include the executive director or another staff member; and

(b) Reviews complaints and investigative reports, opens investigations, participates in informal proceedings to resolve a complaint, or requests a court of competent jurisdiction to take criminal or civil action.

(8) "Continuing education hour" means fifty (50) clock minutes of participating in continuing educational experiences.

(9) "Distance counseling" means the practice of professional counseling as defined by KRS 335.500(5) between the professional counselor and the client ~~using~~ [patient]:

(a) [Provided using] An electronic communication technology; or

(b) Two (2) way, interactive, simultaneous audio and video.

(10) "Document" means information in any form or format that is relevant to a review or investigation conducted by the board and may include:

(a) Originals, copies, or drafts;

(b) Written documents;

(c) Papers;

(d) Books;

(e) Computer files;

(f) Photographs;

(g) Audio or video recordings;

(h) Correspondence;

(i) Electronic mail; ~~[or]~~

(j) Drawings or blueprints; or~~and~~

(k) Client treatment documentation.

(11) "Dual relationship" means a social, business, or personal relationship between a licensee and a client that coexists with the professional-client relationship between the licensee and the client.

(12) "Face-to-face" means supervision that is in person where the supervisor and supervisee are physically present in the same room or through interactive, simultaneous video and audio media.

(13) "Formal complaint" means a formal administrative pleading authorized by the board, which sets forth charges against a licensed individual or other person and commences a formal disciplinary proceeding pursuant to KRS Chapter 13B.

~~(14) ["Good moral character" means a licensee or applicant who has not been:~~

~~(a) Convicted, in a court of competent jurisdiction, of any crime involving a substantial misrepresentation of any material fact, including any of the following:~~

~~1. Bribery or corrupt influences under KRS Chapter 521;~~

~~2. Forgery or related offenses under KRS Chapter 516;~~

3. Business or commercial frauds under KRS Chapter 517;
 4. Perjury or related offenses under KRS Chapter 523;
 5. Abuse of a public office under KRS Chapter 522; or
 6. Miscellaneous crimes affecting businesses, occupations, and professions that have a direct financial or adverse impact on business;

(b) ~~Convicted, in a court of competent jurisdiction, of criminal homicide under KRS Chapter 507 or 507A;~~

(c) ~~Convicted, in a court of competent jurisdiction, of any felony or misdemeanor involving the following:~~

1. Sexual offenses under KRS Chapter 510;
2. Pornography under KRS Chapter 531;
3. Theft and related offenses under KRS Chapter 514;
4. Prostitution offenses under KRS Chapter 529; or
5. Family offenses under KRS Chapter 530;

(d) ~~Convicted, in a court of competent jurisdiction, of any felony involving the following:~~

1. Assault or related offenses under KRS Chapter 508;
2. Kidnapping or related offenses under KRS Chapter 509;
3. Burglary or related offenses under KRS Chapter 511;
4. Criminal damage to property under KRS Chapter 512; or
5. Arson and related offenses under KRS Chapter 513;

(e) ~~Found to have a behavioral or substance abuse problem, which may endanger or impair the health, personal safety, or welfare of a client;~~

(f) ~~Found to be a delinquent taxpayer as defined by KRS 131.4817(1)(b);~~

(g) ~~Convicted, in a court of competent jurisdiction, of three (3) or more offenses of driving under the influence or driving while impaired;~~

(h) ~~Convicted, in a court of competent jurisdiction, of any drug-related felony under KRS Chapter 218A;~~

(i) ~~Convicted, in a court of competent jurisdiction, of any criminal offense similar to the convictions identified in paragraphs (a) to (h) of this subsection that constitutes a violation of law of the state where the conviction occurred; or~~

(j) ~~Subject to a fine, disciplinary supervision, probation, revocation, or suspension of a registration, certification, or license issued by the issuing body.]~~

[(15)] "Individual supervision" means supervision of one (1) or two (2) supervisees with the supervisor.

[(15)] [(46)] "Informal proceedings" means the proceedings instituted at any stage of the disciplinary process with the intent of reaching a dispensation of any matter without further recourse to formal disciplinary procedures under KRS Chapter 13B.

[(16)] [(47)] "Investigator" means an individual designated by the board to assist the board in the investigation of a complaint ~~or an investigator employed by the Attorney General or the board].~~

[(17)] [(48)] "Professional counselor" means a licensed professional clinical counselor as defined by KRS 335.500(3) or licensed professional counselor associate as defined by KRS 335.500(4).

[(18)] [(49)] "Program" means an organized learning experience:

(a) Planned and evaluated to meet learning [behavioral] objectives; and

(b) Presented in one (1) session or a series.

[(19)] [(20)] "Relevant" means having content applicable to the practice of professional counseling.

[(20)] [(24)] "Respondent" means any person, individual, corporation, business trust, estate, trust partnership, limited liability company, association, organization, joint venture, government or any subdivision, agency, or instrumentality thereof, or any other legal or commercial entity ~~[who is]~~ subject to a charge or formal complaint.

[(21)] [(22)] "Scope of practice for professional counseling" means:

(a) The independent practice of counseling encompassing the provision of professional counseling services to individuals, groups, families, couples, and organizations through the application of accepted and established mental health counseling principles, methods, procedures, or ethics;

(b) Counseling to promote mental health wellness, which includes the achievement of social, career, and emotional development across the lifespan, as well as preventing and treating mental disorders and providing crisis intervention;

(c) Counseling that includes psychotherapy, diagnosis, evaluation; administration of assessments, tests and appraisals; referral; or the establishment of counseling plans for the treatment of individuals, couples, groups, and families with emotional, mental, addiction, and physical disorders;

(d) Counseling that encompasses consultation and program evaluation, program administration within and to schools and organizations, and training and supervision of interns, trainees, and pre-licensed professional counselors through accepted and established principles, methods, procedures, and ethics of counselor supervision; or

(e) The functions or practices that are within the professional counselor's training or education.

[(22)] "Student" means an individual taking coursework in a counselor education program governed by a team of credentialed instructors who ~~will~~ maintain a student and professor relationship during student's enrollment period.

[(23)] "Supervisee" means a licensed professional counselor associate who works with clients under supervision.

[(24)] "Supervision" means the educational process of utilizing a partnership between a supervisor and a supervisee aimed at enhancing the professional development of the supervisee in providing professional counseling services to meet the requirements of KRS 335.525(1)(e).

[(25)] "Supervisor" means an individual designated as a licensed professional clinical counselor supervisor, in accordance with 201 KAR 36:065, ~~[a member of a mental health or behavioral services profession listed in 201 KAR 36:065]~~ who controls, oversees, guides, and takes responsibility for the professional clinical counseling practice of a supervisee.

[(26)] "Supervisor of record" means the person listed on the supervisory agreement and approved by the board in accordance with 201 KAR 36:060, Section 2.

[(27)] "Testing and assessment services" means an educational, mental health, clinical, and career assessment to gather information regarding the client for a variety of purposes, including client decision making, treatment planning, and forensic proceedings. Assessment may include both qualitative and quantitative methodologies.

FILED WITH LRC: January 8, 2024

CONTACT PERSON: Sara Boswell Janes, Staff Attorney III, Department of Professional Licensing, Office of Legal Services, 500 Mero Street, 2 NC WK#2, phone (502) 782-2709, fax (502) 564-4818, email Sara.Janes@ky.gov, Link to public comment portal: https://ppc.ky.gov/reg_comment.aspx.

BOARDS AND COMMISSIONS

Board of Licensed Professional Counselors (As Amended at ARRS, January 8, 2024)

201 KAR 36:030. Continuing education requirements.

RELATES TO: KRS 13B, 194A.540, 210.366, 335.500-335.599
 STATUTORY AUTHORITY: KRS 210.366, 335.515(3), (6), 335.535(8)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 210.366 requires a board licensee to complete a minimum of six (6) hours of continuing education in suicide assessment, treatment, and management every six (6) years. KRS 335.515(3) and, [(6)] and 335.535(8)] require the board to promulgate an administrative regulation requiring a licensee to complete continuing education requirements as a condition of renewal of his or her license ~~[licensee]~~. This administrative regulation establishes ~~[delineates]~~ the requirements for continuing education and prescribes methods and standards for the accreditation of continuing education courses.

Section 1. Accrual of Continuing Education Hours.

(1) A minimum of ten (10) continuing education hours shall be accrued by each person holding a license during the annual period for renewal.

(2) All continuing education hours shall be in or related to the field of professional counseling.

(3) A person holding a license shall complete a minimum of three (3) hours of continuing education in domestic violence within three (3) years of initial licensure, as required by KRS 194A.540. A person holding a license who teaches the board-approved training shall be deemed to have completed this requirement.

(4) A person holding a license shall complete a minimum of six (6) hours of continuing education in a course in suicide assessment, treatment, and management within the first three (3) years[year] of initial licensure and every six (6) years of licensure thereafter as required by KRS 210.366. A person holding a license who teaches the board-approved training shall be deemed to have completed this requirement.

~~[(a) A person holding a license shall be exempt from the requirement to complete a continuing education course in suicide assessment, treatment, and management within the first year of licensure if the counselor:~~

~~1. Graduated from a Council for Accreditation of Counseling and Related Education Program since 2009; or~~

~~2. Completed a three (3) semester hours graduate course in suicide and crisis assessment, prevention, and intervention.~~

~~(b) A person holding a license shall be exempt from the requirement to complete a continuing education course in suicide assessment, treatment, and management if the counselor satisfies one (1) of the following at least once per year during the six (6) year periodic requirement:~~

~~1. Is employed in a position that requires at least forty (40) hours of counseling in suicide and crisis assessment, prevention, and intervention;~~

~~2. Teaches a graduate-level counseling course in suicide and crisis assessment, prevention, and intervention; or~~

~~3. Teaches a continuing education course in suicide and crisis assessment, prevention, and intervention.~~

~~(c) The continuing education course in suicide assessment, treatment, and management shall be board approved in accordance with Section 2 of this administrative regulation.~~

~~(d) An individual asserting an exemption of the suicide assessment, treatment, and management course shall maintain sufficient documentation to establish the exemption. Documentation listed in Section 5(3) of this administrative regulation shall be sufficient to establish the exemption.]~~

(5) A person holding a license shall complete a minimum of three (3) hours of continuing education on the law for regulating professional counseling, KRS 335.500 to 335.599 and 201 KAR Chapter 36, every three (3) years of licensure. A person holding a license who teaches the board-approved training shall be deemed to have completed this requirement. [A person holding a license shall be exempt from this requirement if the person:

(a) Teaches a graduate-level course that includes KRS 335.500 to 335.599 and 201 KAR Chapter 36 during the three (3) year period; or

(b) Teaches a continuing education course on KRS 335.500 to 335.599 and 201 KAR Chapter 36 during the three (3) year period.]

(6) All mandatory trainings on domestic violence; suicide assessment, treatment and management; and Kentucky law shall be approved by the Board and any program offered by a general continuing education provider listed in Section 2(1)(a) shall be submitted to the board for approval. ~~[to the board].~~

Section 2. Methods of Acquiring Continuing Education Hours. Continuing education hours applicable to the renewal of the license shall be directly related to the professional growth and development of the licensee's practice of professional counseling. The hours[They] may be earned by completing any of the educational activities [as] established in this section.

(1) Programs not requiring board review and approval.

[(a)] A general continuing education program [from any of the

following providers.] shall be approved without further review by the board if it is:

(a)[4.] Sponsored or approved by:

1.[a.] The American Counseling Association, or any of its affiliated branches or divisions;

2.[b.] The Kentucky Counseling Association, or any of its affiliated chapters or divisions;

~~[c. The American School Counselor Association or any of its affiliated state chapters;]~~

3.[d.] The National Board for Certified Counselors; or

4.[e.] A state counseling licensure board; or

(b)[2.] An academic course offered by a CACREP-accredited[an accredited post-secondary institution directly related to professional] counseling program[or counseling psychology]. Academic credit equivalency for continuing education hours shall be fifteen (15) continuing education hours for each one (1) academic credit hour.

[(b) A continuing education program not requiring board review and approval shall comply with the requirements of subsection (3) of this section and Section 4 of this administrative regulation.]

(2) [Programs requiring board review and approval. For approval purposes, the board shall review the following types of programs to determine relevancy:

~~(a) A program, approved by the board, of a service provider, including a home study course or in-service training provided by another organization or educational institution;~~

~~(b) A program or academic course presented by the licensee. A presenter of relevant programs or academic courses may earn full continuing education credit for each contact hour of instruction, except the earned credit shall not exceed one-half (1/2) of the continuing education renewal requirements. Credit shall not be issued for repeated instruction of the same course; or~~

~~(c) An article authored by the licensee that was published in a relevant, professionally recognized or juried publication. Credit shall not be granted for an article unless it was published within the one (1) year period immediately preceding the renewal date and a licensee shall not earn more than one-half (1/2) of the continuing education hours required for renewal. More than one (1) publication shall not be counted during a renewal period.~~

(3)[a)] Supervision training under 201 KAR 36:065, Section 1(3)[i.] shall be pre-approved by the board, and presented by the board or an instructor who is licensed by the board as a Licensed Professional Clinical Counselor – Supervisor (LPCC-S).

(3)[(b)] The continuing education program on the law for regulating professional counseling, KRS 335.500 to 335.599 and 201 KAR Chapter 36, shall be presented by the board, an instructor who is licensed by the board, or an attorney who demonstrates knowledge of KRS 335.500 to 335.599 and 201 KAR Chapter 36 in the Continuing Education Program Application.

[(4) Academic credit equivalency for continuing education hours shall be fifteen (15) continuing education hours for every one (1) academic credit hour.

~~(5) A general education course, whether elective or used to meet degree requirements, shall not be acceptable as continuing education credit.]~~

Section 3. Procedures for Approval of Continuing Education Programs by a Licensee. To obtain board approval, a licensee shall submit[In order to submit the course to the board for approval, the following shall be submitted]:

(1) A published course or similar description;

(2) The names and qualifications of the instructors;

(3) A copy of the program agenda indicating hours of education, coffee breaks, and lunch breaks, which also states[. The agenda shall state] the specific time when each topic of the program is being presented;

(4) The number of continuing education hours requested;

(5) An official certificate of completion or college transcript from the sponsoring agency or college;

(6) The Continuing Education Program Application; [and]

(7) The[If a provider is seeking approval for a continuing education course, an] application review fee established[set forth] in 201 KAR 36:020 Section 3; and[of twenty (20) dollars.]

(8) A copy of the course evaluation.

Section 4. Procedures for Preapproval of Continuing Education Programs by Providers.[Sponsors and Programs.]

(1) ~~[Sponsor approval.]~~Any provider[entity] seeking to obtain approval[.]:

(a)[.] of a continuing education program ~~[prior to its offering.]~~shall apply to the board at least sixty (60) days in advance of the commencement of the program, and shall provide~~[the following information]~~:

(a) A published course or similar description;

(b) The names and qualifications of the instructors;

(c) A copy of the program agenda indicating hours of education, coffee breaks, and lunch breaks, which states the specific time when each topic of the program is being presented;

(d) The number of continuing education hours requested;

(e) An official certificate of completion or college transcript from the sponsoring agency or college;

(f) The Continuing Education Program Application;

(g) A copy of the course evaluation; and

(h) The application review fee established[set forth] in 201 KAR 36:020 Section 3.~~[required in Section 3 of this administrative regulation on an annual basis for each program; or~~

(b) As a prior-authorized continuing education provider under Section 2(1) of this administrative regulation, shall satisfy the board that the entity seeking this status:

1. Consistently offers programs that meet or exceed all the requirements set forth in Section 1(2) of this administrative regulation; and

2. Does not exclude a licensee from its programs.]

(2) A continuing education activity shall be qualified for approval if the board determines the activity being presented:

(a) Is an organized program of learning;

(b) Pertains to subject matters, which integrally relate to the practice of professional counseling;

(c) Contributes to the professional competency of the licensee; and

(d) Is conducted by individuals who have educational training or experience acceptable to the board.

Section 5. Responsibilities and Reporting Requirements of a Licensee.

(1) During the licensure renewal period, up to fifteen (15) percent of all licensees shall be selected at random by the board and required to furnish documentation of the completion of the appropriate number of continuing education hours. Verification of continuing education hours shall not otherwise be reported to the board.

(2) A licensee shall:

(a) Be responsible for obtaining required continuing education hours;

(b) Identify his or her own continuing education needs and seek activities that meet those needs;

(c) Seek ways to integrate new knowledge, skills, and attitudes;

(d)[1.] Select approved activities by which to earn continuing education hours[.or

2. Submit to the board a request for approval for continuing education activities not approved as required in Section 2(2) of this administrative regulation;]

(e) At the time of renewal, list the continuing education hours obtained during that licensure renewal period;

(f) Document attendance, participation in, and successful completion of continuing education activity for a period of one (1) year from the date of the renewal; and

(g) Maintain records of continuing education hours.

(3) The following items may be used to document continuing education activity:

(a) Transcript;

(b) Certificate; or

(c) Affidavit signed by the instructor[.or

(d) Receipt for the fee paid to the sponsor].

(4) [Compliance with the provisions of this administrative regulation.] Failure to comply with this administrative regulation shall constitute a violation of KRS 335.540(1)(b) and shall result in

sanctions in accordance with KRS 335.540(1).

~~[(5) Documentation sent to the board prior to renewal shall be returned to the licensee by regular mail.]~~

Section 6. Responsibilities and Reporting Requirements of Providers and Sponsors.

(1) A provider of continuing education not requiring board approval shall be responsible for providing documentation directly to the licensee, as established in Section 5(3) of this administrative regulation~~[directly to the licensee]~~.

(2) A sponsor of continuing education requiring board approval shall be responsible for submitting a course offering to the board for review and approval before listing or advertising that offering as approved by the board.

Section 7. Board to Approve Continuing Education Hours; Appeal of Denial.

(1) If an application for approval of continuing education hours is denied, in whole or part, the continuing education course provider or licensee shall have the right to appeal the board's decision.

(2) An appeal shall be:

(a) In writing;

(b) Received by the board within thirty (30) days after the date of the decision denying approval of continuing education hours; and

(c) Conducted in accordance with KRS Chapter 13B.

Section 8. Waiver or Extensions of Continuing Education.

(1) On application, the board may grant a waiver of the continuing education requirements or an extension of time within which to fulfill the requirements in the following cases:

(a) Medical disability of the licensee;

(b) Illness of the licensee or an immediate family member; or[and]

(c) Death or serious injury of an immediate family member.

(2) A written request for waiver or extension of time involving medical disability or illness shall be:

(a) Submitted by the person holding a license; and

(b) Accompanied by a verifying document signed by a licensed physician.

(3) A waiver of or extension of time within which to fulfill the minimum continuing education requirements shall not exceed one (1) year.

(4) If the medical disability or illness upon which a waiver or extension has been granted continues beyond the period of the waiver or extension, the person holding a license shall reapply for the waiver or extension.

Section 9. Continuing Education Requirements for Reinstatement or Reactivation of License.

(1)(a) Except as provided by paragraph (b) of this subsection, a person requesting reinstatement or reactivation of a license shall submit evidence of ten (10) hours of continuing education completed within one (1) year prior to[ef] the filing of the application for reinstatement or reactivation.

(b) Upon request by the applicant, the board may permit the applicant to resume practice if ten (10) hours of continuing education is obtained within ninety (90) days of the date on which the applicant is approved to resume practice.

(2) The continuing education hours received in compliance with this section shall be in addition to the continuing education requirements established in Section 1 of this administrative regulation and shall not be used to comply with the requirements of that section.

Section 10. Hours required to satisfy the continuing education requirement shall be completed on or before the renewal date established in 201 KAR 36:075, Section 1. Failure to complete the continuing education requirement in Section 1 of this administrative regulation by the renewal date of a license shall require the applicant to submit a reinstatement application in accordance with 201 KAR 36:075.

Section 11. Incorporation by Reference.

(1) "Continuing Education Course[Program] Application, DPL-LPC-01[KB LPC 007]", December[July] 2023[June 2015 edition], is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Board of Licensed Professional Counselors, 500 Mero Street[911 Leewood Drive], Frankfort, Kentucky 40601, from 8:00 a.m. to 4:00 p.m., Monday through Friday. This material is also available on the board's Web site at lpc.ky.gov.

FILED WITH LRC: January 8, 2024

CONTACT PERSON: Sara Boswell Janes, Staff Attorney III, Department of Professional Licensing, Office of Legal Services, 500 Mero Street, 2 NC WK#2, phone (502) 782-2709, fax (502) 564-4818, email Sara.Janes@ky.gov, Link to public comment portal: https://ppc.ky.gov/reg_comment.aspx.

BOARDS AND COMMISSIONS
Board of Licensed Professional Counselors
(As Amended at ARRS, January 8, 2024)

201 KAR 36:040. Code of ethics.

RELATES TO: KRS 335.540(1)(g)

STATUTORY AUTHORITY: KRS 335.515(3), (7), (11)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 335.515(11) requires the board to promulgate a code of ethics for licensed professional counselors and licensed professional counselor associates. This administrative regulation establishes the required code of ethics.

Section 1. Responsibility to Clients.

(1) A professional counselor shall:

- (a) Advance and protect the welfare of the counselor's client;
- (b) Respect the rights of a person seeking the counselor's assistance; and
- (c) Make efforts to ensure that the counselor's services are used appropriately.

(2) A professional counselor shall not:

- (a) Discriminate against or refuse professional service to anyone on the basis of race, gender, religion, or national origin;
- (b) Exploit the trust and dependency of a client;
- (c)
 - 1. Engage in a dual relationship with a client that might:
 - a. Impair professional judgment;
 - b. Incur a risk of exploitation of the client; or
 - c. Otherwise violate a provision of this administrative regulation.
 - 2. If a dual relationship cannot be avoided, and does not impair professional judgment, incur a risk of exploitation of the client, or otherwise violate a provision of this administrative regulation, a professional counselor shall take appropriate professional precautions to ensure that judgment is not impaired and exploitation of the client does not occur, which shall include:
 - a. Written informed consent by the client of the client's understanding of the general prohibitions against dual relationships;¹⁻⁷
 - b. Peer consultation by a licensed professional; and
 - c. Proper documentation of the precautions taken by the professional counselor.
- (d) Engage in a sexual, romantic interaction, or an intimate relationship with a current client or with a former client for five (5) years following the termination of counseling. This prohibition shall apply to both in-person and electronic interactions or relationships;
- (e) Use the counselor's professional relationship with a client to further his or her own interests;
- (f) Continue therapeutic relationships unless it is clear that the client is benefiting from the relationship;
- (g) Fail to assist a person in obtaining other therapeutic services if the professional counselor is unable or unwilling to provide professional help for appropriate reasons that include a threat or risk of harm to the professional counselor, a failure to pay for services

previously provided, or a severe injury or medical illness suffered by the professional counselor;

(h) Abandon or neglect a client in treatment without making arrangements for the continuation of treatment;

(i) Videotape, record, or permit third-party observation of counseling sessions without having first obtained written informed consent from the client;

(j) Engage in sexual or other harassment or exploitation of the counselor's client, student, trainee, supervisee, employee, colleague, research subject, or actual or potential witness or complainant in investigations and ethical proceedings; or

(k) Diagnose, treat, or advise on problems outside the recognized boundaries of the counselor's competence.

Section 2. Professional Counselors' Obligations and Duties.

(1) A professional counselor shall safeguard and maintain documentation necessary for rendering professional services.

(2) Regardless of the medium, a professional counselor shall include sufficient and timely documentation to facilitate the delivery and continuity of services. The documentation shall accurately reflect client progress and services provided.

(3) If an amendment is made to a record or documentation, a professional counselor shall properly note the amendment in the client's record.

(4) A professional counselor and the client shall work jointly in devising a counseling plan that offers a reasonable promise of success and is consistent with the abilities, temperament, developmental level, and circumstances of the client.

(5) A professional counselor and the client shall regularly review and revise the client's counseling plan to assess the plan's continued viability and effectiveness, respecting the client's freedom of choice.

(6) A professional counselor shall review in writing and verbally with a client the rights and responsibilities of a professional counselor and a client.

(7) A professional counselor shall provide adequate information about the client's freedom of choice, the counseling process, and the professional counselor so a client may make an educated decision whether to enter into or remain in a counseling relationship.

(8) Informed consent shall be an ongoing part of the counseling process, and a professional counselor shall document discussions of informed consent throughout the counseling relationship.

(9) A professional counselor shall explicitly explain to a client the nature of all services provided. The information shall include the purposes, goals, techniques, procedures, limitations, potential risks, and benefits of services; the counselor's qualifications, credentials, relevant experience, and approach to counseling; continuation of services upon the incapacitation or death of the counselor; the role of technology; and other pertinent information.

(10) A professional counselor shall take steps to ensure that each client understands the implications of diagnosis and the intended use of tests and reports.

(11) A professional counselor shall inform a client about fees and billing arrangements, including procedures for nonpayment of fees.

(12) A professional counselor shall communicate information in ways that are both developmentally and culturally appropriate.

(13) A professional counselor shall use clear and understandable language when discussing issues related to informed consent.

(14) When counseling a minor, an incapacitated adult, or other person unable to give voluntary consent, a professional counselor shall seek the assent of the client to services and include the client in decision making as appropriate.

(15) A professional counselor shall recognize the need to balance the ethical rights of each client to make choices, the client's capacity to give consent or assent to receive services, and parental or familial legal rights and responsibilities to protect the client and make decisions on the client's behalf.

(16) A professional counselor shall discuss the required limitations to confidentiality when working with each client who has been mandated for counseling services.

(17) A professional counselor shall explain what type of information and with whom that information is shared prior to the beginning of counseling. The client may choose to refuse services. In this case, a professional counselor shall, to the best of the counselor's ability, discuss with the client the potential consequences of refusing counseling services.

(18) When a professional counselor learns that a client is in a professional relationship with another mental health professional, the professional counselor shall request release from the client to inform the other mental health professional and strive to establish a positive and collaborative professional relationship.

(19) A professional counselor shall avoid harming a client, supervisee, trainee, or research participant and shall minimize or remedy unavoidable or unanticipated harm.

(20) A professional counselor shall be aware of and avoid imposing the professional counselor's values, attitudes, beliefs, or behaviors on a client.

(21) A professional counselor shall respect the diversity of each client, trainee, and research participant and seek training in areas in which the counselor is at risk of imposing the counselor's values onto a client, especially when the professional counselor's values are inconsistent with the client's goals or are discriminatory in nature.

(22) A professional counselor shall refrain from referring a prospective and current client based solely on the counselor's personally held values, attitudes, beliefs, and behaviors.

(23) A professional counselor shall seek training in areas in which a professional counselor is at risk of imposing his or her values onto a client, especially when the professional counselor's values are inconsistent with the client's goals or are discriminatory in nature.

(24) A professional counselor shall not engage in a counseling relationship with a person with whom the professional counselor has had a previous sexual or romantic relationship.

(25) A professional counselor shall not engage in a counseling relationship with a friend or a family member with whom the professional counselor has an inability to remain objective.

(26) A professional counselor shall consider the risks and benefits of accepting a client with whom the professional counselor has had a previous relationship. This potential client may include an individual with whom the counselor has had a casual, distant, or past relationship. Examples include mutual or past membership in a professional association, organization, or community.

(27) When a professional counselor accepts a client with whom the professional counselor has had a previous relationship, the professional counselor shall take the appropriate professional precautions such as informed consent, consultation, supervision, and documentation to ensure that judgment is not impaired and no exploitation occurs.

(28) A professional counselor shall consider the risks and benefits of extending current counseling relationships beyond conventional parameters. Examples of extending these boundaries of the counseling relationship include attending a client's wedding or commitment ceremony or graduation; purchasing a service or product provided by a client, accepting unrestricted bartering; and visiting a client's ill family member in the hospital.

(29) A professional counselor shall take appropriate professional precautions such as informed consent, consultation, supervision, and documentation to ensure that the client's or supervisee's judgment is not impaired and no harm occurs.

(30) When a professional counselor changes a role from the original or most recent contracted relationship, a professional counselor shall obtain informed consent from the client and explain the client's right to refuse services related to the change.

(31) A professional counselor shall fully inform a client of any anticipated consequences including financial, legal, personal, or therapeutic if the professional counselor role changes. Examples of role changes include changing from:

- (a) Individual to relationship or family counseling, or vice versa;
- (b) An evaluative role to a therapeutic role, or vice versa; or
- (c) A counselor to a mediator role, or vice versa.

(32) A professional counselor shall not enter into non-professional relationships with a former client, the client's romantic partners, or the client's family members when the interaction is

potentially harmful to the client. This applies to both in-person and electronic interactions or relationships.

(33) When a professional counselor agrees to provide counseling services to two (2) or more persons who have a relationship, the professional counselor shall clarify at the outset which person or persons are the client or clients and the nature of the relationships the professional counselor shall have with each involved person. If it becomes apparent that the professional counselor may be called upon to perform potentially conflicting roles, the professional counselor shall clarify, adjust, or withdraw from the conflicting roles.

(34) A professional counselor shall screen prospective group counseling or therapy participants.

(35) To the extent possible, a professional counselor shall select members whose needs and goals are compatible with the goals of the group, who will not impede the group process, and whose well-being will not be jeopardized by the group experience.

(36) In a group setting, a professional counselor shall take precautions to protect clients from physical, emotional, or psychological trauma.

(37) A professional counselor may barter only if the client requests and the bartering for services does not result in exploitation or harm to the client.

(38) A professional counselor shall consider the cultural implications of bartering for services and discuss relevant concerns with the client and document any agreed upon bartering agreements in a written contract.

(39) A professional counselor shall understand the challenges of accepting gifts from clients and recognize that in some cultures, small gifts are a token of respect and gratitude. When determining whether to accept a gift from a client, a professional counselor shall take into account the therapeutic relationship, the monetary value of the gift, the client's motivation for giving the gift, and the counselor's motivation for wanting to accept or decline the gift.

(40) If a professional counselor lacks the competence to be of professional assistance to a client, the professional counselor shall not enter or continue a counseling relationship.

(41) A professional counselor shall terminate a counseling relationship when it becomes reasonably apparent that the client no longer needs assistance, is not likely to benefit, or is being harmed by continued counseling.

(42) A professional counselor may terminate counseling when in jeopardy of harm by the client or by another person with whom the client has a relationship, or when a client does not pay fees as agreed upon.

(43) A professional counselor shall provide pretermination counseling and recommend other service providers when necessary, unless counseling was terminated in accordance with subsection (42) of this section.

Section 3. Evaluation, Assessment, and Interpretation. (1) A professional counselor shall not misuse assessment results or interpretations, and a professional counselor shall take steps to prevent others from misusing the information provided.

(2) A professional counselor shall respect a client's right to know the results, the interpretations made, and the basis for the professional counselor's conclusions and recommendations.

(3) A professional counselor shall use only those testing and assessment services for which the professional counselor has been trained and is competent. A professional counselor using technology-assisted test interpretations shall be trained in the construct being measured and the specific instrument being used prior to using its technology-based application. A professional counselor shall take measures to ensure the proper use of assessment techniques by persons under the counselor's supervision.

(4) A professional counselor shall be responsible for the application, scoring, interpretation, and use of assessment instruments relevant to the needs of the client, whether the counselor scores and interprets the assessments himself or herself or uses technology or other services.

(5) A professional counselor shall be responsible for decisions involving individuals or policies that are based on assessment

results and have a thorough understanding of psychometrics.

(6) Prior to an assessment, a professional counselor shall explain the nature and purposes of the assessment and the specific use of results by potential recipients. The explanation shall be given in terms and language that the client or other legally authorized person acting on behalf of the client would understand.

(7) A professional counselor shall consider the client's welfare, explicit understandings, and prior agreements in determining who receives the assessment results.

(8) A professional counselor shall include accurate interpretations with any release of individual or group assessment results.

(9) A professional counselor shall release assessment data in which the client is identified only with the consent of the client or the client's legal representative. Data shall be released only to persons recognized by the professional counselor as qualified to interpret the data.

(10) A professional counselor shall take special care to provide proper diagnosis of mental disorders. Assessment techniques, including personal interviews, used to determine client care, which includes locus of treatment, type of treatment, and recommended follow-up, shall be tailored to the client and appropriately used.

(11) A professional counselor may refrain from making a diagnosis if the professional counselor believes that the diagnosis would cause harm to the client or others. A professional counselor shall carefully consider both the positive and negative implications of a diagnosis.

(12) If a client is referred to a third party for assessment, the professional counselor shall provide specific referral questions and sufficient objective data about the client to ensure that appropriate assessment instruments are utilized.

(13) When assessments are not administered under standard conditions, as may be necessary to accommodate clients with disabilities, or when unusual behavior or irregularities occur during the administration, those conditions shall be noted in the counselor's interpretation, and the results may be designated as invalid or of questionable validity.

(14) A professional counselor shall provide an appropriate environment for the administration of assessments. The appropriate environment shall include privacy, comfort, and freedom from distraction.

(15) A professional counselor shall ensure that technologically administered assessments function properly and provide a client with accurate results.

(16) Unless the assessment instrument is designed, intended, and validated for self-administration or scoring, a professional counselor shall not permit unsupervised use.

(17) A professional counselor shall select and use with caution assessment techniques based on populations other than that of the client. A professional counselor shall recognize the effects of age, color, culture, disability, ethnic group, gender, race, language preference, religion, spirituality, sexual orientation, and socioeconomic status on test administration and interpretation, and place test results in proper perspective with other relevant factors, such as the purpose of the test as it relates to the specific mental impairment, disability, or age group.

(18) A professional counselor shall accurately describe the purpose, norms, validity, reliability, and applications of the procedures and any special qualifications applicable to the use of those procedures.

(19) A professional counselor shall maintain the integrity and security of tests and assessments consistent with legal and contractual obligations. A professional counselor shall not appropriate, reproduce, or modify published assessments or parts thereof without acknowledgment and permission from the publisher.

(20) A professional counselor shall use established scientific procedures, relevant standards, and current professional knowledge for assessment design in the development, publication, and utilization of assessment techniques.

(21) When providing forensic evaluations, the primary obligation of a professional counselor shall be to remain unbiased and produce objective findings that may be substantiated based on information and techniques appropriate to the evaluation, which may include

examination of the individual or review of records.

(22) A professional counselor shall form his or her professional opinions based on the counselor's professional knowledge and expertise that may be supported by the data gathered in evaluations.

(23) A professional counselor shall define the limits of the counselor's reports or testimony, especially when an examination of the individual has not been conducted.

(24)(a) A professional counselor shall inform an individual who is the subject of a forensic evaluation, in writing, that the relationship:

1. Is for the purposes of an evaluation;
2. Is not therapeutic in nature; and
3. Identifies the entities or individuals who will receive the evaluation report.

(b) A professional counselor who performs forensic evaluations shall obtain written consent from an individual being evaluated or from the individual's legal representative unless a court orders evaluations to be conducted without the written consent of the individual being evaluated or the individual's parent or guardian.

(25) A professional counselor shall not evaluate a current or former client, a client's romantic partners, or a client's family members forensically.

Section 4. Confidentiality. (1) A professional counselor shall respect and guard the confidences of each individual client.

(2) A professional counselor shall protect the confidential information of each prospective, current, and former client.

(3) A professional counselor shall disclose information only with the appropriate consent or with sound legal or ethical justifications under subsection (4) of this section.

(4) A professional counselor shall not disclose a client confidence except:

(a) Pursuant to KRS 202A.400, 620.030, or 645.270 or as otherwise mandated, or permitted by law;

(b) To prevent a clear and immediate danger to a person;

(c) During the course of a civil, criminal, or disciplinary action arising from the therapy, at which the professional counselor is a defendant; or

(d) In accordance with the terms of a written waiver. If more than one (1) person in a family receives counseling, a professional counselor shall not disclose information from a particular family member unless the counselor has obtained a waiver from that individual family member. If the family member is a minor, a custodial parent or legal guardian may provide a waiver.

(5) A professional counselor may use client or clinical materials in teaching, writing, and public presentations if:

(a) A written waiver has been obtained in accordance with subsection (4)(d) of this section; or

(b) Steps have been taken to protect client identity and confidentiality.

(6) A professional counselor shall ensure that client records and documentation kept in any medium are:

(a) Secure so that only authorized persons have access; and

(b) Disposed of so confidentiality is maintained.

(7)(a) A professional counselor shall keep information confidential except if disclosure is required to protect a client or identified others from serious and foreseeable harm or if legal requirements demand that confidential information be revealed.

(b) A professional counselor may consult with other professionals when in doubt as to the validity of an exception.

(8) A professional counselor who provides services to a terminally-ill individual who is considering hastening the individual's death may maintain confidentiality, depending on applicable laws and the specific circumstances of the situation and after seeking consultation or supervision from professional and legal parties.

(9)(a) A professional counselor shall adhere to relevant state laws concerning disclosure about disease status.

(b) When a client discloses that the client has a disease commonly known to be both communicable and life threatening, a professional counselor shall be justified in disclosing information to identifiable third parties, if the parties are known to be at serious and foreseeable risk of contracting the disease.

(c) Prior to making a disclosure, a professional counselor shall assess the intent of the client to inform the third party about the

client's disease or to engage in any behaviors that may be harmful to an identifiable third party.

(10) A professional counselor shall make every effort to ensure that privacy and confidentiality of a client is maintained by subordinates, including employees, supervisees, students, clerical assistants, and volunteers.

(11) When services provided to a client involve participation by an interdisciplinary or treatment team, a professional counselor shall inform the client of the team's existence and composition, information being shared, and the purposes of sharing the information.

(12) A professional counselor shall ensure the confidentiality of all information transmitted through the use of any medium.

(13) A professional counselor shall protect the confidentiality of a deceased client, consistent with legal requirements and the documented preferences of the client.

(14) In group work, a professional counselor shall clearly explain the importance and parameters of confidentiality for the specific group.

(15) In couples and family counseling, a professional counselor shall clearly define who is considered the client, and discuss expectations and limitations of confidentiality. A professional counselor shall obtain an agreement and document in writing the agreement among all involved parties regarding the confidentiality of information. In the absence of an agreement to the contrary, the couple or family shall be considered to be the client.

(16) When counseling a minor client or an adult client who lacks the capacity to give voluntary informed consent, a professional counselor shall protect the confidentiality of information received in the counseling relationship as specified by federal and state laws, written policies, and applicable ethical standards.

(17) A professional counselor shall inform parents and legal guardians about the role of the professional counselor and the confidential nature of the counseling relationship, consistent with current legal and custodial arrangements. A professional counselor shall work to establish, as appropriate, collaborative relationships with parents or guardians to best serve the client.

(18) When counseling a minor client or an adult client who lacks the capacity to give voluntary consent to release confidential information, a professional counselor shall obtain written permission from a third party to disclose information. In these instances, a professional counselor shall inform the client consistent with his or her level of understanding and take measures to safeguard client confidentiality.

(19) A professional counselor shall obtain written permission from a client prior to allowing any person to observe counseling sessions, review session transcripts, or view recordings of sessions with supervisors, faculty, peers, or others within the training environment.

(20)(a) A professional counselor shall provide reasonable access to records and copies of records when requested by a competent client.

(b) A competent client shall include an adult who is able to sign for services, and except for in cases of an emergency, is without the need of a guardian to sign for him or her.

(c) The board may provide reasonable access to records and copies of records to a guardian if a guardian is signing and acting on behalf of an incompetent client.

(d) An incompetent client means a client with chronic issues mentally, such as mental retardation, or acute issues, due to mental illness or drug use. An incompetent client includes a client who is not alert and oriented as to a person, place, time, or situation.

(21) A professional counselor shall limit the access of a client to a client's records, or portions of a client's records, only when there is compelling evidence that the access would cause harm to the client. The determination of harm made by the professional counselor includes situations of when the client is not competent, or if although a competent client considering all of the circumstances it would still be adverse to the client's welfare to release all or a portion of his or her records.

(22) A professional counselor shall document the request of a client and the rationale for withholding some or all of the records in the files of the client.

(23) In situations involving multiple clients, a professional counselor shall provide an individual client with only those parts of records that relate directly to that client and do not include confidential information related to any other client.

(24) When a client requests access to the client's records, a professional counselor shall provide assistance and consultation in interpreting counseling records.

(25) Unless exceptions to confidentiality exist, a professional counselor shall obtain written permission from each client to disclose or transfer records to legitimate third parties.

(26) A professional counselor shall store records following termination of services to ensure reasonable future access, maintain records in accordance with federal and state laws and statutes such as licensure laws and policies governing records, and dispose of client records and other sensitive materials in a manner that protects client confidentiality for a period of not less than seven (7) years after the last date that services were rendered.

(27) Information shared in a consulting relationship shall be discussed for professional purposes only. Written and oral reports by the counselor shall present only data germane to the purposes of the consultation, and every effort shall be made to protect client identity and to avoid undue invasion of privacy.

(28) When consulting with colleagues, a professional counselor shall not disclose confidential information that reasonably may lead to the identification of a client or other person or organization with whom the professional counselor has a confidential relationship unless the professional counselor has obtained the prior consent of the person or organization or the disclosure is unavoidable. A professional counselor shall disclose information only to the extent necessary to achieve the purposes of the consultation.

Section 5. Professional Competence and Integrity. (1) A professional counselor shall maintain standards of professional competence and integrity and shall be subject to disciplinary action in accordance with KRS 335.540:

(a)1. Upon conviction of a felony, or a misdemeanor related to the counselor's practice as a professional counselor; and

2. Conviction shall include adjudication based on:

a. A plea of no contest or an Alford Plea; or

b. The suspension or deferral of a sentence;

(b) If the counselor's license or certificate is subject to disciplinary action by another state's regulatory agency that the board determines violates applicable Kentucky state law or administrative regulation;

(c) Upon a showing of impairment due to mental incapacity or the abuse of alcohol or other substances that could reasonably be expected to negatively impact the practice of professional counseling; or

(d) If the counselor has failed to cooperate with the board by not:

1. Furnishing in writing a complete explanation to a complaint filed with the board;

2. Appearing before the board at the time and place designated; or

3. Properly responding to subpoenas issued by the board.

(2) A professional counselor shall practice only within the boundaries of their competence, based on the counselor's education, training, supervised experience, state and national professional credentials, and professional experience.

(3) While developing skills in new specialty areas, a professional counselor shall take steps to ensure the competence of the counselor's work and protect others from possible harm.

(4) A professional counselor shall monitor oneself for signs of impairment from his or her own physical, mental, or emotional problems and refrain from offering or providing professional services when impaired. A professional counselor shall seek assistance for problems that reach the level of professional impairment, and, if necessary, the professional counselor shall limit, suspend, or terminate his or her professional responsibilities until it is determined that he or she may safely resume professional counseling.

(5) When advertising or otherwise representing services to the public, a professional counselor shall identify the professional counselor's credentials in an accurate manner that is not false, misleading, deceptive, or fraudulent.

(6) A professional counselor shall accurately represent the professional counselor's qualifications.

(7) A professional counselor shall clearly distinguish between paid and volunteer work experience and accurately describe the professional counselor's continuing education and specialized training.

(8) A professional counselor shall correct any known misrepresentations of his or her qualifications by another.

(9) A professional counselor shall truthfully represent the qualifications of a professional colleague.

(10) A professional counselor shall only claim licenses or certifications that are current and in good standing.

(11) A professional counselor shall clearly differentiate between earned and honorary degrees.

(12) A professional counselor shall clearly state the professional counselor's highest earned degree in counseling or a closely related field.

(13) A professional counselor shall not imply doctoral-level competence when possessing a master's degree in counseling or a related field by referring to oneself as a doctor in a counseling context when the counselor's doctorate is not in counseling or a related field.

(14) A professional counselor shall not use all but dissertation (ABD) or other similar terms to imply competency.

(15) A professional counselor shall not condone or engage in discrimination against prospective or current clients, students, employees, supervisees, or research participants based on age, culture, disability, ethnicity, race, religion, spirituality, gender, gender identity, sexual orientation, marital or partnership status, language preference, socioeconomic status, immigration status, or any basis proscribed by law.

(16) A professional counselor shall not engage in or condone sexual harassment. Sexual harassment may consist of a single intense or severe act, or multiple persistent or pervasive acts.

(17) A professional counselor shall accurately and objectively report the professional counselor's professional activities and judgments to appropriate third parties, including courts, health insurance companies, those who are the recipients of evaluation reports, and others.

(18) When a professional counselor provides advice or comment by means of public lectures, demonstrations, radio or television programs, recordings, technology-based applications, printed articles, mailed material, or other media, the professional counselor shall take precautions to ensure that:

(a) The statements are based on appropriate professional counseling literature and practice; and

(b) The recipients of the information are not encouraged to infer that a professional counseling relationship has been established.

(19) When providing services, a professional counselor shall only use techniques, procedures, or modalities that are grounded in theory or have an empirical or scientific foundation.

(20) When a professional counselor uses a developing or innovative technique, procedure, or modality, the professional counselor shall explain the potential risks, benefits, and ethical considerations of using the technique, procedure, or modality.

(21) A professional counselor shall minimize any potential risks or harm when using these techniques, procedures, or modalities.

(22) A professional counselor shall not provide a professional counseling service if under the influence of alcohol, another mind-altering or mood-altering drug, or physical or psychological illness that impairs delivery of the services.

(23) A professional counselor shall not possess or distribute the board's examination material without authorization by the board.

(24) A professional counselor shall not interfere with a board investigation of a professional counselor through a willful means including:

- (a) Misrepresentation of a fact;
- (b) Undue influence of a witness;
- (c) A threat toward a person; or
- (d) Harassing communication toward a person.

(25) A professional counselor shall not verbally abuse, harass, physically threaten, or assault a client, supervisee, employee, board member, or agent of the board.

(26) A professional counselor shall submit a written report to the board, within fifteen (15) days of any of the following events:

(a) A conviction of any crime, including an adjudication based on a plea of no contest or Alford Plea, except for minor traffic offenses;

(b) The entry of an order of protection following notice and an opportunity to be heard pursuant to KRS Chapter 403 or KRS Chapter 456;

(c) Any substantiated act of child abuse and neglect pursuant to KRS Chapter 620, or adult abuse, neglect, and exploitation pursuant to KRS Chapter 209; or

(d) The entry of a pretrial diversion agreement in any court in this state, or another state, where either a criminal charge or sentencing is deferred pending completion of the diversion agreement.

(27) [(26)] A professional counselor shall not lack good moral character.

Section 6. Distance Counseling, Technology, and Social Media.

(1) A professional counselor who engages in the use of distance counseling, technology, or social media shall develop knowledge and skills regarding related technical, ethical, and legal considerations.

(2) Each client shall have the freedom to choose whether to use distance counseling, social media, or technology within the counseling process.

(3) In addition to the information documented in an informed consent for face-to-face counseling as required under Sections 1(2)(c)2.a. and 2(8) of this administrative regulation, the following issues unique to the use of distance counseling, technology, or social media shall be discussed, and verification of the discussion shall be documented in the informed consent form:

(a) Distance counseling credentials, physical location of practice, and contact information;

(b) Risks and benefits of engaging in the use of distance counseling, technology, or social media;

(c) Possibility of technology failure and alternate methods of service delivery;

(d) Anticipated response time;

(e) Emergency procedures to follow when the counselor is not available;

(f) Time zone differences;

(g) Cultural or language differences that may affect delivery of services;

(h) Possible denial of insurance benefits; and

(i) Social media policy.

(4) A professional counselor shall inform a client, in writing, of any breach of the confidentiality of electronic records and transmissions within seventy-two (72) hours of knowledge of the breach.

(5) A professional counselor shall inform a client about the inherent limits of confidentiality when using technology.

(6) A professional counselor shall inform a client of authorized or unauthorized access to information disclosed using this medium in the counseling process.

(7) A professional counselor shall use current encryption standards within the counselor's Web sites or technology-based communications that meet applicable legal requirements for information that is required to be kept confidential. A professional counselor shall take precautions to ensure the confidentiality of information transmitted through any electronic means when the information is required to be kept confidential.

(8) A professional counselor who engages in the use of distance counseling, technology, or social media to interact with a client shall take steps to verify the client's identity at the beginning and throughout the therapeutic process. Verification shall include using code words, numbers, graphics, or other nondescript identifiers.

(9) A professional counselor shall inform a client of the benefits and limitations of using technology applications in the provision of counseling services. The technologies may include computer hardware or software, telephones and applications, social media and Internet-based applications and other audio or video communication, or data storage devices or media.

(10) A professional counselor shall discuss and establish professional boundaries with each client regarding the appropriate use or application of technology and the limitations of its use within the counseling relationship, which include the lack of confidentiality and times when not appropriate to use.

(11) When providing technology-assisted services, a professional counselor shall make efforts to determine that each client is intellectually, emotionally, physically, linguistically, and functionally capable of using the application and that the application is appropriate for the needs of the client. A professional counselor shall verify that each client understands the purpose and operation of technology applications and follow up with each client to correct possible misconceptions, discover appropriate use, and assess subsequent steps.

(12) When distance counseling services are found as ineffective by the counselor or client, a professional counselor shall consider delivering services in the same physical space. If a professional counselor is unable to provide services in the same physical space [*e.g., lives in another state*], the professional counselor shall assist the client in identifying appropriate services.

(13) A professional counselor shall provide information to each client regarding reasonable access to pertinent applications when providing technology-assisted services.

(14) A professional counselor shall consider the differences between face-to-face and electronic communication (nonverbal and verbal cues) and how these may affect the counseling process. A professional counselor shall educate a client on how to prevent and address potential misunderstandings arising from the lack of visual cues and voice intonations when communicating electronically.

(15) A professional counselor shall inform a client on how records are maintained electronically. This includes the type of encryption and security assigned to the records, and for how long archival storage of transaction records is maintained.

(16) A professional counselor who offers distance counseling services or maintains a professional Web site that provides electronic links to relevant licensure and professional certification boards to protect consumer and client rights and address ethical concerns shall ensure that distance counseling services or electronic links are working and are professionally appropriate.

(17) A professional counselor shall clearly explain to a client, as part of the informed consent procedure, the benefits, limitations, and boundaries of the use of social media.

(18) A professional counselor shall avoid disclosing confidential information through public social media.

Section 7. Responsibility to Supervisor's Student or Supervisee.

(1) A professional clinical counselor supervisor, including a counselor who is acting as a faculty supervisor in the school setting as authorized by KRS 335.505(4), shall monitor the services provided by a supervisee.

(2) A professional counselor shall:

(a) Be aware of the counselor's influential position with respect to a student or supervisee;

(b) Avoid exploiting the trust and dependency of a student or supervisee;

(c) Try to avoid a social, business, personal, or other dual relationship that could:

1. Impair professional judgment; or [and]

2. Increase the risk of exploitation;

(d) Take precautions to ensure that judgment is not impaired and to prevent exploitation if a dual relationship cannot be avoided;

(e) Not provide counseling to a:

1. Student;

2. Employee; or

3. Supervisee;

(f) Not engage in sexual intimacy or contact with a:

1. Student; or

2. Supervisee;

(g) Not permit a student or supervisee to perform or represent himself or herself as competent to perform a professional service beyond his or her level of:

1. Training;

2. Experience; or

3. Competence; and

(h) Not disclose the confidence of a student or supervisee unless:

1. Pursuant to KRS 202A.400, 620.030, or 645.270 or as otherwise permitted or mandated by law;

2. It is necessary to prevent a clear and immediate danger to a person;

3. During the course of a civil, criminal, or disciplinary action arising from the supervision, at which the professional counselor is a defendant;

4. In an educational or training setting, of which there are multiple supervisors or professional colleagues who share responsibility for the training of the student or supervisee; or

5. In accordance with the terms of a written informed consent agreement.

(3) A professional clinical counselor supervisor shall monitor client welfare and supervisee performance and professional development. To fulfill these obligations, a professional clinical counselor supervisor shall meet regularly with each supervisee to review the supervisee's work and help the supervisee become prepared to serve a range of diverse clients as required by 201 KAR 36:060.

(4) A professional clinical counselor supervisor shall work to ensure that a supervisee communicates the supervisee's qualifications to render services to a client.

(5) A professional clinical counselor supervisor shall make each supervisee aware of client rights, including the protection of client privacy and confidentiality in the counseling relationship. A supervisee shall provide the supervisee's clients with professional disclosure information and inform them of how the supervision process influences the limits of confidentiality. A supervisee shall make clients aware of who will have access to records of the counseling relationship and how these records will be stored, transmitted, or otherwise reviewed.

(6) A professional clinical counselor supervisor shall not engage in a sexual or romantic interaction or relationship with a current supervisee. This prohibition shall apply to both in-person and electronic interactions or relationships.

(7) A professional clinical counselor supervisor shall not engage in supervisory relationships with individuals with whom the counselor has an inability to remain objective.

(8) A professional clinical counselor supervisor shall establish and communicate to a supervisee procedures for contacting the supervisor or, in the supervisor's absence, alternative on-call supervisors to assist in handling crises.

(9) A professional clinical counselor supervisor shall make the counselor's supervisees aware of professional and ethical standards and legal responsibilities.

(10)(a) A professional clinical counselor supervisor or a supervisee shall have the right to terminate the supervisory relationship with adequate notice to the other party.

(b) The board shall consider adequate notice as a period of two (2) weeks unless there is an exigent circumstance, an emergency situation, or a competency issue such as in situations of substance abuse, a lack of competency, a violation of the code of ethics, or an exploitation of a client. In these kinds of situations [*then no*] notice shall not be [is] required.

(c) When termination is warranted, supervisors shall make appropriate referrals to possible alternative supervisors.

(11) Before providing counseling services, a supervisee shall disclose the supervisee's status as a supervisee and explain how this status affects the limits of confidentiality. Supervisors shall ensure that a client is aware of the services rendered and the qualifications of the supervisee rendering those services.

(12) Students and supervisees shall obtain client permission before they use any information concerning the counseling relationship in the training process.

(13) A professional clinical counselor supervisor shall document and provide each supervisee with ongoing feedback regarding the supervisee's performance and schedule periodic formal evaluative sessions throughout the supervisory relationship.

Section 8. Financial Arrangements. A professional counselor shall:

- (1) Not charge an excessive fee for service;
- (2) Disclose the counselor's fees to a client and supervisee at the beginning of service;
- (3) Make financial arrangements with a patient, third-party payor, or supervisee that:
 - (a) Are reasonably understandable; and
 - (b) Conform to accepted professional practices;
- (4) Not offer or accept payment for a referral; and
- (5) Represent facts truthfully to a client, third-party payor, or supervisee regarding services rendered.

Section 9. Advertising. (1) A professional counselor shall:

- (a) Accurately represent education, training, and experience relevant to the practice of professional counseling; and
- (b) Not use professional identification that includes a statement or claim that is false, fraudulent, misleading, or deceptive, including ***the following***:
 1. A business card;
 2. An office sign;
 3. Letterhead; or
 4. Telephone or association directory listing.
- (2) A statement shall be considered false, fraudulent, misleading, or deceptive if it:
 - (a) Contains a material misrepresentation of fact;
 - (b) Is intended to or likely to create an unjustified expectation; or
 - (c) Deletes a material fact or information.

Section 10. Referral and Termination. (1) A professional counselor shall not abandon or neglect a client in professional counseling.

(2) A professional counselor shall make a timely and appropriate referral of a client if:

- (a) The professional counselor is unable to provide the work or service; or
- (b) The client's need exceeds the competency of the professional counselor.

(3) A professional counselor shall terminate a professional counseling service if a client:

- (a) Has attained his or her stated goal or objective; or
- (b) Fails to benefit from the counseling service.

(4) A professional counselor shall communicate the referral or the termination of counseling service to a client.

(5) A professional counselor shall not terminate counseling service or refer a client for the purpose of entering into a personal relationship with the client, including:

- (a) A sexual or an intimate relationship;
- (b) A financial or business relationship; or
- (c) Other activity that might serve a personal interest of the professional counselor.

(6) A professional counselor shall assist in making appropriate arrangements for the continuation of treatment, when necessary, during interruptions such as vacations, illness, and following termination.

(7) When a professional counselor transfers or refers a client to other practitioners, a professional counselor shall ensure that appropriate clinical and administrative processes are completed and open communication is maintained with both the client and the practitioner.

Section 11. Recognized Standards of Ethics. A professional counselor shall not engage in conduct or practice that is contrary to recognized standards of ethics in the counseling profession. The board subscribes to the code of ethics and practice standards for counselors promulgated by the American Counseling Association.

FILED WITH LRC: January 8, 2024

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BOARDS AND COMMISSIONS
Board of Licensed Professional Counselors
(As Amended at ARRS, January 8, 2024)

201 KAR 36:045. Distance counseling.

RELATES TO: KRS 335.505, 335.515(1), (3), (11), 211.332, 211.334, 211.336, 211.338

STATUTORY AUTHORITY: KRS 335.515(3), (11)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 335.515(3) requires the board to promulgate administrative regulations necessary to carry out and enforce the provisions of KRS 335.500 to 335.599. KRS 211.336 establishes requirements for state agencies that promulgate administrative regulations related to telehealth. This administrative regulation establishes procedures for preventing abuse and fraud through the use of distance counseling, prevents fee-splitting through the use of distance counseling, and utilizes distance counseling in the provision of professional counseling services and in the provision of continuing education.

Section 1. Client Requirements. A counselor-client relationship may commence via distance counseling. An in-person meeting shall not be required unless the provider determines it is medically necessary to perform those services in person as established/set forth] in KRS 211.336(2)(a). A licensee using distance counseling to deliver counseling services or who practices distance counseling shall, upon initial contact with the client:

- (1) Make reasonable attempts to verify the identity of the client;
- (2) Obtain alternative means of contacting the client other than electronically, such as by the use of a telephone number or mailing address;
- (3) Provide to the client alternative means of contacting the licensee other than electronically, such as by the use of a telephone number or mailing address;
- (4) Provide contact methods of alternative communication the licensee shall use for emergency purposes, such as an emergency on call telephone number; ~~and~~
- (5) Document if the client has the necessary knowledge and skills to benefit from the type of distance counseling provided by the licensee;
- (6) Document which services were provided by distance counseling;
- (7) Use secure communications with clients, including encrypted text messages via e-mail or secure Web sites, and not use personal identifying information in non-secure communications; ~~and~~
- (8) In accordance with KRS 211.334 and 900 KAR 12:005 Section 2(1)(c), obtain the informed consent of the client; and
- (9) Inform the client in writing about:
 - (a) The limitations of using technology in the provision of distance counseling;
 - (b) Potential risks to confidentiality of information due to technology in the provision of distance counseling as required by 900 KAR 12:005(2)(a);
 - (c) Potential risks of disruption in the use of distance counseling;
 - (d) When and how the licensee will respond to routine electronic messages;
 - (e) The/in what] circumstances in which the licensee will use alternative communications for emergency purposes;
 - (f) Who else may have access to client communications with the licensee;
 - (g) How communications can be directed to a specific licensee;
 - (h) How the licensee stores electronic communications from the client;
 - (i) Whether the licensee or client may elect to discontinue the provision of services through distance counseling; and
 - (j) The reporting of clients required by 201 KAR 36:040, Sections 2 and 3.

Section 2. Competence, Limits on Practice, Maintenance, and Retention of Records. A licensee using distance counseling to deliver counseling services or who practices distance counseling shall:

(1) Limit the practice of distance counseling to the area of competence in which proficiency has been gained through education, training, and experience;

(2) Maintain current competency in the practice of distance counseling through continuing education, consultation, or other procedures, in conformance with current standards of scientific and professional knowledge;

(3) Document the client's presenting problem, purpose, or diagnosis;

(4) Maintain records in accordance with the requirements of 201 KAR 36:040; ~~and~~

(5) Use methods for protecting health information, which shall include authentication and encryption technology as required by KRS 211.332(5)(c); and

(6) Ensure that confidential communications obtained and stored electronically cannot be recovered and accessed by unauthorized persons when the licensee disposes of electronic equipment and data.

Section 3. Compliance with Federal, State, and Local Law. A licensee using distance counseling to deliver counseling services or who practices distance counseling shall:

(1) Comply with the state law where the licensee initiates the distance counseling;

(2) Be licensed to practice counseling where the client is domiciled; ~~and~~

(3) Comply with Section 508 of the Rehabilitation Act, 29 U.S.C. 794(d), to make technology accessible to a client with disabilities; ~~and~~;

(4) Maintain patient privacy and security in accordance with 900 KAR 12:005 Section 2(1)(b).

Section 4. Representation of Services and Code of Conduct. A licensee using distance counseling to deliver counseling services or who practices distance counseling shall:

(1) Conform to the statutes and administrative regulations governing the provision of counseling services in Kentucky;

(2) Not engage in false, misleading, or deceptive advertising of distance counseling in violation of KRS 335.540(1)(c);

(3) ~~(2)~~ Comply with the code of ethics, 201 KAR 36:040; and

(4) ~~(3)~~ Not split fees.

Section 5. Utilization of Distance Counseling in the Provision of Continuing Education. Providers approved pursuant to 201 KAR 36:030 may utilize distance counseling in the provision of continuing education courses.

FILED WITH LRC: January 8, 2024

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BOARDS AND COMMISSIONS **Board of Licensed Professional Counselors** **(As Amended at ARRS, January 8, 2024)**

201 KAR 36:050. Complaint management process.

RELATES TO: KRS 335.540, 335.545

STATUTORY AUTHORITY: KRS 335.515(3), (7)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 335.515(3) requires the board to promulgate administrative regulations necessary to carry out and enforce the provisions of KRS 335.500 to 335.599. This administrative regulation establishes the procedures for filing, investigating, and addressing a complaint filed against a professional counselor.

Section 1. Receipt of Complaints.

(1) A complaint:

(a) May be submitted by an:

1. Individual;
2. Organization; or
3. Entity;

(b) Shall be:

1. In writing ~~and~~ provided on the Complaint[Complaints] Form, DPL-LPC-12; and

2. Signed by the person submitting[offering] the complaint; and

(c) May be filed by the board based upon information in its possession.

(2)

(a) Upon receipt of a complaint, a copy of the complaint shall be sent to the individual named in the complaint along with a request for that individual's response to the complaint.

(b) The individual shall be allowed a period of twenty (20) days from the date of receipt to submit a written response.

(3)

(a) Upon receipt of the written response of the individual named in the complaint, a copy of his or her response shall be sent to the complainant.

(b) The complainant shall have seven (7) days from the receipt to submit a written reply to the response.

Section 2. Initial Review.

(1) After the receipt of a complaint and the expiration of the period for the individual's response or reply, the complaint screening committee shall consider the individual's response, complainant's reply to the response, and any other relevant material available, and make a recommendation to the board. The board shall determine whether there is enough evidence to warrant a formal investigation of the complaint.

(2) If the board determines before formal investigation that a complaint is without merit, it shall:

(a) Dismiss the complaint; and

(b) Notify the complainant and respondent of the board's decision.

(3) If the board determines that a complaint warrants a formal investigation, it shall:

(a) Authorize an investigation into the matter; and

(b) Order a report to be made to the complaint screening committee at the earliest opportunity.

Section 3. Results of Formal Investigation; Board Decision on Hearing.

(1) Upon completion of the formal investigation, the investigator shall submit a report to the complaint screening committee of the facts regarding the complaint. The committee shall review the investigative report and make a recommendation to the board. The board shall determine whether there has been a prima facie violation of KRS 335.500 to 335.599 or the administrative regulations promulgated thereunder and a complaint should be filed.

(2) If the board determines that a complaint does not warrant issuance of a formal complaint, it shall:

(a) Dismiss the complaint or take action pursuant to KRS 335.540(3); and

(b) Notify the complainant and respondent of the board's decision.

(3) If the board determines that a complaint warrants the issuance of a formal complaint against a respondent, the complaint screening committee shall prepare a formal complaint, which states clearly the charge or charges to be considered at the hearing. The formal complaint shall be reviewed by the board and, if approved, signed by the chair[chairman] and served upon the individual as required by KRS Chapter 13B.

(4) If the board determines that a person may be in violation, it shall:

(a) Order the individual to cease and desist from further violations of KRS 335.505;

(b) Forward information to the county attorney of the county of residence of the person allegedly violating KRS 335.505 with a request that appropriate action be taken under KRS 335.599; or

(c) Initiate action in Franklin Circuit Court for injunctive relief to stop the violation of KRS 335.505.

BOARDS AND COMMISSIONS
Board of Licensed Professional Counselors
(As Amended at ARRS, January 8, 2024)

Section 4. Settlement by Informal Proceedings.

(1) The board, through counsel and the complaint screening committee, may, at any time during this process, enter into informal proceedings with the individual who is the subject of the complaint for the purpose of appropriately dispensing with the matter.

(2) An agreed order or settlement reached through this process shall be approved by the board and signed by the individual who is the subject of the complaint and the ~~chair~~chairman.

(3) The board may employ mediation as a method of resolving the matter informally.

Section 5.

(1) If the complaint screening committee determines that a violation has occurred but is not serious, the complaint screening committee may recommend the issuance of a private written reprimand to the board. If the board accepts the recommendation, the board shall issue a private written reprimand to the credential holder.

(2) A copy of the private written reprimand shall be placed in the permanent file of the credential holder.

(3) A private written reprimand shall not:

(a) Be subject to disclosure to the public under KRS 61.878(1)(l);
or

(b) Constitute disciplinary action.

(4) A private written reprimand may be used by the board for statistical purposes or in any subsequent disciplinary action against the credential holder or applicant.

Section 6. If the board determines that there is reasonable cause to believe that a license holder or applicant for a license is physically or mentally incapable of practicing professional counseling with reasonable skill and safety to clients, the board may order the license holder or applicant to submit to an examination by a mental health professional or a physician designated by the board to determine the license holder's or applicant's mental health or physical status to practice professional counseling.

Section 7. Notice and Service Process. A notice required by KRS 335.500 to 335.599 or this administrative regulation shall be issued pursuant to KRS Chapter 13B and 201 KAR 36:090.

Section 8. Notification. The board shall make public:

(1) Its final order in a disciplinary action under KRS 335.540 with the exception of a written admonishment issued pursuant to KRS 335.540(3); and

(2) An action to restrain or enjoin a violation of KRS 335.505.
201 KAR 36:050.

Section 9. Incorporation by Reference.

(1) "Complaint Form", DPL-LPC-12, July 2023, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Board of Licensed Professional Counselors, 500 Mero Street, Frankfort, Kentucky 40601, from 8:00 a.m. to 4:00 p.m., Monday through Friday. This material is also available on the board's Web site at lpc.ky.gov.

FILED WITH LRC: January 8, 2024

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201 KAR 36:060. Qualifying experience under supervision.

RELATES TO: KRS 335.500(4), 335.505(4), 335.525(1)(e)

STATUTORY AUTHORITY: KRS 335.515(1), (3), **335.525**

NECESSITY, FUNCTION, AND CONFORMITY: KRS

335.505(4) **authorizes[allows]** a student intern or trainee in professional counseling to use the title of **[""]**professional counselor intern**[""]** or **[""]**student in training**[""]** if the activities are performed under the supervision or direction of an approved supervisor and the activities are a part of a supervised program of study. KRS 335.525(1)(e) provides that the board shall issue a **[""]**professional clinical counselor**[""]** license to an applicant who has completed a minimum of 4,000 hours of experience in the practice of counseling under approved supervision. KRS 335.515(3) **provides that[requires]** the board **shall[to]** promulgate administrative regulations to implement KRS 335.500 to 335.599, relating to licensed professional counselors. This administrative regulation establishes the requirements relating to supervision and experience under supervision.

Section 1. Requirements for the Practice of Professional Counseling.

(1) The practice of professional counseling shall be based on knowledge of areas including interpersonal, cognitive, cognitive behavioral, psychodynamics, human relations, crisis intervention, psychopathology, group dynamics, and effective methods and strategies necessary to help the client achieve mental, vocational, emotional, physical, social, moral, and spiritual development and adjustment throughout the client's life span.

(2) In providing counseling services, a licensee shall possess and utilize skills in the following areas:

(a) The helping relationship, including counseling theory and practice;

(b) Human growth and development;

(c) Lifestyle and career development;

(d) Group dynamics, process, counseling, and consulting;

(e) Assessment, appraisal, and testing of individuals;

(f) Social and cultural foundation, including multicultural issues;

(g) Principles of etiology, diagnosis, treatment planning, and prevention of mental and emotional disorders and dysfunctional behavior;

(h) Research and evaluation; and

(i) Professional orientation and ethics.

Section 2. Supervision.

(1) A supervisor of record shall be licensed by the board as a licensed professional clinical counselor supervisor.

(2) The supervisor shall manage, oversee, and direct the supervisee, taking responsibility for the professional clinical counseling practice of the supervisee.

(3) The supervisor shall have access to, and shall review, the supervisee's clinical documentation, when needed, and have a signed agreement with the supervisee's agency, if off-site, allowing the supervisor to:

(a) Review the supervisee's clinical documentation and records;

(b) View the supervisee's client sessions in face-to-face format, recorded format, or both, if available; **and**

(c) Communicate with the supervisee's administrative supervisor, if applicable, regarding the supervisee's performance.

(4) The supervisor shall use observations from the supervisee's clinical documentation, client sessions, and communications with the administrative supervisor, if applicable, to inform supervision and shall document these observations in **his or her** supervisory notes.

(5) The supervisor shall verify on the annual renewal application that he or she has reviewed 201 KAR 36:060 and 201 KAR 36:065.

Section 3. LPCA Supervision Agreement.

(1) A supervisee shall enter into a written supervision agreement with an approved supervisor. The supervision agreement shall contain:

- (a) The name and address of the supervisee;
- (b) The name, address, license or certification number, and number of years of practice of the supervisor of record;
- (c) The name, address, license or certification number, and number of years of practice of other supervisors;
- (d) The agency, institution, or organization where the experience will be received;
- (e) A detailed description of the nature of the practice including the type of:
 - 1. Clients that will be seen;
 - 2. Therapies and treatment modalities that will be used including the prospective length of treatment; and
 - 3. Problems that will be treated;
- (f) The nature, duration, and frequency of the supervision, including the:

- 1. Number of hours of supervision per week;
- 2. Number of hours of individual supervision;
- 3. Methodology for transmission of case information; and
- 4. Number of hours of face-to-face supervision that meet the requirements of KRS 335.525(1)(e);

(g) A statement that supervision:

- 1. Shall occur a minimum of:
 - a. Three (3) times per month and one (1) hour per meeting for a full-time[full-time] practice that consists of twenty-five (25) clock hours or greater per week; or
 - b. One (1) hour for every thirty (30) hours of client contact for a part-time[part-time] practice that consists of less than twenty-five (25) clock hours per week; and
- 2. May include interactive, simultaneous video and audio media that meet applicable legal requirements for information required to be kept confidential;

(h) The conditions or procedures for termination of the supervision;

(i) A statement that:

1. The supervisor of record understands that the supervisor shall be held accountable to the board for the care given to the supervisee's clients; and

2. The supervisor of record meets the criteria established in Section 2 of this administrative regulation; ~~and~~

(j) The signatures of both the supervisor and the supervisee.

(k) A copy of a signed agreement between the supervisor and the supervisee's agency, if off-site, allowing the supervisor to:

- 1. Review the supervisee's clinical documentation and records;
- 2. View the supervisee's client sessions in face-to-face format, recorded format, or both if available; and

3. Regularly communicate with the supervisee's administrative supervisor, if applicable, regarding the supervisee's professionalism, using an agreed upon schedule.

(2) If a supervisee changes his or her supervisor of record or job placement as identified in the supervision agreement, the supervisee shall submit a new supervision agreement, which sets forth the information required by this section.

(3) The licensed professional counselor associate may begin the practice of professional counseling upon the board's approval of the agreement.

Section 4. Multiple Supervisors. The board may approve more than one (1) supervisor of record if an applicant or licensee submits a written request. The board may require the applicant and any supervisors to appear before the board to present a plan for the supervision.

Section 5. Experience Under Supervision.

(1) Experience under supervision shall consist of:

(a) Direct responsibility for a specific individual or group of clients; and

(b) Broad exposure and opportunity for skill enhancement with a variety of developmental issues, dysfunctions, diagnoses, acuity levels, and population groups.

(2) The board may approve an applicant's hours of experience under supervision obtained in another jurisdiction if the jurisdiction's regulatory board issuing professional clinical counselor licenses certifies that:

- (a) It approved the hours;
- (b) It approved the supervisor; and
- (c) The hours were obtained after the applicant received a master's, specialist, or doctoral degree in counseling or a related field.

Section 6. Supervision Requirements.

(1) Supervision shall relate specifically to the qualifying experience and shall focus on:

- (a) The appropriate diagnosis of a client problem leading to proficiency in applying professionally recognized clinical nomenclature;
- (b) The development and modification of the treatment plan;
- (c) The development of treatment skills suitable to each phase of the therapeutic process;
- (d) Ethical problems in the practice of professional counseling; and
- (e) The development and use of the professional self in the therapeutic process.

(2) A supervisee shall not continue to practice professional counseling if:

(a) The conditions for supervision set forth in the LPCA Supervision Agreement required by Section 3 of this administrative regulation are not followed; or

(b) The supervision agreement is terminated for any reason other than the extenuating circumstances that allow temporary supervision in Section 8 of this administrative regulation.

(3) If the terms of the supervision agreement are not being met by the supervisee, the supervisor shall immediately notify this board in writing.

Section 7. Evaluation by Board. The board shall evaluate the period of supervised experience required by KRS 335.525(1)(e) according to one (1) of the following methods:

(1) A candidate who seeks to obtain experience in the Commonwealth of Kentucky shall submit the supervision agreement required by Section 3 of this administrative regulation for the experience prior to beginning to accrue the required experience; or

(2) A candidate who obtained the experience in another state shall submit:

(a) Documentation of the hours of supervision with the Application for Licensed Professional Clinical Counselor required by 201 KAR 36:070;

(b) Information that verifies:

1. That the requirements for the license or certificate of the supervisor from the state in which the license or certificate was held are substantially equivalent to the requirements for that license or certificate in Kentucky;

2. That the supervisor is in good standing with the certifying or licensing state; and

3. That the practice and supervision requirements in the state from which the candidate is applying are substantially equivalent to the requirements established under this administrative regulation.

Section 8. Temporary Supervision.

(1) In extenuating circumstances, if a licensed professional counselor associate is without supervision, the associate may continue working up to sixty (60) calendar days under the temporary supervision of a qualified mental health provider as defined by KRS 202A.011(12) while an appropriate board-approved supervisor is sought and a new supervision agreement is submitted to the board. Extenuating circumstances include situations such as death or serious illness of the board-approved supervisor, a leave of absence by the supervisor, or the termination of the supervisor's employment.

(2)

(a) Within ten (10) days of the occurrence causing the extenuating circumstance, the supervisee shall notify the board of the need for temporary supervision.

(b) Within thirty (30) calendar days of the change in status of board-approved supervision, the supervisee shall submit, in writing, a plan for resolution of the situation. The written plan shall include:

1. The name of the temporary supervisor;
2. Verification of the credential held by the temporary supervisor;
3. An email address and a postal address for the temporary supervisor and the supervisee; and
4. A telephone number for the temporary supervisor.

(c) The temporary supervision arrangement shall expire after sixty (60) days of the establishment of the temporary supervision arrangement with a qualified mental health provider. The temporary supervision arrangement shall not be extended beyond the sixty (60) days.

Section 9. Incorporation by Reference.

(1) The "LPCA Supervision Agreement", DPL-LPC-02, July 2023, [September, 2016], is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Licensed Professional Counselors, 500 Mero Street [911 Leewood Drive], Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:00 [4:30] p.m. This material is also available on the board's Web site at lpc.ky.gov.

FILED WITH LRC: January 8, 2024

CONTACT PERSON: Sara Boswell Janes, Staff Attorney III, Department of Professional Licensing, Office of Legal Services, 500 Mero Street, 2 NC WK#2, phone (502) 782-2709, fax (502) 564-4818, email Sara.Janes@ky.gov, Link to public comment portal: https://ppc.ky.gov/reg_comment.aspx.

BOARDS AND COMMISSIONS Board of Licensed Professional Counselors (As Amended at ARRS, January 8, 2024)

201 KAR 36:065. Licensed professional clinical counselor supervisor.

RELATES TO: KRS 335.500(4), 335.505(4), 335.525(1)(e), 5(a) STATUTORY AUTHORITY: KRS 335.515(1), (3), (5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 335.525(1)(e) requires [provides—that] an applicant for a professional clinical counselor license to [shall] have acquired 4,000 hours of experience in the practice of counseling under approved supervision. KRS 335.515(3) requires the board to promulgate administrative regulations to implement KRS 335.500 to 335.599, relating to licensed professional counselors. KRS 335.525(5)(a) requires a licensed professional counselor associate to maintain ongoing supervision as approved by the board. This administrative regulation establishes the qualifications of a supervisor and establishes the roles and responsibilities of the supervisor.

Section 1. Supervisor Qualifications.

(1) To be a supervisor of a licensed professional clinical counselor who is subject to disciplinary action [under discipline] or a licensed professional counselor associate, an applicant shall:

(a) Submit a LPCC-S Application with supporting documentation that includes one (1) of the following:

1. A certificate or certificates documenting the completion of [from the] fifteen (15) hours [hour] in a board-approved CEU course on supervision; or
2. [Two (2) years of board-approved supervision agreements to support the five (5) years of experience as a licensed professional clinical counselor supervisor; or
3. A copy of the transcript [the syllabus as proof of completion] of a supervision course in a graduate program;

(b) Be licensed by the board as a licensed professional clinical counselor;

(c) Not have:

1. An unresolved complaint that has been:
 - a. Reviewed by the complaints screening committee and referred for investigation; or [citation]
 - b. Filed [filed] against the applicant by the board that licenses or certifies that profession;
 2. A suspended or probated license or certificate; [-or]
 3. Been under discipline by the board within the last two (2) years preceding the application; or
 4. [3.] An order from the board under which the applicant is licensed or certified prohibiting the applicant from providing supervision;
 - (d) Have been in the practice of his or her profession for at least two (2) years following licensure as a professional clinical counselor or its licensure equivalent issued by another state's regulatory professional counseling board; and
 - (e) If coming from another state:
 1. Show proof of supervisory status in the other state;
 2. Take a three (3) hour board-approved training on Kentucky law; and [
 3. Not have an order from the board of another state prohibiting the applicant from providing supervision. [Have taught or completed a:
 1. Three (3) hour graduate level course in counseling supervision; or
 2. Fifteen (15) hour board-approved supervisor training course].
 - (2) [Any supervisor who is a clinical counseling supervisor as a part of a board-approved supervisory agreement or a supervisor of a graduate-level counseling student who is providing services in a mental health setting with five (5) years of experience shall be deemed to satisfy the requirement of subsection (1)(e) of this section.
 - (3) A three (3) hour graduate level course exclusively on counseling supervision or the board-approved supervisor training course shall:
 - (a) Cover:
 1. Assessment, evaluation, and remediation, which includes initial, formative, and summative assessment of supervisee knowledge, skills, and self-awareness; components of evaluation, including [e.g.,] evaluation criteria and expectations, supervisory procedures, methods for monitoring (both direct and indirect observation), supervisee performance, formal and informal feedback mechanisms, and evaluation processes (both summative and formative), and processes and procedures for remediation of supervisee skills, knowledge, and personal effectiveness and self-awareness;
 2. Counselor development, which includes models of supervision, learning models, stages of development and transitions in supervisee-supervisor development, knowledge and skills related to supervision intervention options, awareness of individual differences and learning styles of supervisor and supervisee, awareness and acknowledgement of cultural differences and multicultural competencies needed by supervisors, recognition of relational dynamics in the supervisory relationship, and awareness of the developmental process of the supervisory relationship itself;
 3. Management and administration, which includes organizational processes and procedures for recordkeeping, reporting, monitoring of supervisee's cases, collaboration, research and evaluation; agency or institutional policies and procedures for handling emergencies, case assignment and case management, roles and responsibilities of supervisors and supervisees, and expectations of supervisory process within the institution or agency; institutional processes for managing multiple roles of supervisors, and summative and formative evaluation processes; and
 4. Professional responsibilities, which includes ethical and legal issues in supervision including dual relationships, competence, due process in evaluation, informed consent, types of supervisor liability, privileged communication, and consultation; regulatory issues including counseling supervision, professional standards and credentialing processes in counseling, reimbursement eligibility and procedures, and related institutional or agency procedures; and
 - (b) The board-approved supervisor training course shall be conducted by an instructor who is a licensed professional clinical

counselor and who has demonstrated proficiency in the curriculum established in paragraph (a) of this subsection.

(3) Nothing in this section shall preclude the board from considering information provided by the applicant warranting the issuance of the supervisor designation.

(4) Licensed professional clinical counselors engaged in training supervision shall be called a ~~[""]~~licensed professional clinical counselor supervisor~~[""]~~ and may use the acronym ~~[""]~~LPCC-S~~[""]~~.

Section 2. A supervisor of record shall assume responsibility for the practice of the supervisee. A supervisor shall not serve as a supervisor of record for more than nine (9)~~[six (6)]~~~~[twelve (12)]~~ persons obtaining experience for licensure at the same time. Any supervisor with more than nine (9) supervisees on or before April 1, 2024, shall reduce the number of supervisees to nine (9) or less through attrition and shall not accept new supervisees until [such time as] the supervisor has fewer than nine (9) supervisees of record.

Section 3. A supervisor who is placed under discipline shall be ineligible to act as a supervisor and shall not become eligible to apply for reinstatement as a supervisor ~~[no]~~ earlier than two (2) years following the completion of any disciplinary action, including completion of any suspension or probationary period. Further, a board-approved supervision training shall be required prior to reinstatement.

Section 4. Incorporation by Reference.

(1) "LPCC-S Application", DPL-LPC-03, December~~[July]~~~~2023~~~~[September 2017]~~, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Board of Licensed Professional Counselors, 500 Mero St~~[914 Leewood Drive]~~, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:00~~[4:30]~~ p.m. This material is also available on the board's website at <https://lpc.ky.gov>.

FILED WITH LRC: January 8, 2024

CONTACT PERSON: Sara Boswell Janes, Staff Attorney III, Department of Professional Licensing, Office of Legal Services, 500 Mero Street, 2 NC WK#2, phone (502) 782-2709, fax (502) 564-4818, email Sara.Janes@ky.gov, Link to public comment portal: https://ppc.ky.gov/reg_comment.aspx.

BOARDS AND COMMISSIONS **Board of Licensed Professional Counselors** **(As Amended at ARRS, January 8, 2024)**

201 KAR 36:070. Application, education, and examination requirements.

RELATES TO: KRS 335.500, 335.525(1)(c), (d), (f), 335.527(1)(a), 335B.020

STATUTORY AUTHORITY: KRS 335.515(1), (3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 335.515(3) requires the board to promulgate administrative regulations to carry out and enforce the provisions of KRS 335.500 to 335.599. KRS 335.525(1)(c) requires that applicants for licensure shall have received a master's, specialist, or doctoral degree in counseling or a related field from a regionally-accredited institution. KRS 335.525(1)(d) requires that applicants for licensure shall have sixty (60) graduate semester hours in specified areas. KRS 335.527(1)(a) requires that applicants for licensure shall have received a master's, specialist, or doctoral degree in counseling or a related field from a regionally-accredited institution and sixty (60) graduate hours in specified areas. KRS 335.525(1)(f) requires that applicants achieve passing scores on the examination required by the board. This administrative regulation establishes the application, education, and examination requirements for licensure.

Section 1.

(1) Degree in Counseling. To qualify as a degree in counseling under KRS 335.525(1)(c) or 335.527(1)(a), a degree shall:

(a) Clearly indicate that it is a degree in counseling from a counseling program as evidenced by the description in the program's catalogues and brochures outlining the intent to educate and train the individual for the practice of professional counseling as defined in KRS 335.500(5);

(b) Include the word ~~[""]~~counseling~~[""]~~ in the name of the degree, the academic program of study, or the major field of study;

(c) Be from a counseling program that stands as a recognizable organizational entity within the institution and has a counseling faculty who identify with the professional counseling profession; and

(d) Include practicum or internship experience of at least 600 hours in a counseling program that stands as a recognizable organizational entity within the institution and that has a counseling faculty who identify with the professional counseling profession.

(2) Degree in a related field.

(a) To qualify as a degree in a related field under KRS 335.525(1)(c) or 335.527(1)(a), a degree shall:

1. Be awarded from an academic program of study for the degree that follows an organized sequence of graduate coursework with at least one (1) course in each of the nine (9) content areas established in KRS 335.525(1)(d) or 335.527(1)(a);

2. Include an academic course taken as part of the curriculum ~~of the degree~~~~[three (3) semester hours or four and one-half (4.5) quarter hours, at the minimum,]~~ on professional orientation and ethics with the concentration on the American Counseling Association Code of Ethics; and

3. Include practicum or internship experience of at least 600 hours in a counseling program that stands as a recognizable organizational entity within the institution and that has a counseling faculty who identify with the professional counseling profession.

(b) The degree shall be designed to educate and train the individual for the practice of professional counseling as defined by KRS 335.500(5).

(3) Examples of degrees that shall not be accepted as a degree in counseling or a degree in a related field for purposes of licensure include a degree in clinical psychology, forensic psychology, psychology, Christian psychology, biblical counseling, pastoral counseling, marriage and family therapy, art or dance therapy, social work, criminal justice, or special education.

(4) If an applicant proffers a degree in a related field, the applicant shall also provide evidence of additional graduate coursework in each area listed in KRS 335.525(1)(d)1-9 or, if that applicant is applying for endorsement, in each area listed in KRS 335.527(1)(a)1-9 that is not included in the applicant's degree. The coursework in the degree program, in addition to the other coursework, shall demonstrate that the applicant has documented coursework in all nine (9) of the content areas listed in KRS 335.525(1)(d) or, if that applicant is applying for endorsement, in all nine (9) of the content areas listed in KRS 335.527(1)(a).

(5) The graduate hour requirement of KRS 335.525(1)(d) and 335.527(1)(a) shall be semester hours. A minimum of ninety (90) quarter hours shall be equivalent to sixty (60) graduate semester hours.

Section 2. Accreditation.

(1)~~[(a)]~~ All coursework submitted for licensure shall be from a regionally accredited educational institution ~~[, which is accredited by any one (1) of the following: Southern Association of Colleges and Schools, Middle States Association of Colleges and Schools, New England Association of Colleges and Schools, North Central Association of Colleges and Schools, North Western Association of Schools and Colleges, or Western Association of Schools and Colleges.~~

~~(b) All coursework submitted for licensure from an international educational institution shall be accredited by the International Registry of Counseling Education Programs or reviewed by the World Education Services.]~~

(2) An applicant shall have a degree from a program that is accredited by the Council on Accreditation of Counseling and Related Programs (CACREP)~~[or its affiliates]~~. This requirement shall not apply to an applicant who:

(a) Is enrolled in a counseling or a related field program on or before January 15, 2015;

- (b) Maintains continuous enrollment; and
 - (c) Receives a degree in the counseling or a related field program no later than May 31, 2020.
- (3) If an applicant needs to acquire additional hours, ~~the hours/they~~ shall be from a CACREP- accredited program.

Section 3. Examination. An applicant for licensure as a licensed professional clinical counselor shall obtain a passing score on the National Counselor Examination for Licensure and Certification (NCE) or the National Clinical Mental Health Counseling Examination (NCMHCE).

Section 4. Application for Licensure.

(1)(a) Each applicant for licensure as a licensed professional clinical counselor shall:

1. Submit an Application for Licensed Professional Clinical Counselor to the board;
2. Pay the fee as established in 201 KAR 36:020;
3. Submit proof of passage of one (1) of the examinations required under Section 3 of this administrative regulation;
4. Complete coursework in[at least three (3) semester hours or four and one half (4.5) quarter hours for] each of the following curriculum content areas~~[as]:~~

a. The helping relationship, including theory and practice, which provides an understanding of counseling and consultation processes, and includes~~[the following]:~~

(i) Counseling and consultation theories including both individual and systems perspectives as well as coverage of relevant research and factors considered in applications;

(ii) Basic interviewing, assessment, and counseling skills;

(iii) Counselor or consultant characteristics and behaviors that influence professional counseling relationships, including age, gender, and ethnic differences; verbal and nonverbal behaviors; and personal characteristics, orientations, and skills;

(iv) Client or consultee characteristics and behaviors that influence professional counseling relationships, including age, gender, ethnic differences, verbal and nonverbal behaviors, and personal characteristics, orientations, and skills; and

(v) Ethical considerations;

b. Human growth and development that provides an understanding of the nature and needs of individuals at all developmental levels, and includes:

(i) Theories of individual and family development and transitions across the life span;

(ii) Theories of learning and personality development;

(iii) Human behavior, including an understanding of developmental crises, disability, addictive behavior, psychopathology and environmental factors, normal and abnormal behavior;

(iv) Counseling strategies for facilitating development over the life span; and

(v) Ethical considerations;

c. Lifestyle and career development that provides an understanding of career counseling, development and related factors. Coursework shall include[includes the following]:

(i) Career-counseling theories and decision-making models;

(ii) Career, vocational educational and labor market information resources; visual and print media and computer-based career information systems;

(iii) Career-counseling program planning, organization, implementation, administration, and evaluation;

(iv) Interrelationships among work, family, and other life roles and factors, including multicultural and gender issues as related to career counseling;

(v) Career and educational placement counseling, follow-up and evaluation; assessment instruments and techniques relevant to career counseling;

(vi) Computer-based career-development applications and strategies, including computer-assisted career-counseling systems;

(vii) Career-counseling processes, techniques, and resources, including those applicable to specific populations; and

(viii) Ethical considerations;

d. Group dynamics, process, counseling, and consulting that

provides an understanding of group development, dynamics, and counseling theories; group counseling methods and skills; and other group work approaches. Coursework shall include, and includes the following]:

(i) Principals of group dynamics, including group counseling components, developmental stage theories, and group members' roles and behaviors;

(ii) Group leadership styles and approaches, including characteristics of various types of group leaders and leadership styles;

(iii) Theories of group counseling, including commonalities, distinguishing characteristics, and pertinent research and literature;

(iv) Group counseling methods, including group counselor orientations and behaviors, ethical standards, appropriate selection criteria and methods of evaluation of effectiveness;

(v) Approaches used for other types of group work in counseling, including task groups, prevention groups, support groups, and therapy groups; and

(vi) Ethical considerations;

e. Assessment, appraisal, and testing of individuals that provides an understanding of individual and group approaches to assessment and evaluation in counseling practice. Coursework shall include[includes the following]:

(i) Theoretical and historical bases for assessment techniques in counseling;

(ii) Validity, including evidence for establishing content, construct, and empirical validity;

(iii) Reliability, including methods of establishing stability, internal, and equivalence reliability;

(iv) Appraisal methods, including environmental assessment, performance assessment, individual and group test and inventory methods, behavioral observations, and computer-managed and computer-assisted methods;

(v) Psychometric statistics, including types of assessment scores, measures of central tendency, indices of variability, standard errors, and correlations;

(vi) Age, gender, ethnicity, language, disability, and cultural factors assessment and evaluation in counseling services;

(vii) Strategies for selecting, administering, interpreting, and using assessment and evaluation instruments and techniques in counseling; and

(viii) Ethical considerations;

f. Social and cultural foundations, including multicultural issues that provide an understanding of issues and trends in a multicultural and diverse society that impact professional counselors and the counseling profession. Coursework shall include, and includes the following]:

(i) Multicultural and pluralistic trends, including characteristics and concerns of counseling individuals from diverse groups;

(ii) Attitudes and behavior based on factors such as age, race, religious preferences, physical disability, sexual orientation, ethnicity, culture, family patterns, gender, socioeconomic status, and intellectual ability;

(iii) Individual, family, and group counseling strategies with diverse populations; and

(iv) Ethical considerations;

g. Principles of etiology, diagnosis, treatment planning, and prevention of mental and emotional disorders and dysfunctional behavior that provides an understanding of etiology, diagnosis, treatment planning, and prevention of mental and emotional disorders and dysfunctional behavior. Coursework shall include[includes] [the following]:

(i) Principles of the diagnostic process, including differential diagnosis, and the use of current diagnostic tools, ~~[such as the] and the most current edition of the~~ Diagnostic and Statistical Manual of Mental Disorders (DSM) ~~[, fifth (5th) edition, or the DSM currently in use];~~

(ii) Established diagnostic criteria for mental and emotional disorders, and treatment modalities and placement criteria within the continuum of care;

(iii) Etiology of addiction and co-occurring disorders and the impact of co-occurring substance use disorders on medical and psychological disorders;

(iv) Etiology, the diagnostic process and nomenclature, treatment, referral, and prevention of mental and emotional disorders; and

(v) Principles, models, and documentation formats of biopsychosocial case conceptualization and treatment planning;

h. A research and evaluation [is a] course that provides an understanding of types of research methods, basic statistics, and ethical and legal consideration in research. Coursework ~~shall include~~includes the following:

(i) Basic types of research methods to include qualitative and quantitative research designs;

(ii) Basic parametric and nonparametric statistics;

(iii) Principles, practices, and applications of needs assessment and program evaluation;

(iv) Uses of computers for data management and analysis; and

(v) Ethical and legal considerations;

i. Professional orientation to counseling is a course that provides an understanding of the professional counselor profession and provides an understanding of all aspects of professional functioning, including history, roles, organizational structures, ethics, standards, and credentialing. Coursework shall include~~includes the following~~:

(i) History of the counseling profession, including significant factors and events;

(ii) Professional roles and functions of mental health counselors, including similarities and differences with other types of professionals;

(iii) Professional organizations (primarily the American Counseling Association (ACA), its divisions, branches, and affiliates), including membership benefits, activities, services to members, and current emphases;

(iv) Ethical standards of the National Board of Certified Counselors (NBCC) or the ACA and related ethical and legal issues, and the applications to various professional activities, including appraisals or group work~~(e.g., appraisal, group work)~~;

(v) Professional counselor preparation standards, the evolution and current applications;

(vi) Professional counselor credentialing, including counselor certification, licensure, and accreditation practices and standards, and the effects of public policy on these issues; and

(vii) Public policy processes, including the role of the professional counselor in advocating on behalf of the profession and its clientele; and

j. Practicum or internship experiences shall be for a minimum of two (2) semester courses and provide supervised counseling experience in an appropriate clinical setting, which shall include~~includes the following~~:

(i) 600 clock hours of total experience;

(ii) At least 240 clock hours of direct service, which include diagnosis, treatment planning, assessment, techniques, and intervention, and~~including~~ experience leading groups;

(iii) Weekly interaction that averages one (1) hour per week of individual or triadic supervision throughout the internship, usually performed by the onsite supervisor;

(iv) An average of one and one-half (1 1/2) hours per week of group supervision provided on a regular schedule throughout the internship and performed by a licensed program faculty member;

(v) The opportunity for the student to become familiar with a variety of professional activities and resources in addition to direct service, including~~(e.g.,)~~ record keeping, assessment instruments, supervision, information and referral, and in-service and staff meetings~~];~~;

(vi) The opportunity for the student to develop program-appropriate audio or video recordings for use in supervision or to receive live supervision of his or her interactions with clients; and

(vii) Evaluation of the student's counseling performance throughout the internship, including documentation of a formal evaluation after the student completes the internship by a program faculty member in consultation with the site supervisor;

5. Submit the results of a background check performed within the last ninety (90) days by ~~the Kentucky State Police and a criminal background check performed by~~ the Federal Bureau of Investigation (FBI). ~~[If an applicant submits an application for a~~

~~nationwide criminal background check performed by the FBI and the FBI cannot complete the background check within thirty (30) days of the request, an applicant may submit an Optional Affidavit for Licensure and shall submit the performed nationwide criminal background check within fourteen (14) days of its receipt. If an applicant has a felony conviction during the applicant's lifetime, a misdemeanor conviction within the past five (5) years, or a pending charge, the applicant shall not use the Optional Affidavit for Licensure.]~~Any cases officially expunged shall~~do~~ not have to be disclosed by the applicant and shall not be considered by the board as a conviction for the purposes of this subparagraph. If an applicant does not receive the criminal background check within 180 days of the issuance of a license, the applicant shall notify the board immediately in writing; and

6. Submit a copy of the course description or syllabi for the courses taken to satisfy KRS 335.525(1)(d) or 335.527(1)(a) if the degree in counseling or the degree in a related field is not from a CACREP accredited institution.

(b) If applying for licensure via endorsement~~[for reciprocity]~~, an applicant shall:

1. Meet the requirements in paragraph (a)1. and 2. of this subsection; and

2. Submit an official transcript.

(2) Each applicant for licensure as a licensed professional counselor associate shall:

(a) Submit an Application for Licensed Professional Counselor Associate to the board;

(b) Pay the fee as established in 201 KAR 36:020;

(c) Submit an official transcript;

(d) Satisfy the requirements of subsection (1)(a)4. of this section;

(e) Submit the results of a background check performed within the last ninety (90) days ~~[by the Kentucky State Police and a criminal background check performed by] the FBI. [If an applicant submits an application for a nationwide criminal background check performed by the FBI and the FBI cannot complete the background check within thirty (30) days of the request, an applicant may submit an Optional Affidavit for Licensure and shall submit the performed nationwide criminal background check within fourteen (14) days of its receipt. If an applicant has a felony conviction during the applicant's lifetime, a misdemeanor conviction within the past five (5) years, or a pending charge, the applicant shall not use the Optional Affidavit for Licensure.]~~Any cases officially expunged shall~~do~~ not have to be disclosed by the applicant and shall not be considered by the board as a conviction for the purposes of this paragraph~~];~~ If an applicant does not receive the criminal background check within 180 days of the issuance of a license, the applicant shall notify the board immediately in writing; and

(f) Submit a copy of each syllabi for the courses taken to satisfy KRS 335.525(1)(d) or 335.527(1)(a) if the degree in counseling or degree in a related field is not from a CACREP accredited institution.

Section 5.

(1) An applicant for licensure shall be of good moral character. If an applicant lacks good moral character, the applicant has the duty to provide available evidence relative of rehabilitation.

(2) For evidence relative of rehabilitation, the board may~~shall~~ consider relevant evidence including~~such as~~ the successful completion of probation, the years since the incident without additional incidents, and the successful completion of inpatient or outpatient treatment.

(3) If the board finds that an applicant has not provided sufficient evidence of rehabilitation then the board may deny the application.

Section 6. Denial of Licensure. The board may refuse to issue, renew, or reinstate a license if the applicant:

(1) Committed fraud or misrepresentation in applying for a license in this state or another state; [;]

(2) Has been convicted of [the following]:

(a) A misdemeanor within the last five (5) years, except for minor traffic offenses and in compliance with KRS 335B.020; or

(b) Any felony offense; or

(c) A crime involving moral turpitude, including a substantiated

charge of child abuse or neglect pursuant to KRS Chapter 620; adult abuse, neglect or exploitation pursuant to KRS Chapter 209; or a crime classified as domestic violence, a sex offense or stalking;

(3) Is a respondent in a case with an active order of protection following notice and an opportunity to be heard pursuant to KRS Chapter 403 or KRS Chapter 456;

(4) Does not meet the qualifications as prescribed in KRS Chapter 335 and 201 KAR Title 36;

(5) Has been declared incompetent by a qualified mental health professional appointed by the board or by a court of competent jurisdiction, including those subject to KRS Chapter 202A and Chapter 387 proceedings; or

(6) Has engaged in fraud, dishonesty, or corruption on a certification of examination in this state or another state.

Section 7.

(1) The board may approve remedial work to correct any deficiency to satisfy Sections 1 and 4 of this administrative regulation.

(2) The board shall not approve remedial work for degrees listed in Section 1(3) of this administrative regulation.

Section 8. ~~Section 7.~~ Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Application for Licensed Professional Clinical Counselor", DPL-LPC-04, ~~December/July~~ 2023~~(October 2017); and~~

(b) "Application for Licensed Professional Counselor Associate", DPL-LPC-05, ~~December/July~~ 2023~~(January 2017; and~~

(c) "Optional Affidavit for Licensure", June 2017].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Board of Licensed Professional Counselors~~[Division of Occupations and Professions], 500 Mero Street~~~~[944 Leawood Drive]~~, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:00~~[4:30]~~ p.m. This material is also available on the board's Web site at lpc.ky.gov.

FILED WITH LRC: January 8, 2024

CONTACT PERSON: Sara Boswell Janes, Staff Attorney III, Department of Professional Licensing, Office of Legal Services, 500 Mero Street, 2 NC WK#2, phone (502) 782-2709, fax (502) 564-4818, email Sara.Janes@ky.gov, Link to public comment portal: https://ppc.ky.gov/reg_comment.aspx.

BOARDS AND COMMISSIONS Board of Licensed Professional Counselors (As Amended at ARRS, January 8, 2024)

201 KAR 36:072. Reciprocity requirements for applicants licensed or certified in another state.

RELATES TO: KRS 335.515(12), 335B.020, 12.245, 12.255, 12.357

STATUTORY AUTHORITY: KRS 335.515(1), (3), (12)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 335.515(1) requires the board to evaluate the qualifications of applicants for licensure. KRS 335.515(3) requires the board to promulgate administrative regulations to carry out and enforce the provisions of KRS 335.500 to 335.599. KRS 335.515(12) authorizes the board to enter into reciprocal agreements with certified or licensed professional counseling boards. This administrative regulation establishes the reciprocity requirements for certification or licensure of persons licensed or certified in another state.

Section 1. (1) The licensing requirements for a licensed professional clinical counselor under KRS 335.525 or 335.527 may be waived if:

(a) The board enters into a written reciprocity agreement with the other jurisdiction;

(b) The other jurisdiction grants the same privileges to licensees of Kentucky as Kentucky grants to licensees of that other jurisdiction;

(c) The board determines that the licensing requirements of the other jurisdiction are substantially similar to the requirements of KRS

335.500 to 335.599;

(d) The applicant holds an active valid license or certificate in the other jurisdiction;

(e) The applicant is in good standing in the other jurisdiction;

(f) The applicant has not been disciplined or reprimanded;

(g) The applicant:

1. Does not have a pending disciplinary action; or

2. Is not under investigation by any jurisdiction; and

(h) The applicant is of good moral character.

(2) A/No person shall not be licensed as a licensed professional associate through reciprocity.

Section 2. An applicant seeking licensure as a licensed professional clinical counselor shall:

(1) Submit an Application for Licensed Professional Clinical Counselor by Reciprocity to the board;

(2) Pay the application fee as established in 201 KAR 36:020, Section 1(1);

(3) Submit a letter of good standing from each jurisdiction where the person holds a license or certificate; and

(4) Submit the results of a background check performed within the last ninety (90) days from the submission date of the application for a criminal background check performed by ~~the Kentucky State Police and~~ the Federal Bureau of Investigation (FBI). ~~[If an applicant submits an application for a nationwide criminal background check performed by the FBI and the FBI cannot complete the background check within thirty (30) days of the request, an applicant may submit an Optional Affidavit for Licensure, as incorporated by reference in 201 KAR 36:070, and shall submit the performed nationwide criminal background check within fourteen (14) days of its receipt. If an applicant has a felony conviction during the applicant's lifetime, a misdemeanor conviction within the past five (5) years, or a pending charge, the applicant shall not use the Optional Affidavit for Licensure.] Any cases officially expunged shall/do not have to be disclosed by the applicant and shall not be considered by the board as a conviction for the purposes of this subsection.] If an applicant does not receive the criminal background check within 180 days of the issuance of a license, the applicant shall notify the board immediately in writing.]~~

Section 3. An applicant granted a license under this administrative regulation shall comply with the continuing education requirements under 201 KAR 36:030 and the renewal requirements of 201 KAR 36:075.

Section 4.

(1) The board, by majority vote and during a board meeting, shall determine if the licensing requirements of another jurisdiction are substantially similar to the requirements of KRS 335.500 to 335.599.

(2) The board may only approve a reciprocity agreement with another jurisdiction if Section 1~~(1)~~(a), (b), and (c) of this administrative regulation are satisfied.

(3) The board shall publish the determination and approval of a reciprocity agreement in its board minutes.

Section 5. Incorporation by Reference. (1) "Application for Licensed Professional Clinical Counselor by Reciprocity", DPL-LPC-06, ~~December/July~~ 2023~~(November 2017)~~, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Board of Licensed Professional Counselors~~[Division of Occupations and Professions], 500 Mero Street~~~~[944 Leawood Drive]~~, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:00~~[4:30]~~ p.m. This material is also available on the board's Web site at lpc.ky.gov.

FILED WITH LRC: January 8, 2024

CONTACT PERSON: Sara Boswell Janes, Staff Attorney III, Department of Professional Licensing, Office of Legal Services, 500 Mero Street, 2 NC WK#2, phone (502) 782-2709, fax (502) 564-4818, email Sara.Janes@ky.gov, Link to public comment portal: https://ppc.ky.gov/reg_comment.aspx.

BOARDS AND COMMISSIONS
Board of Licensed Professional Counselors
(As Amended at ARRS, January 8, 2024)

201 KAR 36:075. Renewal, late renewal, and reinstatement of license.

RELATES TO: KRS 335.535

STATUTORY AUTHORITY: KRS 335.515(1), (3), (6), 335.535
 NECESSITY, FUNCTION, AND CONFORMITY: KRS 335.515(3) requires the Board of Licensed Professional Counselors to promulgate administrative regulations necessary for the proper performance of its duties. KRS 335.515(6) and KRS 335.535 require the holder of a license to renew that license annually. This administrative regulation establishes the requirements for renewal, late renewal, and reinstatement of a license.

Section 1.

- (1) A license shall be renewed by October 31 of each year.
- (2) A person receiving an initial license within 120 days prior to the renewal date shall not be required to renew until October 31 of the following year.

Section 2.

- (1) To apply for renewal, a licensed professional clinical counselor shall:
 - (a) Submit a completed LPCC Renewal Application to the board; and
 - (b) Pay to the board the appropriate renewal fee established in 201 KAR 36:020, Section 2(1)(a), for the renewal of a license.
- (2) After the sixty (60) day grace period, ~~in order to~~ apply for reinstatement, an individual who has a terminated license as a licensed professional clinical counselor shall:
 - (a) Submit a completed LPCC Reinstatement Application;
 - (b) Submit proof of completing ten (10) hours of board-approved continuing education within one (1) year ~~prior to~~ the filing of an application for reinstatement;
 - (c) Complete three (3) hours of continuing education on the law for regulating professional counseling, KRS 335.500 to 335.599 and 201 KAR Chapter 36 within one (1) year ~~prior to~~ the filing of an application for reinstatement;
 - (d) Submit a ~~background check performed within the last ninety (90) days by the Kentucky State Police and a~~ criminal background check performed by the Federal Bureau of Investigation;
 - (e) Pay the renewal fee established in 201 KAR 36:020, Section 2(1)(a); and
 - (f) Pay the reinstatement fee established in 201 KAR 36:020, Section 2(3)(a).

Section 3.

- (1) To apply for renewal, a licensed professional counselor associate shall:
 - (a) Submit a completed LPCA Renewal Application to the board; and
 - (b) Pay to the board the appropriate renewal fee established in 201 KAR 36:020, Section 2(1)(b), for the renewal of a license.
- (2)
 - (a) After the sixty (60) day grace period or revocation of a license, ~~in order to~~ apply for reinstatement, an individual who has a terminated license as a professional clinical counselor associate shall:
 1. Submit a completed LPCA Reinstatement Application;
 2. Submit a criminal background check performed within the last ninety (90) days by the ~~Kentucky State Police and a criminal background check performed by the~~ Federal Bureau of Investigation;
 3. Submit proof of completing ten (10) hours of board-approved continuing education completed within one (1) year of the filing for reinstatement;

4. Complete three (3) hours of continuing education on the law for regulating professional counseling, KRS 335.500 to 335.599 and 201 KAR Chapter 36, within one (1) year of the filing for reinstatement;

5. Pay the renewal fee established in 201 KAR 36:020, Section 2(1)(b); and

6. Pay the reinstatement fee established in 201 KAR 36:020, Section 2(3)(b).

(b) A person who applies for reinstatement within three (3) years of termination or revocation of the license shall be required to meet current continuing education requirements established in 201 KAR 36:030.

(c) A person who fails to apply for reinstatement within three (3) years of termination or revocation of the license shall meet the current licensure requirements.

Section 4.

(1) A person shall not engage in the practice of professional counseling after a license has been terminated.

(2) The ten (10) hours of continuing education completed within one (1) year of the filing of reinstatement shall not count towards the applicant's continuing education requirement under 201 KAR 36:030, Section 1(1).

(3) If a supervisor fails to verify the hours required for a licensed professional counselor associate by the termination date of the license, then the LPCA Supervision Agreement, as incorporated by reference in 201 KAR 36:060, shall be terminated.

Section 5.

(1) A licensee for renewal or applicant for reinstatement shall maintain good moral character.

(2) If an applicant lacks good moral character and the incident that resulted in the lack of good moral character occurred since issuance of the initial license or last renewal date, the applicant has the duty to provide available evidence relative of rehabilitation.

(3) For evidence relative of rehabilitation, the board shall consider evidence including ~~such as~~ the successful completion of probation, the years since the incident without additional incidents, and the successful completion of inpatient or outpatient treatment.

(4) If the board finds that an applicant has not provided sufficient evidence of rehabilitation then the board may deny the application.

Section 6. Incorporation by Reference.

(1) The following material is incorporated by reference:

- (a) "LPCC Renewal Application", DPL-LPC-07, December/July 2023 ~~February 2017~~;
- (b) "LPCA Renewal Application", DPL-LPC-08, December/July 2023 ~~February 2017~~;
- (c) "LPCC Reinstatement Application", DPL-LPC-09, December/July 2023 ~~February 2017~~; and
- (d) "LPCA Reinstatement Application", DPL-LPC-10, December/July 2023 ~~February 2017~~.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Licensed Professional Counselors, 500 Mero Street ~~911 Leewood Drive~~, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:00 ~~4:30~~ p.m. This material may also be found on the board's website at lpc@ky.gov.

FILED WITH LRC: January 8, 2024

CONTACT PERSON: Sara Boswell Janes, Staff Attorney III, Department of Professional Licensing, Office of Legal Services, 500 Mero Street, 2 NC WK#2, phone (502) 782-2709, fax (502) 564-4818, email Sara.Janes@ky.gov, Link to public comment portal: https://ppc.ky.gov/reg_comment.aspx.

BOARDS AND COMMISSIONS
Board of Licensed Professional Counselors
(As Amended at ARRS, January 8, 2024)

201 KAR 36:090. Administrative hearings for denials and revocation of ~~probation~~~~[probated sanction]~~~~[probation]~~.

RELATES TO: KRS 335.515(3), (4), 335.545

STATUTORY AUTHORITY: KRS 335.515(3), (4), (7)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 335.515(3) requires the board to promulgate administrative regulations necessary to carry out and enforce the provisions of KRS 335.500 to 335.599. KRS 335.515(4) requires the board to conduct administrative hearings as necessary pursuant to KRS Chapter 13B. This administrative regulation establishes the procedures for an individual to request an administrative hearing from the denial of or refusal to renew or reinstate a license, or revocation of ~~probation~~~~[a probated sanction]~~.

Section 1. Right of Administrative Hearing from a Denial of or Refusal to Renew or Reinstate a License.

(1) The board shall issue written notice of the denial informing the applicant:

(a) Of the specific reason for the board's action, including:

1. The statutory or regulatory violation; and
2. The factual basis on which the denial is based; and

(b) That the applicant may appeal the pending denial to the board within twenty (20) calendar days after receipt of this notification, excluding the day he or she receives notice, or the date that the notification is returned to the board as unclaimed.

(2) A written request for an administrative hearing shall be filed with the board within twenty (20) calendar days after receipt of this notification, excluding the day ~~the applicant~~~~[he or she]~~ receives notice, or the date that the notification is returned to the board as unclaimed. The request shall identify the specific issues in dispute and the legal basis on which the board's decision on each issue is believed to be erroneous.

(3) If the request for an appeal is not timely filed, the notice of denial shall be effective upon the expiration of the time for the certificate holder to request an appeal.

(4) The documentary evidence shall be limited to the application and supporting documents submitted to the board during the application process and that was considered as part of the denial of the application.

(5) A renewal applicant may petition the board, in writing, for a stay of the denial of the license until completion of the administrative hearing process.

Section 2. Revocation of ~~Probation~~~~[Probated Sanction]~~~~[Probation]~~.

(1) If the board moves to revoke ~~probation~~~~[a probated sanction]~~~~[probation]~~, the board shall issue written notice of the revocation and inform the probationee:

- (a) Of the factual basis on which the revocation is based;
- (b) Of each probation term violated;
- (c) Of the sanction to be imposed; and

(d) That the probationee may appeal the revocation to the board within twenty (20) calendar days after receipt of this notification, excluding the day he or she receives notice, or the date that the notification is returned to the board as unclaimed. The notification shall be sent to the last known address on file with the board for the certificate holder.

(2) A written request for an administrative hearing shall be filed with the board within twenty (20) calendar days after receipt of this notification, excluding the day ~~the probationee~~~~[he or she]~~ receives notice, or the date that the notification is returned to the board as unclaimed. The request shall identify the specific issues in dispute and the legal basis on which the board's decision on each issue is believed to be erroneous.

(3) If the request for an administrative hearing is not timely filed, the revocation shall be effective upon the expiration date for the certificate holder to request an appeal.

Section 3. A request for an administrative hearing shall be sent to the Kentucky Board of Licensed Professional Counselors by mail to P.O. Box 1360, Frankfort, Kentucky 40602 or by hand-delivery to 500 Mero Street~~[944 Leawood Drive]~~, Frankfort, Kentucky 40601.

Section 4. An administrative hearing shall be governed in accordance with KRS Chapter 13B.

Section 5. If the final order of the board is adverse to a licensee or applicant, or if the hearing is scheduled at the request of a licensee or applicant for relief from sanctions previously imposed by the board, the costs in an amount equal to the cost of stenographic services, the cost of the hearing officer, and the board's attorney fees may~~[shall]~~ be assessed against the licensee or applicant. In a case of financial hardship, the board may waive all or part of the fee.

FILED WITH LRC: January 8, 2024

CONTACT PERSON: Sara Boswell Janes, Staff Attorney III, Department of Professional Licensing, Office of Legal Services, 500 Mero Street, 2 NC WK#2, phone (502) 782-2709, fax (502) 564-4818, email Sara.Janes@ky.gov, Link to public comment portal: https://ppc.ky.gov/reg_comment.aspx.

KENTUCKY BOARD OF EMERGENCY MEDICAL SERVICES
(As Amended at ARRS, January 8, 2024)

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]~~; or~~[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[\$4,500 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 **twenty-five (25)[\$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.

FILED WITH LRC: January 8, 2024

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.

**KENTUCKY BOARD OF EMERGENCY MEDICAL SERVICES
(As Amended at ARRS, January 8, 2024)**

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.025(2)[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. ***In accordance with this administrative regulation***, 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);

~~(d) If [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

~~(e) [(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 or ~~if~~ 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 that ~~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.

FILED WITH LRC: January 8, 2024

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.

**TRANSPORTATION CABINET
Department of Highways
Division of Maintenance
(As Amended at ARRS, January 8, 2024)**

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~~[f]~~ 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~~(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>.

FILED WITH LRC: January 8, 2024

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.

EDUCATION AND LABOR CABINET

Board of Education

Department of Education

(As Amended at ARRS, January 8, 2024)

702 KAR 3:330. Liability insurance.

RELATES TO: KRS 161.212

STATUTORY AUTHORITY: KRS 156.070, 156.160, 160.105, 161.212

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 administrative 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 in an amount not less than \$1 million for the protection of the employee from liability arising in the course and scope of pursuing the duties of his or her 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, and in the format determined by the department, 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 **\$1 million[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) ~~If [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.

FILED WITH LRC: January 8, 2028

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564-9321, email regcomments@education.ky.gov.

**EDUCATION AND LABOR CABINET
Kentucky Board of Education
Department of Education
(As Amended at ARRS, January 8, 2024)**

705 KAR 4:231. General program standards for secondary career and technical education programs.

RELATES TO: KRS 156.029, 156.802, **158.6455**, 20 U.S.C. 2301-2414[2474]

STATUTORY AUTHORITY: KRS 156.029, 156.070**(2)(a), (4)**, 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]. **This administrative regulation establishes requirements for secondary career and technical education programs.**

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];

(i) Law and public safety;

(k)(i) Manufacturing technology;

(l)(k) Media arts;

(m)(i) Transportation education; and

(n) [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.

(1) Instruction shall be designed to:

(1)(a) Assist students preparing for [school-to-work-]transition into[an] 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 ~~or~~ entrance into community and technical colleges or universities; and]

(3)(e) 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[or] 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,[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, ~~such as~~~~[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.

(1) Programs in grades six (6) through eight (8) shall be designed to allow students to become aware of and explore clusters of occupations.

(2) Programs in grades nine (9) through twelve (12) shall provide in-depth exploration, specialized skill development, and preparation for advanced education.

(3) Students enrolled in public or private schools shall be allowed[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 allow[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 in accordance with KRS 156.802(6)(a). 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 established[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 parent[s], 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, included in the Kentucky Department of Education Career and Technical Education program of studies. 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~~;~~

~~4.] 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.]~~

FILED WITH LRC: January 8, 2024

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PUBLIC PROTECTION CABINET
Department of Financial Institutions
(As Amended at ARRS, January 8, 2024)

808 KAR 10:501. Required forms, fees, filing procedures, and recordkeeping requirements for persons operating pursuant to KRS 292.411 and KRS 292.412, the Kentucky Intrastate Crowdfunding Exemption; and notice filing requirements for federal crowdfunding offerings.

RELATES TO: KRS 292.327, 292.330-292.390, [292.410, 292.411, 292.412, 15 U.S.C. 77d, 15 U.S.C. 77r, 17 C.F.R. Part 227]

STATUTORY AUTHORITY: KRS 292.500(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 292.500(3) authorizes the commissioner to promulgate administrative regulations necessary to carry out the provisions of KRS Chapter 292. KRS 292.411(1)(f) and (s) require the commissioner to prescribe the notice filing form to be used, the filing fee to be paid, and the records to be kept by an issuer. KRS 292.412(2) requires the commissioner to prescribe the filing procedure and form to be used by registered broker-dealers operating an Internet Web site pursuant KRS 292.411(1)(r). KRS 292.412(3), (5), (6), (7), and (8) require the commissioner to prescribe filing procedures and forms for applications and renewal applications, the filing fees to be paid, the records to be kept, and the examination fees for Internet Web site operators. This administrative regulation establishes the required forms, fees, filing procedures, and recordkeeping requirements for persons operating pursuant to KRS 292.411 and KRS 292.412, the Kentucky Intrastate Crowdfunding Exemption, and notice filing requirements for federal crowdfunding offerings. [KRS 292.410(4)(q) allows for exemptions from registration by rule or order of the commissioner.]

Section 1. Definitions.

(1) "Commissioner" is defined by KRS 292.310(4).

(2) "Completion of an offering" means the occurrence of one (1) of the following:

(a) The date upon which the offering deadline expires;

(b) The date upon which the transaction becomes void pursuant to KRS 292.411(1)(i); or

(c) If the offering is closed prior to the offering deadline pursuant to KRS 292.411(k), the date of early closing.

(3) "Internet Web site operator" means a person registered as an Internet Web site operator pursuant to KRS 292.412.

Section 2. Issuer Notice Filings. An issuer making a submission[notice filing] pursuant to KRS 292.411(1)(f) shall complete and submit the following:

(1) Form CF 1, Kentucky Intrastate Crowdfunding Exemption Issuer Notice Filing Form with all required attachments;

(2) Form CF 2, Final Report of Sales Form no later than thirty (30) days after the completion of an offering conducted pursuant to KRS 292.411; and

(3) A filing fee of \$500.

Section 3. Registration of Internet Web Site Operators.

(1) A person applying for registration as an Internet Web site operator shall complete and submit the following:

(a) Form CF 3, Internet Web Site Operator Registration Form with all required attachments;

(b) Form CF 4, Internet Web Site Operator Surety Bond Form; and

(c) A filing fee of \$250.

(2) An Internet Web site operator applying to renew its registration for the following calendar year pursuant to KRS 292.412(6) shall complete and submit the following between December 1 and December 15 of the preceding calendar year:

(a) Form CF 3, Internet Web Site Operator Registration Form with all required attachments; and

(b) A renewal fee of \$250.

(3) Except as provided in subsection (4) of this section, an initial registration shall be effective until December 31 of the year in which the initial registration is approved by the commissioner.

(4) An initial registration approved after November 30 shall be effective until December 31 of the following calendar year.

Section 4. Broker-dealer Notice Filings.

(1) Form CF 5, Broker-Dealer Internet Web Site Operator Notice Filing Form shall be completed by a broker-dealer making a notice filing pursuant to KRS 292.412(2).

(2) The[A] notice filing shall be filed before the broker-dealer operates an Internet Web site pursuant to KRS 292.411(1)(r).

(3) Except as provided in subsection (4) of this section, a notice filing made pursuant to this section shall be effective until December 31 of the year in which the filing is made.

(4) A notice filing made between December 1 and December 31 of the year in which a previous notice filing expires shall be effective for the subsequent calendar year.

Section 5. Recordkeeping Requirements.

(1) An issuer shall accurately make and keep the following books and records relating to any offer or sale made pursuant to KRS 292.411:

(a) All forms and documents that are required by KRS 292.411 or this administrative regulation to be filed with the commissioner;

(b) Evidence of residency from each purchaser in any offering made by the issuer as required by KRS 292.411(1)(o);

(c) Evidence of accredited investor status for each purchaser making an investment exceeding \$10,000 as required by KRS 292.411(1)(e) and (o);

(d) Evidence reflecting all offers made by the issuer;

(e) Evidence reflecting all sales made by the issuer;

(f) Manually or electronically signed copies of all purchaser certifications as required by KRS 292.411(1)(n);

(g) All limited notices distributed in accordance with KRS 292.411(1)(r)7.;

(h) All notices of cancellation of commitment to invest pursuant to KRS 292.411(1)(j);

(i) All notices of closing of an offering prior to the offering deadline delivered pursuant to KRS 292.411(1)(k);

(j) Quarterly reports made pursuant to KRS 292.411(1)(t); and

(k) All other communications with purchasers in the offering.

(2) An Internet Web site operator shall accurately make and keep the following books and records:

(a) Records of fees received pursuant to KRS 292.412(4)(a);

(b) All agreements with issuers offering securities through the Internet Web site operator's Web site;

(c) All information provided to the Internet Web site operator by an issuer to establish that the issuer is organized under the laws of Kentucky and authorized to do business in Kentucky as required by KRS 292.411(1)(r)1.;

(d) Evidence reflecting the limitation of Web site access as required by KRS 292.411(1)(r)3.;

(e) All correspondence or other communications with issuers, prospective purchasers, or purchasers;

(f) All information made available through the Internet Web site relating to an offering; and

(g) Any other information provided by or through the Internet Web site operator to issuers, prospective purchasers, or purchasers.

Section 6. Kentucky Intrastate Crowdfunding Examination Fees. The fee for a routine examination of an Internet Web site operator shall be fifty (50) dollars per working hour. A fee shall not be charged for examination work by an examiner-trainee.

Section 7. Federal Crowdfunding Notice Filing Provisions.

(1) The following provisions apply to offerings made under the federal Regulation Crowdfunding (17 C.F.R. Part[§] 227) and Sections 4(a)(6) and 18(b)(4)(C) of the Securities Act of 1933 (15 U.S.C. 77d(a)(6) and 15 U.S.C. 77r(b)(4)(C)):

(a) For an issuer that either (1) has its principal place of business in this state or (2) sells fifty (50) percent or greater of the aggregate amount of the offering to residents of this state, the issuer shall file the following with the commissioner:

1. A completed Form U-CF, Uniform Notice of Federal Crowdfunding Offering form, or copies of all documents filed with the

Securities and Exchange Commission;

2. A consent to service of process on Form U-2 if not filing on Form U-CF; and

3. A filing fee of \$250[300];

(b) For an issuer that has its principal place of business in this state, the filings required under paragraph (a) of this subsection shall be filed with the commissioner when the issuer makes its initial Form C filing concerning the offering with the Securities and Exchange Commission; and

(c) For an issuer that does not have its principal place of business in this state, but where residents of this state have purchased fifty (50) percent or greater of the aggregate amount of the offering, the filing required under paragraph (a) of this subsection shall be filed when the issuer becomes aware that such purchases have met this threshold, and in no event later than thirty (30) days from the date of completion of the offering.

(2) The initial notice filing required under subsection (1) of this section is effective for twelve months from the date of the filing with the commissioner.

(3) For each additional twelve-month period in which the same offering is continued, an issuer conducting an offering under 17 C.F.R. Part[§] 227 and Sections 4(a)(6) and 18(b)(4)(C) of the Securities Act of 1933, (15 U.S.C.77d(a)(6) and 15 U.S.C.77r(b)(4)(C)) shall renew the initial notice filing required under subsection (1) of this section by filing the following on or before the expiration of the initial notice filing:

(a) A completed Form U-CF marked "renewal" or;

(b) a cover letter requesting renewal; and

(b)(c) A renewal fee of \$250[300].

Section 8. Incorporation by reference.

(1) The following material is incorporated by reference:

(a) "Form CF 1, Kentucky Intrastate Crowdfunding Exemption Issuer Notice Filing Form", September 2023;

(b) "Form CF 2, Final Report of Sales Form", September, 2023;

(c) "Form CF 3, Internet Web Site Operator Registration Form", September 2023;

(d) "Form CF 4, Internet Web Site Operator Surety Bond Form", September 2023; and

(e) "Form CF 5, Broker-Dealer Internet Web Site Operator Notice Filing Form", September 2023.

(f) "Form U-2, Uniform Consent to Service of Process, September 2023

(g) "Form U-CF, Uniform Notice of Federal Crowdfunding Offering", September 2023

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Financial Institutions, 500 Mero St 2SW19, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material may also be obtained at kfi.ky.gov.

FILED WITH LRC: January 8, 2024

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CABINET FOR HEALTH AND FAMILY SERVICES Office of Inspector General (As Amended at ARRS, January 8, 2024)

906 KAR 1:190. Kentucky National Background Check Program (NBCP).

RELATES TO: KRS Chapter 13B, 209.020, Chapter 216B, 42 U.S.C. 1320f-ja-7l, 34 U.S.C. 40102, 40104[42 U.S.C. 5119a(a)(1), 42 U.S.C. 5119c]

STATUTORY AUTHORITY: KRS 194A.050(1), 42 U.S.C. 1320a-7l

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate programs and fulfill the responsibilities vested in the

cabinet, qualify for the receipt of federal funds, and cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. 42 U.S.C. 1320a-7l directs the secretary of the United States Department of Health and Human Services to establish a program to identify efficient, effective, and economical procedures for long-term care facilities or providers to conduct background checks on prospective direct patient access employees on a nationwide basis. The Cabinet for Health and Family Services, Office of Inspector General, is charged with responsibility to oversee and coordinate Kentucky's fingerprint-supported NBCP initiative. This administrative regulation establishes procedures for the implementation of Kentucky's NBCP as a voluntary program. The conditions set forth in this administrative regulation for voluntary KARES system participants are in addition to the name-based, state only background check requirements of KRS 216.533, 216.712(2), 216.787, and 216.789.

Section 1. Definitions.

(1) "Applicant" means an individual who:

(a) Applies for employment with an employer identified in subsection (6) of this section; or

(b) Is subject to background screening by a professional licensing board that enrolls contingent upon approval by the Federal Bureau of Investigation and Department of Kentucky State Police in the Kentucky NBCP.

(2) "Cabinet" means the Cabinet for Health and Family Services.

(3) "Criminal background check" means a state and national fingerprint-supported criminal history background check performed by the Department of Kentucky State Police (KSP) and the Federal Bureau of Investigation (FBI) and includes a comparison of the applicant's fingerprints with any fingerprints that may be on file with KSP or the FBI.

(4) "Disqualifying offense" means:

(a) A conviction of, or a plea of guilty, an Alford plea, or a plea of nolo contendere to:

1. A misdemeanor offense related to:

a. Abuse, neglect, or exploitation of an adult as defined by KRS 209.020(4);

b. Abuse, neglect, or exploitation of a child;

c. A sexual offense;

d. Assault occurring less than seven (7) years from the date of the criminal background check;

e. Stalking occurring less than seven (7) years from the date of the criminal background check;

f. Theft occurring less than seven (7) years from the date of the criminal background check, excluding KRS 514.040;

g. Fraud occurring less than seven (7) years from the date of the criminal background check;

h. Unlawfully possessing or trafficking in a legend drug or controlled substance occurring less than seven (7) years from the date of the criminal background check;

i. KRS 525.130, Cruelty to animals in the second degree – Exemptions – Offense involving equines;

j. KRS 525.135, Torture of dog or cat; or

k. Any other misdemeanor offense relating to abuse, neglect, or exploitation that is not listed in this subsection and occurred less than seven (7) years from the date of the criminal background check;

2. A criminal offense against a victim who is a minor, as defined in KRS 17.500(3);

3. A felony offense involving a child victim;

4. A felony offense under:

a. KRS Chapter 209, protection of adults;

b. KRS 217.182, Sale, distribution, administration, prescription, or possession of legend drugs – Penalty;

c. KRS Chapter 218A, controlled substances;

d. KRS 506.120, Engaging in organized crime;

e. KRS Chapter 434, offenses against property by fraud;

f. KRS Chapter 507, criminal homicide;

g. KRS Chapter 507A, fetal homicide;

h. KRS Chapter 508, assault and related offenses;

i. KRS Chapter 509, kidnapping and related offenses;

j. KRS Chapter 510, sexual offenses;

k. KRS Chapter 511, burglary and related offenses;

l. KRS Chapter 512, criminal damage to property;
 m. KRS Chapter 513, arson and related offenses;
 n. KRS Chapter 514, theft and related offenses, excluding KRS 514.040;
 o. KRS Chapter 515, robbery;
 p. KRS Chapter 516, forgery and related offenses;
 q. KRS Chapter 517, business and commercial frauds;
 r. KRS Chapter 520, escape and other offenses related to custody;
 s. KRS Chapter 525, riot, disorderly conduct, and related offenses;
 t. KRS Chapter 527, offenses relating to firearms and weapons;
 u. KRS Chapter 529, prostitution offenses;
 v. KRS Chapter 530, family offenses, excluding KRS 530.050;
 w. KRS Chapter 531, pornography; or
 x. Any other felony offense relating to abuse, neglect, exploitation, drugs, theft, or fraud not listed in this subsection;
 5. An offense under a criminal statute of the United States or of another state similar to an offense specified in this paragraph; or
 6. A crime described in 42 U.S.C. 1320a-7;
 (b) A pending charge or an outstanding warrant for a criminal offense related to:
 1. A sex crime as defined by KRS 17.500(8);
 2. KRS Chapter 209, protection of adults;
 3. KRS 218A.1412, Trafficking in controlled substance in first degree - Penalties;
 4. KRS Chapter 507, Criminal homicide;
 5. KRS Chapter 508, Assault and related offenses;
 6. KRS Chapter 509, Kidnapping and related offenses;
 7. KRS Chapter 510, Sexual offenses;
 8. KRS Chapter 513, Arson and related offenses;
 9. KRS Chapter 515, Robbery;
 10. KRS Chapter 516, Forgery and related offenses; or
 11. KRS Chapter 531, Pornography;
 (c) An out-of-state or federal charge that is pending or any outstanding warrant from another state or jurisdiction that is similar to an offense specified in subsection (b) of this section;
 (d) A substantiated finding of neglect, abuse, or misappropriation of property by a state or federal agency pursuant to an investigation conducted in accordance with 42 U.S.C. 1395i-3 or 1396r;
 (e) Registration as a sex offender under federal law or under the law of any state; or
 (f) Being listed on a registry as defined in subsection (10) of this section.
 (5) "Employee" means an individual who:
 (a) 1. Is hired directly or through contract by an employer defined in subsection (6) of this section, and has duties that involve or may involve one-on-one contact with a patient, resident, or client; or
 2. Unless excluded pursuant to Section 2(3)(c) through (e) of this administrative regulation, is a volunteer who has duties that are equivalent to the duties of an employee providing direct services and the duties involve, or may involve, one-on-one contact with a patient, resident, or client; and
 (b) Has access to the personal belongings or funds of a patient, resident, or client.
 (6) "Employer" means:
 (a) A long-term care facility as defined in KRS 216.510;
 (b) A nursing pool as defined in subsection (9) of this section providing staff to a long-term care facility or provider;
 (c) An adult day health care program as defined in KRS 216B.0441;
 (d) An assisted living-community as defined in KRS 194A.700(5);
 (e) A home health agency as defined in KRS 216.935;
 (f) A provider of hospice care as defined in 42 U.S.C. 1395x(dd)(1) and licensed pursuant to KRS Chapter 216B;
 (g) A personal services agency as defined in KRS 216.710(10);
 (h) A long-term care hospital as defined in 42 U.S.C. 1395ww(d)(1)(B)(iv);
 (i) A provider of home and community-based services authorized under KRS Chapter 205;
 (j) A staffing agency with a contracted relationship to provide

one (1) or more employers as listed in this subsection with staff whose duties are equivalent to duties performed by an employee pursuant to subsection (5) of this section; or

(k) Any other provider licensed by the cabinet for which a state and national background check is required as a condition of employment.

(7) "KARES system" means the cabinet's secure, web-based application used to facilitate abuse registry and fingerprint-supported state and national criminal background checks for authorized users of the system.

(8) "Kentucky National Background Check Program" or "NBCP" means a background screening program administered by the Cabinet for Health and Family Services, Office of Inspector General to facilitate registry and fingerprint-supported state and national criminal history background checks conducted by the Department of Kentucky State Police and the Federal Bureau of Investigation for the following:

(a) Prospective employees of any employer identified in subsection (6)(a) through (j) of this section that participates voluntarily in the Kentucky National Background Check Program;

(b) Any other individuals required by state law or administrative regulation to submit to a state and national background check as a condition of:

1. Employment; or

2. Licensure, certification, or registration by a professional licensing board that enrolls contingent upon approval by the Federal Bureau of Investigation and Department of Kentucky State Police in the Kentucky NBCP; and

(c) May include individuals seeking approval as a kinship caregiver or foster or adoptive parent.

(9) "Nursing pool" means a person, firm, corporation, partnership, or association engaged for hire in the business of providing or procuring temporary employment in or with a long-term care facility or provider for medical personnel, including nurses, nursing assistants, nursing aides, and orderlies.

(10) "Registry" means the:

(a) Nurse aide abuse registry maintained pursuant to 906 KAR 1:100 and 42 C.F.R. 483.156;

(b) Child abuse and neglect registry maintained pursuant to 922 KAR 1:470 and required by 42 U.S.C. 671(a)(20);

(c) List of Excluded Individuals and Entities maintained by the United States Department of Health and Human Services, Office of Inspector General pursuant to 42 U.S.C. 1320a-7;

(d) Caregiver misconduct registry required by KRS 209.032; and

(e) Any available abuse registry, including the abuse and neglect registries of another state if an applicant resided or worked in that state.

(11) "State" is defined by KRS 446.010(40).

(12) "Violent offender" is defined by KRS 439.3401(1).

Section 2. Applicability and Exceptions.

(1) This administrative regulation shall establish requirements for registry and criminal background checks of prospective employees seeking employment with a:

(a) State-owned or operated health facility licensed pursuant to KRS Chapter 216B; or

(b) Private long-term care employer that participates voluntarily in Kentucky's NBCP.

(2) This administrative regulation shall not apply to current employees of any employer that participates voluntarily in the Kentucky National Background Check program.

(3) A prospective employee shall not include:

(a) An individual who independently contracts with a KARES-participating employer to provide utility, construction, communications, or other services if the contracted services are not directly related to the provision of services to a resident, patient, or client of the employer;

(b) A physician, surgeon, dentist, psychologist, psychiatrist, podiatrist, audiologist, ophthalmologist, optometrist, dietician, therapist, phlebotomist, or any health care practitioner who is licensed to practice in Kentucky and is under contract with a participating employer in which a background check is required as a condition of professional licensure;

- (c) A member of a community-based or faith-based organization that provides volunteer services that do not involve unsupervised interaction with a patient or resident;
- (d) A student participating in an internship program; or
- (e) A family member or friend visiting a patient or resident.

Section 3. Continuous Assessment.

(1) To ensure that the information remains current in the KARES system, the cabinet shall collaborate with the Department of Kentucky State Police (KSP) to implement a mechanism for continuous assessment in which KSP:

(a) Retains the fingerprints of an individual screened under the Kentucky NBCP:

1. For a minimum period of five (5) years from the date of fingerprint submission; and

2. On a five (5) year renewal basis thereafter; and

(b) Facilitates the retention of the fingerprints by the FBI upon approval to participate in the FBI's Next Generation Identification (NGI) rap back service.

(2) Upon implementation of the process for continuous assessment, the Department of Kentucky State Police may provide notification to the cabinet of triggering events for each applicant after initial processing of the applicant's criminal background check, subject to any applicable administrative regulations of the Department of Kentucky State Police and the FBI.

Section 4. Enrolling in the Kentucky NBCP. To enroll in the Kentucky NBCP, an employer or a participating professional licensing board shall:

(1) Log on to the KARES portal; and

(2) Confirm acceptance of the terms and conditions for using the KARES system.

Section 5. Registry and Criminal Background Checks: Procedures and Payment.

(1) To initiate the process for obtaining a background check on a prospective employee or licensee, the employer or participating professional licensing board shall:

(a) Request that the applicant provide a copy of his or her driver's license or other government-issued photo identification and verify that the photograph clearly matches the applicant;

(b) Request that the applicant sign the OIG 1:190-1, Disclosures to be Provided to and Signed by Applicant for Employment or License;

(c) Request that the applicant complete the OIG 1:190-2, Waiver Agreement and Statement; and

(d) Log on to the KARES portal, which shall be a secure web-based system maintained by the cabinet, and enter the applicant's demographic information for a check of:

1. Each registry as defined by Section 1(10) of this administrative regulation; and

2. Available databases maintained separately by the Kentucky Board of Medical Licensure, Kentucky Board of Nursing, Kentucky Board of Physical Therapy, and any other available professional licensing board with oversight of health care professionals, including behavioral health professionals, to validate the applicant's professional licensure status, if applicable.

(2) If an applicant is cleared for hire after a check of the registries and databases identified in subsection (1)(d) of this section, the participating entity shall submit payment via credit or debit card for the criminal background check.

(3)(a) A participating entity enrolled in the Kentucky NBCP shall pay a non-refundable fee not to exceed ~~thirty (30)~~~~twenty-five (25)]~~ dollars to cover the cabinet's administrative cost for facilitating a criminal background check in addition to any fees charged by the Department of Kentucky State Police and the FBI for the actual cost of processing a fingerprint-supported state and national criminal background check and for providing continuous assessment services as described in Section 3(2) of this administrative regulation.

(b) If an applicant's continuous assessment period identified under Section 3 of this administrative regulation has not expired, a fee of twenty (20) dollars shall be charged to view the applicant's

current fitness determination and process a new application, in which case a new fingerprint check is not needed.

(4)(a) Upon submission of payment pursuant to subsection (3) of this section, the employer or other participating entity shall print a copy of the Live Scan Fingerprinting Form from the KARES portal and provide the form to the applicant.

(b) The applicant shall:

1. Have thirty (30) calendar days from the date of payment pursuant to subsection (2) of this section to submit his or her fingerprints at an authorized collection site; and

2. Present the Live Scan Fingerprinting Form and driver's license or other government-issued photo identification to the designated agent at an authorized collection site prior to fingerprint submission.

(5) Upon completion of a criminal background check, the cabinet:

(a) Shall provide notice to the employer that the applicant is:

1. Eligible for hire; or

2. Not eligible for hire if the applicant is found by the cabinet to have a disqualifying offense as identified in Section 1(4) of this administrative regulation;

(b) May release any record of state criminal history found in the files of the Kentucky centralized criminal history record information system to the employer or entity listed on the OIG 1:190-2, Waiver Agreement and Statement incorporated by reference in Section ~~15(14)~~ of this administrative regulation; and

(c) Shall, upon receipt of a written request from an applicant, send a copy if any of a KSP or FBI criminal history report to the applicant by certified mail, restricted delivery service. The applicant shall show proof of identity and sign to receive his or her criminal history report from the local post office.

(6) An employer shall not be obligated to employ or offer employment to an individual who has been found by the cabinet to be eligible for hire pursuant to subsection (5)(a) of this section.

Section 6. Provisional Employment.

(1) If an applicant is not found on a registry and the individual's license has been validated, if applicable, an employer may hire the applicant for a period of provisional employment pending completion of the criminal background check.

(2) The period of provisional employment shall:

(a) Not commence prior to the date the applicant submitted his or her fingerprints; and

(b) Not exceed sixty (60) calendar days from the date of fingerprint collection.

(3) During the period of provisional employment, the individual shall not have supervisory or disciplinary power or routine contact with patients, residents, or clients without supervision on-site and immediately available to the individual.

Section 7. Individuals Ineligible to be Hired. An employer participating in the KARES program or a state-owned or operated health facility shall not employ, contract with, or permit to work as an employee any applicant that submits to a background check if one (1) or more of the following are met:

(1) The applicant refuses to provide photo identification or complete the Disclosures Form or Waiver Agreement and Statement Form required by Section 5(1) (b) and (c) of this administrative regulation;

(2) The applicant is found on a registry as defined by Section 1(10) of this administrative regulation;

(3) The applicant's professional license is not in good standing, if applicable;

(4) The applicant fails to submit his or her fingerprints at an authorized collection site within thirty (30) calendar days of payment submitted pursuant to Section 5(3) of this administrative regulation; or

(5) Upon completion of the initial criminal background check for an applicant, or subsequent to the initial fingerprint check on a current employee, the employer, cabinet agency, or state-owned or operated health facility receives notice from the cabinet that the applicant is not eligible for hire based on a cabinet determination that the individual has been found to have a disqualifying offense.

Section 8. Notice of a Disqualifying Offense and Appeals.

(1) The cabinet shall notify each applicant or current employee determined to have a disqualifying offense.

(2) In addition to the cabinet's notification required by subsection (1) of this section, an employer that receives notice from the cabinet that an individual has been determined to have a disqualifying offense shall notify the individual of the cabinet's determination within three (3) business days of receipt of the notice.

(3) An applicant or current employee who receives notice of a disqualifying offense may:

(a) Challenge the accuracy of the cabinet's determination regarding a disqualifying offense by submitting a written request for informal review, including any information the applicant wishes to be considered, to the Office of Inspector General, Cabinet for Health and Family Services, 275 East Main Street, 5E-A, Frankfort, Kentucky 40621, within ten (10) calendar days of the date of notice of the disqualifying offense; or

(b) Request a rehabilitation review pursuant to Section 10(2) of this administrative regulation.

(4) Upon completion of an informal review if requested pursuant to subsection (3)(a) of this section, the Office of Inspector General shall within ten (10) calendar days of receipt of the request provide written notice to the applicant or employee of the cabinet's decision to uphold or rescind the notice of the disqualifying offense.

(5) An applicant or current employee may appeal the results of an informal review or a rehabilitation review conducted in accordance with Section 10 of this administrative regulation by submitting a written request for an administrative hearing within thirty (30) calendar days from the date of notice of the decision from an informal review or rehabilitation review.

(6)(a) A written request for an administrative hearing shall be mailed to the Office of Ombudsman, Cabinet for Health and Family Services, 275 East Main Street, 1E-B, Frankfort, Kentucky 40621.

(b) The administrative hearing shall be held no later than forty-five (45) calendar days from the date that the request is received by the Office of Ombudsman unless the applicant or employee agrees to a later date.

(c) The issues considered at the hearing shall be limited to the issues directly raised and considered during the informal review or rehabilitation review.

(d) The administrative hearing shall be conducted pursuant to KRS 13B.080.

(e) The hearing officer shall issue a recommended order pursuant to KRS 13B.110.

(f) The secretary or designee shall issue a final order pursuant to KRS 13B.120.

(7) If an applicant or current employee wishes to challenge the accuracy of a criminal background check, the cabinet shall refer the individual to the appropriate state or federal law enforcement agency.

(8) If an applicant or current employee challenges the finding that he or she is the true subject of the results from a registry check, the cabinet shall refer the individual to the agency responsible for maintaining the registry.

Section 9. Termination of an Employee Upon Receipt of Notice of a Disqualifying Offense.

(1) If a provisional employee or current employee has not requested an informal review or a rehabilitation review pursuant to Section 8(3) of this administrative regulation, the employer shall:

(a) Terminate the employee no later than fifteen (15) calendar days after receipt of notice of the disqualifying offense; and

(b) Use the KARES system to provide electronic notification to the cabinet affirming the employee's dismissal within three (3) business days of termination.

(2)(a) If a provisional employee or current employee requests an informal review or a rehabilitation review pursuant to Section 8(3) of this administrative regulation, the employer:

1. May retain the employee pending resolution of the employee's informal review or rehabilitation review; and

2. Shall ensure that the employee is:

a. Subject to direct, on-site supervision; or

b. Reassigned to duties that do not involve one-on-one contact with a resident, patient, or client of the employer.

(b) An employer shall terminate the employee if the:

1. Informal review upholds the cabinet's determination of a disqualifying offense or the rehabilitation review committee does not grant a waiver; and

2. The employee does not request an administrative hearing in accordance with Section 8(5) of this administrative regulation, in which case the employer shall terminate the employee no later than the thirty-first calendar day following written notice of the results of the informal review or rehabilitation review.

(c) If an employee requests an administrative hearing to appeal the decision from an informal review or rehabilitation review, the employer:

1. May retain the employee pending resolution of the appeal if the employee:

a. Remains subject to direct, on-site supervision; or

b. Is reassigned to duties that do not involve one-on-one contact with a resident, patient, or client; and

2. Shall terminate the employee as soon as practicable upon issuance of a final order if the employee does not prevail.

(d) Using the KARES system, the employer shall provide electronic notification to the cabinet affirming the individual's dismissal within three (3) business days of termination.

Section 10. Rehabilitation Review.

(1)(a) An applicant or employee found to have a disqualifying offense upon completion of the criminal background check shall be eligible for consideration of rehabilitation under an independent review process.

(b) Consideration of a disqualifying offense under the rehabilitation review process described in this section shall not apply to:

1. A disqualifying felony offense that occurred less than seven (7) years prior to the date of the criminal background check;

2. Any disqualifying felony or misdemeanor offense related to abuse, neglect, or exploitation of an adult defined by KRS 209.020(4) or child, or a sexual offense;

3. Registration as a sex offender under federal law or under the law of any state;

4. Any person who is a violent offender as defined by Section 1(12) of this administrative regulation; or

5. A pending charge or an outstanding warrant for a criminal offense described in Section 1(4)(b) of this administrative regulation.

(2)(a) An applicant or employee may submit a written request for a rehabilitation review to the cabinet no later than fourteen (14) calendar days from the date of the notice of the cabinet's determination issued pursuant to Section 8(1) of this administrative regulation regarding a determination of a disqualifying offense.

(b) If an applicant or employee requests a rehabilitation review, the employee may be retained on staff and shall be subject to termination in accordance with Section 9(2) of this administrative regulation.

(3) The request for a rehabilitation review shall include the following information:

(a) A written explanation of each disqualifying offense, including:

1. A description of the events related to the disqualifying offense;

2. The number of years since the occurrence of the disqualifying offense;

3. The age of the offender at the time of the disqualifying offense; and

4. Any other circumstances surrounding the offense;

(b) Official documentation showing that all fines, including court-imposed fines or restitution, have been paid or documentation showing adherence to a payment schedule, if applicable;

(c) The date probation or parole was satisfactorily completed, if applicable; and

(d) Employment and character references, including any other evidence demonstrating the ability of the individual to perform the employment responsibilities and duties competently.

(4) A rehabilitation review shall be conducted by a committee of three (3) employees of the cabinet, none of whom:

(a) Is an employee of the Office of Inspector General; or

(b) Was responsible for determining that the individual has a disqualifying offense.

(5) The committee shall consider the information required under subsection (3) of this section, and shall also consider mitigating circumstances including:

(a) The amount of time that has elapsed since the disqualifying offense;

(b) The lack of a relationship between the disqualifying offense and the position for which the individual has applied; and

(c) Evidence that the applicant has pursued or achieved rehabilitation with regard to the disqualifying offense.

(6) No later than thirty (30) calendar days from receipt of the written request for the rehabilitation review, the Office of Inspector General shall send the committee's determination on the rehabilitation waiver to the applicant.

(7) The decision of the committee shall be subject to appeal in accordance with Section 8(5) and (6) of this administrative regulation.

(8) An employer shall not be obligated to employ or offer employment to an individual who is granted a waiver pursuant to this section.

Section 11. Pardons and Expungement. An applicant who has received a pardon for a disqualifying offense or has had the record expunged may be employed.

Section 12. Status of Employment. An employer participating in KARES shall maintain the employment status of each employee who has submitted to a fingerprint-supported criminal background check by reporting the status using the KARES web-based system.

Section 13. Kentucky National Background Check Fund.

(1)(a) The cabinet shall establish a trust and agency fund called the Kentucky National Background Check fund to be administered by the Finance and Administration Cabinet.

(b) The fund shall be funded with moneys collected under Section 5(3) of this administrative regulation.

(2) Moneys in the fund shall be used solely to operate the Kentucky National Background Check program.

Section 14. Termination of Participation. The cabinet shall terminate a voluntarily participating employer's participation in the Kentucky NBP for a period of no less than ninety (90) days if there has been substantial failure by the employer to comply with the provisions of this administrative regulation.

Section 15. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) OIG 1:190-1, "Disclosures to be Provided to and Signed by Applicant for Employment or Licensure", September 2016;

(b) OIG 1:190-2, "Waiver Agreement and Statement", September 2016; and

(c) OIG 1:190-D, "Live Scan Fingerprinting Form", May 2013.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Inspector General, 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 Office of Inspector General's Web site at: <https://www.chfs.ky.gov/agencies/os/oig/Pages/kares.aspx>.**

FILED WITH LRC: January 8, 2024

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CABINET FOR HEALTH AND FAMILY SERVICES

Department for Medicaid Services

Division of Health Care Policy

(As Amended at ARRS, January 8, 2024)

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) **authorizes[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 **by/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 **by/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.

(3) This material may also be viewed at <https://www.cms.gov/data-research/statistics-trends-and-reports/cost-reports>.

FILED WITH LRC: January 8, 2024

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**CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Family Support
(As Amended at ARRS, January 8, 2024)**

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 **Subchapter III** Part F, 21 U.S.C. **862a(a), (d)(1)****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**~~[Part]~~ 272, **Part**~~[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, **authorized/SNAP eligibility was]** temporarily expanded **eligibility** for qualifying students. ~~[Pursuant to]~~ Section 311 of Pub.L. 118-5, the Fiscal Responsibility Act of 2023, **authorized modification off 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. **Benefit application shall be** 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 **established/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) 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, pursuant to 7 C.F.R. 273.7(b)(1)(ii);

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 (1) 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 if 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.

FILED WITH LRC: January 8, 2024

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

OFFICE OF THE GOVERNOR
Department of Veterans Affairs
Office of Kentucky Veterans Services
(Amended After Comments)

17 KAR 6:020. Kentucky Women Veterans Program and coordinating committee. Administrative procedures.

RELATES TO: KRS 40.310, 40.560, 40.600

STATUTORY AUTHORITY: KRS 40.600

NECESSITY, FUNCTION, AND CONFORMITY: KRS 40.540 requires the department to promulgate administrative regulations required for the effective administration of KRS 40.310 through KRS 40.560. KRS 40.600 authorizes the Kentucky Department of Veterans Affairs to accept and expend moneys that may be appropriated by the General Assembly; and other monies received from any other source, including donations and grants and other contributions from a government unit and authorizes the department to administer the funds through the use of agency accounts. KRS 40.600 requires the Kentucky Department of Veterans Affairs to manage the funds and authorize expenditures. This administrative regulation also establishes a coordinating committee to make recommendations for fund expenditures and outlines the administrative procedures of the coordinating committee.

Section 1. Definitions.

(1) "Commissioner" means the Commissioner of the Kentucky Department of Veterans Affairs.

(2) "Coordinating Committee" means the Women Veterans Program Coordinating Committee.

(3) "Fund" means the Kentucky Women Veterans Program Fund.

(4) "Woman Veteran" means a woman who served in the United States Armed Forces or in forces incorporated as part of the United States Armed Forces, and who was discharged under other than dishonorable conditions.

Section 2. Expenditures and Fundraising.

(1) In accordance with this subsection and subsection (2) of this section, money appropriated from the fund shall be expended in support of the Women Veterans Program's activities or events that directly benefit women veterans, including the following activities or events:

(a) Educational sessions or training seminars focused on eligibility requirements for women veterans seeking federal and state veterans' benefits and services;

(b) Research projects focused on collecting and retaining demographic or service-connected disability data for Kentucky's women veterans;

(c) Dissemination of benefit information for women veterans through circulars, brochures, social media, and other media outlets;

(d) Annual meetings or conferences focused on engagement of Kentucky's women veterans and discussions of issues specific to women veterans;

(e) Job fairs, job placement services, other similar programs, or a combination of these focused on employing women veterans;

(f) Therapeutic opportunities focused on improving the mental and emotional wellbeing of Kentucky's women veterans;

(g) Entrepreneurial opportunities for women veterans seeking to establish or expand female veteran-owned businesses;

(h) Programs, memorials, monuments, and other projects that bring public recognition and awareness to the sacrifices, needs, and contributions of Kentucky's women veterans.

(i) Other services designed to make gaining access to federal and state benefits and services more convenient, efficient, or feasible for Kentucky's women veterans.

(j) Costs associated with the above, such as transportation, meals, lodging, and salaries.

(2) Fundraising. If fundraising on behalf of the Women Veterans Program, the Kentucky Department of Veterans Affairs may accept

a gift, donation, or grant from an individual, a corporation, or a government entity.

Section 3. Coordinating Committee for the Women Veterans Program.

(1) The committee shall consist of ten (10) members, including:

(a) The commissioner of the Kentucky Department of Veterans Affairs;

(b) The women veterans program coordinator of the Kentucky Department of Veterans Affairs;

(c) Two (2) members from state government:

1. A Senator appointed by the President of the Kentucky Senate;

2. A Representative appointed by the Speaker of the Kentucky House of Representatives.

(d) Two (2) members from public agencies that provide grants, benefits, or services to women veterans.

(e) Four (4) members from private organizations that provide grants, benefits, or service to women veterans.

(2) The commissioner of the Kentucky Department of Veterans Affairs shall appoint the public agencies and private organizations represented on the committee.

(a) A public agency and private organization specified in subsection (1)(d) and (e) of this section shall recommend two (2) members of the agency or organization to serve on the committee.

(b) The commissioner of the Kentucky Department of Veterans Affairs shall appoint one (1) member from each agency and each organization from the names submitted by the agencies and organizations.

(c) Where possible, at least seven (7) members of the coordinating committee shall be women veterans.

(3) Terms of members. Except in cases of retirement, resignation, or other inability or unwillingness to serve, the initial appointments to the committee shall be as established in paragraphs (a) and (b) of this subsection.

(a) A member appointed pursuant to subsection (1)(c) of this section shall serve for a period of two (2) years.

(b) A member appointed pursuant to subsection (1)(d) and (e) of this section shall serve for a period of three (3) years.

(4) The committee shall:

(a) Meet at the call of the commissioner of Kentucky Department of Veterans Affairs, at least once per quarter.

(b) Make recommendations for fiscally responsible uses of funds donated, gifted, or designated to the Women Veterans Program, including:

1. Propose, investigate, and approve activities that support Kentucky's women veterans;

2. Establish guidelines for approved activities, including funding parameters.

(c) Prepare meeting minutes that summarize each meeting, including recommendations made by the committee;

(d) Prepare an annual report that summarizes recommendations made by the committee and financial activities undertaken on behalf of Kentucky's women veterans;

(e) Submit an annual report by July 20th of each year to be included in the Kentucky Department of Veterans Affairs Annual Report.

(5) The commissioner shall assign duties as appropriate to the Kentucky Department of Veterans Affairs' staff or members of the coordinating committee to assist with administration of the committee.

Section 4. Coordinating Committee Procedures. Coordinating committee procedures shall be in accordance with the approved by-laws of the Women Veterans Coordinating Committee, provided that the funds are not restricted to tax exempt organizations as defined by Title 26, Section 501(c) of the Internal Review Code.

This is to certify that the Executive Director of the Office of Kentucky Veteran Services and the Commissioner of the Kentucky Department of Veterans Affairs have reviewed and recommended

this administrative regulation prior to its adoption, as required by KRS 156.070(4).

SILAS SESSION, Executive Director

WHITNEY ALLEN, Commissioner

TAMARA REID-MCINTOSH, Executive Director

APPROVED BY AGENCY: January 11, 2024

FILED WITH LRC: January 11, 2024 at 11:25 a.m.

CONTACT PERSON: Juan Renaud, Deputy Commissioner,
Office of the Commissioner, 1111 Louisville Rd., Suite B, Frankfort,
Kentucky 40601; phone (502) 782-5721; fax (502) 564-9240; email
juan.renaud@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Juan Renaud

(1) Provide a brief summary of:

(a) What this administrative regulation does: KRS 40.600 charges the Kentucky Department of Veterans Affairs with administering a program to service the approximately seven percent (7%) or 24,000 women veterans in the Commonwealth. Specifically, KRS 40.600 mandates that KDVA conduct outreach, advocacy, and education for Kentucky's women veterans.

(b) The necessity of this administrative regulation: KRS 40.600 authorizes the Women Veterans Program to receive funding from not only the General Assembly, but also other sources such as grants and donations. Proposed regulation 17 KAR 06:020 will afford the Women Veterans Program the administrative bandwidth to carry out the mandates outlined in KRS 40.600.

(c) How this administrative regulation conforms to the content of the authorizing statutes: Proposed regulation 17 KAR 06:020 conforms to the content of KRS 40.600 by focusing on conducting outreach, advocacy, and education for Kentucky's women veterans.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Proposed regulation 17 KAR 06:020 will assist in the effective administration of KRS 40.600 by outlining the Coordinating Committee's administrative functions; detailing the means in which funds can be expended; and affording a mechanism to determine how many of Kentucky's women veterans are reached by the initiatives of the Women Veterans Program.

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

(a) How the amendment will change this existing administrative regulation: Not Applicable.

(b) The necessity of the amendment to this administrative regulation: Not Applicable.

(c) How the amendment conforms to the content of the authorizing statutes: Not Applicable.

(d) How the amendment will assist in the effective administration of the statutes: Not Applicable.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are approximately 275,000 veterans in the Commonwealth. Women veterans account for approximately seven percent (7%) or 24,000 of Kentucky's veterans. Women veterans affected by the proposed administrative change include:

(a) those (including their legal representatives) who are seeking compensation and benefits from the U.S. Department of Veterans Affairs or from the Commonwealth of Kentucky.

(b) any individual or other organization (such as a veteran service organization (VSO)) inquiring about benefits and services to Kentucky's women veterans.

(c) public and private organizations seeking to provide benefits or services to Kentucky's women veterans.

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

(a) List 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 listed above will not be

required to perform compliance actions for this regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Donors will be required to ensure their donations are properly addressed for deposit in the Women Veterans Fund. There will be no costs to the benefiting entities derived from compliance with this regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Kentucky's women veterans will benefit from proposed regulation 17 KAR 06:020 by receiving more opportunities for education, advocacy, and outreach as it relates to claims, benefits, and services available to Kentucky's women veterans.

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

(a) Initially: There will be no costs to the administrative body either initially or on a continuing basis.

(b) On a continuing basis: There will be no costs to the administrative body either initially or on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Implementation and enforcement funding is contained as part of the Women Veterans Program KDVA 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 will be no impact on fees or funding.

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

(9) TIERING: Is tiering applied? Pursuant to KRS 13A.210, tiering is used by administrative bodies to reduce disproportionate impacts on certain classes of regulated entities, including government or small business, or both, and to avoid regulating entities that do not contribute significantly to the problem the administrative regulation was designed to address. In this instance, the new regulation is not expected to result in disproportionate impacts on certain classes of regulated entities. Therefore, tiering has not been 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? Kentucky Department of Veterans Affairs (KDVA).

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 40.540 and KRS 40.600.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? Approximately \$5,000.

(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? Not Applicable.

(c) How much will it cost to administer this program for the first year? The only costs for the first year are the costs of salaries to fill the positions necessary to run the Program.

(d) How much will it cost to administer this program for subsequent years? The only costs for subsequent years are the costs of salaries to fill the positions necessary to run the Program.

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

Revenues (+/-): Specific dollar estimates cannot be determined.

Expenditures (+/-): Approximately \$5,000.

Other Explanation: Although the Program's employee's salaries

are funded by General Funds, KRS 40.600 (6)(a) and (6)(b) authorize the Program to "receive and expend moneys that may be appropriated by the General Assembly," as well as "other moneys received from any other source, including donations and grants." Authorization to receive other moneys results is speculative and makes it difficult to provide specific dollar amounts. The Program will promote women veterans activities, as the funds are received from General and Other Funds.

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? Specific dollar estimates cannot be determined.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? Specific dollar estimates cannot be determined.

(c) How much will it cost the regulated entities for the first year? Not Applicable.

(d) How much will it cost the regulated entities for subsequent years? Not Applicable.

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

Cost Savings (+/-): Specific dollar estimates cannot be determined.

Expenditures (+/-): Specific dollar estimates cannot be determined.

Other Explanation: Although the Program's employees' salaries are funded by General Funds, KRS 40.600 (6)(a) and (6)(b) authorize the Program to "receive and expend moneys that may be appropriated by the General Assembly," as well as "other moneys received from any other source, including donations and grants." Authorization to receive other moneys results is speculative and makes it difficult to provide specific dollar amounts. The Program will promote women veterans activities, as the funds are received from General and Other Funds.

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS13A.010(13)] Not Applicable.

**OFFICE OF THE GOVERNOR
Department of Veterans Affairs
Office of Kentucky Veterans Services
(Amended After Comments)**

17 KAR 6:030. Kentucky Wounded or Disabled Veterans Program. Administrative procedures.

RELATES TO: KRS 40.310, 40.560, 40.350

STATUTORY AUTHORITY: KRS 40.350

NECESSITY, FUNCTION, AND CONFORMITY: KRS 40.540 requires the department to promulgate administrative regulations required for the effective administration of KRS 40.310 through KRS 40.560. KRS 40.350 authorizes the Kentucky Department of Veterans Affairs to accept and expend moneys that may be appropriated by the General Assembly; and other monies received from any other source, including donations and grants and other contributions from a government unit and authorizes the department to administer the funds through the use of agency accounts. KRS 40.350 requires the Kentucky Department of Veterans Affairs to manage the funds and authorize expenditures and establish a Program Coordinator to facilitate the administration of the Wounded or Disabled Veterans Program.

Section 1. Definitions.

(1) "Commissioner" means the Commissioner of the Kentucky Department of Veterans Affairs.

(2) "Coordinator" means the Coordinator of the Wounded or Disabled Veterans Program.

(3) "Disabled Veteran" means a veteran who was deemed disabled while serving in the United States Armed Forces, under conditions other than dishonorable, or was deemed disabled by the United States Department of Veterans Affairs after being discharged, under conditions other than dishonorable.

(4) "Fund" means the Wounded or Disabled Veterans Program Fund.

(5) "Wounded Veteran" means a veteran who was wounded while serving in the United States Armed Forces, who was discharged under conditions other than dishonorable.

Section 2. Expenditures and Fundraising.

(1) In accordance with this section and sections (2)-(4), money appropriated from the fund shall be expended in support of the Wounded or Disabled Veterans Program's initiatives that are focused on easing the transition from active service for wounded or disabled veterans or ensuring that wounded or disabled veterans receive the federal, state, and private benefits to which they are entitled.

(2) Wounded or Disabled Veterans Program's initiatives shall focus on at least one (1) of the following:

(a) Performing outreach to improve wounded or disabled veterans' awareness of eligibility for federal, state, and private wounded or disabled veterans' services and benefits;

(b) Supporting legislation and policies on the local, state, and national levels to advocate and bringing public awareness to wounded or disabled issues;

(c) Collaborating with federal, state, and private agencies that provide services to wounded or disabled veterans, including entering into data-sharing agreements with the United States Department of Veterans Affairs and the Department of Defense to obtain timely information with regard to the addresses and medical statuses of Kentucky's wounded or disabled veterans;

(d) Assessing the needs of wounded or disabled veterans with respect to benefits and services;

(e) Reviewing programs, research projects, and other initiatives that are designed to address or meet the needs of Kentucky's wounded or disabled veterans;

(f) Incorporating wounded or disabled veterans' issues in strategic planning concerning benefits and services;

(g) Monitoring and researching issues relating to wounded or disabled veterans and disseminating information and opportunities throughout the Program's network;

(h) Providing guidance and direction to wounded or disabled veterans applying for grants, benefits, or services via conferences, seminars, and training workshops with federal, state, and private agencies;

(i) Promoting events and activities that recognize and honor wounded or disabled veterans;

(j) Providing facilities, as appropriate, in support of the Program through grants and other sources of funding.

(3) Terms of Data-Sharing. With the consent of a wounded or disabled veteran, the Program's coordinator, or his or her designee, may obtain personal information concerning wounded or disabled veterans for the sole purpose of implementing the Program. Under the provisions of KRS 61.878, the information shall not be subject to public disclosure.

(4) Fundraising. If fundraising on behalf of the Wounded or Disabled Veterans Program, the Kentucky Department of Veterans Affairs may accept a gift, donation, or grant from an individual, a corporation, or a government entity, **provided that the funds are not restricted to tax exempt organizations as defined by Title 26, Section 501(c) of the Internal Review Code.**

This is to certify that the Executive Director of the Office of Kentucky Veteran Services and the Commissioner of the Kentucky Department of Veterans Affairs have reviewed and recommended this administrative regulation prior to its adoption, as required by KRS 156.070(4).

SILAS SESSION, Executive Director

WHITNEY ALLEN, Commissioner

TAMARA REID-MCINTOSH, Executive Director

APPROVED BY AGENCY: January 11, 2024

FILED WITH LRC: January 11, 2024 at 11:25 a.m.

CONTACT PERSON: Juan Renaud, Deputy Commissioner,
Office of the Commissioner, 1111 Louisville Rd., Suite B, Frankfort,
Kentucky 40601; phone (502) 782-5721; fax (502) 564-9240; email
juan.renaud@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Juan Renaud

(1) Provide a brief summary of:

(a) What this administrative regulation does: KRS 40.350 charges the Kentucky Department of Veterans Affairs with administering a program to service the approximately twenty-seven percent (27%) or 75,000 veterans are receiving Compensation or Pension Disability Benefits from the U.S. Department of Veterans Affairs. Specifically, KRS 40.350 mandates that KDVA conduct outreach, advocacy, and education for Kentucky's disabled or wounded veterans.

(b) The necessity of this administrative regulation: KRS 40.350 authorizes the Disabled or Wounded Veterans Program to receive funding from not only the General Assembly, but also other sources such as grants and donations. Proposed regulation 17 KAR 06:030 will afford this Veterans Program the administrative bandwidth to carry out the mandates outlined in KRS 40.350.

(c) How this administrative regulation conforms to the content of the authorizing statutes: Proposed regulation 17 KAR 06:030 conforms to the content of KRS 40.350 by focusing on conducting outreach, advocacy, and education for Kentucky's wounded and disabled veterans.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Proposed regulation 17 KAR 06:030 will assist in the effective administration of KRS 40.350 by detailing the means in which funds can be expended and affording a mechanism to determine how many of Kentucky's wounded or disabled veterans are reached by the initiatives focused on their specific circumstances.

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

(a) How the amendment will change this existing administrative regulation: Not Applicable.

(b) The necessity of the amendment to this administrative regulation: Not Applicable.

(c) How the amendment conforms to the content of the authorizing statutes: Not Applicable.

(d) How the amendment will assist in the effective administration of the statutes: Not Applicable.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are approximately 275,000 veterans in the Commonwealth. Wounded or disabled veterans account for approximately twenty-seven percent (27%) or 75,000 of Kentucky's veterans. Veterans affected by the proposed administrative change include:

(a) veterans (including their legal representatives) who are seeking compensation and benefits from the U.S. Department of Veterans Affairs or from the Commonwealth of Kentucky.

(b) any individual or other organization (such as a veteran service organization (VSO)) inquiring about benefits and services to Kentucky's wounded or disabled veterans.

(c) public and private organizations seeking to provide benefits or services to Kentucky's wounded or disabled veterans.

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

(a) List 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 listed above will not be required to perform compliance actions for this regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Donors will be required to ensure their donations are properly addressed for deposit in the Wounded or Disabled Veterans Fund. There will be no costs to the benefiting entities derived from compliance with this regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Kentucky's wounded or disabled veterans will benefit from proposed regulation 17 KAR 06:030 by receiving more opportunities for education, advocacy, and outreach as it relates to claims, benefits, and services available to Kentucky's wounded or disabled veterans.

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

(a) Initially: There will be no costs to the administrative body either initially or on a continuing basis.

(b) On a continuing basis: There will be no costs to the administrative body either initially or on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Implementation and enforcement funding is contained as part of KDVA's Wounded or Disabled Veterans Program 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 will be no impact on fees or funding.

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

(9) TIERING: Is tiering applied? Pursuant to KRS 13A.210, tiering is used by administrative bodies to reduce disproportionate impacts on certain classes of regulated entities, including government or small business, or both, and to avoid regulating entities that do not contribute significantly to the problem the administrative regulation was designed to address. In this instance, the new regulation is not expected to result in disproportionate impacts on certain classes of regulated entities. Therefore, tiering has not been 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? Kentucky Department of Veterans Affairs (KDVA).

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. State statutes that require or authorize the action taken by the administrative regulation are KRS 40.540 and KRS 40.350.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? Approximately \$5,000.

(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? Not Applicable.

(c) How much will it cost to administer this program for the first year? The only costs for the first year are the costs of salaries to fill the positions necessary to run the Program.

(d) How much will it cost to administer this program for subsequent years? The only costs for subsequent years are the costs of salaries to fill the positions necessary to run the Program.

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

Revenues (+/-): Specific dollar estimates cannot be determined.
Expenditures (+/-): Approximately \$5,000.

Other Explanation: Although the Program's employee's salaries

are funded by General Funds, KRS 40.350 (7)(a) and (7)(b) authorize the Program to "receive and expend moneys that may be appropriated by the General Assembly," as well as "other moneys received from any other source, including donations and grants." Authorization to receive other moneys results is speculative and makes it difficult to provide specific dollar amounts. The Program will promote wounded or disabled veterans activities, as the funds are received from General and Other Funds.

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? Specific dollar estimates cannot be determined.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? Specific dollar estimates cannot be determined.

(c) How much will it cost the regulated entities for the first year? Not Applicable.

(d) How much will it cost the regulated entities for subsequent years? Not Applicable.

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

Cost Savings (+/-): Specific dollar estimates cannot be determined.

Expenditures (+/-): Specific dollar estimates cannot be determined.

Other Explanation: Although the Program's employees' salaries are funded by General Funds, KRS 40.350 (7)(a) and (7)(b) authorize the Program to "receive and expend moneys that may be appropriated by the General Assembly," as well as "other moneys received from any other source, including donations and grants." Authorization to receive other moneys results is speculative and makes it difficult to provide specific dollar amounts. The Program will promote women veterans activities, as the funds are received from General and Other Funds.

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS13A.010(13)] Not Applicable.

**FINANCE AND ADMINISTRATION CABINET
Kentucky Public Pensions Authority
(Amended After Comments)**

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 78.552(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) "Informal settlement" means a submission to the agency by either party that will conclude a request for an administrative hearing prior to the hearing process being initiated.

(13) "Party" is defined by KRS 13B.010(3).

(14)[(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.

(15)[(14)] "Recommended order" is defined by KRS 13B.010(5).

(16)[(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.

(17)[(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 ~~prehearing~~~~[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.

(3) Once the valid Form 2940, Agency Portal Exemption, is processed, the claimant shall receive 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 he or she is directly involved, via first-class mail, except when a different manner of distribution is required by KRS Chapter 13B.

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. Informal Settlements.

(1)(a) Informal settlements pursuant to KRS 13B.070(3) may only be used if:

1. The issue(s) that prompted the administrative hearing has been resolved;

2. The agency has determined it will not take the agency action that resulted in the request for an administrative hearing; or

3. The claimant wishes to withdraw his, her, or its request for an administrative hearing.

(b) Informal settlements pursuant to KRS 13B.070(3) shall not be used other than as described in paragraph (a) of this subsection.

(2) The submission of an informal settlement pursuant to KRS 13B.070(3) shall be made by the party with the burden of proof under KRS 13B.090(7).

(3) An informal settlement pursuant to KRS 13B.070(3) shall be made in writing and filed with the agency. The informal settlement shall include:

(a) The claimant's or relevant member's first name, last name, and member ID or other personal identifying information; and

(b) A brief statement detailing the purpose of the informal settlement.

(4)(a) An informal settlement pursuant to KRS 13B.070(3) may only be filed:

1. After a request for administrative hearing has been filed in compliance with Section 5 of this administrative regulation; and

2. Prior to the agency's distribution of an order scheduling the prehearing conference through the agency portal, as described in Section 2 of this administrative regulation, or by first-class mail.

(b) An informal settlement pursuant to KRS 13B.070(3) shall not be valid if:

1. Filed prior to a request for an administrative hearing as specified in Section 5 of this administrative regulation; or

2. Filed after the agency has distributed an order scheduling the prehearing conference.

(5)(a) If an informal settlement is submitted that meets the qualifications established in subsections (1) through (4) of this section, the matter shall be considered resolved, and the agency shall notify both parties in writing that the matter has been resolved and the administrative hearing shall not proceed.

(b) The written notification in paragraph (a) of this subsection shall state that both parties shall have until the end of day fifteen (15) calendar days from the date the notification is provided to file a written objection to the notification that the administrative hearing shall not proceed.

(6)(a) If a written objection is filed by the end of day on the 15th calendar day as provided in subsection (5)(b) of this section, the administrative hearing requested shall proceed.

(b) If a written objection is not filed by the end of day on the 15th calendar day as provided in subsection (5)(b) of this section, the administrative hearing requested shall not proceed, and the matter shall not be appealable.

(7) Nothing in this section shall prevent the parties from engaging in formal settlements and agreements to present to the hearing officer in accordance with Section 9 of this administrative regulation.

Section 7.[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 8.[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 9.[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 10.[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 11.[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 12.[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 13.[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 14.[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:

(a) Be mailed by first-class U.S. mail; or, if permitted by law;

(b) Electronically[electronically] mailed through the agency portal to any party that provides written consent[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 15.[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 16.[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.

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 17.[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 18.~~[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 19.~~[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: January 3, 2024

FILED WITH LRC: January 5, 2024 at 2:15 p.m.

CONTACT PERSON: Jessica Beaubien, Policy Specialist, Kentucky Public Pensions Authority, 1260 Louisville Road, Frankfort, Kentucky 40601, phone (502) 696-8800 ext. 8570, fax (502) 696-8615, email Legal.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:

(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.

FISCAL NOTE

(1) What 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] This administrative regulation will not have a major economic impact.

BOARDS AND COMMISSIONS Kentucky Board of Medical Licensure (Amended After Comments)

201 KAR 9:067. Professional standards and procedures for medicinal cannabis practitioners.

RELATES TO: KRS 13B.125, 218B.015, 218B.050, 218A.202, [] 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 to promulgate administrative regulations to establish procedures for applying for authorization to provide written certifications; the conditions that ~~shall~~ must be met to be eligible for authorization to provide written certifications; the process and procedures for renewing authorization to provide written certifications; the continuing education requirements for medicinal cannabis practitioners; the 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 indications of cannabis use disorder; 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 that 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 shall~~[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 if, ~~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 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: January 5, 2024

FILED WITH LRC: January 8, 2024 at 10:40 a.m.

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.

BOARDS AND COMMISSIONS

Board of Nursing

(Amended After Comments)

201 KAR 20:057. Scope and standards of practice of advanced practice registered nurses.

RELATES TO: KRS 218A.171, 218A.172, 218A.202, 218A.205(3)(a), (b), 314.011(7), (8), 314.042, 314.091, 314.193(2), 314.195

STATUTORY AUTHORITY: KRS 218A.205(3)(a), (b), 314.042, 314.131(1), 314.193(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 218A.205(3)(a) and (b) require the Board of Nursing, in consultation with the Kentucky Office of Drug Control Policy, to establish by administrative regulation mandatory prescribing and dispensing standards for licensees authorized to prescribe or dispense controlled substances, and in accordance with the Centers for Disease Control and Prevention (CDC) guidelines, to establish a prohibition on a practitioner issuing a prescription for a Schedule II controlled substance for more than a three (3) day supply if intended to treat pain as an acute medical condition, unless an exception applies. KRS 314.131(1) authorizes the board to promulgate administrative regulations necessary to enable it to carry into effect the provisions of KRS Chapter 314[.] and authorizes the board to require by administrative regulation that licensees and applicants utilize a specific method of submission of documents or information that is required to be provided to the board, including electronic submission. KRS 314.193(2) authorizes the board to promulgate administrative regulations establishing standards for the performance of advanced practice registered nursing to safeguard the public health and welfare. This administrative regulation establishes the scope and standards of practice for an advanced practice registered nurse.

Section 1. Definitions. (1) "Collaboration" means the relationship between the advanced practice registered nurse and a physician in the provision of prescription medication, including both autonomous and cooperative decision-making, with the advanced practice registered nurse (APRN) and the physician contributing their respective expertise.

(2) "Collaborative Agreement for the Advanced Practice Registered Nurse's Prescriptive Authority for Controlled Substances" or "CAPA-CS" means the written document pursuant to KRS 314.042(11)(40).

(3) "Collaborative Agreement for the Advanced Practice Registered Nurse's Prescriptive Authority for Nonscheduled Legend Drugs" or "CAPA-NS" means the written document pursuant to KRS 314.042(8).

(4) "Good standing" is defined by KRS 314.039.

(5) "Immediate family" means a spouse, parent, parent-in-law, stepparent, child, stepchild, son-in-law, daughter-in-law, sibling, stepsibling, brother-in-law, sister-in-law, grandparent, grandchild, spouse of grandparent or grandchild[child, sibling, parent-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, step-parent, step-child, step-sibling], or other person[relative] residing in the same residence as the APRN[a prescribing practitioner].

(6) "KBML" means the Kentucky Board of Medical Licensure.

(7)[(5)] "PDMP"["KASPER"] 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[established in KRS 218A.202].

Section 2. (1) The practice of the APRN[advanced practice registered nurse] shall be in accordance with the standards and functions established in scope and standards of practice statements adopted by the board in subsection (2) of this section.

(2) The following scope and standards of practice statements shall be adopted:

(a) AACN Scope and Standards for Acute Care Nurse Practitioner Practice;

(b) AACN Scope and Standards for Acute Care Clinical Nurse Specialist Practice;

(c) Neonatal Nursing: Scope and Standards of Practice;

(d) Nursing: Scope and Standards of Practice;

(e) Pediatric Nursing: Scope and Standards of Practice;

(f) Psychiatric- Mental Health Nursing: Scope and Standards of Practice;

(g) Scope of Practice for Nurse Practitioners;

(h) Standards of Practice for Nurse Practitioners;

(i) Scope of Nurse Anesthesia Practice;

(j) Standards for Nurse Anesthesia Practice;

(k) Standards for Office Based Anesthesia Practice;

(l) Standards for the Practice of Midwifery;

(m) Oncology Nursing Scope and Standards of Practice;

(n) The Women's Health Nurse Practitioner: Guidelines for Practice and Education;

(o) Definition of Midwifery and Scope of Practice of Certified Nurse-Midwives and Certified Midwives; and

(p) Standards for Professional Nursing Practice in the Care of Women and Newborns.

Section 3. CAPA-CS Practice Requirements for APRNs

(1) In the performance of advanced practice registered nursing, the APRN[advanced practice registered nurse] shall seek consultation or referral in those situations outside the APRN's[advanced practice registered nurse's] scope of practice.

(2) An APRN wishing to have a CAPA-CS in the first year of the APRN's licensure must be employed by a health care entity or provider. If the employing provider is an APRN, the employing APRN shall have been granted an exemption under Section 7 of this administrative regulation.

(3) During term of the CAPA-CS, the APRN and the collaborating physician shall meet, [either] in person or via video conferencing, or by phone, if in person or video conferencing is

not feasible, to review the APRN's reverse PDMP report. The review may include information from the patient's medical record that relates to the condition or conditions being treated with controlled substances by the APRN.

(a) Both the APRN and the physician shall maintain a record of:

1. The meeting date;

2. A summary of discussions; and

3. Any recommendations made shall be made in writing.

(b) The record shall be maintained by both parties for a period of one (1) year past the expiration of the APRN CAPA-CS.

(c) The APRN's meeting records shall be subject to audit by the board and the physician's records shall be subject to audit by the KBML. The sole purpose of the audit shall be to document that the collaboration meetings have taken place to verify compliance with this section.

(4) In the first year of the CAPA-CS, the APRN and a physician shall meet at least quarterly; and

(5) In the ensuing three (3) years of the CAPA-CS, the APRN and the physician shall meet at least biannually.

Section 4. Advanced practice registered nursing shall include prescribing and administering medications, as well as[and] ordering treatments, devices, diagnostic tests, and performing certain procedures that shall be consistent with the scope and standards of practice of the APRN[advanced practice registered nurse].

Section 5. Advanced practice registered nursing shall not preclude the practice by the APRN[advanced practice registered nurse] of registered nursing practice as defined by KRS 314.011(6).

Section 6. (1)(a) A CAPA-NS and a CAPA-CS shall include the:

1. Name;

2. Practice address;

3. Phone number;

4. License number of both the APRN[advanced practice registered nurse] and each physician who is a party to the agreement; and

5. Population focus and area of practice of the APRN and each physician[advanced practice registered nurse].

(b) An APRN[advanced practice registered nurse] shall use a[the Common] CAPA-NS Agreement[form].

(c) An APRN shall use the Standardized CAPA-CS Form.

(2)(a) To notify the board of the existence of a CAPA-NS pursuant to KRS 314.042(8)(b), the APRN shall submit an online notification[file with the board the APRN Prescriptive Authority Notification Form].

(b) To notify the board that the requirements of KRS 314.042(9) have been met and that the APRN will be prescribing nonscheduled legend drugs without a CAPA-NS, the APRN shall submit an online notification[file the APRN Prescriptive Authority Notification Form].

(c) To notify the board of the existence of a CAPA-CS pursuant to KRS 314.042(11)(b)[(40)(b)], the APRN shall submit an online notification[file with the board the APRN Prescriptive Authority Notification Form].

(d) To notify the board that the requirements of KRS 314.042(14) have been met and request that the APRN be exempt from prescribing scheduled legend drugs under a CAPA-CS, the APRN shall complete the request for APRN exemption from CAPA-CS prescriptive authority and pay the listed fee in administrative regulation 201 KAR 20:240, Section 3(1)(e). Each submitted request shall be subject to the fee, regardless of whether the board grants the exemption after making a determination under Section 7 of this administrative regulation.

(e) All notifications, rescissions, and exemption requests shall be submitted by the APRN to the board via the online KBN Nurse Portal at www.kbn.ky.gov, and shall include the information and documentation required by subsections (1) and (2) of this section.

(f) Upon request by the Board, the APRN shall furnish to the board a copy of the executed CAPA-NS Agreement or Standardized CAPA-CS Agreement Form.

(3) For purposes of the CAPA-NS and the CAPA-CS, in determining whether the APRN and the collaborating physician are qualified in the same or a similar specialty, the board shall consider

the facts of each particular situation and the scope of the APRN's and the physician's actual practice.

(4)(a) An APRN with controlled substance prescriptive authority[a CAPA-CS], shall:—

(a) Obtain a United States Drug Enforcement [Agency]Administration (DEA) Controlled Substance Registration Certificate and shall report [all]the APRN's Kentucky DEA number[numbers], [including a DEA-X Controlled Substance Registration Certificate,]and any change in the status of a certificate by providing a copy of each registration certificate to the board within thirty (30) days of issuance.

(b) [An APRN shall]Register for a master account with the [Kentucky All-Schedule Prescription Electronic Reporting System (KASPER)]PDMP, within thirty (30) days of obtaining a DEA Controlled Substance Registration Certificate, and prior to prescribing controlled substances. A copy of the [KASPER]PDMP master account registration certificate shall be submitted to the board via the online KBN Nurse Portal[APRN Update portal] within thirty (30) days of receipt of confirmation of registration by [KASPER]the PDMP.

(5) An APRN shall report any changes to a CAPA-NS or a CAPA-CS to the board within thirty (30) days.

(6) If an APRN's CAPA-NS or CAPA-CS ends unexpectedly for reasons outside the APRN's control such as being ended by the physician without notice, the physician's license becoming no longer valid in Kentucky, or the death of a physician, the APRN may continue to prescribe[non-scheduled legend drugs] for thirty (30) days, after documenting in each patient's medical record the applicant's professional determination that the continued prescribing is justified based on the individual facts applicable to the patient's diagnosis and treatment. This thirty (30) day grace period shall not be extended or occur successively. [If an APRN's CAPA-CS ends unexpectedly, the APRN] [with a CAPA-CS] [shall cease prescribing controlled substances] [if the collaborative agreement unexpectedly ends,] [until the CAPA-CS is resumed,] [or] [the APRN enters into a new CAPA-CS, or the APRN is granted an exemption by the Board under Section 7 of this administrative regulation.]

(7) An APRN with a CAPA-NS or a CAPA-CS shall report a practice address to the board. A change to the practice address shall be reported to the board within thirty (30) days.

(8) All documents and information required to be reported to the board by this section shall be reported by uploading the document or information through the board's Web site, <https://kbn.ky.gov/>, utilizing the tab APRN Update]. The board shall not accept documents or information sent in any other format.

Section 7. CAPA-CS Exemption Review Request. (1) An APRN who wishes to request a CAPA-CS exemption pursuant to KRS 314.042(14) shall:

(a) Complete a CAPA-CS exemption review request the board's website as required in Section 6(8) of this administrative regulation;

(b) Submit the fee required by 201 KAR 20:240, Section 3(1)(e); and

(c) Comply with the requirements established in KRS 314.042(14) and this administrative regulation.

(2) Upon receipt of the CAPA-CS exemption review request, the board shall verify the following:

(a) The APRN has had four (4) years of controlled substance prescribing authority;

(b) The APRN's license is in good standing;

(c) The APRN has maintained a DEA registration and a current registration certificate is on file with the board;

(d) The APRN has maintained a PDMP registration and a current registration is on file with the board;

(e) That a current Notification of a CAPA-CS for the APRN is on record with the board; and

(f) The APRN has an active account with the PDMP.

(3) Upon receipt of the CAPA-CS exemption review request, the board shall:

(a) Perform a criminal background check for any unreported misdemeanor or felony convictions in Kentucky; and

(b) Perform a check of the coordinated licensure information

system specified in KRS 314.475 for any unreported disciplinary actions in another state.

(4) The APRN submitting the request shall cooperate with supplemental requests for documentation before the board makes a determination that the APRN's license is in good standing pursuant to KRS 314.042(14).

(5) An APRN wishing to practice in Kentucky through licensure by endorsement may request an exemption under this section.

(a) An APRN wishing to practice in Kentucky through licensure by endorsement is exempt from the CAPA-CS requirement if the APRN:

1. Has met the prescribing requirements for controlled substances in a state that grants such prescribing authority to APRNs;

2. Has had authority to prescribe controlled substances for at least four (4) years; and

3. Has a license in good standing.

(b) An APRN wishing to practice in Kentucky through licensure by endorsement who has had the authority to prescribe controlled substances for less than four (4) years and wishes to continue to prescribe controlled substances shall enter into a CAPA-CS with a physician licensed in Kentucky and comply with the provisions of KRS 314.042(11), until the requirements of this section are met.

(6) If the board determines that the APRN is eligible for the exemption after a review and determination of the exemption request under this section, the board shall notify the APRN in writing that the CAPA-CS is no longer required. The board shall not require the APRN to maintain a CAPA-CS as a condition to prescribe controlled substances unless the board imposes such a requirement as part of an action instituted under KRS 314.091(1).

(7) If the board denies the exemption request, the denial shall be in writing and shall state the reasons for the denial. The requestor may request a hearing pursuant to KRS 13B within twenty (20) days of receiving written notification of the denial. If a hearing is requested and the order of the board is adverse to the advance practice registered nurse, the board may impose costs pursuant to administrative regulation 201 KAR 20:162, Section 7.

(8) The APRN nurse shall not prescribe controlled substances without a CAPA-CS until the board has completed its review and has notified the APRN in writing that the APRN is exempt from the CAPA-CS requirement.

Section 8.[Section 7.] Prescribing Medications without Prescriptive Authority. Prescribing nonscheduled legend drugs[medications] without a CAPA-NS or prescribing controlled substances without a CAPA-CS shall constitute a violation of KRS 314.091(1), unless:[except if]

(1) In the case of nonscheduled legend drugs, the[a] CAPA-NS has been discontinued pursuant to KRS 314.042(9) or if the prescribing occurred within the grace period established in Section 6(6) of this administrative regulation; or[.]

(2) In the case of controlled substances, the APRN was granted an CAPA-CS exemption by the Board under KRS 314.042(14)(e) prior to the date the medications were prescribed.

Section 9.[Section 8.] The board may make an unannounced visit to an [advanced practice registered nurse] APRN's practice to determine if the [advanced practice registered nurse's practice] it is consistent with the requirements established by KRS Chapter 314 and 201 KAR Chapter 20, [and patient] Patient and prescribing records shall be made available for immediate inspection.

Section 10.[Section 9.] Prescribing Standards for Controlled Substances. (1)(a) This section shall apply to APRNs[APRN] with controlled substance prescriptive authority[a CAPA-CS, if prescribing a controlled substance]. It also applies to the utilization of [KASPER]the PDMP.

(b) The APRN shall practice according to the applicable scope and standards of practice for the APRN's role and population focus. This section does not alter the prescribing limits established in KRS 314.011(8).

(2) Prior to the initial prescribing of a controlled substance to a patient, the APRN shall:

(a) Obtain the patient's medical history, including history of substance use, and conduct an examination of the patient and document the information in the patient's medical record. An APRN certified in psychiatric-mental health shall obtain a medical and psychiatric history, perform a mental health assessment, and document the information in the patient's medical record;

(b) Query [KASPER]the PDMP for the twelve (12) month period immediately preceding the request for available data on the patient and maintain all [KASPER]PDMP report identification numbers and the date of issuance of each [KASPER]PDMP report in the patient's record;

(c) Develop a written treatment plan stating the objectives of the treatment and further diagnostic examinations required; and

(d) Discuss with the patient, the patient's parent if the patient is an unemancipated minor child, or the patient's legal guardian or health care surrogate:

1. The risks and benefits of the use of controlled substances, including the risk of tolerance and drug dependence;

2. That the controlled substance shall be discontinued once the condition requiring its use has resolved; and

3. Document that the discussion occurred and obtain written consent for the treatment.

(3) The treatment plan shall include an exit strategy, if appropriate, including potential discontinuation of the use of controlled substances.

(4) For subsequent or continuing long-term prescriptions of a controlled substance for the same medical complaint, the APRN shall:

(a) Update the patient's medical history and document the information in the patient's medical record;

(b) Modify and document changes to the treatment plan as clinically appropriate; and

(c) Discuss the risks and benefits of any new controlled substances prescribed, including the risk of tolerance and drug dependence with the patient, the patient's parent if the patient is an unemancipated minor child, or the patient's legal guardian or health care surrogate.

(5) During the course of treatment, the APRN shall query [KASPER]the PDMP no less than once every three (3) months for the twelve (12) month period immediately preceding the request for available data on the patient. The APRN shall maintain in the patient's record all [KASPER]PDMP report identification numbers and the date of issuance of each [KASPER]PDMP report or a copy or saved image of the [KASPER]PDMP report. If neither an identification number nor an image can be saved to the patient's record as a result of technical limitations of the APRN's electronic health record system, the APRN shall make a concurrent note in the patient's record documenting the date and time that the APRN reviewed the patient's [KASPER]PDMP report.

(6) These requirements may be satisfied by other licensed practitioners in a single group practice if:

(a) Each licensed practitioner involved has lawful access to the patient's medical record;

(b) Each licensed practitioner performing an action to meet these requirements is acting within the scope of practice of his or her profession; and

(c) There is adequate documentation in the patient's medical record reflecting the actions of each practitioner.

(7) If prescribing a controlled substance for the treatment of chronic, non-cancer pain, the APRN[,] in addition to the requirements of this section, shall obtain a baseline drug screen and further random drug screens if the APRN:

(a) Finds a drug screen clinically appropriate; or

(b) Believes that it is appropriate to determine whether [or not] the controlled substance is being taken by the patient.

(8) If prescribing a controlled substance for the treatment of a mental health condition, the APRN shall meet the requirements of this section and KRS 314.011(8)(a) and (b).

(9) Prior to prescribing a controlled substance for a patient in the emergency department of a hospital that is not an emergency situation, the APRN shall:

(a) Obtain the patient's medical history, conduct an examination of the patient, and document the information in the patient's medical

record. An APRN certified in psychiatric - mental health shall obtain a medical and psychiatric history, perform a mental health assessment, and document the information in the patient's medical record;

(b) Query [KASPER]the PDMP for the twelve (12) month period immediately preceding the request for available data on the patient and document the data in the patient's record;

(c) Develop a written treatment plan stating the objectives of the treatment and further diagnostic examinations required; and

(d) Discuss the risks and benefits of the use of controlled substances with the patient, the patient's parent if the patient is an unemancipated minor child, the patient's legal guardian, or health care surrogate, including the risks of tolerance and drug dependence, and document that the discussion occurred and that the patient consented to that treatment.

(10) For each patient for whom an APRN prescribes a controlled substance, the APRN shall keep accurate, readily accessible, and complete medical records, which include:

(a) Medical history and physical or mental health examination;

(b) Diagnostic, therapeutic, and laboratory results;

(c) Evaluations and consultations;

(d) Treatment objectives;

(e) Discussion of risk, benefits, and limitations of treatments;

(f) Treatments;

(g) Medications, including date, type, dosage, and quantity prescribed;

(h) Instructions and agreements;

(i) Periodic reviews of the patient's file; and

(j) All [KASPER]PDMP report identification numbers and the date of issuance of each [KASPER]PDMP report.

(11) The requirement to query [KASPER]the PDMP shall not apply to:

(a) An APRN prescribing or administering a controlled substance immediately prior to, during, or within the fourteen (14) days following an operative or invasive procedure or a delivery if the prescribing or administering is medically related to the operative or invasive procedure of the delivery and the medication usage does not extend beyond the fourteen (14) days;

(b) An APRN prescribing or administering a controlled substance necessary to treat a patient in an emergency situation; or

(c) An APRN prescribing a controlled substance:

1. For administration in a hospital or long-term-care facility with an institutional account, or an APRN in a hospital or facility without an institutional account, if the hospital, long-term-care facility, or licensee queries [KASPER]the PDMP for all available data on the patient or resident for the twelve (12) month period immediately preceding the query within twelve (12) hours of the patient's or resident's admission and places a copy of the query in the patient's or resident's medical records during the duration of the patient's stay at the facility;

2. As part of the patient's hospice or end-of-life treatment;

3. For the treatment of pain associated with cancer or with the treatment of cancer;

4. To assist a patient with submitting to a diagnostic test or procedure;

5. Within seven (7) days of an initial prescription pursuant to subsection (1) of this section if the prescriber:

a. Substitutes a controlled substance for the initial prescribing;

b. Cancels any refills for the initial prescription; and

c. Requires the patient to dispose of any remaining unconsumed medication;

6. Within ninety (90) days of an initial prescription pursuant to subsection (1) of this section if the prescribing is done by another licensee in the same practice or in an existing coverage arrangement, if done for the same patient for the same condition;

7. To a research subject enrolled in a research protocol approved by an institutional review board that has an active federal-wide assurance number from the United States Department of Health and Human Services, Office for Human Research Protections if the research involves single, double, or triple blind drug administration or is additionally covered by a certificate of confidentiality from the National Institutes of Health;

8. During the effective period of any disaster or situation with

mass casualties that have a direct impact on the APRN's practice;

9. As part of the administering or ordering of controlled substances to prisoners in a state, county, or municipal correctional facility;

10. That is a Schedule IV controlled substance for no longer than three (3) days for an established patient to assist the patient in responding to the anxiety of a nonrecurring event; or

11. That is classified as a Schedule V controlled substance.

(12) In accordance with 21 C.F.R. 1306.12(b)(1)(iv) - (v), federal regulation 21 C.F.R. 1306.12(b) concerning the issuance of multiple prescriptions for Schedule II controlled substances shall not apply to APRNs in this state.

(13) No less than once every six (6) months, an APRN who holds a DEA Controlled Substance Registration Certificate shall review a reverse [KASPER]PDMP report for the preceding six (6) months to determine if the information contained in [KASPER]the PDMP is correct. If the information is incorrect, the APRN shall comply with 902 KAR 55:110 and take the necessary steps to seek correction of the information, by:

(a) First contacting the reporting pharmacy;

(b) Contacting law enforcement if suspected fraudulent activity;

or

(c) Contacting the Drug Enforcement Professional Practices Branch, Office of Inspector General, Cabinet for Health and Family Services.

(14) An APRN shall not issue a prescription for hydrocodone combination products for more than a three (3) day supply if the prescription is intended to treat pain as an acute medical condition, except if:

(a) The APRN, in his or her professional judgment, believes that more than a three (3) day supply of hydrocodone combination products is medically necessary to treat the patient's pain as an acute medical condition and the APRN adequately documents the acute medical condition and lack of alternative treatment options that justifies deviation from the three (3) day supply limit on the patient's medical records;

(b) The prescription for hydrocodone combination products is prescribed to treat chronic pain;

(c) The prescription for hydrocodone combination products is prescribed to treat pain associated with a valid cancer diagnosis;

(d) The prescription for hydrocodone combination products is prescribed to treat pain while the patient is receiving hospice or end-of-life treatment;

(e) The prescription for hydrocodone combination products is prescribed as part of a narcotic treatment program licensed by the Cabinet for Health and Family Services;

(f) The prescription for hydrocodone combination products is prescribed to treat pain following a major surgery, which is any operative or invasive procedure or a delivery, or the treatment of significant trauma; or

(g) Hydrocodone combination products are administered directly to an ultimate user in an inpatient setting.

(15) Prescriptions written for hydrocodone combination products pursuant to subsection (14)(a) through (g) of this section shall not exceed thirty (30) days without any refill.

(16) An APRN may prescribe electronically. Electronic prescription shall be as established in KRS 218A.171.

(17) For any prescription for a controlled substance, the prescribing APRN shall discuss with the patient the effect the patient's medical condition and medication may have on the patient's ability to safely operate a vehicle in any mode of transportation.

Section 11.[Section 40.] Immediate Family and Self-prescribing or Administering Medications.

(1) An APRN shall not self-prescribe or administer controlled substances.

(2) An APRN shall not prescribe or administer controlled substances to his or her immediate family except as established in subsections (3) and (4) of this section.

(3) An APRN may prescribe or administer controlled substances to an immediate family member:

(a) In an emergency situation;

(b) For a single episode of an acute illness through one (1)

prescribed course of medication; or

(c) In an isolated setting, if no other qualified practitioner is available.

(4)(a) An APRN who prescribes or administers controlled substances for an immediate family member pursuant to subsections (3)(a) or (b) of this section shall document all relevant information and notify the appropriate provider.

(b) An APRN who prescribes or administers controlled substances for an immediate family member pursuant to subsection (3)(c) of this section shall maintain a provider-practitioner relationship and appropriate patient records.

Section 12.[Section 44.] Incorporation by Reference. (1) The following material is incorporate by reference:

(a) "AACN Scope and Standards for Acute Care Nurse Practitioner Practice", 2017 Edition, American Association of Critical-Care Nurses;

(b) "ACCN Scope and Standards for Acute Care Clinical Nurse Specialist Practice", 2014 Edition, American Association of Critical-Care Nurses;

(c) "Neonatal Nursing: Scope and Standards of Practice", 2013 Edition, American Nurses Association/ National Association of Neonatal Nurses;

(d) "Nursing: Scope and Standards of Practice", 2015 Edition, American Nurses Association;

(e) "Pediatric Nursing: Scope and Standards of Practice", 2015 Edition, American Nurses Association/ Society of Pediatric Nursing/ National Association of Pediatric Nurse Practitioners;

(f) "Psychiatric-Mental Health Nursing: Scope and Standards of Practice", 2014, American Nurses Association/ American Psychiatric Nursing Association;

(g) "Scope of Practice for Nurse Practitioners", 2019 Edition, American Association of Nurse Practitioners;

(h) "Standards of Practice for Nurse Practitioners", 2019 Edition, American Association of Nurse Practitioners;

(i) "Scope of Nurse Anesthesia Practice", 2013 Edition, American Association of Nurse Anesthetists;

(j) "Standards for Nurse Anesthesia Practice", 2019 Edition, American Association of Nurse Anesthetists;

(k) "Standards for Office Based Anesthesia Practice", 2019 Edition, American Association of Nurse Anesthetists;

(l) "Standards for the Practice of Midwifery", 2011 Edition, American College of Nurse Midwives;

(m) "Oncology Nursing Scope and Standards of Practice", 2019 Edition, Oncology Nursing Society;

(n) "The Women's Health Nurse Practitioner: Guidelines for Practice and Education", 2014 Edition, Association of Women's Health, Obstetric and Neonatal Nurses/Nurse Practitioners in Women's Health;

(o) "Definition of Midwifery and Scope of Practice of Certified Nurse-Midwives and Certified Midwives", 2012 Edition, American College of Nurse Midwives;

(p) "Standards for Professional Nursing Practice in the Care of Women and Newborns", 2019 Edition, Association of Women's Health, Obstetric and Neonatal Nurses;

(q) "Standardized CAPA-CS Agreement Form", 9/2023["APRN Prescriptive Authority Notification Form", 6/2018, Kentucky Board of Nursing]; and

(r) "[Common]-CAPA-NS Agreement Form", 9/2023[6/2015, Kentucky Board of Nursing].

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

AUDRIA DENKER, President

APPROVED BY AGENCY: January 5, 2024

FILED WITH LRC: January 11, 2024 at 10:05 a.m.

CONTACT PERSON: Jeffrey R. Prather, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300,

VOLUME 50, NUMBER 8– FEBRUARY 1, 2024

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ky.gov/formservices/Nursing/PendReg.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jeffrey Prather

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets standards for APRN practice.

(b) The necessity of this administrative regulation: This administrative regulation is necessary because of KRS 314.042.

(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 setting standards of practice.

(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 standards of practice.

(2) If 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 clears up regulatory language to use "APRN"; adds definitions for "Good standing", "Immediate family" and "PDMP" (prescription drug monitoring program). It establishes regulatory standards for APRNs engaged in a CAPA-CS, including creation of a new CAPA-CS form. The amendments further provide for the regulatory process by which an APRN may request an exemption from the CAPA-CS requirement, in accordance with Senate Bill (SB) 94 (2023RS).

(b) The necessity of the amendment to this administrative regulation: These regulation amendments were necessary due to SB 94, and the changes to KRS 314.042.

(c) How the amendment conforms to the content of the authorizing statutes: By clearly stating requirements.

(d) How the amendment will assist in the effective administration of the statutes: By clearly stating standards, procedures, and requirements.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Kentucky APRNs, approximately 14,000 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: APRNs who wish to be in a CAPA-CS will need to use the form incorporated by reference. If the wish to request an exemption, they must be in good standing, provide a DEA and a PDMP registration, and meet the 4-year prescribing requirement.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No additional cost, other than the exemption request fee in 201 KAR 20:240, which is mandated by KRS 314.042(14)(b)(4).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will be in compliance with the administrative regulation and KRS 314.042, and will be authorized to prescribe controlled substances.

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

(a) Initially: No additional cost.

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

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

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No fees are increased; however, a fee of \$50 has been proposed in 201 KAR 20:240, which is mandated by KRS 314.042(14)(b)(4), and currently in promulgation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This regulation does not establish a fee; however, see KRS 314.042(14)(b)(4), and

201 KAR 20:240.

(9) TIERING: Is tiering applied? The changes will apply equally, there is no tiering.

FISCAL NOTE

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. Kentucky Revised Statutes KRS 218A.205(3)(a), (b), 314.131(1), 314.042, and 314.193.

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

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

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

(c) How much will it cost to administer this program for the first year? No additional cost.

(d) How much will it cost to administer this program for subsequent years? No additional cost.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

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

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

(c) How much will it cost the regulated entities for the first year? None.

(d) How much will it cost the regulated entities for subsequent years? None.

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

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

BOARDS AND COMMISSIONS

Board of Nursing

(Amended After Comments)

201 KAR 20:067. Professional standards for medicinal cannabis.

RELATES TO: KRS 218B.010, 218B.015, 218B.050, 218B.080, 314.011, 314.042, 314.085, 314.089, 314.091

STATUTORY AUTHORITY: KRS 218B.010, 218B.015, 218B.050, 218B.080, 314.131

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.131 authorizes the Board to promulgate administrative regulations to

regulate the conduct of its licensees. This administrative regulation establishes the professional standards for APRNs practicing as a medicinal cannabis practitioner.

Section 1. Definitions. (1) "Advanced Practice Registered Nurse" or "APRN" is defined by KRS 314.011(7).

(2) "Authorization" means a credential that authorizes the APRN to provide written certifications under KRS 218B.050 and this administrative regulation.

(3) "Bona fide practitioner-patient relationship" is defined by KRS 218B.010(1).

(4) "Cabinet" means the Cabinet for Health and Family Services.

(5) "Controlled substance" means any Schedule II, III, IV, or V controlled substance and does not include medicinal cannabis.

(6) "Good standing" means a license that at the time of initial application or renewal, is not:

(a) Limited, suspended, probated, revoked, or otherwise disciplined;

(b) Under investigation;

(c) Subject to monitoring, alternative discipline, or peer assistance; or

(d) Held by a person who has ever been subject to disciplinary action by any licensing entity, including the board of any jurisdiction or the United States Drug Enforcement Administration (DEA) that was based, in whole or in part, on the person's inappropriate prescribing, personally furnishing, dispensing, diverting, administering, supplying or selling a controlled substance or other dangerous drug.

(7) "Medicinal cannabis" is defined by KRS 218B.010(15).

(8) "Medicinal cannabis practitioner" means an APRN who is holds an authorization under this administrative regulation.

(9) "Minor" means a person less than eighteen (18) years of age.

(10) "Immediate family member" is defined by 201 KAR 20:057, Section 1(5).

(11) "Prescription Drug Monitoring Program" or "PDMP" is defined by 201 KAR 20:057, Section 1(11).

(12) "Qualifying medical condition" is defined by KRS 218B.010(26).

(13) "Qualified patient" is defined by KRS 218B.010(25).

(14) "Telehealth" is defined by KRS 211.332(5).

(15) "Use of medicinal cannabis" is defined by KRS 218B.010(37).

(16) "Written certification" means a written certification for the use of medicinal cannabis and is defined by KRS 218B.010(39).

Section 2. Applicability. This administrative regulation does not apply to an APRN who recommends treatment with cannabis or a drug derived from cannabis under any of the following that are approved by an investigational review board or equivalent entity, the United States Food and Drug Administration, or the National Institutes for Health or any of its cooperative groups or centers under the United States Department of Health and Human Services:

(1) A research protocol;

(2) A clinical trial;

(3) An investigational new drug application; or

(4) An expanded access submission.

Section 3. Eligibility for an Authorization. (1) An APRN applicant for an authorization shall meet the following requirements:

(a) Holds an active, unrestricted Kentucky license as an APRN that is in good standing;

(b) Has a DEA registration and a current registration certificate is on file with the board;

(c) Has an active account with the PDMP, a current PDMP registration certificate is on file with the board;

(d) Has not been denied a license to prescribe, possess, dispense, administer, supply, or sell a controlled substance by the DEA or appropriate issuing body of any state or jurisdiction, based, in whole or in part, on the applicant's inappropriate prescribing, personally furnishing, dispensing, administering, supplying or selling a controlled substance or other dangerous drug;

(e) Has not held a license issued by the DEA or a state licensing administration in any jurisdiction, under which the person may

prescribe, personally furnish, dispense, possess, administer, supply or sell a controlled substance, that has ever been restricted, based, in whole or in part, on the applicant's inappropriate prescribing, dispensing, administering, supplying, or selling a controlled substance or other dangerous drug;

(f) The applicant has not been subject to disciplinary action by any licensing entity that was based, in whole or in part, on the applicant's inappropriate prescribing, personally furnishing, dispensing, diverting, administering, supplying or selling a controlled substance or other dangerous drug; and

(g) The applicant has completed the continuing education requirements in Section 6 of this administrative regulation.

(h) The applicant has no ownership or investment interest in or compensation agreement with a cannabis business licensed under KRS Chapter 218B.

(2) The board shall provide the cabinet with the names of all APRNs authorized to provide written certifications.

(3) An APRN who fails to renew the authorization or is otherwise unable to legally practice as a registered nurse or APRN shall not practice as or use the title of medicinal cannabis practitioner until an authorization has been issued by the board.

(4) An APRN shall not provide written certifications unless authorized to do so under this section.

(5) It is not within the scope of practice for an APRN to provide written certifications, unless the APRN is authorized to do so under this section.

(6) The board shall notify the cabinet immediately with the name of any APRN whose authorization is lapsed, surrendered, suspended, revoked or otherwise not renewed.

Section 4. Procedures for submitting an initial application for authorization. (1) An applicant for a certificate to recommend medicinal cannabis shall:

(a) Submit to the board an Application for Authorization to Provide Written Certifications for the Use of Medicinal Cannabis;

(b) Submit to the board a copy of the APRN's DEA registration certificate;

(c) Submit a copy of the PDMP master account registration certificate to the board;

(d) Submit proof of completion of the education requirements in Section 6(1) of this administrative regulation; and

(e) Pay a nonrefundable fee of \$100.

(2) An application shall be considered complete if all the following requirements are met:

(a) Evidence of all the requirements in subsection (1) of this section are received by the board; and

(b) The APRN is not under investigation pursuant to 201 KAR 20:161 of evidence appearing to show that the applicant has violated KRS 314.091(1).

(3) Upon receipt of the application:

(a) The board shall review all application materials submitted.

(b) The board may contact individuals, agencies, or organizations for information about the applicant. As part of the application process, the board may request an applicant to appear before the board to answer questions or provide additional information.

(c) An applicant shall not withdraw an application for the authorization to provide written certifications without the approval of the board.

(4) The following processes apply if an application is not complete within (6) six months of the date the application is received by the board:

(a) If the application is not complete because required information or materials have not been received by the board, the board may notify the applicant that it intends to consider the application abandoned if the application is not completed. If an application is abandoned, the board may close the application.

1. The notice shall specifically identify the information or materials required to complete the application and inform the applicant that the information or materials must be received by a specified date.

2. The notice shall also inform the applicant that if the application remains incomplete at the close of business on the specified date

the application may be deemed to be abandoned.

3. If all of the information or materials are received by the board by the specified date and the application is determined to be complete, the board shall process the application. The board may require updated information, as it deems necessary.

(b) If the application is not complete because the board is investigating the applicant for a violation of KRS 314.091(1), the Board shall do both of the following:

1. Notify the applicant that although otherwise complete, the application shall not be processed pending completion of the investigation; and

2. Upon completion of the investigation and the determination that the applicant is not in violation of KRS 314.091(1), process the application. The board may require updated information, as it deems necessary.

(5) Once submitted, the Application for Authorization to Provide Written Certifications for the Use of Medicinal Cannabis shall follow the periods for length and renewal in accordance with 201 KAR 20:085, Sections 1 and 2.

(6) All supporting documentation required under this section shall be submitted via the KBN Nurse Portal at <https://kbn.ky.gov>.

Section 5. Renewal of the Authorization. (1) If the APRN fails to renew the authorization in accordance with 201 KAR 20:085, Sections 1 and 2, the authorization shall lapse.

(2) If the APRN fails to timely renew the authorization, the APRN may reapply as an initial applicant in accordance with the procedures set forth in Section 4 of this administrative regulation.

(3) The authorization may be renewed after an APRN's license to practice is has been renewed or restored, if the APRN:

(a) Meets the requirements in Section 3 of this administrative regulation;

(b) Pays a nonrefundable fee of \$100; and

(c) Has completed the continuing education requirements in Section 6(2) of this administrative regulation.

(4) All supporting documentation required under this section shall be submitted via the KBN Nurse Portal at <https://kbn.ky.gov>.

Section 6. Continuing Education. (1) An applicant for an initial authorization shall have completed within the immediate twelve (12) months a one (1) [-]time requirement of six (6) contact hours within in the following subjects:

(a) Diagnosing qualifying medical conditions;

(b) Treating qualifying medical conditions with medicinal cannabis; and

(c) The pharmacological characteristics of medicinal cannabis and possible drug interactions.

(2) Thereafter, an APRN renewing the authorization shall have obtained during the earning period three (3) continuing education hours in the subjects listed in subsection (1) of this section.

Section 7. Sanctions. (1) The board may probate, restrict, suspend, revoke, or otherwise discipline an APRN's license or credential to issue authorizations for violations of KRS 314.091(1), or violations in accordance with KRS 218B.015(3)(b).

(2) An investigation against the APRN under this administrative regulation shall be conducted in accordance with 201 KAR 20:161.

(3) A disciplinary proceeding against the APRN under this administrative regulation shall be conducted in accordance with KRS 314.091 and 201 KAR 20:162.

(4) APRN may be ordered by the board to undergo a substance use evaluation and be subject to an immediate temporary suspension, in accordance with KRS 218B.015(4), 314.085, and 314.089.

Section 8. Professional Standards of Care for Providing Written Certifications. (1) An APRN authorized by the board to provide written certifications may only provide a patient with a written certification after the APRN:

(a) Has established a bona fide practitioner-patient relationship with the patient in an in-person visit that complies with this administrative regulation and for which there is an expectation that the APRN will provide a plan of care for the patient;

(b) Has diagnosed the patient, or confirmed a diagnosis provided by another medicinal cannabis practitioner, with a qualifying medical condition for which the medicinal cannabis practitioner believes that the patient may receive therapeutic or palliative benefit from the use of medicinal cannabis;

(c) Has reviewed a report of information from the PDMP related to the patient for a period of time that covers at least the twelve (12) months immediately preceding the date of the report;

(d) Consulted with the patient, or the patient's custodial parent or legal guardian responsible for providing consent to treatment if the patient is a minor child, with respect to the possible risks and side effects associated with medicinal cannabis, including possible interactions between medicinal cannabis and any other drug or medication that the patient is taking at that time; and

(e) Obtained the written consent of the patient's custodial parent or legal guardian responsible for providing consent to treatment, if the patient is a minor child.

(2) A bona fide practitioner-patient relationship may be established following a referral from the patient's primary care provider and may be maintained via telehealth. However, a bona fide practitioner-patient relationship shall not be established via telehealth.

(3)(a) When issuing a written certification to a patient, the APRN shall use the Cabinet's Written Certification Form in accordance with KRS 218B.050(6);

(b) An initial written certification shall be provided during the course of an in-person examination of the patient by the APRN. Subsequent written certifications, including for the purpose of renewing a registry identification card, may be provided electronically or during the course of a telehealth consultation.

(c) For the purpose of applying for a registry identification card, a written certification provided under this section shall:

1. Be valid for a period of not more than sixty (60) days;

2. The APRN may renew a written certification for not more than three (3) additional periods of not more than sixty (60) days each; and

3. The APRN shall not issue another certification to the patient until an examination of the patient has been conducted by the APRN.

(d) Within twenty-four (24) hours of providing a patient with a written certification, the APRN shall record the issuance of the written certification in the PDMP.

(4)(a) An APRN who provides written certifications shall comply with the professional standards established in this section.

(b) Prior to providing a written certification, the APRN shall:

1. Obtain, review, and record a complete and appropriate evaluation of the patient, which shall include:

a. The patient's name;

b. Date or dates of office visits or treatments, and responses to treatments;

c. The patient's medical history, including relevant prescription history and diagnostic results;

d. 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;

e. Based on evidence or behavioral indications of addiction or drug abuse, the APRN shall obtain a drug screen on the patient. It is within the APRN's discretion to decide the nature of the screen and which type of drug to be screened;

f. The patient's social and family history;

g. A physical examination relevant to the current medical condition;

h. The patient's psychiatric history;

i. A focused physical examination of the patient relevant to the patient's current medical condition;

j. Documented review that standard medical treatment has been attempted or considered. If standard medical treatment is not attempted, the APRN shall document the reasons that standard medical treatment is not appropriate for this patient;

k. The APRN's diagnosis of the patient's qualifying medical condition; and

l. If the patient has been previously diagnosed with a qualifying medical condition by another healthcare provider pursuant to

KRS 314.050(4)~~[a medicinal cannabis practitioner]~~, the APRN may confirm the diagnosis if:

(i) The APRN obtains a copy of the medical records or a detailed written summary indicating the diagnosis; and
(ii) The APRN is satisfied that those records confirm a diagnosis of a qualifying condition.

(iii) The APRN shall maintain a copy of any record or report of any medicinal cannabis practitioner on which the practitioner relied for purposes of meeting the requirements under this paragraph.

(iv) Document a plan to obtain the patient's consent in order to obtain and discuss the patient's prior medical records within thirty (30) days of initiating treatment. Upon receipt of the medical records, the APRN shall review and incorporate the information from the records into the evaluation and treatment of the patient. If the APRN is unable, despite best efforts, to obtain the patient's prior medical records, the APRN shall document those efforts in the patient's chart.

(v) Obtain and review a PDMP report for that patient for the twelve (12) month period immediately preceding the initial patient encounter and appropriately utilize that information in the evaluation and treatment of the patient;

(vi) Explain treatment alternatives, the risks, and the benefits of medicinal cannabis with the patient;

(vii) Obtain written informed consent from the patient for treatment;

(viii) Discuss and document the patient's treatment with the patient's other providers;

(ix) If the patient is a female of childbearing potential and age, meet the requirements of subparagraph 2. of this paragraph.

2.a. Prior to initiating treatment, the APRN shall **recommend[require]** that female patients of childbearing age submit to a pregnancy test and, if pregnant, the APRN shall provide counseling. The APRN shall document a patient's decision to decline to take a pregnancy test and the stated rationale for the patient's decision.

b. Prior to providing a written certification to a patient who is pregnant or breastfeeding, the APRN shall document the patient's decision to decline consultation referenced in this subsection, and the stated rationale for the patient's decision.

(5) The written certification shall include a statement from the APRN certifying that:

(a) A bona fide practitioner-patient relationship exists between the APRN and patient.

(b) The patient has been diagnosed with at least one (1) qualifying medical condition for which the APRN believes the patient may receive medical, therapeutic, or palliative benefit; and

(c) In the APRN's professional medical opinion, the patient may receive medical, therapeutic, or palliative benefit from the use of medicinal cannabis.

(6) An APRN who authorizes a written certification 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 APRN shall confirm whether the patient's condition continues to be a terminal illness.

(7) The APRN shall terminate or decline to issue a new written certification under any of the following circumstances:

(a) The patient no longer has the diagnosis of, or symptoms of, the qualifying medical condition.

(b) The APRN is not authorized to issue a written certification.

(c) Based on the APRN's clinical judgement, the patient or caregiver is abusing or diverting medicinal cannabis.

(d) The patient is deceased.

(8) The APRN shall notify the cabinet in writing within thirty (30) days the name of any patient for whom the APRN has terminated or declined to issue a written certification.

(9) The records required for the recommendation for a written certification may be kept with the patient's other medical records and shall be retained for at least five (5) years following the last office visit by the patient.

(10) An APRN medicinal cannabis practitioner shall not:

(a) Dispense medicinal cannabis; or

(b) Provide a written certification to an immediate family member or for himself or herself.

Section 9. Documented Deviation from Professional Standards for Providing Written Certifications. If an APRN is unable to conform to professional standards for providing written certifications set forth in this administrative regulation due to circumstances beyond the APRN's control, or the APRN makes a professional determination that it is not appropriate to comply with a specific standard, based upon the individual facts applicable to a specific patient's diagnosis and treatment, the APRN 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 providing of a written certification under the circumstances.

Section 10. Material Incorporated by reference. (1) "Application for Authorization to Provide Written Certifications for the Use of Medicinal Cannabis", 09/2023.

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

AUDRIA DENKER, President

APPROVED BY AGENCY: January 5, 2024

FILED WITH LRC: January 11, 2024 at 10:05 a.m.

CONTACT PERSON: Jeffrey R. Prather, General Counsel,
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REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jeffrey Prather

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the credentialing, continuing education requirements, sanctions, and professional standards for APRNs authorized to practice as medicinal cannabis practitioners.

(b) The necessity of this administrative regulation: It is necessary to promulgate this regulation to establish standards for APRNs 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 setting standards.

(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 standards for APRNs authorized to practice as medicinal cannabis practitioners.

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation may affect APRNs with a Drug Enforcement Administration (DEA) registration, at this time, approximately 2300

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

(a) List 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. The APRNs that wish to be authorized to practice as medicinal cannabis practitioners will have to submit an application, provide documentation or otherwise complete the credentialing requirements, 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 an APRN 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 APRN 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: No additional cost, beyond staff processing of authorization applications.

(b) On a continuing basis: No additional cost, beyond staff processing of authorization applications.

(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 is not applied because all applicants are in the same class and treated the same.

FISCAL NOTE

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 314.131 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.

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

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

(c) How much will it cost to administer this program for the first year? No additional cost.

(d) How much will it cost to administer this program for subsequent years? No additional cost.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

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

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

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

ENERGY AND ENVIRONMENT CABINET Department for Environmental Protection Division of Waste Management (Amended After Comments)

401 KAR 45:105. Land application of biosolids.

RELATES TO: KRS 224.1, 224.10, 224.40, 224.70, 224.99

STATUTORY AUTHORITY: KRS 224.10-100, 224.40-305, 224.50-760, 224.50-765, 40 C.F.R. Part 503

NECESSITY, FUNCTION, AND CONFORMITY: KRS Chapter 224 requires the cabinet to promulgate administrative regulations for the treatment, management, processing, or disposal of wastes. KRS 224.40-305 requires persons who establish, construct, operate, maintain, or allow the use of a waste site or facility to obtain a permit. This administrative regulation establishes the standards and requirements for the application of biosolids, in accordance with 40 C.F.R. Part 503 and as required by KRS 224.50-765 from the treatment of domestic sewage or sewage sludge from a treatment facility. This administrative regulation is no more stringent than the corresponding federal rules but in order to comply with KRS 224.50-765(3), does have additional requirements that are not in 40 C.F.R. Part 503 related to a permitting program and siting criteria.

Section 1. Definitions.

(1) "Karst feature" means sinkholes, sinking streams, cave openings, fensters, and springs.

(2) "Ordinary high-water mark" means the line on the shore of a body of water established by the fluctuations of water and indicated by physical characteristics, such as defined, natural line impressed on the bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, and the presence of litter and debris.

(3) "Seasonal high-water table" means the highest level that groundwater, at atmospheric pressure, reaches in the soil in years with normal rainfall.

(4) "Sinkhole" means a depression in the land surface resulting from the chemical dissolution of the underlying carbonate rocks that create a potential direct conduit from surface water flow into the underlying groundwater system. This includes the immediately adjacent catchment area that could direct surface water flow into the underlying groundwater system.

Section 2. General Provisions.

(1) The general provisions related to the land application of biosolids shall be as established in 40 C.F.R. 503.5 through 40 C.F.R. 503.9.

(2)(a) If a biosolid material is exempt from regulation pursuant to 40 C.F.R. 503.10 then the provisions of this administrative regulation shall not apply to the biosolid material, except as required in paragraph (b) of this subsection.

(b) The exemptions established in 40 C.F.R. 503.10 shall not exempt biosolids given away from the requirement to obtain a registered permit by rule established in 401 KAR 45:070.

Section 3. Land Application of Biosolids. (1) Except for additional siting criteria standards established in Section 5 of this administrative regulation, the requirements related to the application of biosolids to the land shall be as established in 40 C.F.R. 503.10

through 40 C.F.R. 503.18.

(2) An operator certified in accordance with 401 KAR 45:090 shall be available **to[ate]** the land application site while biosolids are being applied to the land. All sludge land application operations shall be accomplished under the direction of a certified landfarming operator.

(3) The reports required by 40 C.F.R. 503.18 shall also be sent to the Kentucky Division of Waste Management.

(4) Permittees shall submit to the cabinet "Annual Biosolids Land Application Report", form DEP 4506 by March 31st of each year on the land application activity that occurred in the previous year. Permittees shall submit the report for years with no land application activity.

(5) In addition to the notification requirements in 40 C.F.R. 503.12, the person who prepares the biosolids shall notify the persons applying the biosolids or owner or operator of a biosolids land application site that the biosolids may contain constituents from an industrial pretreatment program.

(6) The notifications provided pursuant to subsection (5) of this section shall be given to adjoining landowners by the persons applying the biosolids or owner or operator of a biosolids land application site.

(7) The additional notifications in subsections (5) and (6) of this section shall be in writing and occur prior to submitting a biosolids application to the cabinet.

Section 4. Pathogens and Vector Attraction Reduction. The requirements related to the reduction of pathogens and the vectors that could transport those pathogens shall be as established in 40 C.F.R. 503.30 through 40 C.F.R. 503.33.

Section 5. Siting Criteria for Land Application of Biosolids. The land application of biosolids shall comply with the siting criteria in subsections (1) through (4) of this section.

(1) Biosolids shall not be applied in the 100-year floodplain.

(2)(a) Applicants shall use the Kentucky Energy and Environment Cabinet Basics of Groundwater and Kentucky Aquifers document when determining their aquifer type.[A minimum of four (4) feet of soil between the soil surface and the seasonal high-water table shall be maintained for land application in areas comprised of the Granular-unconsolidated and alluvial (Ohio River Alluvium) aquifers. The aquifer type determination shall be made by using the map in the Kentucky Energy and Environment Cabinet Basics of Groundwater and Kentucky Aquifers document. Buffers located in subsection (4) of this section shall be maintained for aquifer types in this paragraph.]

(b) A minimum of four (4) feet of soil between the soil surface and the seasonal high-water table shall be maintained for land application in areas comprised of the Granular-unconsolidated, karst, and alluvial (Ohio River Alluvium) aquifers.[Buffers located in the table in subsection (4) of this section shall be maintained for land application in areas comprised of karst, shallow fracture and deep granular-consolidated, and localized fracture and minor karst aquifer types. The aquifer type determination shall be made by using the map in the Kentucky Energy and Environment Cabinet Basics of Groundwater and Kentucky Aquifers document.]

(3) A land application unit shall not be located on land with a slope greater than fifteen (15) percent.

(4)(a) The ten (10) meter buffer zone for surface waters listed in 40 C.F.R. 503.14(c) shall not be used. All biosolid land application facilities shall maintain the following buffer zones:

Required Buffer Zones Minimum Distance in Feet from the Boundary of the Application Zone	
Structure or Object	Application Buffer
Residences and Occupied Buildings	200
Water Well	200
Surface Water including Perennial Streams	100
Karst Feature	100
Intermittent Stream	50
Ephemeral Stream	30

Property Line and Public Roads

30

(b) The distances measured for buffer zones shall be as established in subparagraphs 1. through 7. of this paragraph:

1. Residences and occupied buildings shall be measured from the building or residence to the closest boundary of the area that land application will occur.

2. Water wells buffer shall be measured from the well to the closest boundary of the area that land application will occur.

3. Surface Water including perennial streams buffer shall be measured from the baseline stream bank to the closest boundary of the area that land application will occur.

4. Karst features buffer shall be measured from the feature to the closest boundary of the area that land application will occur.

5. Ephemeral streams buffer shall be measured from the ordinary high-water mark to the closest boundary of the area that land application will occur.

6. Property line buffers shall be measured from the property line to the closest boundary of the area that land application will occur.

7. Public roads buffer shall be measured from the edge of the road to the closest boundary of the area that land application will occur.

Section 6. Biosolids Land Application Permit Required. (1) All persons operating under a permit issued prior to June 29, 2023 for the land application of biosolids shall operate in accordance with that permit until a renewal permit is issued by the cabinet. At the time for renewal, the applicant shall apply for a new permit under this administrative regulation.

(2) All persons seeking to engage in the land application of biosolids after June 29, 2023 shall first obtain a permit issued in accordance with this administrative regulation from the cabinet prior to land application.

Section 7. Biosolid Land Application Permit Review. (1) Persons applying for a biosolids land application permit shall submit "Application for a Biosolid Land Application Facility Permit" form DEP 4505. The completed permit application shall be submitted to the cabinet and include all of the attachments that are required by the application form. The attachments in the application shall include:

- (a) Copies of property deeds or land application agreements;
- (b) Lists of landfills receiving biosolids;
- (c) Laboratory analysis of the biosolids;
- (d) An enlargement of a current United States Geological Survey topographic map. The map shall have a minimum scale of one (1) inch equals 400 feet and the contour interval as published; and
- (e) A certification statement.

(2) A fee in the amount specified in 401 KAR 45:250 shall accompany the permit application, unless the applicant is a municipality.

(3) The cabinet shall not require additional information that is not in the permit application. Any additional information requests shall be in the form of a notice of deficiency or in response to a variance request from the applicant pursuant to 401 KAR 30:020.

(4) The cabinet shall not review a permit application until the application has been deemed complete. An application for a biosolids land application permit shall be considered complete unless the forms submitted are incomplete or otherwise missing information which is necessary for review.

(5) If the application is determined to be incomplete, the cabinet shall notify the applicant of all the deficiencies that render it incomplete and the applicant shall have the right to correct deficiencies identified by the cabinet. If the cabinet determines that the application is incomplete two or more times, that determination shall be considered final and the applicant shall have the right to file a petition pursuant to KRS 224.10-420.

(6) (a) The cabinet shall review complete applications and issue a final determination within 120 calendar days of the official day the permit application was received.

- (b) The official date of receipt for a permit application shall be:
 1. The date the paper document is stamped received by the Division of Waste Management; or
 2. The submission date created by electronic submittal portal.

(c) The cabinet's review timeframe shall be paused from the date:

1. The cabinet mails, hand delivers, or electronically sends a notice of deficiency until the date the Division of Waste Management receives the response to the deficiencies as established in paragraph (b) of this subsection; and

2. A permit application is subject to an adjudicatory process that prevents the cabinet from making a determination to the date the administrative or judicial hearings are final and the parties are in compliance with the final orders resulting from those hearings.

(d) The timetables established in this section may be extended at the initiative of either the cabinet or the applicant. The purpose and period of the extension shall be in writing and, if agreed to by both parties, shall be signed by both the cabinet and the applicant. The agreement to extend the timetable shall become part of the cabinet's permit file.

(7)(a) Upon final approval of the permit application the cabinet shall post on its Web page, a public notice of permit issuance.

(b) Persons aggrieved by the final determination of the cabinet shall be afforded an opportunity to appeal the decision pursuant to KRS 224.10-420(2).

(c) Land application of biosolids under the approved permit shall not begin until thirty (30) days from the date the public notice established in paragraph (a) of this subsection.

Section 8. Modification of Permits. A biosolids land application permit may be modified during its term. The modification shall be in accordance with this section.

(1) If a permit is modified, only the conditions subject to modification shall be reopened.

(2) Modifications requested by the permittee shall not be considered by the cabinet until the permittee has submitted a completed "Application for a Biosolid Land Application Facility Permit" form DEP 4505, to the cabinet.

(3) Causes for modification. Causes for modification of permits shall include:

(a) Material and substantial alterations or additions to the permitted special waste site or facility that would justify new permit conditions that are different or absent in the existing permit;

(b) The cabinet determines good cause exists for modification of a compliance schedule, such as an act of God, strike, flood, materials shortage, or other events over which the permittee has little or no control and for which there is no reasonable available remedy;

(c) The cabinet receiving notification of expected closure and finds that one (1) or more of the permit conditions are no longer warranted;

(d) The corrective action program established in the permit has not brought the site into compliance with the groundwater protection standards;

(e) To approve a corrective action plan required by 401 KAR 45:160;

(f) To include conditions applicable in new or amended statutes or administrative regulations;

(g) To include conditions applicable as a result of a hearing or enforcement action as established in 401 KAR Chapter 40;

(h) Ownership of the special waste site or facility changes;

(i) To expand the capacity of a special waste site or facility; or

(j) To add a new special waste source.

(4) All terms of an existing permit shall remain in effect during the permit modification request.

(5) The cabinet shall make a final determination to approve or disapprove a permit modification within ninety (90) calendar days.

Section 9. Permit Transfers. A permit shall not be transferable to any person without prior approval of the cabinet. For purposes of this section, a permit transfer application shall be required if a person requests that the name on the permit be changed to a different person or entity or if the permittee is a corporation and fifty-one (51) percent or more of the stock is sold to a person who was not previously a stockholder, or was a stockholder owning less than five (5) percent of the stock.

(1) A person requesting to transfer a permit for an existing special waste site or facility shall submit to the cabinet a completed Application to Transfer a Special Waste Permit form DEP 7094C, incorporated by reference in 401 KAR 45:040.

(2) The cabinet shall make a final determination to approve or disapprove a formal permit transfer within sixty (60) calendar days.

(3) If the transfer application is incomplete, the cabinet shall notify the applicant in writing of all the deficiencies. Periods of deficiency shall not be counted against the review time frame. Failure to submit information noted by the cabinet related to the deficiencies within fifteen (15) calendar days of receipt of the notice of deficiency is grounds for disapproval of the transfer application.

Section 10. Suspension and Revocation of Biosolid Land Application Permits. (1) The cabinet may modify, suspend, or revoke a permit issued under this chapter for:

(a) Violation of any requirement of KRS Chapter 224, this chapter, or 401 KAR 30:031;

(b) Aiding, abetting, or allowing the violation of KRS Chapter 224, this chapter, or 401 KAR 30:031;

(c) A Violation of a condition or a variance of the special waste site or facility permit;

(d) Misrepresentation or omission of a significant fact by the owner or operator either in the application for the permit or in information subsequently reported to the cabinet;

(e) Failure to comply with an order issued by the cabinet; or

(f) The facility is transferred to another person without prior approval of the cabinet.

(2) The cabinet shall follow the applicable procedures in this administrative regulation and 401 KAR Chapter 40 in revoking any permit under this section.

(3) If a permit is revoked, the owner or operator may reapply.

(4) Upon revocation of a permit, an owner or operator of a special waste site or facility may file a request for a hearing. A hearing request shall be pursuant to KRS 224.10-420 upon revocation of the permit.

Section 11. Permit Renewals. (1) Applications for renewal shall be submitted to the cabinet ninety (90) calendar days prior to the expiration of the permit. Persons applying for a renewal shall submit a completed Application for a Biosolid Land Application Facility Permit form DEP 4505, to the cabinet.

(2) Applications for renewal shall be subject to the review requirements in this administrative regulation.

(3) The cabinet shall consider whether all conditions of prior permit conditions have been met.

Section 12. Closure of a Biosolid Landfarming Site or Facility. (1) A landfarming site or facility shall send a letter of closure to the cabinet if:

(a) An owner or operator determines to permanently cease accepting biosolid at a special waste landfarming site or facility and does not exceed limits pursuant to Section 3 of this administrative regulation; or

(b) The landfarming site or facility has reached the limits in 40 C.F.R. 503.13 and is required to cease accepting biosolid at that location.

(2) The notification shall be a letter to the cabinet indicating the special waste landfarming site or facility is in compliance with regulatory requirements and is no longer accepting biosolid at the location.

Section 13. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Application for a Biosolid Land Application Facility Permit", Form DEP 4505, (**December[July] 2023**);

(b) "Annual Biosolids Land Application Report", Form DEP 4506, (**December[July] 2023**); and

(c) "Kentucky Energy and Environment Cabinet Basics of Groundwater and Kentucky Aquifers", (July 2023).

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Waste Management, 300 Sower Boulevard, 2nd Floor, Frankfort, Kentucky 40601,

Monday through Friday, 8:00 a.m. to 4:30 p.m.

(3) This material may also be obtained on the division's Web site at eec.ky.gov/environmental-protection/waste.

REBECCA GOODMAN, Secretary

APPROVED BY AGENCY: January 10, 2024

FILED WITH LRC: January 10, 2024 at 3:30 p.m.

CONTACT PERSON: Michael Mullins, Env Scientist Consultant II, 300 Sower Blvd, Frankfort, Kentucky 40601, phone (502) 782-6720, fax (502) 564-4245, email michael.mullins@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael Mullins

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes procedures and requirements for the land application of biosolids in conformance with 40 C.F.R. Part 503.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with the requirements of SB 213 (KRS 224.50-765).

(c) How this administrative regulation conforms to the content of the authorizing statutes: This new administrative regulation conforms to the authorizing statutes by referencing 40 C.F.R. Part 503 as the means to land apply biosolids. The statute also requires the cabinet to establish siting criteria and a permitting program. This administrative regulation establishes a permitting program and siting criteria.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This new administrative regulation assists in the effective administration of the statutes by following the requirements of the statute to set up a land application program that is in conformance with 40 C.F.R. Part 503 with a permitting program and siting criteria.

(2) If 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 made were in response to comment received during the public comment period. The amendments clarified that exemption of materials in 40 C.F.R. Part 503 are exempt from the provisions of the administrative regulation except for the registered permit-by-rule provision. Also, language was inserted to clarify that the notification provisions in the administrative regulation are to occur prior to land application. The section on buffer zones was amended to make the requirements more understandable. The administrative regulation was amended to include a public notice to issued by the cabinet upon final approval of a permit application. There were also amendments to the forms incorporated by reference that necessitated a new edition date.

(b) The necessity of the amendment to this administrative regulation: The amendments were necessary to respond to comments during the public comment period.

(c) How the amendment conforms to the content of the authorizing statutes: The amendments conform to the authorizing statutes by maintaining compliance with KRS 224.50-765 and the requirement to be in conformance with 40 C.F.R. Part 503.

(d) How the amendment will assist in the effective administration of the statutes: The amendments assist in the administration of the statutes by providing clarifications and correcting exemption concerns in the administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The total universe of potential impacted entities is 399. 394 of those are wastewater treatment plants that either already have a permit (54) or could get a permit in the future (340). The remaining 5 are private entities (contractors) that already have permits. There are 15 registered permit-by-rule for wastewater treatment plants in the Commonwealth.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Each entity mentioned in question (3) will

need to follow the referenced portions of 40 C.F.R. Part 503 as well as obtain a permit from the cabinet prior to applying biosolids to the land. The applicant will also need to comply with the siting criteria that is established in the administrative regulation. In order to comply with the amendments to the administrative regulation the entities will need to complete land owner notification prior to applying for a permit, comply with the registered permit by rule process for sludge giveaway, and use the revised forms that are incorporated by reference with a new edition date of December 2023.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will not be an additional cost to the regulated entities in complying with this administrative regulation. A permit was required prior to this proposed administrative regulation that had a permit application listed on 401 KAR 45:250. This administrative regulation requires the same permitting fee in 401 KAR 45:250 as did the older permitting program.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The regulated entities will have a streamlined process for the land application of biosolids that is in conformance with the corresponding federal regulation.

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

(a) Initially: There will not be a cost to the agency to implement this new administrative regulation.

(b) On a continuing basis: There will not be a cost to the agency to implement this new administrative regulation on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The funding source for this program will be a mix of restricted funds from the fees charged for application review and general funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There will not be a need to increase fees or funding associated with this new administrative regulation. The agency currently regulates wastewater treatment plant sludges and will simply use the current personnel and funding to implement the new process.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: There are no new fees associated with this administrative regulation. The current fee that is charged for application review (401 KAR 45:250) will continue to be applied to biosolid applications under this new process.

(9) TIERING: Is tiering applied? No. All entities that submit an application for a biosolids permit will have their application reviewed in accordance with the application information submitted and will not be treated differently.

FISCAL NOTE

(1) What 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 not only the Department for Environmental Protection's Division of Waste Management but also local governments that have wastewater treatment plants that generate sludge.

(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, 224.40-305, 224.50-760, KRS 224.50-765, 40 C.F.R. Part 503

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not generate any additional revenue. The fee in 401 KAR 45:250 will apply to the applications in this administrative regulation. There will not be any additional applications they are just shifted to the new process under this administrative regulation.

(b) How much revenue will this administrative regulation generate

for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This new administrative regulation will not generate any additional revenue for the agency.

(c) How much will it cost to administer this program for the first year? There will be no additional costs associated with this new biosolids process. The agency will use existing staff and funding to accomplish the goals of the statute.

(d) How much will it cost to administer this program for subsequent years? Currently the agency does not believe there will be an increase in costs to run the program in the future.

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

Revenues (+/-): This new administrative regulation will not generate any new revenues due to the biosolids being mainly regulated by 40 C.F.R. Part 503. The cabinet will charge the same for this new permitting process as it did for the existing permitting process for the regulation of these materials.

Expenditures (+/-): The cabinet will use existing staff and the same funding source to process and regulate biosolids under this new material.

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? Regulated entities will save \$500 per application. The current process is to charge \$500 for a notice of intent and then an additional \$5,000 for a formal application. This new process does not have a notice of intent and therefore the applicant will not be required to pay the \$500.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? The savings in subsequent years will depend on the number of applications received by the agency. The applicant will still save \$500 per application due to the notice of intent not being required.

(c) How much will it cost the regulated entities for the first year? There will not be a cost increase to regulated entities related to this proposal. This material is currently permitted and regulated by the cabinet and a fee of \$5,500 (for new formal permits) will be reduced to \$5,000 with this new proposal.

(d) How much will it cost the regulated entities for subsequent years? The cost in subsequent years will depend on the number of applications submitted by 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 (+/-): The cost savings will be \$500 per application. However, a definite cost savings cannot be provided as it will depend on the number of applications received.

Expenditures (+/-): The expenditures will be relatively the same except for the cost savings mentioned above.

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 proposal will not have a major economic impact as defined KRS 13A.010(13).

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 40 C.F.R. Part 503.

(2) State compliance standards. KRS 224.50.760 and KRS 224.50-765.

(3) Minimum or uniform standards contained in the federal mandate. The federal citation sets standards for the management of sewage sludge. 40 C.F.R. Part 503 covers landfilling, composting, incinerating, and land applying this material. The cabinet is required

by KRS 224.50-765 to promulgate administrative regulations that are in conformance with Part 503 related to the land application of those sludges (biosolids as defined in KRS 224.765(1)).

(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 is not more stringent than the corresponding federal requirements. However, as required by KRS 224.50-765(3), the administrative regulation does include additional siting criteria and a formal permitting program.

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. KRS 224.50-765 (SB 213 from the 2023 Legislative Session) required the cabinet to establish these additional items.

ENERGY AND ENVIRONMENT CABINET Department for Environmental Protection Division of Waste Management (Amended After Comments)

401 KAR 45:160. Surface and groundwater monitoring and corrective action for special waste sites or facilities.

RELATES TO: KRS 224.1[224.01], 224.10, 224.40, 224.46, 224.50, 224.99, 40 C.F.R. 302.4, Appendix A

STATUTORY AUTHORITY: KRS 224.10-100, 224.40-305, 224.50-760, 40 C.F.R. 302.4

NECESSITY, FUNCTION, AND CONFORMITY: KRS Chapter 224 requires the cabinet to adopt administrative regulations for the treatment, management, processing, or disposal of wastes. KRS 224.40-305 requires persons who establish, construct, operate, maintain or permit the use of a waste site or facility to obtain a permit. This chapter establishes the permitting standards for special waste sites or facilities, and the standards applicable to all special waste sites or facilities. This administrative regulation sets forth the standards for groundwater and surface water monitoring and corrective action at special waste sites or facilities. This administrative regulation does not establish requirements for surface or groundwater monitoring of special waste sites or facilities where biosolids from the treatment of domestic sewage or sewage sludge from a treatment facility have been land applied, except as it applies to biosolid permit corrective action plans.

Section 1. Applicability.

(1) The requirements of this administrative regulation apply to owners and operators of special waste landfills, Type A special waste landfarming or composting sites or facilities, other special waste sites or facilities at which the cabinet determines groundwater and surface water monitoring shall be required pursuant to 401 KAR 45:100 Section 3(3), and special waste sites or facilities required to perform corrective action as a result of documented groundwater contamination.

(2) Designs, reports, and plans constituting the public practice of geology, as defined in KRS 322A.010, shall be developed by a person registered pursuant to KRS Chapter 322A, except as provided for by KRS 322A.080.

(3) Landfarming and composting sites or facilities required to monitor surface water shall comply with Section 6(26) of 401 KAR 45:100. Landfarming and composting sites or facilities required to perform corrective action shall comply with Section 5 of this administrative regulation. The owner or operator shall satisfy the requirements of this administrative regulation for all wastes and waste constituents contained in the site or facility. The cabinet may waive baseline groundwater characterization and groundwater monitoring, subject to the provisions of 401 KAR 30:020.

Section 2. Design Requirements for Groundwater Monitoring Systems. The groundwater quality monitoring system to be utilized in the groundwater monitoring plan shall accurately analyze groundwater quality and characterize regional and local groundwater flow and flow systems. The monitoring system shall consist at a minimum, of the following:

(1) Background wells shall be located so that they will not be affected by groundwater contamination from the disposal area. Background wells shall be placed as described in paragraphs (a) and (b) of this subsection.

(a) At least one (1) background well at a point hydraulically upgradient from the disposal area in the direction of increasing static head that is capable of providing data representative of groundwater not affected by the special waste site or facility.

(b) When the special waste site or facility occupies the most upgradient position in the flow system or the upgradient area is not representative, sufficient downgradient or side gradient monitoring wells shall be placed to accurately characterize the groundwater quality and regional and local groundwater flow systems; ~~Background wells shall be located so that they will not be affected by groundwater contamination from the disposal area;~~ and

(2) At least two (2) monitoring wells at points hydraulically downgradient in the direction of decreasing static head from the area in which special waste has been or will be disposed. The cabinet may allow springs for monitoring points if the springs are hydraulically downgradient from the area in which special waste has been or will be disposed, if the springs are developed and protected in a manner approved by the cabinet, and if the springs are capable of detecting any contamination from the disposal facility. Downgradient monitoring wells shall be located so that they will provide early detection of groundwater contamination and progressive monitoring of the phases and units of the site or facility.

(3) An alternative monitoring plan may be proposed in an application for a special waste site or facility in accordance with Section 3(2) of 401 KAR 45:110.

Section 3. Requirements for Monitoring Well Construction.

(1) Precautions shall be taken during drilling and construction of monitoring wells to avoid introducing contaminants into the borehole. Only potable water shall be used in drilling monitoring wells, unless otherwise approved by the cabinet. Drilling muds shall not be used except with prior approval of the cabinet. Air systems and drilling lubricants shall not introduce contaminants into the boreholes.

(2) Decontamination of all equipment to be placed into the boring shall be performed before use at the site and between boreholes. Where possible, upgradient wells shall be drilled first.

(3) Monitoring wells shall be cased as follows:

(a) In a manner to ensure the integrity of the monitoring well borehole by isolating water bearing units which are sampled by each well;

(b) With a minimum casing diameter of four (4) inches, unless otherwise approved by the cabinet in writing;

(c) With screens and appropriate gravel or sand where necessary, to enable collection of samples at depths where appropriate aquifer flow zones exist;

(d) To allow the casing to protrude at least one (1) foot above ground;

(e) To provide a drill hole diameter that is a minimum of four (4) inches larger than the outside diameter of the well casing;

(f) To produce an annular space above the sampling depth that is sealed to prevent contamination of samples and the groundwater; and

(g) If plastic casing is used, it shall be threaded and gasket sealed to preclude potential sample contamination from solvent welded joints, unless otherwise provided by the cabinet in the permit.

(4) Monitoring well casings shall be enclosed in a protective cover that shall:

(a) Be of sufficient strength to protect the well from damage by heavy equipment and vandalism, and also include protective barrier steel posts at the corners of the concrete pad;

(b) Be installed into firm rock, unless otherwise approved by the cabinet;

(c) Be grouted and placed with a cement collar below the frost line to hold it firmly in position, unless otherwise approved by the cabinet;

(d) Be numbered and painted in a highly visible color;

(e) Protrude at least one (1) inch higher above grade than the monitoring well casing;

(f) Have a locking cap; and

(g) Be made of steel or any other material of equivalent strength.

(5) Each monitoring well shall have a concrete pad extending two (2) feet around the well and sloped away from the well.

Section 4. Sampling and Analysis.

(1) Parameters listing. Owners or operators of special waste sites or facilities that require groundwater monitoring shall conduct sampling and analysis from each monitoring well for the parameters listed in Section 8 of this administrative regulation.

(2) Reporting of analysis results. Analyses of data required by this section shall be submitted to the cabinet on a form provided by the cabinet within sixty (60) days of sampling or fifteen (15) days after completion of analyses, whichever is sooner, unless the cabinet approves another time period in the permit. Frequency of sampling shall be as indicated in Section 8 of this administrative regulation.

(3) If analysis of the sample results indicates contamination, the owner or operator shall notify the cabinet within forty-eight (48) hours of receiving the analysis results and shall arrange for the cabinet to split a sample no later than ten (10) days from the receipt of the results.

Section 5. Groundwater Contamination Assessment and Corrective Action.

(1) The owner or operator of a special waste site or facility shall prepare and submit a groundwater assessment plan if laboratory analyses of one (1) or more public or private water supplies or monitoring wells at the site or facility shows the presence of one (1) or more parameters listed in 40 C.F.R. 302.4 Appendix A[as of September 1994], above the maximum contaminant level (MCL) as specified in 401 KAR 30:031 or significant increase over established background levels for parameters that have no MCL. For parameters that have no maximum contaminant levels, a significant increase over background shall be determined using a statistical test as specified in Section 6 of this administrative regulation.

(2) Confirmation sampling. The owner or operator of a special waste site or facility shall not be required to submit a groundwater assessment plan if the following conditions are met:

(a) Within ten (10) days after receipt of sample results showing groundwater contamination the owner or operator resamples the affected wells; and

(b) Analysis from resampling shows to the cabinet's satisfaction that groundwater contamination has not occurred.

(3) The owner or operator of a special waste site or facility shall be required to provide alternate water supplies to affected parties within twenty-four (24) hours of notification of the cabinet that sample results indicate contamination of a drinking water supply if it has been determined that the special waste site or facility is the probable source of contamination.

(4) The groundwater assessment plan shall be submitted to the cabinet within thirty (30) days of the occurrence of the conditions described in subsection (1) of this section. The assessment plan shall specify the manner in which the owner or operator will determine the existence, quality, quantity, areal extent, and depth of groundwater degradation, and the rate and direction of migration of contaminants in the groundwater. The assessment plan shall be prepared by a registered geologist pursuant to subsection (2) of Section 1[qualified professional in the field of hydrogeology] and shall be implemented upon approval by the cabinet in accordance with the approved implementation schedule. The assessment plan shall be implemented within sixty (60) days after approval by the cabinet. The plan shall contain, at a minimum, the following information:

(a) The number, location, size, casing type and depth of wells, lysimeters, borings, pits, piezometers, and other assessment structures or devices to be used;

(b) Sampling and analytical methods for the parameters to be evaluated;

(c) Analyses of all parameters listed in the approved monitoring plan in the permit application, and any other parameter required by the cabinet; and

(d) Evaluation procedures, including the use of previously gathered groundwater quality information, to determine the

concentration, rate, and extent of groundwater degradation or pollution from the facility.

(5) For public or private water supplies that may be adversely affected by the facility, the owner or operator shall submit a detailed hydrogeologic study addressing the potential effect of the site or facility on the water supply.

(6) If the cabinet determines that the assessment plan is inadequate, the cabinet may modify the plan and approve the plan as modified.

(7) Within ninety (90) days after the implementation of the groundwater assessment plan, the owner or operator shall submit a groundwater assessment report containing the new data collected, analysis of the data, and recommendations on the necessity for abatement.

(8) The cabinet may require abatement measures prior to approval of the groundwater assessment plan.

(9) Within ninety (90) days of cabinet approval of the groundwater assessment report, but no later than one (1) year from the event specified in subsection (1) of this section, the owner or operator shall submit a remedial action plan to include the following:

(a) The specific methods or techniques to be used to abate groundwater contamination from the facility;

(b) The specific methods or techniques to be used to prevent further groundwater contamination from the facility; and

(c) A description of the means used to restore or replace public or private water supplies affected by contamination from the special waste facility.

(10) The owner or operator of a special waste site or facility shall take any other steps deemed necessary by the cabinet to ensure protection of human health and the environment.

(11) Corrective action measures under this administrative regulation shall be initiated and completed within a period of time as specified by the cabinet considering the extent of degradation determined pursuant to subsection (1) of this section.

(12) Corrective action measures under this administrative regulation may be terminated upon approval of the cabinet when the owner or operator demonstrates that concentrations have been reduced to levels below the maximum contaminant level or naturally occurring background.

Section 6. Statistical Methods for Groundwater Analysis. The owner or operator of a special waste site or facility shall use the following statistical procedure in determining whether background values or concentration limits have been significantly exceeded:

(1) If the level of a parameter is to be compared to the parameter's background value and that background value has a sample coefficient of variation less than one (1.00):

(a) The owner or operator shall take at least four (4) portions from a sample at each well and determine whether the difference between the mean of the parameter at each well, using all portions taken, and the background value for the parameter is significant at the 0.05 level using the Cochran's Approximation to the Behrens-Fisher Students' t-test. If the test indicates that the difference is significant, the owner or operator shall repeat the same procedures, with at least the same number of portions as used in the first test, with fresh samples from the monitoring wells. If this second round of analyses indicates that the difference is significant, the owner or operator shall conclude that a statistically significant change has occurred; or

(b) With prior approval from the cabinet, the owner or operator may use an equivalent statistical procedure for determining whether a statistically significant change has occurred. The cabinet shall approve such a procedure in the permit if it is found that the alternative procedure reasonably balances the probability of falsely identifying a noncontaminating facility and the probability of failing to identify a contaminating facility in a manner that is comparable to that of the statistical procedure described in paragraph (a) of this subsection.

(2) In all other situations, the owner or operator shall use a statistical procedure approved in the permit which provides reasonable confidence that the migration of contamination from a special waste site or facility into and through the groundwater will be indicated. The cabinet shall approve a statistical procedure in the

permit that:

(a) Is appropriate for the distribution of the data used to establish background values or concentration limits; and

(b) Provides a reasonable balance between the probability of falsely identifying a noncontaminating facility and the probability of failing to identify a contaminating facility.

Section 7. Baseline Groundwater Quality Characterization Parameters. For special waste sites or facilities that require groundwater monitoring, the following parameters are to be analyzed and the resulting data submitted in the permit application:

(1) For all landfarming or composting sites or facilities required to monitor groundwater, the characterization shall be based on the following ~~[dissolved]~~metals and other waste analysis based parameters:

1. Specific conductance;
2. Chemical oxygen demand;
3. Total organic carbon;
4. Chloride;
5. Iron;
6. Manganese;
7. Sodium;
8. Total nitrogen;
9. Nitrate nitrogen;
10. Chromium;
11. Cadmium;
12. Coliform bacteria;
13. pH;
14. Calcium;
15. Magnesium;
16. Potassium;
17. Sulfate Bicarbonate; and
18. Carbonate.

(b) Groundwater elevation in monitoring wells recorded as a distance from the elevation at the well head referenced to mean sea level based on a United States Geological Survey (USGS) datum.

(2) For special waste landfills, used solely for the disposal of coal combustion by-products, the characterization shall be based on the following dissolved metals and other parameters:

1. Chloride;
2. Chemical oxygen demand;
3. Total dissolved solids;
4. Total organic carbon;
5. Specific conductance;
6. pH;
7. Copper;
8. Nickel;
9. Zinc;
10. Iron;
11. Sodium;
12. Arsenic;
13. Cadmium;
14. Lead;
15. Mercury;
16. Selenium;
17. Calcium;
18. Magnesium;
19. Potassium;
20. Sulfate;
21. Bicarbonate; and
22. Carbonate.

(b) Groundwater elevations recorded as a distance from the elevation at the well head referenced to mean sea level based on a United States Geological Survey (USGS) datum.

(3) For special waste sites or facilities other than those specified in subsections (1) and (2) of this section, the characterization shall be for parameters determined by the cabinet based on a review of the chemical analysis of the waste provided in the application.

Section 8. Groundwater Monitoring Parameters.

(1) Owners or operators of landfarming or composting sites or facilities requiring groundwater monitoring shall monitor for the following parameters on a semiannual basis:

- (a) 1. Chemical oxygen demand;
2. Total organic carbon;
3. Total nitrogen;
4. Nitrate nitrogen;
5. Lead;
6. Chromium;
7. Cadmium; and
8. Coliform bacteria.

(b) Groundwater elevations in monitoring wells recorded as a distance from the elevation at the well head referenced to mean sea level based on a USGS datum; and

(c) Monitoring of additional parameters may be required by the cabinet based on the waste analysis.

(2) Owners or operators of special waste landfills used solely for the disposal of coal combustion by-products shall monitor semiannually for the following:

- (a) 1. Chloride;
2. Chemical oxygen demand;
3. Total dissolved solids;
4. Total organic carbon;
5. Specific conductance;
6. pH; and
7. Copper.

(b) Groundwater elevations in monitoring wells recorded as a distance from the elevation at the well head referenced to mean sea level based on a USGS datum.

(c) Monitoring of additional parameters may be required by the cabinet based on a significant increase from the baseline characterization.

(d) If, after four (4) initial monitoring events, analysis for the parameters in paragraphs (a) to (c) of this subsection indicates no exceedances above levels specified in Section 5(1) of this administrative regulation, the owner or operator may, upon request, be granted permission from the cabinet to reduce the monitoring parameters to those listed in paragraph (a) of this subsection.

(3) Owners or operators of special waste sites or facilities other than those referenced in subsections (1) and (2) of this section shall monitor quarterly for parameters to be determined by the cabinet based upon chemical analysis of the waste to be disposed.

Section 9. Surface Water Monitoring and Corrective Action.

(1) Special waste sites or facilities required to monitor surface water shall do so in accordance with a plan provided in the permit application. The plan shall be sufficient to characterize the quality of surface water unaffected by the site or facility and to determine if water leaving the site or facility has been contaminated.

(a) Baseline sampling shall include a minimum of two (2) samples collected at no less than thirty (30) day intervals and shall be sufficient to characterize baseline conditions.

(b) Operational surface water monitoring shall be completed in accordance with the surface water monitoring plan approved in the permit application and shall be sufficient to determine if the site or facility is contaminating surface water.

(2) Corrective action shall be completed by a special waste site or facility owner or operator as necessary to comply with 401 KAR 30:031.

REBECCA GOODMAN, Secretary

APPROVED BY AGENCY: January 10, 2024

FILED WITH LRC: January 10, 2024 at 3:30 p.m.

CONTACT PERSON: Michael Mullins, Env Scientist Consultant II., 300 Sower Blvd, Frankfort, Kentucky 40601, phone (502) 782-6720, fax (502) 564-4245, email michael.mullins@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael Mullins

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation regulates groundwater monitoring plans for special waste facilities.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide the regulated

community pertinent information related to groundwater monitoring plans.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The authorizing statutes provides the department the authority to promulgate administrative regulations and administer special waste programs. 401 KAR Chapter 45 establishes different permitting options for entities that manage special waste. Some of those permits will require a groundwater monitoring plan. This administrative regulation provides regulated entities information related to those plans.

(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 statute by providing details related to groundwater monitoring plans.

(2) If 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 in response to comments clarifies that the administrative regulation only applies to biosolids when corrective action plans are necessary.

(b) The necessity of the amendment to this administrative regulation: These amendments are necessary to let the regulated entity know that corrective actions plans can be used to require groundwater monitoring plans for biosolids.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the authorizing statutes by providing the regulated community a more concise administrative regulation related to groundwater monitoring plan as well as clarifying that groundwater monitoring plans do not apply to the land application of biosolids unless a corrective action plan is necessary.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will help in the effective administration of the statutes by ensuring that the requirements for groundwater monitoring plans apply to biosolids when a corrective action plan is necessary.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The total universe of potential impacted entities is 399. 394 of those are wastewater treatment plants that either already have a permit (54) or could get a permit in the future (340). The remaining 5 are private entities (contractors) that already have permits.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Each entity mentioned in question (3) will need to follow this administrative regulation for requirements related to groundwater monitoring plans for special waste management except for biosolids.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will not be an additional cost to the regulated entities in complying with this administrative regulation. This administrative regulation didn't substantially change for special waste management of for special wastes that are not biosolids.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The regulated entities will benefit by understanding that this administrative regulation doesn't apply to biosolids and from portions of the administrative regulation that were amended to clarify the intent that has caused confusion in the past.

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

(a) Initially: There will not be a cost to the agency to implement this amendment

(b) On a continuing basis: There will not be a cost to the agency to implement this amendment on a continuing basis

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The funding source for this program will be a mix of restricted funds from the fees charged for application review and general funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There will not be a need to increase fees or funding associated with this amendment. The agency currently regulates wastewater treatment plant sludges and will simply use the current personnel and funding to implement the new process.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: There are no new fees associated with this administrative regulation. The current fee that is charged for application review (401 KAR 45:250) will continue to be applied to biosolid applications under this new process.

(9) TIERING: Is tiering applied? No. All entities that submit an application for a biosolids permit will have their application reviewed in accordance with the application information submitted and will not be treated differently.

FISCAL NOTE

(1) What 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 not only the Department for Environmental Protection's Division of Waste Management but also local governments that have wastewater treatment plants that generate sludge.

(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, 224.40-305, 224.50-760, 40 C.F.R. 302.4, 40 C.F.R. Part 503

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

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

(b) How 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 will not generate any additional revenue for the agency.

(c) How much will it cost to administer this program for the first year? There will be no additional costs associated with this new biosolids process. The agency will use existing staff and funding to accomplish the goals of the statute.

(d) How much will it cost to administer this program for subsequent years? Currently the agency does not believe there will be an increase in costs to run the program in the future.

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

Revenues (+/-): The amendments to this administrative regulation will not generate any revenues. The amendments are only necessary to clarify the groundwater monitoring plan provisions do not apply to biosolid land application. The amendments also make clarifications that will make the administrative regulation easier to understand.

Expenditures (+/-): The cabinet will use existing staff and the same funding source to meet the requirements in this administrative regulation.

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? Regulated entities will not realize any cost savings from the amendments to this administrative regulation.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? Regulated entities will not realize any cost savings from the amendments to this administrative regulation.

(c) How much will it cost the regulated entities for the first year? There will not be a cost increase to regulated entities related to this proposal.

(d) How much will it cost the regulated entities for subsequent years? There will not be a cost increase to regulated entities related to this proposal.

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

Cost Savings (+/-): There will not be a cost savings to the regulated community related to these amendments. The amendments state that groundwater monitoring plans are not required for the land application of biosolids. The other amendments are aimed at clarifying existing language that has caused confusion to the regulated community due to an outdated reference.

Expenditures (+/-): The expenditures will be relatively the same to regulated entities.

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 proposal will not have a major economic impact as defined KRS 13A.010(13).

JUSTICE AND PUBLIC SAFETY CABINET Internal Investigations Branch (Amended After Comments)

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) **"Disability" is defined in 42 U.S.C.A. § 12102(1).**

(2) **"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.~~

(3) **[(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.**

(4) **[(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.

(5)(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).

(6)(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.

(7)(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.

(8)(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.

(9)(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.

(10)(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.

(11)(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, ~~for~~ gender identity, or disability;

(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.

[(4)](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, including the name of the alleged offender and victim, date and

time of the alleged conduct, name of the facility, and nature of the alleged conduct, ~~and allege a special incident~~ shall be accepted.

(3) Referrals from any other source ~~that~~which give sufficient information, including the name of the alleged offender and victim, date and time of the alleged conduct, name of the facility, and nature of the alleged conduct, ~~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, ~~an~~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 ~~a~~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, ~~an~~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: January 11, 2024

FILED WITH LRC: January 11, 2024 at 11:50 a.m.

CONTACT PERSON: Nathan Goens, Attorney, Justice and Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-8216, fax (502) 564-6686, email

Justice.RegContact@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Nathan Goens

(1) Provide a brief summary of:

(a) What this administrative regulation does: This 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.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Protection and Permanency
(Amended After Comments)

922 KAR 1:520. Supplements to per diem rates.

RELATES TO: KRS 2.015, 199.011(4), (10), 200.503(3)[200.115(4)], 600.020(9), (30), [605.120(2),] 610.110(6), [620.020(1),] 620.140(1)(d)[, 42 U.S.C. 672]

STATUTORY AUTHORITY: KRS 194A.050(1), 605.120(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 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 605.120(2) requires the cabinet to establish a reimbursement system, within existing appropriation amounts, for foster parents that comes as close as possible to meeting the actual cost of caring for foster children, and to address additional costs associated with providing care to children with exceptional needs. In addition, *Olmstead v. L.C. and E.W.*, 119 S. Ct. 2176 (1999), held that unnecessary institutionalization of a person with a disability may be a violation of the Americans with Disabilities Act of 1990, 3 U.S.C. 421 and that, given certain exceptions, services should be delivered in the most integrated setting appropriate to the treatment needs of a person with a disability. This administrative regulation establishes the requirements for a foster home to receive a high-risk or parenting youth supplement reimbursement, to the extent funds are available, for extraordinary care the foster home provides to a child with exceptional needs, or a parenting youth, who is in the custody of the cabinet.

Section 1. Definitions.

(1) ["Case permanency plan"] is defined by KRS 620.020(1).

(2) "Child" means:

(a) A child as defined by KRS 199.011(4) and 600.020(9);

(b) A person age eighteen (18) or older whose commitment to the cabinet has been extended or reinstated by a court in accordance with KRS 610.110(6) or 620.140(1)(d); or

(c) A person under age twenty-one (21) who meets the exceptions to the age of majority in accordance with KRS 2.015.

(2) "Child with a serious emotional disability" is defined by KRS 200.503(3).

(3) ["Crisis"] means a factor or set of factors that:

(a) Jeopardizes a child's placement in a home; and

(b) Creates a risk for removal of the child from the home to a more restrictive setting, including institutionalization.

(4) "Exceptional needs" means the needs of a child:

(a) As specified in Section 2(2) or 4 of this administrative regulation; and

(b) Reimbursed in accordance with KRS 605.120(2).

(4) [(5)] "Extraordinary care" means services:

(a) Provided to a child with exceptional needs in the custody of the cabinet; and

(b) That exceed a regular per diem, as established in 922 KAR 1:350, Section 10.

(5) [(6)] "Family team meeting" means a meeting convened to develop a child's case permanency plan to successfully attain the desired outcomes for the child and family.

(7) "Foster home" means:

(a) A "foster family home" as defined by KRS 199.011(10) and 600.020(30), if referring to a physical structure; or

(b) An individual approved as a foster parent by the cabinet pursuant to 922 KAR 1:310 or 922 KAR 1:350, if referring to an individual.

(6) [(8)] "High-risk supplement" means a reimbursement to a foster home **approved in accordance with 922 KAR 1:350**[that] is necessary to cover an additional expense associated with the provision of extraordinary care.

(7) [(9)] "Parenting youth supplement" means a daily supplement to the per diem that is necessary to cover an additional expense associated with a youth who is placed with and has custody of their own child.

[(10)] "Transition" means the period of a child's adjustment from a more restrictive out-of-home care placement to a foster home.]

Section 2. High-risk supplement.

(1) To the extent funds are available, the cabinet shall reimburse a foster home for the extraordinary care provided to a child with exceptional needs.

(2) The cabinet shall consider a child eligible for a high-risk supplement if:

(a) 1. Community resources meet the child's needs; and

2. The child requires services consistent with Level III[IV or Level V] care established in 922 KAR 1:360, Section 4;

(b) The child is placed in a public child welfare agency[medically complex or care plus] foster home in accordance with 922 KAR 1:350;

(c) A child has a need for extraordinary care due to[a]:

1. Being a child with a serious emotional disability[Transition]; [or]

2. Being designated as medically complex by cabinet staff, as established in 922 KAR 1:350, Section 4(1)(b); or

3. Dual involvement with the Department of Juvenile Justice[Crisis];

(d) A consultation initiated by cabinet staff[family team meeting] is held to:

1. Assess the child and prospective foster home's need for additional support and services; and

2. Complete a "DPP-111B, High-Risk Supplement Assessment"; and

[2. Include the following individuals:

a. Designated regional cabinet staff;

b. Family members, including the child or a sibling;

c. Family friends;

d. Community partners;

e. Foster parents; or

f. Other individuals requested by the family or cabinet staff; and]

(e) The foster home agrees to maintain a monthly log of the services provided to the child for the duration of the high-risk supplement.

(3) [If a child is eligible for the high-risk supplement:

(a) ~~Designated regional cabinet staff shall develop an addendum to the child's case permanency plan that includes specific services and their timeframes for the child; and~~

(b) ~~The child's foster home shall complete monthly logs of the child's extraordinary care.~~

(4) The high-risk supplement shall be:

(a) A standardized amount ~~[added to the per diem]~~ specified in contract between an approved foster home and the cabinet; and

(b) Provided to a foster home for a period of up to six (6) months if the requirements established in this section are met.

~~(4) [(5)]~~ Extensions to the high-risk supplement may be granted in six (6) month intervals if:

(a) The child is reassessed by the cabinet pursuant to Section 3 of this administrative regulation and continues to meet the eligibility requirements established in subsection (2) of this section; and

(b) A consultation is completed~~[The family team meeting is held]~~ prior to granting each extension in order to:

1. Review progress made during~~[in]~~ the child's current case planning conference~~[permanency plan addendum]~~, which shall include a review of the foster home's monthly log of the child's extraordinary care; and

2. Complete a new "DPP-111B, High-Risk Supplement Assessment".

~~(5) [(6)]~~ If a high-risk supplement extension is granted, the~~the~~:

(a) ~~The cabinet shall develop a new addendum to the child's case permanency plan that includes the specific services and their timeframes to be provided through the period of the extension granted; and~~

(b) ~~The~~ foster home shall continue to complete monthly logs of the child's extraordinary care.

Section 3. Reassessment for High-Risk Supplement.

(1) If a foster home receives a high-risk supplement, the child shall be reassessed when the supplement expires to determine if the eligibility requirements established in Section 2 of this administrative regulation are met.

(2) If a child eligible for the high-risk supplement is relocated to another foster home or out-of-home placement, the cabinet:

(a) Shall cease reimbursement of the high-risk supplement to the child's prior foster home; and

(b) May redetermine the child to be eligible for the high-risk supplement if the requirements established in Section 2(2) of this administrative regulation are met.

Section 4. Parenting Youth Supplement.

(1) To the extent funds are available, the cabinet shall reimburse a foster home or approved provider pursuant to 922 KAR 1:300, 922 KAR 1:310, or 922 KAR 1:340 for the extraordinary care provided to a child who is a parenting youth.

(2) The cabinet shall consider a child eligible for a parenting youth supplement if:

(a) The child is placed in:

1. A cabinet-approved foster home as established by 922 KAR 1:350;

2. An independent living setting approved in accordance with 922 KAR 1:340;

3. A private child-placing agency foster home approved in accordance with 922 KAR 1:310; or

4. An approved private child-caring facility in accordance with 922 KAR 1:300.

(b) The child:

1. Is in the custody of the cabinet;

2. Has custody and control of their own child or children; and

3. Physically resides in the same location as the child or children; and

(c) A "DPP-116, Parenting Youth Supplement" is completed.

(3) A parenting youth supplement shall be:

(a) A standardized amount per child of the parenting youth added to the per diem of the parenting youth;

(b) Effective for the duration of the placement in which the youth in the custody of the cabinet and their child or children reside together; and

(c) Specified in the DPP-116.

(4) If a child deemed eligible for the parenting youth supplement is relocated to another foster home or provider established in subsection (2)(a) of this section, the cabinet:

(a) Shall cease reimbursement of the parenting youth supplement to the child's prior foster home or provider; and

(b) May redetermine the child to be eligible for the parenting

youth supplement if the requirements of subsection (2) of this section are met.

Section 5. Service Appeals. A foster home or provider referenced in Section 4(1) of this administrative regulation may request an appeal in accordance with 922 KAR 1:320.

Section 6. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "DPP-111B, High-Risk Supplement Assessment", 01/24/09/23~~[(07/20)]~~; and

(b) "DPP-116, Parenting Youth Supplement", 11/20.

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

LESA DENNIS, Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: January 8, 2024

FILED WITH LRC: January 11, 2024 at 2:25 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

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the criteria and process for the provision of supplements to foster home per diems specifically for caring for high-risk and parenting youth.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the process by which a foster home or parenting youth may be reimbursed for extraordinary care in meeting the needs of children in out of home care.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 605.120(2) requires the cabinet to establish a reimbursement system, within existing appropriation amounts, for foster parents that comes as close as possible to meeting the actual cost of caring for foster children, and to address additional costs associated with providing care to children with exceptional needs. This administrative regulation adds a supplement to foster care per diem for caring for youth in the cabinet's custody who require high-risk and parenting youth supplement to current per diem rates.

(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 through the establishment of extraordinary care provisions and existing high-risk and parenting youth supplement to current per diem rates.

(2) If 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 extraordinary care provisions for children in out of home care and streamlines the approval for a high-risk supplement for eligible children in out of home care in an effort to promote placement stability. This amendment is also necessary for consistency with recent amendments made to the levels of care established in 922 KAR 1:360. Material incorporated by reference, the DPP-111B, is also being amended in a consistent manner. The administrative regulation is being further amended in response to written comments received to clarify which foster homes are eligible for the high-risk supplement and that the required consultations shall be initiated by cabinet staff. The DPP-111B is also being further amended to delete confusing and unnecessary information relating to the rate paid.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary in order to be able to provide a high-risk supplement to the per diem for the care of children with more complex needs in out of home care. This amendment is also necessary to reflect changes made in 922 KAR 1:360.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes through the provision of reimbursement to foster homes that meet the extraordinary needs of children in out of home care.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statutes through the provision of reimbursement to foster homes that provide for the extraordinary needs of children in out of home care.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: During SFY2023, there were 291 youth receiving a special social services agreement; 57 youth receiving a parenting youth supplement; and 2 receiving a high risk supplement. Department for Community Based Services approved placement settings for youth in out of home care will be able to receive additional supports through this administrative regulation and proposed 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: A youth in need of extraordinary care provisions will have to meet criteria established in this administrative regulation to be eligible for the high-risk supplement. An approved provider will be required to submit the high-risk supplement assessment form in order to receive the additional reimbursement.

(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 new costs to the identified entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Youth in need of extraordinary care provisions will experience the benefit of placement stability and appropriate service provision with the per diem supplements established in this administrative regulation. Financial arrangements with the foster care providers are comparable to past arrangements involving the same population with complex needs.

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

(a) Initially: The amendment to this administrative regulation is not projected to have a fiscal impact on the administrative body. There is a limited number of children and youth that this amendment will be applicable to, although it will provide great assistance towards obtaining placement stability for that small number of youths.

(b) On a continuing basis: The amendment to this administrative regulation is not projected to have a fiscal impact on the administrative body.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of funding includes federal Social Security Act Title IV-E funds for foster care maintenance 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: An increase in fees or funding is not necessary to implement this administrative regulation.

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

(9) TIERING: Is tiering applied? Tiering is not applied, because this administrative regulation is 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 Community Based Services, implements and is impacted by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1), 605.120(2)

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

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

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

(c) How much will it cost to administer this program for the first year? No fiscal impact is expected, and costs may be absorbed within existing appropriations.

(d) How much will it cost to administer this program for subsequent years? Costs to the administrative body are comparable and absorbable within existing appropriations. There is a limited number of children and youth that this amendment will be applicable to, although it will provide great assistance towards obtaining placement stability for that small number of youths.

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? Some children and youth placed in foster homes may receive a higher per diem for their complex care and may provide some cost savings for regulated entities.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? Some children and youth placed in foster homes may receive a higher per diem for their complex care and may provide some cost savings for regulated entities.

(c) How much will it cost the regulated entities for the first year? This amendment does not include costs to regulated entities.

(d) How much will it cost the regulated entities for subsequent years? This amendment does not include costs to regulated entities.

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

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

PROPOSED AMENDMENTS

Public comment periods for ordinary, non-emergency regulations are at least two months long. For other regulations with open comment periods, please also see last month's [Administrative Register of Kentucky](#).

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

101 KAR 1:325. Probationary periods.

RELATES TO: KRS 18A.005, 18A.0751(1)(e), (4)(e), 18A.111
STATUTORY AUTHORITY: KRS 18A.005, 18A.075(1), 18A.0751(1)(e), (4)(e)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 18A.075(1) requires the Personnel Board to promulgate comprehensive administrative regulations consistent with the provisions of KRS 18A.005 to 18A.200. KRS 18A.0751(1)(e) requires the Personnel Board to promulgate comprehensive administrative regulations for the classified service governing probation. KRS 18A.0751(4)(e) authorizes the Personnel Board to promulgate administrative regulations to establish an initial probationary period in excess of six (6) months for specific job classifications. This administrative regulation establishes the requirements relating to probationary periods.

Section 1. Initial Probationary Period. (1) The initial probationary period shall be computed from the effective date of appointment to the corresponding date in the sixth or final month, depending upon the length of initial probationary period, except as established in KRS 18A.111.

(2) The following job classifications shall require an initial probationary period in excess of six (6) months: Title Code	Job Classification	Length of Initial Probationary Period
20000538	Golf Course Assistant Superintendent	9 months
20000539	Golf Course Superintendent	9 months
20000558	Parks Golf Professional	9 months
20000677	State Park Ranger I	9 months
20000562	Resort Park Assistant Manager[-I]	12 months
20000563	Resort Park Manager II[II]	12 months
20000564	Resort Park Manager III[III]	12 months
20000568	Parks Program Services Supervisor	9 months
20000569	Parks Camping/Boat Dock Manager	9 months
20000570	Park Business Manager I[-I]	12 months
[20000574]	[Park Business Manager II]	[12 months]
[20000572]	[Park Manager I/Historic Site Manager]	[12 months]
20000573	Park Manager II[II]	12 months
20000574	Park Manager III[III]	12 months
20000609	Conservation Officer Recruit	12 months
20000616	Veterans Benefits Field Rep I	9 months
20000618	Veterans Benefits Regional Administrator	9 months
[20000676]	[State Park Ranger Recruit]	[12 months]
20000687	Public Safety Telecommunicator I	12 months
20000688	Public Safety Telecommunicator II	12 months

20000690	Public Safety Telecommunication Supervisor	12 months
20000692	CVE Inspector I	12 months
20000694	CJIS (Criminal Justice Information System) Compliance Specialist I	12 months
20000695	CJIS Compliance Specialist II	12 months
20000696	CJIS Compliance Specialist III	12 months
20000697	CJIS Compliance Supervisor	12 months
20000698	Transportation Operations Center Specialist I	12 months
20000703	Polygraph Examiner II	12 months
20000704	Polygraph Examiner I	12 months
20000713	Driver's Test Administrator	12 months
20000719	Law Enforcement Training Instructor I	12 months
[20000722]	[Law Enforcement Training Instructor I - Telecommunications]	[12 months]
20000813	Boiler Inspector I	12 months
20000817	HVAC Inspector I	12 months
20000821	OSH Industrial Hygiene[Hygienist] Compliance Officer I	12 months
20000834	OSH Safety Compliance[Compliance] Officer I	12 months
20000852	OSH Safety Consultant I	12 months
20000856	OSH Industrial Hygiene[Hygienist] Consultant I	12 months
20000888	Insurance Fraud Investigator I	12 months
20000889	Insurance Fraud Investigator II	12 months
20000890	Insurance Fraud Investigator Supervisor	12 months
20000938	Forensic Firearms and Toolmark Examiner I	12 months
20000940	Forensic Chemist I	12 months
20000941	Forensic Chemist II	12 months
20000943	Forensic Biologist I	12 months
20000944	Forensic Biologist II	12 months
20000953	Forensic Computer Examiner I	12 months
20000954	Forensic Computer Examiner II	12 months
20000955	Forensic Computer Examiner III	12 months
20000963	Therapy Program Assistant	9 months
20000974	Audiologist I	12 months
20001001	Patient Aide I	9 months
20001021	Nursing Investigator	12 months
[20001037]	[Medical Investigator I]	[12 months]
20001038	Medical Investigator II	12 months
20001122	Disability Adjudicator I	12 months
20001125	Social Service Worker I	9 months
20001132	Field Services Supervisor	12 months
[20001135]	[Juvenile Facility Superintendent I]	[12 months]
20001136	Juvenile Facility Manager II[Superintendent III]	12 months
20001137	Facilities Regional Administrator	12 months
20001138	Youth Services Program Supervisor	12 months
20001139	Juvenile Facility Manager I[Superintendent II]	12 months

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20001140	Family Services Office Supervisor	12 months
20001142	Human Rights Specialist	12 months
20001157	Administrative Hearing Officer I	12 months
20001159	Human Rights Enforcement Branch Manager	12 months
20001162	Human Rights Research/Information Compliance Supervisor	12 months
20001163	Human Rights Housing Compliance Supervisor	12 months
20001164	Human Rights Employment/Public Accommodations Compliance Supervisor	12 months
20001165	Human Rights Compliance Enforcement Officer II	12 months
20001166	Probation and Parole Officer I	12 months
20001171	Youth Worker I	12 months
20001174	Youth Worker Supervisor	12 months
20001175	Juvenile Services District Supervisor	12 months
20001184	Service Region Administrator	12 months
20001185	Service Region Administrator Associate	12 months
20001186	Service Region Clinical Associate	12 months
20001841	Criminal Intelligence Analyst I	12 months
20001842	Criminal Intelligence Analyst II	12 months
20001876	Law Clerk	12 months
20001895	Environmental Administrative Hearing Officer	12 months
[20001904]	[Investigator I]	[12 months]
21000900	Financial Institutions Examiner I	12 months
21000901	Financial Institutions Examiner II	12 months
21002025	Highway Technician Assistant I	12 months
21002026	Highway Technician Assistant II	12 months
21002027	Highway Technician I	12 months
21002028	Highway Technician II	12 months
21002029	Highway Technician III	12 months
21002030	Highway Technician IV	12 months
21002031	Highway Technician Superintendent I	12 months
21002032	Highway Technician Superintendent II	12 months
21002326	Apprentice I	12 months
21002327	Apprentice II	12 months
21002476	Boards and Commissions Support Specialist	12 months
21002825	Advanced Practice Registered Nurse Investigator	12 months
21003600	Public Safety Telecommunication Manager	12 months
21003601	Public Safety Telecommunicator III	12 months

(3) If the length of the initial probationary period for a job classification is changed, an employee serving an initial probationary period on the effective date of the change shall serve the shorter of the initial probationary periods. If an employee is appointed, the employee's appointing authority shall advise the employee of the period of his initial probation.

Section 2. Promotional Probationary Period. (1) An employee who satisfactorily completes the promotional probationary period shall be granted status in the position to which he has been promoted. Unless an employee receives notice prior to the end of his promotional probationary period that he has failed to

satisfactorily complete the promotional probationary period and that he is being reverted, the employee shall be deemed to have served satisfactorily and shall acquire status in the position to which he has been promoted.

(2) An employee who fails to satisfactorily complete a promotional probationary period shall be reverted to his former position or to a position in the same job classification as his former position. A written notification shall be sent to the employee to advise the employee of the effective date of reversion. A copy of the notice of reversion shall be forwarded to the Secretary of Personnel on the same date notice is delivered to the employee.

(3) Except as established in KRS 18A.111, the promotional probationary period shall be computed from the effective date of promotion to the corresponding date in the appropriate month following promotion as established in KRS 18A.005(27).

(4) The promotional probationary period shall be the same length as the initial probationary period for each job classification.

Section 3. Probationary Period Upon Reinstatement.

(1) An employee who is reinstated to a position in the classified service no later than twelve (12) months after the beginning of a break in the classified service shall be reinstated with status. This shall include an employee ordered reinstated pursuant to KRS 18A.111(3), unless the board rules otherwise.

(2) An employee who is reinstated to the classified service more than twelve (12) months after a break in service, except an employee ordered reinstated pursuant to KRS 18A.111(3), shall serve an initial probationary period.

MARK A. SIPEK, Executive Director

APPROVED BY AGENCY: January 12, 2024

FILED WITH LRC: January 12, 2024 at 11:00 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 29, 2024, at 9:30 a.m. Eastern Time at 1025 Capital Center Drive, Suite 105, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through end of the day, March 28, 2024. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Stafford Easterling General Counsel, Personnel Board, 1025 Capital Center Drive, Suite 105, Frankfort, Kentucky 40601, phone (502) 564-7830, fax (502) 695-5799, email stafford.easterling@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stafford Easterling

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation defines the mandatory initial probationary periods of specific job classifications from the effective date of appointment. The regulation also provides for amending or re-naming the titles of certain job classifications and abolishing job classifications that are no longer deemed necessary.

(b) The necessity of this administrative regulation: This regulation is necessary to set the requirements of probationary periods and maintain a list of current job classifications.

(c) How this administrative regulation conforms to the content of the authorizing statutes: 18A.075(1)(4)(e) authorizes the Personnel Board to establish initial probationary periods and maintain a current list of job classifications.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation

will continue to provide effective administration of the statutes by its requirements to establish probationary periods and current job classifications.

(2) If 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 abolishes seven (7) job classifications; Investigator I, Juvenile Facility Superintendent I, Law Enforcement Training Instructor I – Telecommunications, Medical Investigator I, Park Business Manager II, Park Manager/Historic Site Manager, and State Park Ranger Recruit. In addition, this amendment renames thirteen (13) current job classification titles. Title Codes; 20000856, 200001139, 200001136, 200001038, 200000834, 200000821, 200000570, 200000573, 200000574, 200000562, 200000563, 200000564, and 200000677.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to maintain an updated job classification list.

(c) How much will it cost the regulated entities for the first year? The amendment abolishes positions that are no longer deemed necessary and renames job classification titles. This conforms with the obligation of the Personnel Board and Personnel Cabinet to effectively maintain and administer the merit system.

(d) How the amendment will assist in the effective administration of the statutes: This amendment provides clarity on current job classifications. This amendment abolishes seven (7) job classifications and renames thirteen (13) job classification titles.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation affects all state government agencies and the amendment will affect state government agencies employing the identified job classifications.

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

(a) List 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 Personnel Cabinet will work with the impacted state agencies to update the state job classification list to remove the abolished positions and update the job classification title changes accordingly. All employees affected by the new job classification titles will be notified.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): A valid list of job classifications is maintained within this regulation, as well as the job classification title changes.

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

(a) Initially: There will be no cost to implement this amendment.

(b) On a continuing basis: There will be no ongoing cost to implement this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: There is no need for a source of funding to implement and enforce this regulation.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This regulation, as amended, is not anticipated to generate any new or additional fees.

(9) TIERING: Is tiering applied? No. This regulation, as amended, treats all impacted employees the same.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Personnel Board, Personnel Cabinet, Justice and Public Safety Cabinet, Tourism, Arts and Heritage Cabinet, Education and Labor Cabinet, and Kentucky Board of Medical Licensure.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 18A.005, KRS 18A.075(1), and KRS 18A.0751(1)(e) and (4)(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? No revenue will be generated.

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

(c) How much will it cost to administer this program for the first year? There are no estimated costs to administer the amendments to this regulation.

(d) How much will it cost to administer this program for subsequent years? There are no estimated costs for subsequent years to administer the amendments to this regulation.

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

Revenues (+/-):

Expenditures (+/-):

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

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? No revenue will be generated.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? No revenue will be generated.

(c) How much will it cost the regulated entities for the first year? There are no estimated costs to administer the amendments to this regulation.

(d) How much will it cost the regulated entities for subsequent years? There are no estimated costs for subsequent years to administer the amendments to this regulation.

Note:

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation: There should be no increase or decrease in the cost to administer 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.030(1)] The amendment to this regulation will have no economic impact of any amount on state or local government or regulated entities.

BOARDS AND COMMISSIONS

**Board of Dentistry
(Amendment)**

201 KAR 8:533. Licensure of dentists.

RELATES TO: KRS 39A.350-39A.366, 218A.205, 304.40-075, 313.010(9), 313.030, 313.254

STATUTORY AUTHORITY: KRS 218A.205, 313.021(1)(a), (b), (c), 313.035(1), (3), 313.254

NECESSITY, FUNCTION, AND CONFORMITY: KRS 313.035 and 218A.205 require the board to promulgate administrative regulations relating to requirements and procedures for the licensure of dentists. This administrative regulation establishes requirements and procedures for licensure of dentists.

Section 1. General Licensure Requirements. An applicant desiring initial licensure in Kentucky as a general dentist shall~~initial licensure in the Commonwealth shall at a minimum~~:

(1) Understand, read, speak, and write the English language with a comprehension and performance level equal to at least the ninth grade of education, verified by testing as necessary;

(2) Submit a completed, signed, and notarized Application for Dental Licensure with an attached applicant photo taken within the past six (6) months;

(3) Pay the fee required by 201 KAR 8:520;

(4) Not be~~currently~~ subject to disciplinary action pursuant to KRS Chapter 313 that would prevent licensure;

(5) Complete and pass the board's jurisprudence exam;

(6) Hold an active~~Provide proof of having current~~ certification in cardiopulmonary resuscitation (CPR) or a more comprehensive program which meets or exceeds the American Heart Association Guidelines for CPR and ECC;

(7) Submit to a nationwide state and federal criminal background check by fingerprint through the Department of Kentucky State Police;

(8) Provide verification~~within three (3) months of the date the application is received at the office of the board~~ of any license to practice dentistry held previously or currently in any state or other licensing jurisdiction;

(9) Hold a Doctor of Medicine in Dentistry (DMD) or Doctor of Dental Surgery (DDS) degree from a dental school, college, or department of a university accredited by the~~Provide proof that the applicant is a graduate of a~~ Commission on Dental Accreditation (CODA)~~accredited dental school or college or dental department of a university~~;

(10) Successfully complete~~Provide proof that the applicant has successfully completed Part I and Part II of~~ the National Board Dental Examination (NBDE) Part I and Part II or the Integrated National Board Dental Examination (INBDE)~~which is written and theoretical~~, conducted by the Joint Commission on National Dental Examinations (JCNDE)~~and~~;

(11) Provide a written explanation for any positive returns on a query of the National Practitioner Data Bank; and

(12) Complete all additional requirements for one (1) of the following:

(a) Licensure by clinical examination;

(b) Licensure by credentials; or

(c) Licensure by foreign training.

Section 2. Requirements for Licensure by Clinical Examination. An individual desiring initial licensure in Kentucky as a general dentist by clinical examination shall:

(1) ~~Each individual desiring initial licensure as a dentist by examination shall complete~~Complete all~~of the~~ requirements ~~listed in Section 1 of this administrative regulation; and~~;

(2) Successfully complete all components of one (1) of the following~~Each individual desiring initial licensure as a dentist by examination shall successfully complete a~~ clinical examinations~~examination~~ within the five (5) years preceding the filing of the application~~The board shall accept the following regional clinical examinations~~;

(a) The examination of the Council of Interstate Testing Agencies (CITA);

(b) The examination of the Central Regional Dental Testing Service (CRDTS);

(c) The examination of the Commission on Dental Competency Assessments (CDCA);

(d) The examination of the States Resources for Testing and Assessments~~Southern Regional Testing Agency~~ (SRTA)~~and~~;

(e) The examination of the Western Regional Examining Board (WREB); or

(f) The Dental Licensure Objective Structured Clinical Examination (DLOSCE) of the Joint Commission on National Dental Examinations (JCNDE).

(3) An individual applying more than two (2) years after graduating with a DDS or DMD~~An individual desiring initial licensure as a dentist by examination more than two (2) years after fulfilling all of the requirements of his or her CODA accredited dental education~~ shall:

(a) Hold a license to practice dentistry in good standing in another state or territory of the United States or the District of Columbia; or

(b) Complete a continuing education plan approved by the board~~If the applicant does not hold a license to practice dentistry in good standing, complete a board approved refresher course prior to receiving a license to practice dentistry in the Commonwealth of Kentucky~~.

(4) An applicant who has taken a clinical examination three (3) times and failed to achieve a passing score shall~~not be allowed to sit for the examination again until the applicant has~~ complete~~completed and passed~~ a remediation plan approved by the board.

Section 3. Requirements for Licensure by Credentials. An individual desiring initial licensure in Kentucky as a general~~Each individual desiring initial licensure as a~~ dentist by credentials shall:

(1) Complete all~~of the~~ requirements~~listed~~ in Section 1 of this administrative regulation;

(2) Successfully complete~~Provide proof of having passed~~ a state, regional, or national clinical examination used to determine clinical competency in a state or territory of the United States or the District of Columbia; and

(3) Be licensed and actively practicing dentistry in a state or territory of the United States or the District of Columbia for a~~least~~Provide proof that, for five (5) of the six (6) years ~~immediately preceding the filing of the application, the applicant has been engaged in the active practice of dentistry when he or she was legally authorized to practice dentistry in a state or territory of the United States or the District of Columbia if the qualifications for the authorization were equal to or higher than those of the Commonwealth of Kentucky~~.

Section 4. Requirements for Licensure by Foreign Training. An individual desiring initial licensure in Kentucky as a general dentist who is a graduate of a non-CODA accredited dental school, college or department of a university shall:

(1) Complete all requirements in Section 1 of this administrative regulation except for subsection (9);

(2) Pass the Test of English as a Foreign Language (TOEFL) administered by the Educational Testing Service with a score of 650 on the paper-based test (PBT) or a score of 116 on the internet-based test (iBT), if English is not the applicant's primary language;

(3) Successfully complete two (2) years of postgraduate training in a CODA accredited general dentistry program;

(4) Submit a letter of satisfactory program completion from the program director of each postgraduate training site; and

(5) Successfully complete a clinical examination required by Section 2(2) of this administrative regulation within five (5) years preceding the filing of the application.

(6) An individual applying for dental licensure more than two (2) years after completing a CODA accredited general dentistry program shall:

(a) Hold a license to practice dentistry in good standing in another state or territory of the United States or the District of

Columbia; or

(b) Complete a continuing education plan approved by the board.

Section 5. Requirements for Student Limited Licensure.

[(1)] An[Each] individual desiring limited licensure in Kentucky as a student[limited license] shall:

(1)[(a)] Complete all[of the] requirements[listed] in Section 1 of this administrative regulation except for[with the exception of] subsections (9) and (10);

(2)[(b)] Submit[Provide] a letter from the dean or program director of a postgraduate, residency, or fellowship program in [the Commonwealth of] Kentucky stating that the applicant has been accepted into the program and the expected date of completion;

(3)[(c)] Submit a signed Statement Regarding Student Licensure Limitations; and

(4)[(d)] Submit an official final transcript of the applicant's dental coursework with the degree posted.

(5)[(2)] A student limited license holder[An individual licensed under this section] shall only practice dentistry in conjunction with programs of the dental school where the individual is a student and shall only provide professional services to patients of these programs.

(6)[(3)] A student limited license may be renewed in accordance with Section 10 of this administrative regulation but[Licenses issued under this section shall be renewed with all other dental licenses issued by the board and] shall automatically expire when the student graduates from or exits the program[upon the termination of the holder's status as a student].

(7)[(4)] A program enrolling[an individual holding] a student limited license holder shall notify the board in writing of the date the student graduates from or exits the program.

(8)[(5)] Nothing in this section shall prohibit:

(a) A student from performing a dental procedure[operation] under the direct supervision of a competent instructor within the dental school, college, or department of a university or private practice facility approved by the board. The board may authorize a student [of any dental college, school, or department of a university] to practice dentistry within a[in any] state or municipal institution,[or] public school,[or under the] board of health,[or in a] public clinic, or[a] charitable entity[institution]. A fee shall not be accepted by the student beyond the expenses covered by a[provided by the] stipend;

(b) A student limited license holder from working under the general supervision of a licensed dentist within the confines of the postgraduate training program; and

(c) A volunteer health practitioner from providing services under KRS 39A.350-39A.366.

Section 6.[Section 5.] Requirements for Faculty Limited Licensure.

[(1)] An[Each] individual desiring limited licensure in Kentucky as a faculty member[limited license] shall:

(1)[(a)] Complete all[of the] requirements [listed] in Section 1 of this administrative regulation with the exception of subsections (9) and (10);

(2)[(b)] Submit[Provide] a letter from the dean or program director of a Kentucky[the] dental school stating that the applicant has received[showing] a faculty appointment[with one (1) of the Commonwealth's dental schools];

(3)[(c)] Submit a signed Statement Regarding Faculty Licensure Limitations; and

(4)[(d)] Submit an official final transcript of the applicant's[his or her] dental coursework with the degree posted.

(5)[(2)] A faculty limited license holder[An individual licensed under this section] shall only practice dentistry in conjunction with programs of the dental school where the individual is a faculty member and shall only provide professional services to patients of these programs.

(6)[(3)] A faculty limited license may be renewed in accordance with Section 10 of this administrative regulation but[Licenses issued under this section shall be renewed with all other dental licenses issued by the board and] shall automatically expire when the licensee leaves their faculty position[upon the termination of the

holder's status as a faculty member].

(7)[(4)] A program employing[an individual holding] a faculty limited license holder shall notify the board in writing of the date the licensee leaves their faculty position[exits the program].

[Section 6. Requirements for Licensure of Foreign-Trained Dentists.

(1) Each individual desiring licensure as a dentist who is a graduate of a non-CODA accredited dental program shall successfully complete two (2) years of postgraduate training in a CODA accredited general dentistry program and shall:

(a) Provide proof of having passed the Test of English as a Foreign Language (TOEFL) administered by the Educational Testing Service with a score of 650 on the paper-based test (PBT) or a score of 116 on the internet-based test (IBT), if English is not the applicant's native language;

(b) Submit a completed, signed, and notarized Application for Dental Licensure with an attached applicant photo taken within the past six (6) months;

(c) Pay the fee required by 201 KAR 8:520;

(d) Not be currently subject to disciplinary action pursuant to KRS Chapter 313 that would prevent licensure;

(e) Complete and pass the board's jurisprudence exam;

(f) Provide proof of having current certification in cardiopulmonary resuscitation (CPR) that meets or exceeds the American Heart Association Guidelines for CPR and ECG;

(g) Submit to a state and federal criminal background check by fingerprint through the Department of Kentucky State Police;

(h) Provide verification within three (3) months of the date the application is received at the office of the board of any license to practice dentistry held previously or currently in any state or jurisdiction;

(i) Provide proof of having successfully completed two (2) years postgraduate training in a CODA accredited general dentistry program;

(j) Submit one (1) letter of recommendation from the program director of each training site;

(k) Provide proof of successful completion of Part I and Part II of the National Board Dental Examination, which is written and theoretical, conducted by the Joint Commission on National Dental Examinations within the five (5) years preceding application for licensure;

(l) Provide proof of successfully completing within the five (5) years prior to application a clinical examination required by Section 2(2) of this administrative regulation; and

(m) Provide a written explanation for any positive returns on a query of the National Practitioner Data Bank.

(2) An individual desiring initial licensure as a dentist who is a graduate of a non-CODA accredited dental program and applies more than two (2) years after fulfilling all of the requirements of his or her postgraduate training in a CODA accredited general dentistry program shall:

(a) Hold a license to practice dentistry in good standing in another state or territory of the United States or the District of Columbia; or

(b) If the applicant does not hold a license to practice dentistry in good standing, complete a board approved refresher course prior to receiving a license to practice dentistry in the Commonwealth of Kentucky.]

Section 7. Requirements for Charitable Limited Dental Licensure.

[(4)] An individual desiring limited licensure in Kentucky to provide charitable dental services[Each individual desiring a charitable limited license] shall:

(1)[(a)] Understand, read, speak, and write the English language with a comprehension and performance level equal to at least the ninth grade of education, verified by testing as necessary;

(2)[(b)] Submit a completed, signed, and notarized Application for Charitable[Dental] Limited Licensure with an attached applicant photo taken within the past six (6) months;

(3)[(c)] Pay the fee required by 201 KAR 8:520;

(4)[(d)] Not be subject to disciplinary action pursuant to KRS

Chapter 313 that would prevent licensure;

(5)(e) Hold[Have] a license to practice dentistry in good standing in another state or territory of the United States or the District of Columbia; and

(6)(f) Provide a written explanation for any positive returns on a query of the National Practitioner Data Bank.

(7)(2) A charitable limited dental license holder [An individual licensed under this section] shall:

(a) Work only with charitable entities registered with the Cabinet for Health and Family Services that have met the requirements of KRS 313.254 and 201 KAR 8:581;

(b) Only perform procedures allowed by KRS 313.254(4) and (5) which shall be completed within the duration of the charitable event;

(c) Not prescribe any medications while practicing in Kentucky;

(d) Be eligible for the provisions of medical malpractice insurance procured under KRS 304.40-075; and

(e)(d) Perform these duties without expectation of compensation or charge to the individual, and without payment or reimbursement by any governmental agency or insurer.;

(e) Have a charitable limited license that shall be valid for no more than two (2) years and shall expire during the regular dental renewal cycle; and

(f) Comply with reciprocity requirements if applicable.

1. A state that extends a reciprocal agreement shall comply with this section.

2. An individual shall notify the sponsor of a charitable clinic and the board of the intent to conduct or participate in the clinic.

3. An individual conducting or participating in a charitable clinic shall have a license to practice dentistry in the state in which the dentist practices.

(3) A dentist licensed under this section shall not be allowed to prescribe any medications while practicing in the Commonwealth.]

Section 8. Requirements for Specialty Licensure. An individual ~~[Each individual]~~ desiring initial licensure as a dental specialist in Kentucky as defined by KRS 313.010(9) shall:

(1) Submit a completed, signed, and notarized Application for Specialty Licensure with an attached applicant photo taken within the past six (6) months;

(2) Pay the fee required by 201 KAR 8:520;

(3) Hold an active Kentucky license to practice general dentistry prior to being issued a specialty license; and

(4) Successfully complete ~~[Submit satisfactory evidence of completing]~~ a CODA accredited graduate or postgraduate specialty program after graduating ~~[graduation]~~ from a dental school.

Section 9. ~~[Minimum-]~~Continuing Education Requirements. A Kentucky licensed dentist shall complete thirty (30) hours of continuing education during the two (2) year licensure period defined by KRS 313.030(2) except in the following cases:

(1) A licensee who was issued a new or reinstated license in the second year of the current biennial license period shall only complete one-half the required hours for that period;

(2) A licensee who graduated in the first year of the current biennial license period shall only complete one-half the required hours for that period;

(3) A licensee who graduated in the second year of the current biennial license period shall not be required to complete continuing education hours for that period;

(4) A charitable limited license holder shall not be required to complete continuing education hours; or

(5) A licensee may be granted a hardship waiver or deferment if such a request is submitted to and approved by the board.

~~[(1) Each individual desiring renewal of an active dental license shall complete thirty (30) hours of continuing education that relates to or advances the practice of dentistry and would be useful to the licensee's practice.]~~

(6)(2) Acceptable continuing education content ~~[hours]~~ shall include ~~[course content designed to increase];~~

(a) Competency in treating patients who are medically compromised or who experience medical emergencies during the course of dental treatment;

(b) ~~Pharmaceutical~~ ~~[Knowledge of pharmaceutical]~~ products and ~~[the protocol of the]~~ proper use protocols of medications;

(c) Competence to diagnose oral pathology;

(d) Awareness of currently accepted methods of infection control;

(e) Basic ~~[Knowledge of basic]~~ medical and scientific subjects ~~[including biology, physiology, pathology, biochemistry, pharmacology, epidemiology, and public health];~~

(f) Clinical ~~[Knowledge of clinical]~~ and technological subjects;

(g) Patient ~~[Knowledge of subjects pertinent to patient]~~ management, safety, and oral healthcare;

(h) Mass ~~[Competency in assisting in mass]~~ casualty or mass immunization situations;

(i) Clinical dentistry performed on a charitable or volunteer basis ~~[skills through the volunteer of clinical charitable dentistry that meets the requirements of KRS 313.254];~~

(j) Business ~~[Knowledge of office business]~~ operations and best practices; and ~~[or]~~

(k) Dental ~~[Participation in dental]~~ association or society business meetings.

(7)(3) The thirty (30) hours of continuing education shall include:

(a) A minimum of ten (10) hours ~~[shall be]~~ taken in a live interactive presentation format.

(b)(4) A maximum of ten (10) hours ~~[total may be taken]~~ that meet the requirements of subsection (4)(2)(i) - (k) of this section.

(c)(5) A minimum of three (3) hours ~~[of continuing education shall be taken]~~ in the use of the Kentucky All Schedule Prescription Electronic Reporting System (KASPER), pain management, or addiction disorders.

(8)(6) Dentists who hold a board-issued sedation permit shall also meet the continuing education requirements of 201 KAR 8:550, Section 8.

(9)(7) All continuing education hours shall be documented ~~[by/verified by the receipt of]~~ a certificate of completion or ~~[certificate of attendance bearing:~~

(a) ~~A~~ ~~[The]~~ signature ~~[of]~~ or other verification of ~~[by]~~ the provider;

(b) The name of the licensee in attendance;

(c) The title of the course or meeting attended or completed;

(d) The date of attendance or completion;

(e) The number of hours earned; and

(f) Evidence of the method of delivery if the course was taken in a live interactive presentation format.

(10)(8) The licensee shall be responsible for obtaining the qualifying documentation of continuing education ~~[It shall be the sole responsibility of the individual licensee to obtain documentation] from the provider or sponsoring organization [verifying participation as established in subsection (7) of this section] and to retain those documents [the documentation] for a minimum of five (5) years.~~

(11)(9) During the ~~[At]~~ license renewal process, licensees ~~[each licensee]~~ shall attest to their compliance ~~[the fact that he or she has complied]~~ with the requirements of this section.

(12)(10) Licensees ~~[Each licensee]~~ shall be subject to audit of their compliance with the requirements of this section ~~[proof of continuing education compliance by the board].~~

Section 10. ~~[Requirements for-]~~Renewal of a Dental License.

[(1) All dental licenses issued by the board shall expire on December 31 of odd-numbered years and must be renewed to remain active. A licensee ~~[Each individual]~~ desiring renewal of an active general, specialty, student limited, or faculty limited dental license shall:

(1)(a) Submit a ~~[signed-]~~ completed and signed Application for Renewal of Dental Licensure;

(2)(b) Pay the fee required by 201 KAR 8:520;

(3)(c) Maintain an active ~~[with no more than a thirty (30) day lapse, CPR]~~ certification in CPR or a more comprehensive program that meets or exceeds the American Heart Association Guidelines for CPR and ECC ~~[unless a hardship waiver is approved by the board]; and~~

(4)(d) Meet the continuing education requirements ~~[as provided for]~~ in Section 9 of this administrative regulation ~~[except in the following cases:~~

1. If a hardship waiver has been submitted to and is subsequently approved by the board;

2. If the licensee graduated in the first year of the biennial license period, the licensee shall complete one-half (1/2) of the hours as outlined in Section 9 of this administrative regulation; and

3. If the licensee graduated in the second year of the biennial license period, the licensee shall not be required to complete the continuing education requirements outlined in Section 9 of this administrative regulation].

(5)[(2)] If a licensee who has not actively practiced dentistry in the two (2)[consecutive] years preceding the filing of the renewal application shall complete a continuing education plan approved by the board, he or she shall complete and pass a board-approved refresher course prior to resuming the active practice of dentistry.

(6) A licensee desiring renewal of a charitable limited dental license shall repeat the initial licensure process required by Section 7 of this administrative regulation.

Section 11. Retirement of a Dental License.

[(1)] A licensee[Each individual] desiring to no longer hold an active dental license in Kentucky[retirement of a dental license] shall submit a completed and signed Retirement of License Form.

(1)[(2)] Upon receipt of this form, the board shall send written confirmation of retirement to the address provided[by the licensee on the Retirement of License form].

(2)[(3)] A licensee shall not retire a license that has[a] pending disciplinary action against it.

(3)[(4)] A license that is not properly retired or renewed shall be considered expired for reinstatement purposes[Each retirement shall be effective upon the processing of the completed and signed Retirement of License Form by the board].

Section 12. Reinstatement of a Dental License.

[(1)] A former licensee[Each individual] desiring reinstatement of an expired or[a] properly retired dental license in Kentucky shall:

(1)[(a)] Submit a completed, signed, and notarized Application to Reinstatement [a]Dental or Dental Hygiene Licensure[Licensure] with an attached applicant photo taken within the past six (6) months;

(2)[(b)] Pay the fee required by 201 KAR 8:520;

(3)[(c)] Hold an active[Show proof of having current] certification in CPR or a more comprehensive program that meets or exceeds the American Heart Association Guidelines for CPR and ECC;

(4)[(d)] Provide verification[within three (3) months of the date the application is received at the office of the board] of any license to practice dentistry obtained[held previously or currently] in any state or other licensing jurisdiction since the applicant was first licensed in Kentucky;

(5)[(e)] Submit to a nationwide state and federal criminal background check by fingerprint through the Department of Kentucky State Police; and

(6)[(f)] Provide a written explanation for any positive returns on a query of the National Practitioner Data Bank.

(7)[(2)] An[If an individual applies to reinstate a license within two (2) years of when the license was last active, the individual shall provide proof of having met the continuing education requirements as outlined in Section 9 of this administrative regulation within those two (2) years.

(3) If the applicant who has not actively practiced dentistry in the two (2)[consecutive] years [immediately]preceding the filing of the reinstatement application[, the applicant] shall complete[and pass] a continuing education plan[refresher course] approved by the board prior to resuming the active practice of dentistry.

(8) A former licensee who applies to reinstate an expired license that was not properly retired shall be subject to:

(a) The expired license reinstatement penalties in 201 KAR 8:520 if applying less than two (2) years from when the license was last active; or

(b) The same reinstatement fees as a properly retired license if applying more than two (2) years from when the license was last active.

[(4)] If a license is reinstated in the first year of the biennial license period, the licensee shall complete all of the continuing education requirements as outlined in Section 9 of this

administrative regulation prior to the renewal of the license.

(5) If a license is reinstated in the second year of the biennial license period, the licensee shall complete one-half (1/2) of the hours as outlined in Section 9 of this administrative regulation prior to the renewal of the license.]

Section 13. [Requirements for]Verification of Licensure. An[Each] individual desiring an official verification of a dental license held currently or previously in Kentucky shall:

(1) Submit a signed and completed Verification of Licensure or Registration Form; and

(2) Pay the fee required by 201 KAR 8:520.

Section 14. [Requesting a Duplicate License. Each individual desiring a duplicate dental license shall:

(1) Submit a signed and completed Duplicate License or Registration Request Form; and

(2) Pay the fee required by 201 KAR 8:520.

Section 15. Issuance of Initial Licensure. Upon an applicant's completion of all[If an applicant has completed all of the] requirements for dental licensure within six (6) months of the date the application was received[at the office of the board], the board shall:

(1) Issue a license in sequential numerical order; or

(2) Deny licensure due to a violation of KRS Chapter 313 or 201 KAR Chapter 8.

Section 15. [Section 16.] Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Application for Charitable [Dental]Limited Licensure", January 2024[May 2023];

(b) "Application for Dental Licensure", January 2024[May 2023];

(c) "Application for Renewal of Dental Licensure", January 2024[May 2023];

(d) "Application for Specialty Dental Licensure", January 2024[February 2023];

(e) "Application to Reinstatement [a]Dental or Dental Hygiene Licensure[Licensure]", January 2024[May 2023];

(f) "Duplicate License or Registration Request Form", January 2024[December 2022];

(g) "Retirement of License Form", January 2024[February 2023];

(h) "Statement Regarding Faculty Licensure Limitations", January 2024[May 2023];

(i) "Statement Regarding Student Licensure Limitations", January 2024[May 2023];

(j) "Verification of Licensure or Registration Form", January 2024[February 2023]; and

(k) "2020 American Heart Association Guidelines for CPR and ECC", 2020.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Dentistry, 312 Whittington Parkway, Suite 101, Louisville, Kentucky 40222, Monday through Friday, 8 a.m. through 4:30 p.m. This material is also available on the board's Web site at <http://dentistry.ky.gov>.

JEFF ALLEN, Executive Director

APPROVED BY AGENCY: January 10, 2024

FILED WITH LRC: January 12, 2024 at 11:50 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 28, 2024 at 3:00 p.m., Eastern Time at the Kentucky Board of Dentistry, 312 Whittington Parkway, Suite 101, Louisville, Kentucky 40222. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed 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 March 31, 2024. 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: Jeff Allen, Executive Director, Kentucky Board of Dentistry, 312 Whittington Parkway, Suite 101, Louisville, Kentucky 40222, phone (502) 429-7280, fax (502) 429-7282, email jeffrey.allen@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jeffrey Allen

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes requirements to practice dentistry in Kentucky.

(b) The necessity of this administrative regulation: KRS 313.021(1)(a) requires the board to exercise the administrative functions of the Commonwealth in the regulation of dentists.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes the rules for obtaining a license to practice as a dentist in Kentucky.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes requirements for being licensed to practice dentistry in conformity with its authorizing statute.

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

(a) How the amendment will change this existing administrative regulation: The amendment is not intended to make substantive changes, merely to clarify existing language.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to clarify details about certain aspects of dental licensure.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment maintains established requirements for being licensed to practice dentistry in conformity with its authorizing statute.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will clarify certain aspects of dental licensure, making the licensure process more efficient and effective for both board staff and potential licensees

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will primarily affect the approximately 3,200 licensed dentists in Kentucky as well as any new applicants for licensure and the patients of licensed dentists.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Each individual impacted will be required to apply for or renew their licensure in accordance with applicable law and administrative regulations.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This administrative regulation does not address specific fee amounts, which are instead provided for in 201 KAR 8:520.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The administrative regulation will result in a healthier patient population and the avoidance of potentially costly violations of applicable law and administrative regulations by licensed dentists.

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

(a) Initially: No additional cost.

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

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

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Fee amounts are already established in a separate administrative regulation (201 KAR 8:520) and no increase is needed.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not impact existing fees which are already established in 201 KAR 8:520.

(9) TIERING: Is tiering applied? No; this administrative regulation impacts all similarly situated entities equally.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? None outside of the Board of Dentistry.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 313.021.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This amendment does not alter the existing revenue generated by dental licensure, which is approximately \$1,100,000 every fiscal biennium to the Board of Dentistry.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This amendment does not alter the existing revenue generated by dental licensure, which is approximately \$1,100,000 every fiscal biennium to the Board of Dentistry.

(c) How much will it cost to administer this program for the first year? There will be no additional cost as a result of this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? There will be no additional cost as a result of this administrative regulation.

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 does not establish specific fee amounts, which are contained in a separate administrative regulation; however, the revenue generated from dentist licensure is approximately \$1,100,000 every fiscal biennium.

Expenditures (+/-): Expenditures specifically related to this administrative regulation are difficult to determine due to indirect personnel and overhead costs; however, total agency expenditures are approximately \$1,400,000 every fiscal biennium.

Other Explanation: Not 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? None.

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

(c) How much will it cost the regulated entities for the first year? No additional cost as a result of this administrative regulation. This administrative regulation does not contain specific fees, which are provided for in a separate administrative regulation.

(d) How much will it cost the regulated entities for subsequent years? There will be no additional cost as a result of this amendment. This administrative regulation does not contain specific

fees, which are provided for in a separate administrative regulation.

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. This administrative regulation does not directly have a major economic impact as it does not contain specific fee amounts. When administered in conjunction with the current fees established elsewhere, it impacts the dental health community by just over \$500,000 per year, primarily from licensure fees.

**GENERAL GOVERNMENT CABINET
Board of Landscape Architects
(Amendment)**

201 KAR 10:030. Code of ethics.

RELATES TO: KRS 323A.110

STATUTORY AUTHORITY: KRS 323A.210(2)(b)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 323A.110(2)[KRS 323A.110(4)(b)] authorizes the board to discipline a licensee for unprofessional conduct. KRS 323A.210 authorizes the board to adopt reasonable administrative regulations not inconsistent with KRS Chapter 323A but which are necessary to carry out the provisions of KRS Chapter 323A. This code of ethics is intended to establish guidelines for the determination of unprofessional conduct by landscape architects practicing in the state and for the protection of the public they will be serving.

Section 1. Code of Ethics. (1) A violation of this code of ethics shall be considered unprofessional conduct pursuant to KRS 323A.110(2)[KRS 323A.110(4)(b)].

(2) The landscape architect shall conduct his practice in order to protect the life, health, property and welfare of the public and shall at all times recognize that his primary obligation is to protect the life, health, property and welfare of the public in the performance of his professional duties. If his landscape architectural judgment is overruled under circumstances where the safety, health and welfare of the public are endangered, he shall inform his employer of the possible consequences and notify any other proper authority of the situation, as may be appropriate.

(3) The landscape architect shall perform his services only in areas of his competence.

(a) The landscape architect shall perform landscape architectural assignments only when qualified by education or experience in the specific technical field of professional landscape architecture involved;

(b) The landscape architect may accept an assignment requiring education or experience outside of his own field of competence, but only to the extent that his services are restricted to those phases of the project in which he is qualified. All other phases of that project shall be performed by qualified associates, consultants, or employees;

(c) The landscape architect shall not affix his signature or seal to any landscape architectural plan or document dealing with subject matter to which he lacks competence by virtue of education or experience, or to any such plan or document not prepared under his direct supervisory control; and

(d) It shall be the responsibility of the licensee to demonstrate competence in the specific technical field in which the licensee is practicing.

(4) The landscape architect shall be completely objective and truthful in all professional reports, and shall include all relevant and pertinent information in those reports.

(5) The landscape architect shall avoid conflicts of interest:

(a) The landscape architect shall avoid all conflicts of interest with his employer or client and shall promptly inform his employer or client of any business association, interests, or circumstances which could influence his judgment or the quality of his services;

(b) The landscape architect shall not accept compensation, financial or otherwise, from more than one (1) party for services pertaining to the same project, unless the circumstances are fully disclosed to, and agreed to, by all interested parties;

(c) The landscape architect shall not solicit or accept financial or other valuable considerations from material or equipment suppliers for specifying their products;

(d) The landscape architect shall not solicit or accept gratuities, directly or indirectly, from contractors, their agents, or other parties dealing with his client or employer in connection with work for which he is responsible;

(e) When in public service as a member, advisor, or employee of a governmental body or department, the landscape architect shall not participate in considerations or actions with respect to services provided by him or his organization in private landscape architectural practices;

(f) The landscape architect shall not solicit or accept a landscape architectural contract from a governmental body on which a principal or officer of his organization serves as a member; or

(g) The landscape architect shall not attempt to supplant another landscape architect after definite steps have been taken by a client toward the latter's employment and he shall not accept a commission for which another landscape architect has been employed without first conclusively determining that the latter's employment has been terminated.

(6) The landscape architect shall solicit or accept work only on the basis of his qualifications.

(a) The landscape architect shall not offer to pay, either directly or indirectly, any commission, political contribution, or a gift, or other consideration in order to secure work, exclusive of securing salaried positions through employment agencies.

(b) The landscape architect shall seek professional employment on the basis of qualification and competence for proper accomplishment of the work.

(c) The landscape architect shall not falsify or permit misrepresentation of his, or his associates', academic or professional qualifications. He shall not misrepresent or exaggerate his degree of responsibility in or for the subject matter of prior assignments. Brochures or other presentations incident to the solicitation of employment shall not misrepresent pertinent facts concerning employers, employees, associates, joint ventures, or his or their past accomplishments with the intent and purpose of enhancing his qualifications and his work.

(7) In the practice of landscape architecture, a landscape architect shall associate only with reputable persons or organizations.

(a) The landscape architect shall not knowingly associate with or permit the use of his name or firm in a business venture by any person or firm which he knows, or has reason to believe, is engaging in business or professional practices of a fraudulent or dishonest nature, or in violation of these administrative regulations; or

(b) If the landscape architect has knowledge or reason to believe that another person or firm may be in violation of any of these provisions or KRS Chapter 323A, he shall present that information to the board in writing and shall cooperate with the board in furnishing any further information or assistance as may be required by the board.

GARY R. WONITZEK, President

APPROVED BY AGENCY: January 8, 2024

FILED WITH LRC: January 8, 2024 at 2:45 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 22, 2024 at 10:30 a.m. Eastern Time at the office of the Kentucky Board of Landscape Architects, 2365 Harrodsburg Road, Suite B350, Lexington, Kentucky. 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 March 31, 2024. 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: Jane Alexander, Executive Director, Kentucky Board of Landscape Architects, 2365 Harrodsburg Road, Suite B350, Lexington, Kentucky, 40504 telephone: (859) 246-2753, email: ky.labd@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jane Alexander

(1) Provide a brief summary of:

(a) What this administrative regulation does: It establishes a code of ethics for landscape architects.

(b) The necessity of this administrative regulation: It is necessary to establish guidelines for unprofessional conduct for the protection of the public.

(c) How this administrative regulation conforms to the content of the authorizing statutes: It is authorized by KRS 323A.210(2)(b).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By establishing a code of ethics to be followed by Landscape Architects.

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

(a) How the amendment will change this existing administrative regulation: It corrects an incorrect statutory citation.

(b) The necessity of the amendment to this administrative regulation: The error needed to be corrected.

(c) How the amendment conforms to the content of the authorizing statutes: By correcting an error.

(d) How the amendment will assist in the effective administration of the statutes: By correcting an error.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Landscape Architects, approximately 325.

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

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

(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.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): N/A

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

(a) Initially: No cost.

(b) On a continuing basis: No cost.

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

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

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

(9) TIERING: Is tiering applied? Tiering was not applied as the amendment affects everyone 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? Board of Landscape

Architects.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 323A.210

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. No effect

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None

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

(c) How much will it cost to administer this program for the first year? No cost

(d) How much will it cost to administer this program for subsequent years? No cost

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

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. No effect

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? No cost savings

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? No cost savings

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

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

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

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

GENERAL GOVERNMENT CABINET Board of Landscape Architects (Amendment)

201 KAR 10:040. Applications.

RELATES TO: KRS 323A.040, 323A.050, 323A.060, 323A.070
STATUTORY AUTHORITY: KRS 323A.210(2)(b)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 323A.210 authorizes the board to promulgate administrative regulations necessary to implement KRS Chapter 323A. This administrative regulation establishes the procedures for the filing and processing of an application for registration as a landscape architect.

Section 1. Application for Initial License.[Filing of Applications.]

(1) An applicant for a license[registration] as a landscape architect shall file a completed Application for License[Registration] to Practice Professional Landscape Architecture. The application shall be signed by the applicant certifying that the applicant is familiar with the provisions of KRS Chapter 323A and the administrative regulations in 201 KAR Chapter 10 and agrees to abide by them[:

(a) ~~Be filed during regular business hours at the office of the board;~~

(b) ~~Include an attached photograph, taken within thirty (30) days of the application, of the applicant showing the face of the applicant at least three-fourths (3/4) of an inch wide;~~

(c) ~~List at least five (5) references in accordance with Section 3 of this administrative regulation;~~

(d) ~~Be received by the board by February 1 to be considered for the June examination or by August 1 to be considered for the December examination;~~

(e) ~~Be signed by the applicant, certifying that the applicant:~~

1. ~~Is familiar with the provisions of KRS Chapter 323A; and~~

2. ~~Subscribes to and agrees to abide by the applicable statutes and administrative regulations promulgated by the board; and~~

(f) ~~Be notarized].~~

(2)(a) An applicant shall take and pass the Landscape Architect Registration Examination (LARE).

(b) The applicant shall cause the results of the LARE to be sent to the board by the exam administrator. [An application for a written examination shall be filed at the office of the board at least four (4) months prior to the beginning date of an examination.]

(3) The fee prescribed in 201 KAR 10:050, Section 1(6), shall accompany the application.

Section 2. Verification of Work Experience.~~[Personal References.]~~

(1) An applicant shall cause a Verification of Work Experience form to be submitted by a former or present employer. The former or present employer shall submit the form directly to the board. [The application shall list at least five (5) citizens of the United States as a personal reference for the applicant. Three (3) of the five (5) persons listed as a reference shall be a registered professional landscape architect. A personal reference for an applicant:

(a) Shall not be a relative of the applicant; and

(b) May be contacted by the board for information relating to the applicant's character and professional ability.

(2) A member of the board may be listed as a person who has supervised the work of an applicant.]

(2) Military experience shall be acceptable if it has been gained in landscape architecture as defined by the provisions of KRS 323A.010(3).

(3) The sale or installation of a product such as landscape materials (plants and construction) shall not be considered professional experience.

(4) A plan or sketch drawn by a person solely for the promotion or sale of that person's products shall not be considered professional experience.

Section 3. Reciprocity. An applicant who seeks a license[registration] under KRS 323A.050(1) shall submit:

(1) Satisfactory proof of a license[registration] in good standing in a state or country in which the applicant is licensed; [and]

(2)(a) An applicant who is licensed in another state of the United States shall have passed the LARE to be considered for licensure by reciprocity.

(b) An applicant who is licensed in another country shall take and pass the LARE to be considered for licensure by reciprocity. [A statement that licensure in the state was obtained:

(a) Under a grandfather clause;

(b) By examination; or

(c) Other means, including an explanation of the other means];

(3)(a) An applicant for licensure by reciprocity who was educated in the United States shall have graduated from a school that is accredited by the Landscape Architectural Accreditation Board (LAAB).

(b) An applicant for licensure by reciprocity who was educated outside the United States shall provide documentation from an educational assessment organization approved by the board that the applicant's education is equal to an accredited landscape architecture curriculum approved by the board. The applicant shall be responsible for any fee charged by such an organization.

Section 4. Board Consideration of Applications for Licensure.

(1) Each applicant shall be considered and voted on by the board.

(2) Approval of an applicant shall require a majority vote of the board.

(3) The action taken by the board shall be recorded in the board minutes.

(4) A copy of the letter from the board notifying an applicant of the board's decision regarding application shall be placed in the applicant's file.

[Section 5. Professional Landscape Architectural Experience.

(1) Military experience shall be acceptable if it has been gained in landscape architecture as defined by the provisions of KRS 323A.010(3).

(2) The sale or installation of a product such as landscape materials (plants and construction) shall not be considered a professional experience.

(3) A plan or sketch drawn by a person solely for the promotion or sale of that person's products shall not be considered a professional experience.]

Section 5. Renewal.

(1) A licensee shall renew a license annually by July 1 by completing the online renewal form and paying the fee required by 201 KAR 10:050. A license may be renewed as active or inactive status.

(2) A licensee who does not renew online shall renew a license annually by July 1 by completing the Annual Active Renewal Notice form or the Inactive Annual Renewal Form and paying the fee required by 201 KAR 10:050. In addition, the Annual Active Renewal Notice form shall be accompanied by the Continuing Education Approval Request and Affidavit Form (Form #CE-1).

Section 6. Change of Status.

(1) A licensee may choose to inactivate the license. To do so, the licensee shall notify the board in writing.

(2) During the period a license is inactive, a licensee shall:

(a) Be exempt from the provisions of 201 KAR 10:080; and

(b) Not practice landscape architecture.

Section 7. Reinstatement and Reactivation.

(1) Prior to reinstatement of a suspended or expired license or reactivation of an inactive or retired license, a licensee shall complete the number of continuing education hours required for the annual renewal of the license times the number of years the license was suspended, expired, retired, or inactive.

(2) The number of continuing education hours required by subsection (1) of this section shall not exceed twenty-four (24) hours.

(3) The request for reinstatement or reactivation shall be accompanied by the fee required by 201 KAR 10:050.

Section 8. Retired License.

(1) A licensee who has retired from the practice of landscape architecture may request a retired license by notifying the board in writing.

(2) The request shall be accompanied by the fee required by 201 KAR 10:050.

(3) The licensee shall provide evidence of retirement, such as social security benefits or a public or private pension.

Section 9. [Section 6.] Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Application for License[Registration] to Practice Professional Landscape Architecture", 7/2023; [May 2002 Edition, Kentucky State Board of Examiners and Registration of Landscape Architects, is incorporated by reference.]

(b) Verification of Work Experience, 7/2023;

(c) Annual Active Renewal Notice, 7/2023; and

(d) Inactive Annual Renewal Form, 7/2023.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Landscape Architects, 2365 Harrodsburg Road, Suite B350, Lexington,

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Kentucky, 40504. [It may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky State Board of Examiners and Registration of Landscape Architects, 301 East Main Street, Lexington, Kentucky 40507.] Monday through Friday, 8 a.m. to 4:30 p.m.

GARY R. WONITZEK, President

APPROVED BY AGENCY: January 8, 2024

FILED WITH LRC: January 8, 2024 at 2:45 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 22, 2024, at 10:30 a.m. Eastern Time at the office of the Kentucky Board of Landscape Architects, 2365 Harrodsburg Road, Suite B350, Lexington, Kentucky. 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 March 31, 2024. 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: Jane Alexander, Executive Director, Kentucky Board of Landscape Architects, 2365 Harrodsburg Road, Suite B350, Lexington, Kentucky, 40504, telephone: (859) 246-2753, email: ky.labd@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jane Alexander

(1) Provide a brief summary of:

(a) What this administrative regulation does: It establishes the procedures for filing and processing applications for licensure as a landscape architect.

(b) The necessity of this administrative regulation:

(c) How this administrative regulation conforms to the content of the authorizing statutes: It is authorized by KRS 323A.210(2)(b).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By establishing procedures for applications as a Landscape Architect.

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

(a) How the amendment will change this existing administrative regulation: It clarifies what is contained in an application for licensure, which examination is required, and how work experience is to be reported. It deletes unnecessary language. It clarifies the process for licensure by reciprocity, renewal, change of status, reinstatement, reactivation, and retired license.

(b) The necessity of the amendment to this administrative regulation: The administrative regulation needed to be updated.

(c) How the amendment conforms to the content of the authorizing statutes: The authorizing statute permits the amendment.

(d) How the amendment will assist in the effective administration of the statutes: By updating the licensure process.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Applicants for licensure as a Landscape Architect, number unknown.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: They will use the correct licensure procedure.

(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 other than the application fee.

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

entities identified in question (3): They will have used the correct application procedure.

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

(a) Initially: There will be no additional cost beyond the regular operating costs of the agency.

(b) On a continuing basis: See (a) above.

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

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

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

(9) TIERING: Is tiering applied? Tiering was not applied as the amendment affects everyone 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? Board of Landscape Architects.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 323A.210

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. No effect

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The amount cannot be estimated since it depends on the number of applicants.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? See (a) above.

(c) How much will it cost to administer this program for the first year? There will be no additional costs beyond the general operating budget of the agency.

(d) How much will it cost to administer this program for subsequent years? See (c) above.

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. No effect

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? No cost savings

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? No cost savings

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

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

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in

aggregate, as determined by the promulgating administrative bodies. It does not.

BOARDS AND COMMISSIONS
Board of Landscape Architects
(Amendment)

201 KAR 10:050. Fees.

RELATES TO: KRS 323A.040, 323A.050, 323A.060, 323A.070, 323A.100(1), (4)

STATUTORY AUTHORITY: KRS 323A.060, 323A.100(1), 323A.210(2)(b)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 323A.060 requires the board to promulgate administrative regulations to establish fees for services. This administrative regulation establishes fees for landscape architect licensees.

Section 1. Fees. The following nonrefundable fees shall apply:

(1) Renewal fees:

(a) Active license: \$250.

(b) Inactive license: \$150.

(c) Retired license: twenty-five (25) percent of the active license renewal fee established in paragraph (a) of this subsection;

(2) Duplicate license: twenty-five (25) dollars.

(3) Application fee: \$250.

(4) Reinstatement fee:

(a) Within thirty (30) days of expiration: 120 percent of the license renewal fee established in subsection (1)(a) or (1)(b) of this section;

(b) Between thirty-one (31) and sixty (60) days of expiration: 140 percent of the license renewal fee established in subsection (1)(a) or (1)(b) of this section;

(c) Between sixty-one (61) days and one (1) year of expiration: 200 percent of the license renewal fee established in subsection (1)(a) or (1)(b) of this section; or

(d) Beyond one (1) year of expiration: 300 percent of the license renewal fee established in subsection (1)(a) or (1)(b) of this section; and

(5) Reactivation fee: equal to the active license renewal fee established in subsection (1)(a) of this section.

Section 2. The fees listed in subsection (1) of section 1 of this administrative regulation shall be paid annually.

GARY R. WONITZEK, President

APPROVED BY AGENCY: January 8, 2024

FILED WITH LRC: January 8, 2024 at 2:45 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 22, 2024 at 10:30 a.m. Eastern Time at the office of the Kentucky Board of Landscape Architects, 2365 Harrodsburg Road, Suite B350, Lexington, Kentucky. 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 March 31, 2024. 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: Jane Alexander, Executive Director, Kentucky Board of Landscape Architects, 2365 Harrodsburg Road, Suite B350, Lexington, Kentucky, 40504, telephone: (859) 246-2753, email: ky.labd@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jane Alexander

(1) Provide a brief summary of:

(a) What this administrative regulation does: It establishes fees.

(b) The necessity of this administrative regulation:

(c) How this administrative regulation conforms to the content of the authorizing statutes: It is authorized by KRS 323A.210(2)(b).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By establishing 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: It clarifies which fees are to be paid annually.

(b) The necessity of the amendment to this administrative regulation: The administrative regulation needed to be updated.

(c) How the amendment conforms to the content of the authorizing statutes: The authorizing statute permits the amendment.

(d) How the amendment will assist in the effective administration of the statutes: By clarifying which fees are to be paid annually.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Applicants for licensure as a Landscape Architect, both new and renewal, number unknown.

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

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

(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 additional cost other than the application fee.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will be in compliance with the regulation.

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

(a) Initially: There will be no additional cost beyond the regular operating costs of the agency.

(b) On a continuing basis: See (a) above.

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

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

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

(9) TIERING: Is tiering applied? Tiering was not applied as the amendment affects everyone 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? Board of Landscape Architects.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 323A.210

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. No effect

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The amount cannot be estimated since it depends on the number of applicants.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? See (a) above.

(c) How much will it cost to administer this program for the first year? There will be no additional costs beyond the general operating budget of the agency.

(d) How much will it cost to administer this program for subsequent years? See (c) above.

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. No effect

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? No cost savings

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? No cost savings

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

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

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

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

BOARDS AND COMMISSIONS

Board of Landscape Architects

(Amendment)

201 KAR 10:070. Seals.

RELATES TO: KRS 323A.080

STATUTORY AUTHORITY: KRS 323A.080, 323A.210

NECESSITY, FUNCTION, AND CONFORMITY: KRS 323A.080 requires that a licensed landscape architect secure an embossed circular seal of the design prescribed by the administrative regulation of the board and that a working drawing, specification or report prepared by, or under the supervision of, the individual, partnership, or firm bear the imprint of the seal. This administrative regulation prescribes the design and size of the required seal.

Section 1. Licensees' Seal. The seal required by KRS 323A.080 shall:

(1) Be two (2) inches in diameter; and

(2) Contain the following information in the impression of the seal:

(a) The words "State of Kentucky" at the top between the two (2) knurled circles;

(b) The words "Licensed[Registered] Landscape Architect" in a like position at the bottom;

(c) The individual's name placed horizontally in the circular field; and

(d) The individual's license[certificate] number placed horizontally beneath the name.

Section 2. (1) The seal shall be either:

(a) An individual embossing seal;

(b) A rubber stamp seal; or

(c) An electronically generated seal.

(2) An electronically generated seal shall be used only when the following requirements are met:

(a) It is a unique identification of the landscape architect;

(b) It is verifiable;

(c) It is under the landscape architect's direct and sole control;

(d) It is linked to a document in such a manner that changes are readily determined and visually displayed if any data contained in the document file was changed subsequent to the electronically generated seal having been affixed to the document;

(e) Changes to the document after affixing the electronically generated seal cause the seal to be removed or altered in such a way as to invalidate the seal; and

(f) Once the seal is applied to the document, the document shall be available in a view only format.

GARY R. WONITZEK, President

APPROVED BY AGENCY: January 8, 2024

FILED WITH LRC: January 8, 2024 at 2:45 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 22, 2024 at 10:30 a.m. Eastern Time at the office of the Kentucky Board of Landscape Architects, 2365 Harrodsburg Road, Suite B350, Lexington, Kentucky. 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 March 31, 2024. 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: Jane Alexander, Executive Director, Kentucky Board of Landscape Architects, 2365 Harrodsburg Road, Suite B350, Lexington, Kentucky, 40504, telephone: (859) 246-2753, email: ky.labd@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jane Alexander

(1) Provide a brief summary of:

(a) What this administrative regulation does: It establishes fees.

(b) The necessity of this administrative regulation:

(c) How this administrative regulation conforms to the content of the authorizing statutes: It is authorized by KRS 323A.210(2)(b).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By establishing 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: It clarifies which fees are to be paid annually.

(b) The necessity of the amendment to this administrative regulation: The administrative regulation needed to be updated.

(c) How the amendment conforms to the content of the authorizing statutes: The authorizing statute permits the amendment.

(d) How the amendment will assist in the effective administration of the statutes: By clarifying which fees are to be paid annually.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Applicants for licensure as a Landscape Architect, both new and renewal, number unknown.

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

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

(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 additional cost other than the application fee.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will be in compliance with the regulation.

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

(a) Initially: There will be no additional cost beyond the regular operating costs of the agency.

(b) On a continuing basis: See (a) above.

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

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

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

(9) TIERING: Is tiering applied? Tiering was not applied as the amendment affects everyone 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? Board of Landscape Architects.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 323A.080, KRS 323A.210

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. No effect

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None

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

(c) How much will it cost to administer this program for the first year? There will be no additional costs beyond the general operating budget of the agency.

(d) How much will it cost to administer this program for subsequent years? See (c) above.

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. No effect

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? No cost savings

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? No cost savings

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

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

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

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

BOARDS AND COMMISSIONS

Board of Landscape Architects (Amendment)

201 KAR 10:080. Continuing education.

RELATES TO: KRS 323A.100(1), 323A.210(2)(a)

STATUTORY AUTHORITY: KRS 323A.100(1), 323A.210(2)(a),

(b)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 323A.100(1) requires a landscape architect to complete the approved continuing education hours established by an administrative regulation promulgated by the board. KRS 323A.210(2)(a) authorizes the board to promulgate administrative regulations to establish a program of continuing education for licensees. This administrative regulation establishes the continuing education requirements for a landscape architect.

Section 1. Definitions.

(1) "Annually" or "continuing education year" means a twelve (12) month period from July 1 of a calendar year through June 30 of the following calendar year.

(2) "Board" is defined by KRS 323A.010(1).

(3) "Continuing education hour" means a minimum of fifty (50) minutes of actual instruction.

(4) "Self-directed course[study]" means a course of study that a licensee independently creates[a course of study in which a licensee takes and passes any examination offered by the sponsor].

(5) "Sponsor" means an individual, organization, association, institution, or other entity that provides educational activity for the purpose of fulfilling the continuing education requirements of this administrative regulation.

(6) "Tour" means a review or inspection of a landscape architectural element specified in the definition of "practice of landscape architecture" established by KRS 323A.010(3).

Section 2. General Statement. Continuing education obtained by a licensee shall maintain, improve, or expand skills and knowledge obtained prior to initial licensure or develop new and relevant skills and knowledge that contribute to the health, safety, and welfare of the public.

Section 3. Continuing Education Requirements.

(1) A licensee shall acquire twelve (12) hours of continuing education annually.

(2) A licensee may be credited for a maximum of six (6) hours of continuing education for a tour annually.

(3) A licensee may carry forward a maximum of twelve (12) hours of continuing education to meet the subsequent year's requirements. ~~[Tour hours may be carried forward into subsequent years.]~~

Section 4. Approval of Continuing Education Programs.

(1) The board shall:

(a) Approve a continuing education program that it determines:

1. Is relevant to the practice of landscape architecture; [and]

2. Furthers the competence of a licensee; and

3. Contributes to the health, safety, and welfare of the public.

(b) Determine the number of continuing education hours allowed.

(2) (a) Before the continuing education program is offered, a sponsor may[shall] submit a Continuing Education Preapproval Request and Affidavit (Form #CE-2) with a copy of the hand-out materials and agenda and a description of the topic as well as the presenter, teacher, or speaker.

(b) A sponsor shall not offer, present, or advertise a program as a continuing education program that meets the continuing education requirements for a licensee unless it has obtained the approval of the board.

(3) A licensee who completes an educational program that has not been submitted to the board for prior approval shall receive continuing education credit if:

(a) The licensee submits to the board a Continuing Education Preapproval Request and Affidavit (Form #CE-2) with a copy of the course materials, agenda, a description of the course, qualifications of the presenter, examination if one (1) was given; and

(b) The board determines that the program meets the requirements of a continuing education program.

(4) Self-directed courses, including those completed online, audibly, or by video, that meet the requirements of this administrative regulation shall be accepted.

(5) Continuing education credits shall be given for one-half (1/2) the number of hours, not to exceed six (6) hours, of a tour if the licensee has submitted to the board a description of the tour and the board determines that the tour meets the requirements of a continuing education program.

Section 5. (1) Continuing education activities may include a college or university course that is beyond the basic curriculum for a landscape architect and pertains to the practice of landscape architecture. The conversion of university credits to continuing education hours shall be:

(a) One (1) university quarter hour of credit shall equal twelve (12)[thirty (30)] continuing education hours.

(b) One (1) university semester hour of credit shall equal fifteen (15)[forty-five (45)] continuing education hours.

(2)(a) A landscape architect who presents[prepares and teaches] a continuing education course shall be credited with twice the number of hours equal to the time spent teaching the course.

(b) Credit shall not be given for repeated instruction of the same course.

Section 6. Reporting of Continuing Education Activities.

(1) Upon license renewal, a licensee shall report continuing education activities for the continuing education period ending June 30.

(2) The report of continuing education activities shall include:

(a) Name of activity;

(b) Date of activity;

(c) Location of activity; and

(d) Continuing education hours earned.

(3) The report of continuing education activities shall be made on a "Continuing Education Approval Request and Affidavit Form (Form #CE-1)."

(4)~~The report of continuing education activities shall be:~~

~~(a) Signed by the licensee; and~~

~~(b) Affixed with the licensee's seal.~~

(5) A licensee shall maintain for two (2) continuing education years documentation verifying successful completion of the annual requirement.

Section 7. Verification of Continuing Education Activities.

(1) Following each renewal period, the board shall require between five (5) and fifteen (15) percent of the licensees, chosen randomly, to furnish documentation of the completion of the appropriate number of continuing education hours for the previous renewal period, including hours carried forward from the previous year.

(2) Documentation of attendance and participation in a continuing education activity shall be made by submission of an official document, including a:

(a) Transcript;

(b) Certificate of attendance;

(c) Affidavit signed by the instructor; or

(d) ~~[Receipt for a fee paid to a sponsor; or~~

~~(e)]~~A written summary of attendance and participation.

(3) If not previously approved, the board shall determine whether the continuing education program submitted is relevant to the practice of landscape architecture and furthers the competence of the licensee.

(a) If the activity qualifies as continuing education, the board shall include the number of hours earned for that activity in determining if the applicant obtained the required twelve (12) hours of continuing education.

(b) If the activity does not qualify as continuing education, the board shall deduct the number of hours claimed for that activity from the total number of hours earned by the licensee. After this calculation, if a licensee does not have the required twelve (12) hours of continuing education, the board shall send written notification to the licensee that:

1. The licensee did not meet the continuing education requirements because an activity listed on the applicant's form as a continuing education activity did not qualify for continuing education credit; and

2. The board shall suspend his license if the requirements of subsection (4) of this section are not met.

(4) The license of the licensee shall be suspended if the licensee fails to:

(a) Complete the required number of continuing education hours within sixty (60) days of the notification from the board; and

(b) Submit to the board a completed and updated "Continuing Education Approval Request and Affidavit Form" (Form #CE-1) within sixty-five (65) days of the notification from the board.

Section 8. Reciprocity. Credit for continuing education earned by a licensee who does not reside in Kentucky shall be granted if the licensee meets all the requirements of this administrative regulation.

Section 9. Exempt Licensee.

(1) A licensee shall be exempt from the continuing education requirements:

(a) For the partial year period of initial licensure;

(b) During the period of time in which the licensee has an inactive license~~[in accordance with the provisions of Section 10 of this administrative regulation]; or~~

(c) If the board approves a written request for an exemption submitted by the licensee in accordance with the provisions of subsection (2) of this section.

(2) A licensee may request an exemption from the continuing education requirements by submitting written document that the licensee was:

(a) Employed or assigned to duty outside the United States for a period exceeding 120 consecutive days during the calendar year; or

(b) Unable to complete the requirements because of:

1. Physical disability;

2. Personal illness; or

3. Illness of a family member or dependent.

~~[Section 10. Inactive License.~~

~~(1) A licensee may choose to inactivate his license.~~

~~(2) During the period a license is inactive, a licensee shall:~~

~~(a) Be exempt from the provisions of this administrative regulation; and~~

~~(b) Not practice landscape architecture.~~

~~Section 11. Reinstatement of Suspended or Inactive License.~~

~~(1) Prior to reinstatement of a suspended or inactive license, a licensee shall complete the number of continuing education hours required for the annual renewal of the license times the number of years the license was suspended or inactive.~~

~~(2) The number of continuing education hours required by subsection (1) of this section shall not exceed twenty-four (24)~~

hours.]

Section 10.~~[Section 12.]~~ Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Continuing Education Approval Request and Affidavit Form" (Form #CE-1), May 2002 edition; and

(b) "Continuing Education Preapproval Request and Affidavit Form" (Form #CE-2), May 2002 edition.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Kentucky Board of Landscape Architects, 2365 Harrodsburg Road, B350, Lexington, Kentucky 40504, Monday through Friday, 8 a.m. to 4:30 p.m.

GARY R. WONITZEK, President

APPROVED BY AGENCY: January 8, 2024

FILED WITH LRC: January 8, 2024 at 2:45 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 22, 2024 at 10:30 a.m. Eastern Time at the office of the Kentucky Board of Landscape Architects, 2365 Harrodsburg Road, Suite B350, Lexington, Kentucky. 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 March 31, 2024. 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: Jane Alexander, Executive Director, Kentucky Board of Landscape Architects, 2365 Harrodsburg Road, Suite B350, Lexington, Kentucky, 40504, telephone: (859) 246-2753, email: ky.labd@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jane Alexander

(1) Provide a brief summary of:

(a) What this administrative regulation does: It establishes continuing education requirements for Landscape Architects

(b) The necessity of this administrative regulation:

(c) How this administrative regulation conforms to the content of the authorizing statutes: It is authorized by KRS 323A.100 and KRS 323A.210(2)(b).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By setting continuing education 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: It updates continuing education requirements and removes unnecessary language.

(b) The necessity of the amendment to this administrative regulation: The administrative regulation needed to be updated.

(c) How the amendment conforms to the content of the authorizing statutes: The authorizing statute permits the amendment.

(d) How the amendment will assist in the effective administration of the statutes: By setting requirements.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Landscape Architects, approximately 000.

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

(a) List 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 necessary.

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

not anticipated that there will be any additional costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will be in compliance with the regulation.

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

(a) Initially: There will be no additional cost beyond the regular operating costs of the agency.

(b) On a continuing basis: See (a) above.

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

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

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

(9) **TIERING:** Is tiering applied? Tiering was not applied as the amendment affects everyone 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? Board of Landscape Architects.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 323A.100, KRS 323A.210

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. No effect

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None

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

(c) How much will it cost to administer this program for the first year? There will be no additional costs beyond the general operating budget of the agency.

(d) How much will it cost to administer this program for subsequent years? See (c) above.

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. No effect

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? No cost savings

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? No cost savings

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

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

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000)

or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. It does not.

BOARDS AND COMMISSIONS
Board of Nursing
(Amendment)

201 KAR 20:370. Applications for licensure.

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

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

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

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

- (1) Submit the completed application to the board office, for:
 - (a) RN or LPN licensure by examination, endorsement, or reinstatement, Application for Licensure;
 - (b) RN or LPN Renewal, Annual Licensure Renewal Application: RN or LPN;
 - (c) Licensure or reinstatement as an Advanced Practice Registered Nurse, Application for Licensure as an Advanced Practice Registered Nurse;
 - (d) Renewal as an RN and an APRN, Annual Licensure Renewal Application: RN and APRN;
 - (e) Retired licensure status, Application for Retired Status;
 - (f) APRN renewal with an RN Compact license, Annual Licensure Renewal Application: APRN with RN Compact License (not Kentucky);
 - (g) APRN renewal with a Kentucky RN License, Annual Licensure Renewal Application, APRN with Kentucky RN License; or
 - (h) In addition to any other renewal form, for APRN renewal, APRN Practice Data;
- (2) Submit the current application fee, as required by 201 KAR 20:240;
- (3) Submit a certified or attested copy of the court record of each misdemeanor or felony conviction in this or any other jurisdiction and a letter of explanation that addresses each conviction, except for traffic-related misdemeanors (other than DUI) or misdemeanors older than five (5) years;
- (4) Submit a certified copy of a disciplinary action taken in another jurisdiction with a letter of explanation or report a disciplinary action pending on a nurse licensure application or license in another jurisdiction;
- (5) Have paid all monies due to the board;
- (6) Submit a copy of an official name change document (court order, marriage certificate, divorce decree, Social Security card), if applicable;
- (7) Submit additional information as required by the board in 201 KAR Chapter 20;
- (8) Meet the additional requirements for:
 - (a) Licensure by examination established by 201 KAR 20:070;
 - (b) Licensure by endorsement established by 201 KAR 20:110;
 - (c) Licensure by reinstatement established by 201 KAR 20:225;
 - (d) Licensure by renewal established by 201 KAR 20:230;
 - (e) Retired nurse or inactive licensure status established by 201 KAR 20:095; or
 - (f) Advanced practice registered nurse licensure, renewal, or reinstatement established by 201 KAR 20:056;

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

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

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

- (1) For an application for licensure by endorsement, within one (1) year from the date the application form is ~~filed~~submitted with the board office;
- (2) For an application for licensure by examination, within one (1) year from the date the application form is ~~filed~~submitted with the board office or the date the applicant fails the examination, whichever comes first; or
- (3) For all other applications except renewal of license applications, within one (1) year from the date the application form is ~~filed~~submitted with the board office.

Section 3. A multistate licensee who changes primary state of residence to Kentucky shall apply for a multistate license in Kentucky within sixty (60) days.

Section 4.~~Section 3.~~ Incorporation by Reference.

(1) The following material is incorporated by reference:

- (a) "Application for Licensure", 10/2022, Kentucky Board of Nursing;
 - (b) "Annual Licensure Renewal Application: RN or LPN", 02/2022, Kentucky Board of Nursing;
 - (c) "Application for Licensure as an Advanced Practice Registered Nurse", 10/2022, Kentucky Board of Nursing;
 - (d) "Annual Licensure Renewal Application: RN and APRN", 02/2022, Kentucky Board of Nursing;
 - (e) "Application ~~for Retired Status~~to Retire a License", ~~8/2004~~11/2023, Kentucky Board of Nursing;
 - (f) "Annual Licensure Renewal Application: APRN with RN Compact License (not Kentucky)", 02/2022, Kentucky Board of Nursing; and
 - (g) "Annual Licensure Renewal Application, APRN with Kentucky RN License", 02/2022, Kentucky Board of Nursing; ~~and~~
 - (h) "~~APRN Practice Data~~", 6/2012, ~~Kentucky Board of Nursing~~.
- (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available on the board's Web site at [\[https://kbn.ky.gov/General/Pages/Document-Library.aspx\]](https://kbn.ky.gov/General/Pages/Document-Library.aspx) <https://kbn.ky.gov/General/Pages/Document-Library.aspx>.

AUDRIA DENKER, President

APPROVED BY AGENCY: December 14, 2023.

FILED WITH LRC: December 27, 2023 at 10:30 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 25, 2024 at 10:00 AM at Kentucky Board of Nursing, 312 Whittington Parkway, Ste 300, Louisville, Kentucky 40222. Individuals interested in being heard at this hearing shall notify this agency in writing by March 18, 2024, 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 March 31, 2024. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Jeffrey R. Prather, General Counsel, Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, (502) 338-2851, Jeffrey.Prather@ky.gov, Or submit a comment at: <https://secure.kentucky.gov/formservices/Nursing/PendReg>

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jeffrey Prather

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides various application forms for Licensed Practical Nurses (LPNs), Registered Nurses (RNs), and Advanced Practice Registered Nurses (APRNs).

(b) The necessity of this administrative regulation: This administrative regulation is necessary because of the licensure provisions for KRS Chapter 314.

(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 incorporating the various forms and setting regulatory and statutory requirements.

(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 providing for the appropriate application forms that are submitted to the Board.

(2) If 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 include a provision that when a multistate licensee changes primary state of residence to another party state, the licensee shall apply for a multistate license in the new party state within 60 days, pursuant to KRS 314.475 and Nurse Licensure Compact (NLC) Rule 402.2. The amendments also update the retired status application form, and removes an obsolete form.

(b) The necessity of the amendment to this administrative regulation: Amendments are required to bring the regulation into compliance with the NLC Rules, update the retired status application for electronic submission by applicants, and remove obsolete material incorporated by reference.

(c) How the amendment conforms to the content of the authorizing statutes: By requiring applications.

(d) How the amendment will assist in the effective administration of the statutes: To review applicants for compliance with licensure requirements.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All multistate licensure applicants and licensees who wish to retire their license, number unknown.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Applicants for multistate licensure must apply for multistate licensure in Kentucky within 60 days of changing the applicant's primary state of residence. Licensees who wish to retire their licenses must submit an application.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no additional cost beyond licensure fees established under 201 KAR 20:240.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The Board of Nursing regulation will be apprised of NLC multistate application requirements and applicants who wish to retire their license will be able to process applications more timely and efficiently.

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

(a) Initially: There is no additional cost.

(b) On a continuing basis: There is no additional cost.

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

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

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

not.

(9) TIERING: Is tiering applied? Tiering was not applied as the changes apply to all 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? Board of Nursing.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 314.131 and 314.475.

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

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

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

(c) How much will it cost to administer this program for the first year? No additional cost.

(d) How much will it cost to administer this program for subsequent years? No additional cost.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

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

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

(c) How much will it cost the regulated entities for the first year? None.

(d) How much will it cost the regulated entities for subsequent years? None.

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

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

BOARDS AND COMMISSIONS

Board of Nursing
(Amendment)

201 KAR 20:506. Nurse licensure compact.

RELATES TO: KRS 314.475

STATUTORY AUTHORITY: KRS 314.131, 314.475

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.475, Article I(c)2 requires the Board of Nursing to review any rule adopted by the Interstate Commission of Nurse Licensure Compact Administrators pursuant to Article VIII of KRS 314.475 within sixty (60) days of adoption for the purpose of filing the rule as an emergency administrative regulation pursuant to KRS 13A.190 and

for filing the rule as an accompanying ordinary administrative regulation pursuant to KRS Chapter 13A. This administrative regulation incorporates by reference the rules adopted by the Interstate Commission of Nurse Licensure Compact Administrators and the bylaws.

Section 1. The Kentucky Board of Nursing shall comply with all bylaws, rules, and administrative regulations of the Interstate Commission of Nurse Licensure Compact Administrators, which includes The Interstate Commission of Nurse Licensure Compact Administrators, Final Rules as of January 1, 2024[2024], and Bylaws adopted[as of] August 3, 2017, [and as] amended August 15, 2017, March 25, 2019, and March 27, 2023.

Section 2. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "The Interstate Commission of Nurse Licensure Compact Administrators, Final Rules", January 2024[2024]; and

(b) "The Interstate Commission of Nurse Licensure Compact Administrators, Bylaws", March 2023[August 2017].

(2)(a) 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 am to 4:30 p.m.; or

(b) This material may also be obtained on the Kentucky Board of Nursing's Web site at <https://kbn.ky.gov/document-library/Pages/default.aspx>.

(3) This material may also be obtained at:

(a) The Interstate Commission of Nurse Licensure Compact Administrators, 111 East Wacker Drive, Suite 2900, Chicago, IL 60601; or

(b) <https://www.ncsbn.org/nlcrules.htm>.

AUDRIA DENKER, President

APPROVED BY AGENCY: December 14, 2023.

FILED WITH LRC: December 27, 2023 at 10:30 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 25, 2024 at 10:00 AM at Kentucky Board of Nursing, 312 Whittington Parkway, Ste 300, Louisville, Kentucky 40222. Individuals interested in being heard at this hearing shall notify this agency in writing by March 18, 2024, 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 March 31, 2024. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Jeffrey R. Prather, General Counsel, Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, (502) 338-2851, Jeffrey.Prather@ky.gov, Or submit a comment at: <https://secure.kentucky.gov/formservices/Nursing/PendReg>

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jeffrey Prather

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation implements KRS 314.475, the Nurse Licensure Compact.

(b) The necessity of this administrative regulation: This administrative regulation is necessary because KRS 314.475, Article I(e)(2) requires rules adopted by the Interstate Commission of Nurse Licensure Compact Administrators to be promulgated as administrative regulations pursuant to KRS Chapter 13A.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 314.475, which requires this promulgation.

(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 following the mandate contained in KRS 314.475, Article I(e)(2).

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

(a) How the amendment will change this existing administrative regulation: This amendment updates the material incorporated by reference, by replacing The Interstate Commission of Nurse Licensure Compact Administrators, Final Rules", 2021, with the Interstate Commission of Nurse Licensure Compact Administrators, Final Rules", January 2024.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary because KRS 314.475, Article I(e)(2) requires rules adopted by the Interstate Commission of Nurse Licensure Compact Administrators to be promulgated as administrative regulations pursuant to KRS Chapter 13A.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of KRS 314.475, which requires this promulgation.

(d) How the amendment will assist in the effective administration of the statutes: This amendment assists in the effective administration of the statutes by following the mandate contained in KRS 314.475, Article I(e)(2).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 90,000 nurses licensed 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: No action is necessary.

(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 additional cost imposed by this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Nothing in the newly promulgated compact policies requires that any specific action be taken by KBN licensees.

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

(a) Initially: There is no additional cost.

(b) On a continuing basis: There is no additional cost.

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

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

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

(9) TIERING: Is tiering applied? The changes will apply equally, there is no tiering.

FISCAL NOTE

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 314.131, 314.475.

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

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

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

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

year? No additional cost.

(d) How much will it cost to administer this program for subsequent years? No additional cost.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

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

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

(c) How much will it cost the regulated entities for the first year? None.

(d) How much will it cost the regulated entities for subsequent years? None.

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

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

TOURISM, ARTS AND HERITAGE CABINET **Department of Fish and Wildlife Resources** **(Amendment)**

301 KAR 1:140. Special commercial fishing permit for Kentucky and Barkley lakes.

RELATES TO: KRS 150.010(32), 150.450(2)

STATUTORY AUTHORITY: KRS 150.025(1), 150.175(3), (4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the Kentucky Department[department] of Fish and Wildlife Resources to regulate the size or type of devices and methods used to take fish and wildlife, including places where taking is permitted[the places where they may be taken]. KRS 150.175(3), (4) authorizes the department to promulgate administrative regulations regarding the issuance of commercial fishing licenses, commercial fishing gear, and commercial fishing gear tags. This administrative regulation establishes restrictions on the use of gill and trammel nets at Kentucky and Barkley lakes[Lakes].

Section 1. [Definitions.

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

(2) "Immediate family" means the person's spouse, mother, father, grandparent, son, or daughter.

(3) "Permit" means a special commercial fishing permit.

(4) "Roe-bearing fish" means paddlefish, shovelnose sturgeon, and bowfin.

(5) "Rough fish" is defined by KRS 150.010(37).

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

Section 2. [Permit Requirements.

(1) A person shall possess a valid Kentucky commercial fishing license to obtain or retain a permit throughout the special commercial fishing season.

(2) The department shall not issue more than twenty-five (25) permits.

(3) A permit holder shall submit a completed permit application to the department, along with the appropriate permit fee established in 301 KAR 3:022, postmarked on or before November 1 to retain the permit privilege.

(4) The ability to purchase a permit shall only be transferred to immediate family members.

(5) New permits shall not be issued until the total number of permits is less than twenty-five (25).

(6) A [lottery]-drawing shall be used to select new permittees if the total number of permits is less than twenty-five (25).

(a) A person applying for a vacant permit shall submit to the department a completed Application for a Special Commercial Fishing Permit postmarked on or before November 1, along with the appropriate fee established in 301 KAR 3:022.

(b) The maximum number of permits issued to nonresidents shall be seven (7).

Section 2. [Section 3.] Permit Requirements.

(1) A person shall possess and carry a valid permit and a valid commercial fishing license:

(a) If using a gill net or trammel net to take rough fish:

1. From November 1 through March 31 at both Kentucky and Barkley lakes[Lakes]; and

2. In the portions of Kentucky and Barkley lakes[Lakes] open to commercial fishing as established in 301 KAR 1:150.

(b) If transporting a gill net or trammel net; and

(c) If selling fish taken with a gill net or trammel net.

(2) A person shall:

(a) Tag a gill net or trammel net as established in KRS 150.175(4);

(b) Not use a gill net or trammel net with a bar mesh size smaller than three and five-tenths (3.5) inches or larger than four and five-tenths (4.5) inches, except:

1. A whip set may have a minimum bar mesh size of three (3) inches; and

2. Beginning on November 15 and running through March 31 at both Kentucky and Barkley lakes[Lakes], gill and trammel nets with a bar mesh size larger than four and five-tenths (4.5) may be used in stationary sets only;

(c) Not fish a stationary set net with the top of the net or float line shallower than three (3) feet below the surface;

(d) Tend each net, except whip sets, at least once every twenty-four (24) hours;

(e) Not leave whip sets unattended;

(f) Affix a decal supplied by the department to each side of the boat or motor used for fishing under this permit so that the decal is clearly visible while fishing with a gill net or a trammel net;

(g) Not dispose of any commercially caught rough fish at public boat launch areas; and

(h) Not harvest paddlefish at both Kentucky and Barkley lakes[Lakes] during the special commercial fishing season if the paddlefish are less than thirty-eight (38) inches, as measured from the beginning of the eye to the fork of the tail fin.

(3) A permit holder may be accompanied by two (2) unlicensed helpers, who shall be:

(a) In the same boat with the permit holder if fishing with a gill net or a trammel net; or

(b) Accompanied by the permit holder if transporting or selling fish taken under the permit.

(4) A permit holder shall:

(a) Maintain an accurate record of daily fishing activity; and

(b) Submit a completed monthly report to the department by the tenth day of the following month on the Monthly Report of Commercial Fish Harvest in Kentucky form provided by the department.

Section 3. [Section 4.] Paddlefish Harvest Requirements.

(1) A person who possesses a valid permit shall be allowed to harvest paddlefish flesh or roe during the special commercial fishing season without the need to purchase a Commercial Roe-bearing Fish Harvester's Permit.

(2) A person who harvests paddlefish roe during the special commercial fishing season shall follow all Commercial Roe-bearing

Fish Harvester Permit reporting requirements established in 301 KAR 1:155, Section 4(4).

Section 4.[Section–5:] Permit Suspension, Revocation, and Renewal.

(1) The department shall suspend the permit of a person who fails to complete and submit to the department a Monthly Report of Commercial Fish Harvest or a Daily Commercial Roe Harvest Report for each transaction involving a buyer permittee by the following methods:

(a) The first time during the season a report is not received or, if mailed, not postmarked by the tenth of the following month, the licensee or permittee shall receive by mail a courtesy reminder letter.

(b) The second time during the season a report is not received or, if mailed, not postmarked by the tenth of the following month, the licensee or permittee shall receive a warning letter.

(c) If a third or subsequent time during the season a report is not received or, if mailed, not postmarked by the tenth of the following month, the license or permit shall be suspended until all reports have been received.

(2) The department shall not renew the commercial fishing license or harvester's permit of a person who fails to complete and submit to the department all reports required by this administrative regulation.

(3) The department shall revoke or not renew a person's permit for a period of two (2) years, for the following state violations involving commercial fishing:

(a) Use of illegal commercial fishing gear;

(b) Knowingly placing commercial fishing gear in a restricted area;

(c) Harvesting prohibited species of fish;

(d) Commercially fishing, as established by 301 KAR 1:150, in waters not open to commercial fishing; or

(e) Knowingly falsifying commercial harvest data.

(4) A person whose permit has been revoked or denied shall be eligible to enter the [lottery] drawing following the revocation period only if a permit is available based on the twenty-five (25) permit restriction established in Section 2 of this administrative regulation.

(5) A person whose permit has been revoked or denied may request an administrative hearing pursuant to KRS Chapter 13B.

(6) A request for a hearing shall be in writing and postmarked or delivered in person to the department no later than thirty (30) days after notification of the denial or revocation.

(7) Upon receipt of the request for a hearing, the department shall proceed according to the provisions of KRS Chapter 13B.

(8) The hearing officer's recommended order shall be considered by the commissioner and the commissioner shall issue a final order pursuant to KRS Chapter 13B.

Section 5.[Section–6:] Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Application for a Special Commercial Fishing Permit", 2007 Edition;

(b) "Monthly Report of Commercial Fish Harvest in Kentucky", 2023[2008] Edition; and

(c) "Daily Commercial Roe-Bearing Fish Harvester's Transaction Report", 2008 Edition.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Fish and Wildlife Resources, #1 Sportsman's Lane, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

RICH STORM, Commissioner

APPROVED BY AGENCY: January 11, 2024

FILED WITH LRC: January 12, 2024 at 11:00 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 28, 2024, 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 weekdays 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 March 31, 2024. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Jenny Gilbert, Legislative Liaison, Kentucky Department of Fish and Wildlife Resources, 1 Sportsman's Lane, (502) 564-3400, fax: (502) 564-0506, email: fwpubliccomments@ky.gov

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jenny Gilbert

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth the conditions and provisions for a special commercial fishery using gill and trammel nets at Kentucky and Barkley lakes.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to specify the waters open to, and other restrictions on the use of, gill and trammel nets at Kentucky and Barkley lakes.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.025(1) authorizes the Kentucky Department of Fish and Wildlife Resources to regulate the size or type of devices and methods used to take fish and wildlife, including places where taking is permitted. KRS 150.175(3), (4) authorizes the department to promulgate administrative regulations regarding the issuance of commercial fishing licenses, commercial fishing gear, and commercial fishing gear tags. This administrative regulation establishes restrictions on the use of gill and trammel nets at Kentucky and Barkley lakes.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will carry out the purposes of KRS 150.025 by defining the type and size of gill and trammel nets that can be used, the time period nets can be used, how and where the nets can be set, and what fish can be harvested.

(2) If 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 addresses a cleanup where "The Monthly Report of Commercial Fish Harvest in Kentucky" had been revised multiple times since 2008 (2014, 2019, and 2023 (submitted to LRC in December)) and changes had been accounted for in 301 KAR 1:155. However, the reference to the same document in this administrative regulation was never changed and still refers to the 2008 document which is no longer being used. In addition, this amendment removes the definition section due to the creation of 301 KAR 1:001 which contains definitions for all 301 KAR 1 regulations.

(b) The necessity of the amendment to this administrative regulation: This amendment will correct the version of "The Monthly Report of Commercial Fish Harvest in Kentucky" referenced in the Incorporated by Reference section. Also, with the creation of 301 KAR 1:001, there is no need for definition sections in each individual regulation.

(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 commercial fishers who possess a special commercial fishing permit for Kentucky and Barkley lakes will be affected by this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The entities in question (3) are already utilizing the newest version of the reporting form and 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): There will be no cost to comply with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Since the entities identified in question (3) are already using the newest version of the form, there will be no additional benefits.

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

(a) Initially: This administrative regulation change will result in no initial change in administrative cost to the Department.

(b) On a continuing basis: There will be no additional cost on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding is the State Game and Fish Fund.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No new fees will be established.

(9) TIERING: Is tiering applied? No. Tiering is not applied to this regulation because all commercial fishers who possess a special commercial fishing permit for Kentucky and Barkley lakes must abide by the same requirements.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Fish and Wildlife Resources' Divisions of Fisheries and Law Enforcement will be impacted by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.025(1) authorizes the Kentucky Department of Fish and Wildlife Resources to regulate the size or type of devices and methods used to take fish and wildlife, including places where taking is permitted. KRS 150.175(3), (4) authorizes the department to promulgate administrative regulations regarding the issuance of commercial fishing licenses, commercial fishing gear, and commercial fishing gear tags. This administrative regulation establishes restrictions on the use of gill and trammel nets at Kentucky and Barkley lakes.

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

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

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

(c) How much will it cost to administer this program for the first year? There will be no additional costs to administer this program for the first year.

(d) How much will it cost to administer this program for subsequent years? There will be no additional costs to administer this program for subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? There will be no cost savings in the first year.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? There will be no cost savings in subsequent years.

(c) How much will it cost the regulated entities for the first year? There will be no cost to the regulated entities in the first year.

(d) How much will it cost the regulated entities for subsequent years? There will be no 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 (+/-):

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)] Since this is a cleanup of the regulation, there will be no economic impact.

TOURISM, ARTS AND HERITAGE CABINET Department of Fish and Wildlife Resources (Amendment)

301 KAR 1:146. Commercial fishing gear.

RELATES TO: KRS 150.010, 150.025, 150.120, 150.170, 150.175, 150.445, 150.450, 150.990

STATUTORY AUTHORITY: KRS 150.025(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the Department[department] of Fish and Wildlife Resources to promulgate administrative regulations regarding the buying, selling, and transporting[te-establish seasons for the taking] of fish and wildlife, the restriction of places where taking is permitted,[to regulate bag limits, creel limits, and methods of take,] and the application off[to make] administrative regulations[those requirements apply] to a limited area or the entire state. This administrative regulation establishes the legal methods that may be used by commercial fishers[fishermen] to harvest rough fish.

Section 1. [Definitions.

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

(2) "Commercial gear tag" means a metal tag provided by the department that is attached to legal commercial fishing gear as established in this administrative regulation.

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

Section 2. [Gear Requirements.

(1) The gear listed in subsections (2) through (16) of this section shall be the only legal commercial fishing gear allowed in commercial fishing waters established in 301 KAR 1:150 and under the conditions established in 301 KAR 1:155 by a licensed commercial fisher[fisherman].

(2) A hoop net, wing net, straight net, or heart lead net shall have a minimum bar mesh size of three (3) inches, except that the minimum mesh size shall be one (1) inch in the following waters:

(a) The Ohio River;

(b) The Mississippi River; and

(c) Those portions of the following waters open to commercial fishing pursuant to 301 KAR 1:150:

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1. The Cumberland River below Barkley Dam; and
2. The Tennessee River below Kentucky Dam.
- (3) A hoop may be made of any:
 - (a) Size;
 - (b) Shape; or
 - (c) Material.
- (4) Wings and leads shall be constructed of the following material:
 - (a) Natural multifilament; or
 - (b) Synthetic.
- (5) Netting used for wings and leads shall:
 - (a) Be constructed of twine no smaller than number six (6) nylon or the equivalent;
 - (b) Have a breaking strength of fifty-five (55) pounds or greater; and
 - (c) Have a bar mesh size no larger than one (1) inch.
- (6) Wings and leads may consist of either:
 - (a) Knotted construction; or
 - (b) Knotless construction.
- (7) The maximum length of each hoop net wing or lead shall be sixty (60) feet.
- (8) The following nets shall be fished as individual nets:
 - (a) Hoop nets;
 - (b) Wing nets;
 - (c) Straight lead nets; or
 - (d) Heart lead nets.
- (9) Wings or leads shall:
 - (a) Not be tied together to become a continuous multiple net unit; and
 - (b) Be used only to lead fish into a hoop net.
- (10) One (1) commercial gear tag shall be attached to the first hoop of each net.
- (11) A gill or trammel net:
 - (a) May be fished:
 1. Weighted; or
 2. As a flag net; and
 - (b) Shall have one (1) commercial gear tag attached to each 100 feet or part thereof.
- (12) A gill or trammel net shall only be used in:
 - (a) The Ohio River;
 - (b) The Mississippi River; or
 - (c) An overflow lake adjacent to the Ohio or Mississippi rivers[River] if the lake can be accessed from the river by a boat during high flow conditions, except as prohibited:
 1. On department Wildlife Management Areas pursuant to 301 KAR 4:020 and 4:050; or
 2. Pursuant to the requirements of 301 KAR 1:140.
- (13) The bar mesh size on gill or trammel nets shall be:
 - (a) At least three (3) inches in:
 1. The Mississippi River; and
 2. Overflow lakes adjacent to the Mississippi River;
 - (b) At least four (4) inches from November 1 through April 30 in:
 1. The Ohio River; and
 2. Overflow lakes adjacent to the Ohio River; and
 - (c) Between four (4) and four and one-half (4 1/2) inches from May 1 through October 31 in:
 1. The Ohio River; and
 2. Overflow lakes adjacent to the Ohio River.
- (14) A commercial trotline shall:
 - (a) Have more than fifty (50) hooks placed no closer than eighteen (18) inches apart;
 - (b) Have one (1) commercial gear tag attached to each end of the trotline, and at a minimum, one (1) commercial gear tag attached to every 100 feet of trotline;[- and]
 - (c) Not be longer than 1,000[6,000] feet; and
 - (d) Be set at least three (3) feet under the surface of the water.
- (15) A seine:
 - (a) Shall have a maximum bar mesh size of one (1) inch;
 - (b) May have knotted netting if constructed of twine that is:
 1. No smaller than number six (6) nylon; or
 2. An equivalent having a breaking strength of at least fifty-five (55) pounds;
 - (c) May have knotless netting if constructed of twine that is:

1. No smaller than number 147 nylon; or
2. An equivalent having a breaking strength of fifty (50) pounds or greater;
 - (d) Shall be constructed of:
 1. Natural multifilament; or
 2. Synthetic material;
 - (e) Shall have both float and lead lines;
 - (f) Shall have the following attached at each end:
 1. Wood poles;
 2. Fiberglass poles; or
 3. Brailes;
 - (g) Shall be attended by a person who pulls the seine by hand through the water to entrap fish; and
 - (h) Shall have one (1) commercial gear tag attached to each 100 feet or part thereof.
- (16) A slat trap basket shall:
 - (a) Not have wire or other mesh added to any part of the trap;
 - (b) Have at least two (2) openings left between slats:
 1. No smaller than one and one-fourth (1 1/4) inches wide in the catch portion of the trap; and
 2. That shall not be restricted by cross-bracings to a length shorter than eight (8) inches;
 - (c) Not be larger than two (2) feet in diameter or square-end measure; and
 - (d) Have one (1) commercial gear tag attached to the opening ring or square.

RICH STORM, Commissioner

APPROVED BY AGENCY: January 11, 2024

FILED WITH LRC: January 12, 2024 at 11:00 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 28, 2024, at 10:00 a.m., at KDFWR Administration Building, 1 Sportsman's Lane, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through March 31, 2024. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Jenny Gilbert, Legislative Liaison, Kentucky Department of Fish and Wildlife Resources, 1 Sportsman's Lane, (502) 564-3400, fax: (502) 564-0506, email: fwpubliccomments@ky.gov

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jenny Gilbert

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the legal methods that may be used by commercial fishers to harvest rough fish.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to specify the types of legal gear that may be used by commercial fishers to harvest rough fish from waters open to commercial fishing.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.025(1) authorizes the Department of Fish and Wildlife Resources to promulgate administrative regulations regarding the buying, selling, and transporting of fish and wildlife, the restriction of places where taking is permitted, and the application of administrative regulations to a limited area or the entire state.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation carries out the purposes of KRS 150.025 by defining the size and types of gear that commercial fishers can use to take rough fish.

(2) If 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 addresses several concerns about the current use of trotlines for commercial fishing, including requiring the tagging of trotlines at both ends and every 100 feet, reducing single trot line length from 6000 feet to 1000 feet, and requiring commercial trot lines to be set at least three feet under the surface of the water. In addition, the definitions section for this regulation was removed due to the creation of 301 KAR 1:001 which contains definitions for all 301 KAR 1 regulations.

(b) The necessity of the amendment to this administrative regulation: The amended tagging requirements for trotlines is necessary to make it easier and quicker for law enforcement officers to check for ownership and legality of the trotlines. Currently, only one tag is required for the entire length of trot line, which makes it difficult for officers to locate the single tag while on the water. The current maximum length for trotlines (6000 feet) is overly long and creates issues for law enforcement if pulling of the line is necessary. Multiple trotlines can be used, so this shouldn't limit commercial fishers in the total length of trotline they want to set. Finally, to reduce dangerous and potentially damaging impacts to recreational boaters and anglers, it is necessary to require trotlines to be set at least three feet below the surface of the water. It was also necessary to remove the definitions section of this regulation due to the creation of 301 KAR 1:001 which contains definitions for all 301 KAR 1 regulations.

(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 commercial fishers using commercial trotlines will be affected, as well as officers checking lines and recreational boaters and anglers trying to avoid trotlines.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Commercial fishers wishing to use trotlines will have to follow the new trotline requirements. No additional actions will be required of law enforcement officers or recreational boaters and anglers.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Depending on how many lines a commercial fisher sets, there will be a small cost to purchase extra commercial gear tags to tag both ends of the line and tag every 100 feet of line. Currently, commercial gear tags cost \$15.00 for a block of 10 for residents and \$100 for a block of 10 for nonresidents.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The main benefits will be seen by both law enforcement and recreational boaters and anglers. Law enforcement will save time and potentially injury by not having to pull long stretches of nets containing multiple fishing hooks trying to find a single gear tag. Recreational boaters and anglers will benefit from not getting tangled up in the trotlines on the surface of the water which can damage motors and also potentially injure those trying to unravel lines from their motors.

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

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

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

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding is the State Game and Fish Fund.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees, nor does it indirectly increase any fees.

(9) TIERING: Is tiering applied? No. Tiering is not applied to this regulation because all commercial fishers must abide by the same requirements.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Fish and Wildlife Resources' Divisions of Fisheries and Law Enforcement will be impacted by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.025(1) authorizes the Department of Fish and Wildlife Resources to promulgate administrative regulations regarding the buying, selling, and transporting of fish and wildlife, the restriction of places where taking is permitted, and the application of administrative regulations to a limited area or the entire state.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? Minimal additional revenue will be generated by this administrative regulation through the sale of additional commercial gear tags 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? Minimal additional revenue will be generated by this administrative regulation through the sale of additional commercial gear tags in subsequent years.

(c) How much will it cost to administer this program for the first year? There will be no additional costs to administer this program for the first year.

(d) How much will it cost to administer this program for subsequent years? There will be no additional costs to administer this program for subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? There will be no cost savings in the first year.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? There will be no cost savings in subsequent years.

(c) How much will it cost the regulated entities for the first year? Depending on how many lines a commercial fisher sets, there will be a small cost to purchase extra commercial gear tags in the first year to tag both ends of the line and tag every 100 feet of line. Currently, commercial gear tags cost \$15.00 for a block of 10 for residents and \$100 for a block of 10 for nonresidents.

(d) How much will it cost the regulated entities for subsequent years? Depending on how many lines a commercial fisher sets, there will be a small cost in subsequent years to purchase extra commercial gear tags to tag both ends of the line and tag every 100 feet of line. Currently, commercial gear tags cost \$15.00 for a block of 10 for residents and \$100 for a block of 10 for nonresidents.

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 cost to purchase additional gear tags will be low and not result in a "Major economic impact".

**TOURISM, ARTS AND HERITAGE CABINET
Department of Fish and Wildlife Resources
(Amendment)**

301 KAR 1:150. Waters open to commercial fishing.

RELATES TO: KRS 150.010, 150.120, 150.170, 150.175, 150.445, 150.450, 150.990

STATUTORY AUTHORITY: KRS 150.025(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the Department of Fish and Wildlife Resources to promulgate administrative regulations regarding the buying, selling, and transporting of fish and wildlife, the restriction of places where taking is permitted, to regulate bag limits, creel limits, and methods of take, and the application of administrative regulations to make these requirements apply to a limited area or to the entire state. This administrative regulation establishes the areas where commercial fishing is allowed.

Section 1. Rivers and Creeks.

[(1)] The rivers and creeks established in subsections (1) through (7) [paragraphs (a) through (q)] of this section [subsection] shall be open to commercial fishing pursuant to 301 KAR 1:146 and 1:155:

(1) [(a)] Barron River from its junction with Green River upstream to Greencastle, Kentucky;

(b) Cumberland River from its junction with the Ohio River upstream to the Highway 62 bridge;

[(c)] Eagle Creek from its junction with the Kentucky River upstream to the Highway 22 bridge in Grant County;

(2) [(d)] Green River from its junction with the Ohio River upstream to 200 yards below Green River Lock and Dam 4 [(6)];

[(e)] Highland Creek from its junction with the Ohio River upstream to the Rock Ford Bridge in Union County;

(3) [(f)] Kentucky River from its junction with the Ohio River upstream to the junction of the North and Middle Forks of Kentucky River;

[(g)] North Fork of the Kentucky River from its junction with the Kentucky River upstream to the mouth of Walker's Creek;

(h) South Fork of the Kentucky River from its junction with the Kentucky River upstream to the mouth of Cow Creek;

(i) Licking River from its junction with the Ohio River upstream to a point directly adjacent to Highway 111 on the Bath and Fleming Counties line;

(4) [(j)] Mississippi River from the mouth of the Ohio River downstream to the Tennessee line;

(5) [(k)] Ohio River from its junction with the Mississippi River upstream to the West Virginia state line except those segments of the river that extend below the following locks and dams where slot baskets are the only piece of commercial gear allowed, except for the first 200 yards below the dam pursuant to KRS 150.445:

(a) [(1-)] Lock and Dam 53 downstream to a line perpendicular with the end of the longest lock wall including the circular cell portion;

(b) [(2-)] Lock and Dam 52 downstream to a line perpendicular with the end of the longest lock wall including the circular cell portion;

(c) [(3-)] Smithland Dam downstream to a line perpendicular to the end of the outer lock wall;

(d) [(4-)] J.T. Myers Dam downstream to a line perpendicular to the end of the outer lock wall and that portion of the split channel around

the southern part of Wabash Island from the fixed weir dam to the first dike;

(e) [(5-)] Newburgh Dam downstream to a line perpendicular to the end of the outer lock wall;

(f) [(6-)] Cannelton Dam downstream to a line perpendicular to the end of the outer lock wall;

(g) [(7-)] McAlpine Dam downstream to the K&I railroad bridge;

(h) [(8-)] Markland Dam downstream to a line perpendicular to the end of the outer lock wall;

(i) [(9-)] Meldahl Dam downstream to a line perpendicular to the end of the outer lock wall; and

(j) [(10-)] Greenup Dam downstream to a line perpendicular to the end of the outer lock wall;

(6) [(4)] Pond River from its junction with the Green River upstream to the Highway 62 bridge; and

[(m)] Panther Creek from its junction with the Green River upstream to the head of the creek;

(n) Rough River from its junction with the Green River upstream to the Highway 69 bridge at Dundee, Kentucky;

(7) [(e)] Tennessee River from its junction with the Ohio River upstream to River Mile 17.8;

(p) Tradewater River from its junction with the Ohio River upstream to the Highway 365 bridge; and

(q) Salt River from its junction with the Ohio River upstream to the northwestern boundary of Ft. Knox.

Section 2. [(2)] Lakes. The lakes established in subsections (1) through (5) of this Section [following lakes] shall be open to commercial fishing pursuant to 301 KAR 1:146 and 1:155; [but not above the first shoal or riffle upstream from the impounded or standing pool of the lake in any main or tributary stream except as specified in subsection (3) of this section:]

(1) [(a)] Barkley;

(b) Herrington Lake from the impounded or standing pools of the lake up to the first shoal or riffle in any main or tributary stream; [and]

(2) [(e)] Kentucky Lake from the impounded or standing pools of the lake up to the first shoal or riffle in any main or tributary stream; [.]

(3) Lake Barkley from the impounded or standing pools of the lake up to the first shoal or riffle in any main or tributary stream; [Exceptions.]

(4) Lake Cumberland from the impounded or standing pools of the lake up to the first shoal or riffle in any main or tributary stream, except Lake Cumberland shall be closed to commercial fishing.

(a) Above the confluence of Koger Creek on the Big South Fork Arm; and

(b) Above the confluence of the Rockcastle River on the Cumberland River Arm; and

[(a)] Cumberland Lake shall be closed to commercial fishing above the confluence of Koger Creek on the Big South Fork Tributary;]

(5) [(b)] Permanent overflow lakes adjacent to the Mississippi and Ohio Rivers that may be accessed from either river by a boat during high flow [conditions shall be open to statewide commercial fishing during these high flow] events, except as prohibited on department wildlife management areas pursuant to 301 KAR 4:020 and 301 KAR 4:050.

RICH STORM, Commissioner

APPROVED BY AGENCY: January 11, 2024

FILED WITH LRC: January 11, 2024 at 11:00 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 28, 2024, at 9:30 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 March 31, 2024. 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 areas where commercial fishing is allowed.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to manage the commercial harvest of fish in Kentucky by establishing the waters open to commercial fishing.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.025(1) authorizes the Department of Fish and Wildlife Resources to promulgate administrative regulations regarding the buying, selling, and transporting of fish and wildlife, the restriction of places where taking is permitted, and the application of administrative regulations to a limited area or to the entire state.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will carry out the purposes of KRS 150.025(1) by listing the waters that are open to commercial fishing 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 removes several creeks and rivers from the list of waters open to commercial fishing due either having no or very few records of commercial harvest in the last decade. In addition, due to the full removal of Lock and Dam 6 (previous upper boundary) and partial removal of Lock and Dam 5, this amendment sets a new upper boundary for commercial fishing on the Green River at Lock and Dam 4. Finally, this amendment closes a portion of Lake Cumberland (upstream from the confluence of the Rockcastle River on the Cumberland River Arm) to commercial fishing due to numerous conflicts between recreational users and commercial fishers and potential detrimental effects on Lake Sturgeon.

(b) The necessity of the amendment to this administrative regulation: The removal of certain waterbodies was due to no or very few records of commercial harvest in the last decade on these waters. Also, due to the deauthorization and removal of Green River Lock and Dam 6 and partial removal of Lock and Dam 5, a new upper boundary for commercial fishing was required on the Green River. Finally, numerous conflicts between recreational users and commercial fishers using trot lines, as well as the threat to Lake Sturgeon from trot line capture, resulted in the need to close a portion of Lake Cumberland open to commercial fishing.

(c) How the amendment conforms to the content of the authorizing statutes: See (1)(c) above.

(d) How the amendment will assist in the effective administration of the statutes: See (1)(d) above.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All commercial fishers who fished in the waterbodies that are proposed to be closed, as well as the Green River, 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: Commercial fishers will no longer be allowed to fish on the proposed creeks and rivers in Section 1 and the section of Lake Cumberland proposed in Section 2(4)(b). In addition, commercial fishers must follow the new upper boundary location for commercial fishing on the Green River.

(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 cost to entities in question (3). The rivers and creeks being closed to commercial fishing had no or very low use in the last decade, so commercial income from these waterbodies was negligible. The loss of commercial fishing income from the relocation of the upper boundary on the Green River will also be negligible. Although a section of Lake Cumberland was closed to commercial fishing, there is still a large portion of the lake that remains open to fishing, including a long stretch of the Cumberland River Arm on the upper end of the lake.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Although benefits are limited, the impacts of this amendment should be minimal due to the low commercial use of the waters being closed and the large number of commercial waters still open.

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

(a) Initially: There will be no cost associated with implementation of this administrative regulation initially.

(b) On a continuing basis: There will be no cost associated with implementation of this administrative regulation on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding is the State Game and Fish Fund.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No new fees will be established.

(9) TIERING: Is tiering applied? No. Tiering is not applied to this regulation because all commercial fishers must abide by the same requirements.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Fish and Wildlife Resources' Divisions of Fisheries and Law Enforcement will be impacted by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.025(1) authorizes the Department of Fish and Wildlife Resources to promulgate administrative regulations regarding the buying, selling, and transporting of fish and wildlife, the restriction of places where taking is permitted, and the application of administrative regulations to a limited area or to the entire state.

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

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

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

(c) How much will it cost to administer this program for the first year? There will be no additional costs to administer this program for the first year.

(d) How much will it cost to administer this program for subsequent years? There will be no additional costs to administer this program for subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? There will be no cost savings in the first year.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? There will be no cost savings in subsequent years.

(c) How much will it cost the regulated entities for the first year? There will be no direct cost to the regulated entities in the first year; however, there could be a small loss in revenue for those that had commercially fished on the waters proposed to be closed. Commercial harvest reports show low to no harvest on these waters, however.

(d) How much will it cost the regulated entities for subsequent years? There will be no direct cost to the regulated entities in subsequent years; however, there could be a small loss in revenue for those that had commercially fished on the waters proposed to be closed. Commercial harvest reports show low to no harvest on these waters, however.

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: See (4)(c) and (4)(d) above.

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

TOURISM, ARTS AND HERITAGE CABINET
Department of Fish and Wildlife Resources
(Amendment)

301 KAR 1:201. Taking of fish by traditional fishing methods.

RELATES TO: KRS 150.010, 150.170, 150.175, 150.340, 150.620, 150.990

STATUTORY AUTHORITY: KRS 150.025(1), 150.470

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the Department of Fish and Wildlife Resources to promulgate administrative regulations regarding the buying, selling and transporting ~~to establish seasons for the taking~~ of fish and wildlife, the restriction of places where taking is permitted, to regulate limits and methods of take, and the application of administrative regulations to make these requirements apply to a limited area or to the entire state. KRS 150.470(1) authorizes the department to promulgate administrative regulations regarding ~~for~~ daily limits, and size limits for fish. This administrative regulation establishes fish size limits, daily limits, and possession limits for fishing.

Section 1. Statewide Limits and Requirements.

(1) A person taking fish from public or private waters using traditional fishing methods shall observe the daily limits and size limits established in paragraphs (a) through (l) of this subsection, except as established in Sections 2 through 6[7] of this administrative regulation or pursuant to 301 KAR 1:180:

(a) Black bass daily limit, six (6).

1. Largemouth bass and smallmouth bass size limit, twelve (12) inches.

2. Kentucky bass and Coosa bass, no size limit;

(b) Rock bass daily limit, fifteen (15); no size limit;

(c) Sauger, walleye, and any hybrid thereof daily limit, singly or

in combination, six (6); size limit, fourteen (14) inches;

(d) Muskellunge daily limit, one (1); size limit, thirty (30) inches;

(e) Chain pickerel daily limit, five (5); no size limit;

(f) White bass and hybrid striped bass daily limit, singly or in combination, fifteen (15); size limit, no more than five (5) fish in a daily limit or ten (10) fish in a possession limit shall be fifteen (15) inches or longer;

(g) Striped bass daily limit, five (5); size limit, fifteen (15) inches;

(h) Crappie daily limit, twenty (20); no size limit;

(i) Trout.

1. No culling statewide.

2. Rainbow trout daily limit, eight (8); no size limit.

3. Brown trout daily limit, one (1); size limit, sixteen (16) inches.

4. Brook trout, catch and release only.

5. Cutthroat trout daily limit, one (1); size limit, twenty (20) inches;

(j) Redear sunfish daily limit, twenty (20); no size limit;

(k) Paddlefish daily limit, two (2); no size limit; and

(l) Catfish daily limit is unlimited; no size limit, except that only one (1) trophy catfish of each species may be harvested daily.

(2) The possession limit shall be two (2) times the daily limit, except as established in Section 2 of this administrative regulation.

(3) A person shall release grass carp caught from a lake owned or managed by the department.

(4) A person shall release any:

(a) Lake sturgeon; or

(b) Alligator gar.

(5) A person shall release fish:

(a) Below the minimum size limits established by this administrative regulation;

(b) Within a protected slot limit established by this administrative regulation; or

(c) Of a particular species if a person already possesses the daily limit for that species.

(6) A person shall not possess more than one (1) daily limit of processed or unprocessed fish while:

(a) Fishing;

(b) On the shoreline; or

(c) On the water.

(7) A fishing tournament organizer or representative, excluding a tournament angler, may possess more than the daily limit of tournament caught fish:

(a) At the weigh-in site;

(b) At the release site; or

(c) While transporting live fish from a remote weigh-in site back to the water body of origin for release.

(8) A fishing tournament organizer or representative, excluding a tournament angler, may possess more than the daily limit of unprocessed tournament caught fish that expired at the sites established in subsection (7) of this section for subsequent disposal by one (1) of the methods established in paragraphs (a) through (c) of this subsection:

(a) Bagged, sealed, and placed in a garbage dump;

(b) Donated to a charity for the purpose of human consumption; or

(c) Transferred to a conservation officer or another agent of the department.

(9) A person shall not remove the head or tail of any fish for which a size limit or daily limit exists while:

(a) Fishing;

(b) On the shoreline; or

(c) On the water.

(10) A person may possess sport fish below the size limit or beyond the possession limit if the person:

(a) Obtains the fish from a licensed fish propagator or other legal source; and

(b) Retains a receipt or other written proof that the fish were legally acquired.

(11) A person shall release all caught trout unless the person:

(a) Has a valid trout permit;

(b) Is exempted from trout permit requirements pursuant to KRS 150.170(2); or

(c) Is fishing in a licensed pay lake stocked with trout by the lake

operator.

(12) A person fishing in an artificial bait-only area shall not attach any of the items established in paragraphs (a) through (h) of this subsection to the artificial bait:

- (a) An insect;
- (b) Minnow;
- (c) Fish egg;
- (d) A worm;
- (e) Corn;
- (f) Cheese;
- (g) Cut bait; or
- (h) A similar organic bait substance including dough bait and putty or paste-type bait designed to attract fish by taste or smell.

(13) The fishing season shall be open year-round.

Section 2. Exceptions. All other provisions of this administrative regulation shall apply to the bodies of water listed in this section, with the exceptions established in subsections (1) through ~~(74)~~~~(75)~~ of this section.

(1) Bad Branch, Letcher County. A person shall only fish with artificial bait with a single hook;

(2) Barkley Lake.

(a) Largemouth bass and smallmouth bass size limit, fifteen (15) inches.

(b) Crappie size limit, ten (10) inches;

(3) Barren River and tributaries upstream from confluence with the Green River, including Barren River Lake. Smallmouth bass size limit, fifteen (15) inches;

(4) Barren River Lake.

(a) Crappie size limit, ten (10) inches.

(b) Largemouth and smallmouth bass size limit, fifteen (15) inches.

(c) Blue and channel catfish aggregate daily limit of fifteen (15), only one (1) of which shall be longer than twenty-five (25) inches.

(d) Barren River Lake shall extend up:

- 1. Barren River to the Highway 100 bridge;
- 2. Long Creek to the Highway 100 bridge;
- 3. Beaver Creek to the Highway 1297 bridge;
- 4. Skaggs Creek to the Mathews Mill Road bridge; and
- 5. Peter Creek to the Peter Creek Road bridge;

(5) Beaver Lake, Anderson County.

(a) A person shall not possess shad or use shad as bait.

(b) Largemouth bass. There shall be a slot limit between twelve

(12) and fifteen (15) inches;

(6) Beech Fork Reservoir, Powell County.

(a) Largemouth bass size limit, fifteen (15) inches.

(b) Bluegill daily limit, fifteen (15);

(7) Bert Combs Lake, Clay County.

(a) A person shall not possess shad or use shad as bait.

(b) Largemouth bass. There shall be a slot limit between twelve (12) and fifteen (15) inches;

(8) Beulah Lake, Jackson County. Largemouth bass. There shall be a slot limit between twelve (12) and fifteen (15) inches;

(9) Boltz Lake, Grant County.

(a) A person shall not possess shad or use shad as bait.

(b) Largemouth bass. There shall be a slot limit between twelve (12) and fifteen (15) inches;

(10) Briggs Lake, Logan County. A person shall not possess shad or use shad as bait;

(11) Buckhorn Lake.

(a) Largemouth bass and smallmouth bass size limit, fifteen (15) inches.

(b) Muskellunge size limit, forty (40) inches.

(c) Crappie size limit, nine (9) inches;

(12) Carnico Lake, Nicholas County.

(a) Largemouth bass size limit, fifteen (15) inches.

(b) Sunfish daily limit, fifteen (15);

(13) Carr Creek Lake.

(a) Largemouth bass and smallmouth bass size limit, fifteen (15) inches.

(b) Crappie size limit, nine (9) inches.

(c) Blue and channel catfish aggregate daily limit of fifteen (15), only one (1) of which shall be longer than twenty-five (25) inches;

(14) Carter Caves State Park Lake, Carter County.

(a) Fishing shall be during daylight hours only.

(b) Largemouth bass. There shall be a slot limit between twelve

(12) and fifteen (15) inches.

(c) A person shall not possess shad or use shad as bait;

(15) Cave Run Lake.

(a) Largemouth bass. There shall be a slot limit between twelve

(12) and fifteen (15) inches.

(b) Smallmouth bass size limit, eighteen (18) inches.

(c) Muskellunge size limit, forty (40) inches.

(d) Cave Run Lake shall extend up:

- 1. Scott's Creek to the Highway 801 culvert;
- 2. Beaver Creek to the Highway 1274 culvert;
- 3. North Fork Creek to the confluence of Craney Creek;
- 4. Licking River to the Highway 772 bridge; and
- 5. Ramey Creek to include the pool of water north of Highway 801;

(16) Cedar Creek Lake, Lincoln County. Largemouth bass size limit, twenty (20) inches; daily limit, one (1);

(17) Chimney Top Creek, Wolfe County. A person shall only fish with artificial bait;

(18) Clear Fork, tributary of the Gasper River. A person shall release all sportfish;

(19) Corinth Lake, Grant County.

(a) A person shall not possess shad or use shad as bait.

(b) Largemouth bass. There shall be a slot limit between twelve

(12) and fifteen (15) inches;

(20) Cumberland Lake.

(a)

1. Largemouth bass size limit, fifteen (15) inches.

2. Smallmouth bass size limit, eighteen (18) inches.

3. Striped bass size limit, twenty-two (22) inches; daily limit, two

(2).

4. Crappie size limit, ten (10) inches.

(b) Cumberland Lake shall extend up:

- 1. The Cumberland River to Cumberland Falls;
- 2. The Big South Fork to Devil's Jump;
- 3. The Rockcastle River to The Narrows; and
- 4. The Laurel River to Laurel River Dam;

(21) Cumberland River upstream from Cumberland Falls and all tributaries. Smallmouth bass size limit, fifteen (15) inches;

(22) Cumberland River from Wolf Creek Dam downstream to the Kentucky-Tennessee state line and tributaries, except Hatchery Creek in Russell County as established in subsections (39) and (40) of this section.

(a) Brown trout size limit, twenty (20) inches; daily limit, one (1).

(b) Brook trout size limit, fifteen (15) inches; daily limit, one (1).

(c) Rainbow trout. There shall be a slot limit between fifteen (15) and twenty (20) inches; daily limit, five (5), which shall not include more than one (1) fish greater than twenty (20) inches.

(d) A trout permit shall be required in order to fish the Cumberland River below Wolf Creek Dam to the Tennessee state line including the Hatchery Creek and all other tributaries upstream to the first riffle.

(e) Chumming shall not be permitted in the Cumberland River below Wolf Creek Dam to the Tennessee state line, including the Hatchery Creek and all other tributaries upstream to the first riffle;

(23) Cumberland River below Barkley Lake. Fishing is prohibited at the mouth of the lock chamber, as designated by signs.

(24) Dale Hollow Lake.

(a) Smallmouth bass. There shall be a slot limit between sixteen (16) and twenty-one (21) inches. The daily limits shall not include more than one (1) fish less than sixteen (16) inches long and one (1) fish greater than twenty-one (21) inches long.

(b) Walleye and walleye hybrids, daily limit, five (5); size limit, sixteen (16) inches.

(c) Sauger daily limit, ten (10); size limit, fourteen (14) inches.

(d) Rainbow trout and brown trout, no size limit; daily limit, seven (7), singly or in combination.

(e) Largemouth bass size limit, fifteen (15) inches.

(f) Black bass aggregate daily limit, five (5), no more than two (2) of which shall be smallmouth bass.

(g) Crappie size limit, ten (10) inches; daily limit, fifteen (15);

(25) Dewey Lake.
 (a) Largemouth bass and smallmouth bass size limit, fifteen (15) inches.
 (b) Blue and channel catfish aggregate daily limit of fifteen (15), only one (1) of which shall be longer than twenty-five (25) inches.
 (c) Muskellunge size limit, forty (40) inches;
 (26) Dix River for two (2) miles downstream from Herrington Lake Dam. A person shall only fish with artificial bait;
 (27) Doe Run Lake, Kenton County.
 (a) Largemouth bass size limit, fifteen (15) inches.
 (b) Channel catfish daily limit, four (4).
 (c) A person shall not possess shad or use shad as bait;
 (28) Dog Fork, Wolfe County. A person shall only fish with an artificial bait with a single hook;
 (29) Elkhorn Creek, downstream from the confluence of the North and South forks to the first shoal located 3,400 feet above its confluence with the Kentucky River, as posted with signs. Largemouth bass and smallmouth bass. There shall be a slot limit between twelve (12) and fifteen (15) inches;
 (30) Elmer Davis Lake, Owen County.
 (a) Largemouth bass. There shall be a slot limit between twelve (12) and fifteen (15) inches.
 (b) A person shall not possess shad or use shad as bait;
 (31) Fishtrap Lake.
 (a) Largemouth bass and smallmouth bass size limit, fifteen (15) inches.
 (b) Crappie size limit, nine (9) inches.
 (c) Blue and channel catfish aggregate daily limit of fifteen (15), only one (1) of which shall be longer than twenty-five (25) inches;
 (32) Floyd's Fork Creek, from Highway 60 downstream to Bardstown Road in Jefferson County. Largemouth and smallmouth bass size limit, fifteen (15) inches;
 (33) Golden Pond at the Visitors' Center at Land Between the Lakes. Channel catfish daily limit, five (5); size limit, fifteen (15) inches;
 (34) General Butler State Park Lake, Carroll County.
 (a) Largemouth bass. There shall be a slot limit between twelve (12) and fifteen (15) inches.
 (b) Channel catfish daily limit, four (4).
 (c) A person shall not possess shad or use shad as bait;
 (35) Grayson Lake. Largemouth bass and smallmouth bass. There shall be a slot limit between twelve (12) and fifteen (15) inches[size limit, fifteen (15) inches];
 (36) Greenbo Lake, Greenup County.
 (a) A person shall not possess shad or use shad as bait.
 (b) Bluegill and sunfish daily limit, fifteen (15) fish;
 (37) Green River from Green River Lake Dam and extending downstream to the end of the concrete wall. Fishing shall be limited to rod in hand using either:
 (a) An artificial bait with a single hook; or
 (b) Live bait attached to a single hook;
 (38) Green River Lake.
 (a) Crappie size limit, nine (9) inches.
 (b) Muskellunge size limit, forty (40) inches.
 (c) Green River Lake shall extend up:
 1. Green River to the Snake Creek Boat Ramp;
 2. Robinson Creek to the Highway 76 Bridge; and
 3. Casey Creek to the Arnolds Landing Boat Ramp.
 (39) Hatchery Creek, upper section as established by signs, Russell County. Rainbow trout, brown trout, and brook trout, no size limit; daily limit, five (5), singly or in combination;
 (40) Hatchery Creek, lower section as established by signs, Russell County. A person fishing for trout shall:
 (a) Only use artificial bait; and
 (b) Release all trout;
 (41) Highsplint Lake, Harlan County. Largemouth bass size limit, twenty (20) inches; daily limit, one (1);
 (42) Jericho Lake, Henry County.
 (a) Largemouth bass size limit, fifteen (15) inches.
 (b) A person shall not possess shad or use shad as bait;
 (43) Kentucky Lake and the canal connecting Kentucky and Barkley lakes.

(a) Largemouth bass and smallmouth bass size limit, fifteen (15) inches.
 (b) Crappie size limit, ten (10) inches;
 (44) Kentucky River upstream of Lock and Dam 14, the North Fork and tributaries including Carr Fork below Carr Creek Lake, along with the Middle and South Forks and all tributaries. Smallmouth bass size limit, fifteen (15) inches;
 (45) Kentucky River WMA, Boone Tract, excluding Benji Kinman Lake.
 (a) Sunfish daily limit, fifteen (15).
 (b) Catfish daily limit, four (4);
 (46) Lake Blythe, Christian County. Largemouth bass. There shall be a slot limit between twelve (12) and fifteen (15) inches;
 (47) Lake Chumley, and the department-owned property surrounding the lake, Boyle and Lincoln counties. Closed to public access from one-half (1/2) hour after sunset through one-half (1/2) hour before sunrise;
 (48) Lake Malone, Muhlenberg and Logan counties. Largemouth bass. There shall be a slot limit between twelve (12) and fifteen (15) inches;
 (49) ~~[Lake Mingo, Jessamine County. A person shall not possess shad or use shad as bait;~~
 (50) Lake Reba, Madison County. A person shall not possess shad or use shad as bait;
 (50) ~~[(54)]~~ Lake Shelby, Shelby County.
 (a) Largemouth bass size limit, fifteen (15) inches.
 (b) Channel catfish daily limit, four (4).
 (c) A person shall not possess shad or use shad as bait;
 (51) ~~[(52)]~~ Laurel River Lake.
 (a) Largemouth bass size limit, fifteen (15) inches.
 (b) Smallmouth bass size limit, eighteen (18) inches; daily limit, two (2).
 (c) Crappie size limit, nine (9) inches; daily limit, fifteen (15);
 (52) ~~[(53)]~~ Lincoln Homestead Lake, Washington County.
 (a) A person shall not fish except during daylight hours.
 (b) Largemouth bass. There shall be a slot limit between twelve (12) and fifteen (15) inches.
 (c) Channel catfish daily limit, four (4).
 (d) A person shall not possess shad or use shad as bait;
 (53) ~~[(54)]~~ Marion County Lake. A person shall not possess shad or use shad as bait;
 (54) ~~[(55)]~~ McNeely Lake, Jefferson County.
 (a) A person shall not possess shad or use shad as bait.
 (b) Largemouth bass. There shall be a slot limit between twelve (12) and fifteen (15) inches;
 (55) ~~[(56)]~~ Mill Creek Lake, Powell County.
 (a) Largemouth bass size limit, fifteen (15) inches.
 (b) A person shall not possess shad or use shad as bait;
 (56) ~~[(57)]~~ New Haven Optimist Lake, Nelson County.
 (a) Largemouth bass size limit, fifteen (15) inches.
 (b) Channel catfish daily limit, four (4).
 (c) A person shall not possess shad or use shad as bait;
 (57) ~~[(58)]~~ Nolin River Lake shall extend up Bacon Creek to Highway 178 and to Wheelers Mill Road Bridge on the Nolin River.
 (a) Largemouth bass and smallmouth bass size limit, fifteen (15) inches.
 (b) Crappie size limit, nine (9) inches;
 (58) ~~[(59)]~~ Ohio River.
 (a) White bass, striped bass, and any hybrid thereof, daily limit, thirty (30); no more than four (4) in the daily limit shall be fifteen (15) inches or greater.
 (b) The blue catfish daily limit shall be unlimited, except that no more than one (1) fish in the daily limit shall be thirty-five (35) inches or longer.
 (c) The channel catfish daily limit shall be unlimited, except that no more than one (1) fish in the daily limit shall be twenty-eight (28) inches or longer.
 (d) The flathead catfish daily limit shall be unlimited, except that no more than one (1) fish in the daily limit shall be thirty-five (35) inches or longer;
 (59) ~~[(60)]~~ Otter Creek, Meade County. Smallmouth and largemouth bass. There shall be a slot limit between twelve (12) and fifteen (15) inches;

~~(60)~~~~(64)~~ Panbowl Lake, Breathitt County. Largemouth bass. There shall be a slot limit between twelve (12) and fifteen (15) inches;

~~(61)~~~~(62)~~ Parched Corn Creek, Wolfe County. A person shall only fish with an artificial bait with a single hook;

~~(62)~~~~(63)~~ Pennyrite Lake, Christian County. Largemouth bass. There shall be a slot limit between twelve (12) and fifteen (15) inches;

~~(63)~~~~(64)~~ Pikeville City Lake, Pike County. A person shall release largemouth bass;

~~(64)~~~~(65)~~ Rockcastle River WMA, all ponds collectively, Pulaski County.

(a) Largemouth bass size limit, fifteen (15) inches; daily limit, one (1).

(b) Bluegill and sunfish daily limit, ten (10).

(c) Catfish daily limit, four (4).

(d) Crappie daily limit, fifteen (15);

~~(65)~~~~(66)~~ Rough River Lake.

(a) Crappie size limit, nine (9) inches.

(b) Largemouth bass and smallmouth bass size limit, fifteen (15) inches.

(c) Rough River Lake shall extend up Rough River to the Highway 84 Bridge;

~~(66)~~~~(67)~~ Shanty Hollow Lake, Warren County. A person shall not possess shad or use shad as bait;

~~(67)~~~~(68)~~ Shillalah Creek, Bell County, outside the Cumberland Gap National Park. A person shall only fish with an artificial bait with a single hook;

~~(68)~~~~(69)~~ Spurlington Lake, Taylor County. A person shall not possess shad or use shad as bait;

~~(69)~~~~(70)~~ Sympson Lake, Nelson County. Largemouth bass size limit, fifteen (15) inches;

~~(70)~~~~(74)~~ Taylorsville Lake, including the impounded waters of the lake to Dry Dock Road Bridge on the Salt River.

(a) Largemouth bass and smallmouth bass size limit, fifteen (15) inches.

(b) Blue and channel catfish aggregate daily limit of fifteen (15), only one (1) of which shall be longer than twenty-five (25) inches.

(c) Crappie size limit, ten (10) inches; daily limit, fifteen (15);

~~(71)~~~~(72)~~ Trammel Creek, Allen County. Rainbow trout daily limit, five (5);

~~(72)~~~~(73)~~ Willisburg Park Pond, Washington County.

(a) Largemouth bass size limit, fifteen (15) inches.

(b) Catfish daily limit, four (4).

(c) Sunfish daily limit, fifteen (15);

~~(73)~~~~(74)~~ Wood Creek Lake. Largemouth and smallmouth bass. There shall be a slot limit between twelve (12) and fifteen (15) inches; and

~~(74)~~~~(75)~~ Yatesville Lake.

(a) Largemouth bass and smallmouth bass size limit, fifteen (15) inches.

(b) Blue and channel catfish aggregate daily limit of fifteen (15), only one (1) of which shall be longer than twenty-five (25) inches.

Section 3. Daily Limits and Size Limits for Waters Containing Rockcastle Strain Walleye.

(1) Rockcastle Strain Walleye Waters.

(a) Barren River and tributaries upstream from confluence with the Green River[-], including Barren River Lake;

(b) Cumberland River and tributaries above Cumberland Falls;

(c) Kentucky River and tributaries upstream from Lock and Dam 14;

(d) Middle Fork Kentucky River and tributaries;

(e) North Fork Kentucky River and tributaries, including Carr Fork below Carr Creek Lake;

(f) South Fork Kentucky River and tributaries;

(g) Levisa Fork River and tributaries upstream from Fishtrap Lake, including Fishtrap Lake;

(h) Martins Fork Lake; and

(i) Wood Creek Lake.

(2) There shall be a slot limit between eighteen (18) and twenty-six (26) inches and a daily limit of two (2) for walleye in the waters established in subsection (1) of this section.

Section 4. Seasonal Catch and Release for Trout.

(1) There shall be a catch and release trout season from October 1 through March 31 for the bodies of water established in subsection (3) of this section.

(2) A person shall:

(a) Only use artificial bait; and

(b) Release all trout.

(3) The streams established in paragraphs (a) through (o) of this subsection shall be open for the catch and release trout season:

(a) Bark Camp Creek in Whitley County;

(b) Beaver Creek from Highway 90 Bridge upstream to Highway 200 Bridge in Wayne County;

(c) Big Bone Creek within Big Bone Lick State Park in Boone County;

(d) Cane Creek in Laurel County;

(e) Casey Creek in Trigg County;

(f) Clear Creek from mouth upstream to 190 Bridge in Bell County;

(g) East Fork of Indian Creek in Menifee County;

(h) Elk Spring Creek in Wayne County;

(i) Floyd's Fork Creek in Jefferson County from Highway 60 downstream to Bardstown Road;

(j) Gunpowder Creek in Boone County;

(k) Left Fork of Beaver Creek in Floyd County from Highway 122 Bridge upstream to the headwater;

(l) Otter Creek in Meade County on the Fort Knox Reservation and Otter Creek Park;

(m) Rock Creek from the Bell Farm Bridge to the Tennessee state line in McCreary County;

(n) Trammel Creek in Allen County; and

(o) Swift Camp Creek in Wolfe County.

Section 5. Special Limits for Fishing Events.

(1) The commissioner may establish special limits for fishing events including:

(a) Size limits for selected species;

(b) Daily limits for selected species;

(c) Eligible participants; and

(d) Dates and times of special limits.

(2) An event sponsor shall post signs informing anglers of any special limits for a minimum of twenty-four (24) hours before the event.

Section 6. Daily Limits and Size Limits for Special Lakes and Ponds. The requirements established in subsections (1) through (5) of this section shall apply to all bodies of water established in the List of Special Lakes and Ponds[-list]:

(1) Largemouth bass size limit, fifteen (15) inches; daily limit, one (1);

(2) Catfish daily limit, four (4);

(3) Sunfish or bream daily limit, fifteen (15);

(4) Rainbow trout daily limit, five (5); and

(5) A person shall not possess shad or use shad as bait.

Section 7. ~~[Special Catfish Size Limit Lakes. All lakes established in the Special Catfish Size Limit Lakes list shall have a twelve (12)-inch size limit on catfish.~~

~~Section 8. Incorporation by Reference.~~

(1) ~~[The following material is incorporated by reference:~~

~~(a) "Special Catfish Size Limit Lakes", 2024 edition; and~~

~~(b) "List of Special Lakes and Ponds", 2024 Edition~~~~[2024 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.

RICH STORM, Commissioner

APPROVED BY AGENCY: January 11, 2024

FILED WITH LRC: January 12, 2024 at 11:00 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 28,

2024, at 9:00 a.m., at KDFWR Administration Building, 1 Sportsman's Lane, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through March 31, 2024. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Jenny Gilbert, Legislative Liaison, Kentucky Department of Fish and Wildlife Resources, 1 Sportsman's Lane, Phone (502) 564-3400, fax (502) 564-0506, email fwpubliccomments@ky.gov

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jenny Gilbert

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes size limits, daily creel limits, and possession limits for sport fish that may be taken from Kentucky waters.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to properly manage the sport fish populations of Kentucky.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.025(1) authorizes the Department of Fish and Wildlife Resources to promulgate administrative regulations regarding the buying, selling, and transporting of fish and wildlife, the restriction of places where taking is permitted, and the application of administrative regulations to a limited area or to the entire state. KRS 150.470(1) authorizes the department to promulgate administrative regulations regarding daily limits and size limits for fish.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the statutes by limiting the number and size of fish that may be taken from Kentucky's waters. This will ensure that Kentucky's valuable sport fish populations are maintained at high levels.

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

(a) How the amendment will change this existing administrative regulation: This amendment changes the size limit for Largemouth and Smallmouth bass at Grayson Lake from a 15-inch minimum size limit to a 12- to 15-inch slot size limit. This amendment also removes the 12-inch catfish size limit from a list of 93 lakes and pond incorporated by reference. In addition, Lake Mingo was removed from the special regulation section (Section 2) because it was a redundant regulation that is already covered in Section 6 (Lake Mingo is on the list incorporated by reference for this section). Finally, Three Springs Lake's name was changed to Jesse W. Thornton Lake in the "Special Lakes and Ponds" list which is incorporated by reference. This was required due to Warren County making the name change. One other non-substantive cleanup was made to the "Special Lakes and Ponds" list.

(b) The necessity of the amendment to this administrative regulation: The Largemouth Bass population at Grayson Lake has shown consistent high reproduction and recruitment, resulting in high densities of small fish and lower growth rates. As a result, the bass population is stunted, and anglers primarily only catch small fish which are below the size limit. The slot limit will allow anglers to harvest those small fish, thereby decreasing their density and associated competition for food, and allow growth to improve. Combining the Largemouth Bass and Smallmouth Bass in the same regulation reduces any confusion for anglers. The 12-inch catfish minimum size limit regulation was determined to be overly burdensome and not necessary. Also, Lake Mingo was already incorporated by reference in Section 6, so it was removed from Section 2 due to redundancy. Finally, the name change for Three Springs Lake is necessary to match the new name of the lake due to the change made by Warren County government.

(c) How the amendment conforms to the content of the authorizing statutes: See (1)(c) above.

(d) How the amendment will assist in the effective administration of the statutes: See (1)(d) above.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All anglers fishing for bass at Grayson Lake will be affected. The name change for Three Springs Lake will not have any affect on anglers fishing the lake.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Anglers fishing for bass at Grayson Lake will now be required to release bass between 12 and 15 inches but can harvest bass under 12 inches which is primarily what they currently catch. Anglers fishing any of the 93 lakes which had the 12-inch catfish minimum size limit will now be able to keep catfish of any size.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): By harvesting the over-abundant small bass, anglers can help reduce the density of these small bass, reduce food competition, and ultimately increase growth rates of the bass. This should result in a much larger average size of the bass they catch from the lake. On the 12-inch catfish minimum size limit lakes, anglers will now be able to harvest all sizes of catfish if they wish.

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

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

(b) On a continuing basis: There will be no additional cost on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding is the State Game and Fish Fund.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees, nor does it indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering was not applied because all individuals fishing at Grayson Lake must abide by the same requirements.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Fish and Wildlife Resources' Divisions of Fisheries and Law Enforcement will be impacted by this amendment.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.025(1) authorizes the Department of Fish and Wildlife Resources to promulgate administrative regulations regarding the buying, selling, and transporting of fish and wildlife, the restriction of places where taking is permitted, and the application of administrative regulations to a limited area or to the entire state. KRS 150.470(1) authorizes the department to promulgate administrative regulations regarding daily limits and size limits for fish.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire

departments, or school districts) for the first year? It is unknown if this administrative regulation could indirectly increase any fishing license sales during the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? There will be no direct revenue generated in subsequent years, and it is unknown if fishing license sales will be indirectly increased because of this amendment.

(c) How much will it cost to administer this program for the first year? There will be no initial cost to implement this administrative regulation for the first year.

(d) How much will it cost to administer this program for subsequent years? There will be no cost in subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? There will be no anticipated cost savings for the regulated entities in the first year.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? There will be no anticipated cost savings for the regulated entities in subsequent years.

(c) How much will it cost the regulated entities for the first year? There will be no additional costs for the regulated entities in the first year.

(d) How much will it cost the regulated entities for subsequent years? There will be no additional costs for the regulated entities in subsequent years.

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] It is expected that there will be little to no economic impact to the regulated entities. As a result, this regulation will not have a "Major economic impact" on state or local government or Kentucky anglers.

TOURISM, ARTS AND HERITAGE CABINET
Department of Fish and Wildlife Resources
(Amendment)

301 KAR 2:178. Deer hunting on Wildlife Management Areas, state parks, other public lands, and federally controlled areas.

RELATES TO: KRS 150.010, 150.170, 150.340, 150.370(1), 150.990

STATUTORY AUTHORITY: 148.029(5), 150.025(1), 150.390(1), 150.620

NECESSITY, FUNCTION, AND CONFORMITY: KRS 148.029(5) authorizes the Department of Parks, in cooperation with the Department of Fish and Wildlife Resources, to implement wildlife management plans on state parks. KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish open seasons for the taking of wildlife, to regulate bag limits, and to make these requirements apply to a limited area. KRS 150.390(1)

prohibits the taking of deer in any manner contrary to any provisions of KRS Chapter 150 or KAR Title 301. KRS 150.620 authorizes the department to promulgate administrative regulations for the maintenance and operation of the lands it has acquired for public recreation. This administrative regulation establishes deer hunting seasons, application procedures, and other matters pertaining to deer hunting on Wildlife Management Areas, state parks, other public lands, and federally controlled areas that differ from statewide requirements.

Section 1. Definitions.

(1) "Adult" means a person who is at least eighteen (18) years of age.

(2) "Bait" means a substance composed of grains, minerals, salt, fruits, vegetables, hay, or any other food materials, whether natural or manufactured, that may lure, entice, or attract wildlife.

(3) "Centerfire" means a type of gun that detonates a cartridge by the firing pin striking a primer in the middle of the end of the cartridge casing.

(4) "Ground blind" means a structure consisting of a frame and a top that is placed on the ground to completely enclose a hunter while hunting deer.

(5) "In-line muzzleloader" means a gun:

(a) Capable of being loaded only from the discharging end of the barrel or cylinder; and

(b) That is equipped with an enclosed ignition system located directly behind the powder charge.

(6) "Mentor hunt" means a quota youth hunt in which the adult who accompanies a youth may legally take a deer.

(7) "Mobility-impaired" means an individual who meets the requirements of 301 KAR 3:026, Section 2(1).

(8) "Modern gun" means an air gun, rifle, handgun, or shotgun that is loaded from the rear of the barrel.

(9) "Modern gun season" means the sixteen (16) consecutive day period beginning the second Saturday in November during which a modern gun may be used to take deer pursuant to 301 KAR 2:172.

(10) "Muzzleloader" means a rifle, shotgun, or handgun that is loaded from the discharging end of the barrel or discharging end of the cylinder.

(11) "Quota hunt" means a hunt in which a participant is selected by a random drawing.

(12) "Quota youth hunt" means a quota hunt in which a youth is the only person who can legally take a deer.

(13) "Statewide requirements" mean the season dates, zone descriptions, and other requirements for deer hunting as established in 301 KAR 2:172.

(14) "Wildlife management area" or "WMA" means a tract of land:

(a) Controlled by the department through ownership, lease, license, or cooperative agreement; and

(b) That has "Wildlife Management Area" or "WMA" as part of its official name.

(15) "Youth" means a person under the age of sixteen (16) by the date of the hunt.

(16) "Youth gun seasons" means the October youth gun season and the December free youth weekend, as established in 301 KAR 2:172.

Section 2. General WMA Requirements.

(1) Unless established in this administrative regulation, statewide requirements shall apply.

(2) Except as established in Section 6 of this administrative regulation, if a WMA is in two (2) or more deer hunting zones, as established in 301 KAR 2:172, then the WMA shall be regulated by the most liberal zone requirements of the zones in which it lies.

(3) Deer hunting on WMAs listed in Section 6 of this administrative regulation shall be permitted only as established in this administrative regulation, except archery and crossbow hunting shall be allowed pursuant to the statewide requirements established in 301 KAR 2:172, unless otherwise noted.

(4) If a WMA is:

(a) Listed in Section 6 of this administrative regulation, then gun

hunting shall be prohibited, unless otherwise noted; and

(b) Not listed in Section 6 of this administrative regulation, then statewide deer hunting requirements shall apply.

(5) An antlerless deer shall not count against a person's statewide or zone bag limit if harvested during:

(a) The Grayson Lake WMA open youth hunt; or

(b) Any WMA or state park either-sex quota hunt.

(6) An open gun deer hunt, beginning on the Wednesday following the third Monday in January for ten (10) consecutive days, shall:

(a) Be limited to members of the United States Armed Forces and the National Guard and reserve component who:

1. Are residents of Kentucky or nonresidents stationed in Kentucky; and

2. Were deployed out-of-country during any portion of the most recent regular statewide deer season;

(b) Only be on a WMA designated as open for this special hunt; and

(c) Be pursuant to statewide requirements established in 301 KAR 2:172.

(7) On all WMAs and Otter Creek Outdoor Recreation Area, a person:

(a) Attaching a tree stand or climbing a tree shall not use a:

1. Nail;

2. Spike;

3. Screw-in device;

4. Wire; or

5. Tree climber;

(b) May use a portable stand or climbing device;

(c) Shall:

1. Not place a portable stand in a tree more than two (2) weeks before opening day; and

2. Remove a portable stand within one (1) week following the last day of each hunting period;

(d) Shall plainly mark the portable stand with the hunter's customer identification number[name and address];

(e) Shall not use an existing permanent tree stand;

(f) Shall not place, distribute, or hunt over bait; and

(g) Shall not hunt in a ground blind, if gun deer hunting is allowed, without first attaching a hat or vest made of solid, unbroken hunter orange material to the blind so that it is visible from all sides.

(8) A person without a valid quota hunt confirmation number shall not enter a WMA during a quota hunt on that area except:

(a) To travel through a WMA on an established road or to use an area designated open by a sign;

(b) To accompany a youth who is hunting in a youth or mentor quota hunt;

(c) That one (1) assistant, who shall not be required to have applied for the quota hunt, may accompany a hunter who was drawn to hunt, but shall check in and out as established in Section 5 of this administrative regulation; or

(d) To participate in small game hunting or the October shotgun segment of the fall turkey season during the archery and crossbow quota hunt on Big Rivers or Higginson-Henry WMA.

(9) Except for waterfowl or dove hunting, or legal hunting at night, a person who is hunting any species, or a person who is accompanying a hunter, shall wear hunter orange clothing pursuant to 301 KAR 2:172 while:

(a) On a WMA or state park if gun deer hunting is allowed;

(b) Hunting within the sixteen (16) county elk zone when a firearms elk season is open, pursuant to 301 KAR 2:132; or

(c) Hunting within the bear zone during a bear firearms season, pursuant to 301 KAR 2:300.

Section 3. General Quota Hunt Procedures.

(1) A quota hunt applicant who is not selected and applies to hunt the following year shall be given one (1) preference point for each year the applicant was not selected.

(2) If selected for a quota hunt, a person shall lose all accumulated preference points.

(3) A random selection of hunters with preference points shall be made for each year's quota hunts before those without preference points are chosen.

(4) A person shall forfeit all accumulated preference points if, in a given year, the person does not apply for or is ineligible to apply for:

(a) A deer quota hunt; and

(b) The no-hunt option.

(5) A person who applies for the no-hunt option shall:

(a) Not be drawn for a quota hunt; and

(b) Be given one (1) preference point for each year the no-hunt option is selected.

(6) If applying as a party:

(a) Each applicant's preference points shall be used to calculate an average point total for the party; and

(b) A party with a higher preference point average will be randomly selected before a party with a lower preference point average.

(7) There shall be a maximum of ten (10) percent of nonresidents drawn in each quota hunt pool.

(8) The commissioner shall extend the application deadline if technical difficulties with the automated application system prevent applications from being accepted for one (1) or more days during the application period.

(9) A hunter may take up to two (2) deer on a quota hunt in Zones 2, 3, and 4, only one (1) of which may be an antlered deer, except as established in Section 6 of this administrative regulation.

(10) If a hunter has purchased the appropriate permits, a hunter may take unlimited antlerless deer in:

(a) The West Kentucky WMA gun hunt;

(b) WMA quota hunts in Zone 1; and

(c) State Park quota hunts in Zone 1, except as established in Section 8 of this administrative regulation.

~~[(11) One (1) person shall be drawn from the eligible quota hunt applicants who were not selected in the original drawing, and shall receive one (1) deer permit that carries with it all the privileges of the Special Commission Permit established in 301 KAR 3:100.]~~

Section 4. Quota Hunt Application Process. A person applying for a quota hunt shall:

(1) Complete the quota hunt application process on the department's Web site at fw.ky.gov between September 1 and September 30;

(2) Select:

(a) A first and second choice of hunts; or

(b) The no-hunt option;

(3) Pay a nonrefundable three (3) dollar application fee for each applicant;

(4) Not apply more than one (1) time; and

(5) Not apply as a group of more than five (5) persons.

Section 5. Quota Hunt Participant Requirements. Except as otherwise established in this administrative regulation, a person selected to participate in a quota hunt shall:

(1) Possess, unless exempted pursuant to KRS 150.170:

(a) A valid annual Kentucky hunting license; and

(b) A deer permit that authorizes the taking of deer with the equipment being used and in accordance with the zone restrictions where the hunt will occur;

(2) Hunt on the assigned dates and in assigned areas selected by a random drawing of applicants if applicable;

(3) Comply with hunting equipment restrictions specified by the type of hunt;

(4) Check in at the designated check station prior to hunting:

(a) Either:

1. On the day before the hunt, between noon and 8 p.m. local time; or

2. On the day of the hunt, between 5:30 a.m. and 8 p.m. Eastern time; and

(b) With documentation of the participant's:

1. Proof of identification or draw confirmation number; and

2. Purchase of a current license or permit which allows or includes statewide deer hunting privileges;

(5) Check out at the designated check station:

(a) If finished hunting;

(b) If the hunter's bag limit is reached; or

- (c) By 8 p.m. Eastern time on the final day of the hunt;
- (6) Take a harvested deer to the designated check station by 8 p.m. Eastern time the day the deer was harvested;
- (7) Be declared ineligible to apply for the next year's drawing if the hunter or the hunter's assistant fails to check out properly;
- (8) Telecheck a harvested deer or check a harvested deer on the department's Web site at fw.ky.gov if there is not a designated check station at the quota hunt; and
- (9) Comply with all species quota hunt requirements or be ineligible to apply for any quota hunt or no-hunt option for these species the following year.

Section 6. Wildlife Management Area Requirements.

- (1) Dr. Norman and Martha Adair WMA.
- (2) Ballard WMA.
 - (a) On the main tract, the quota hunt shall be for two (2) consecutive days beginning on the first Saturday in November.
 - (b) On the main tract, the archery, crossbow, and October youth gun seasons shall be open pursuant to statewide requirements through October 14, except that the two (2) mile driving loop marked by signs shall be closed to all hunting.
 - (c) The archery, crossbow, modern gun, youth gun, and muzzleloader seasons shall be open pursuant to statewide requirements only on the 400-acre tract south of Sallie Crice Road.
 - (d) A quota hunt participant shall be given one (1) preference point for each antlerless[female] deer checked in, up to a maximum of four (4) points.
- (3) Barren River WMA. The area shall be open pursuant to statewide requirements except that on the Peninsula Unit, including Narrows, Goose, and Grass Islands, a person shall not hunt deer with a modern gun.
- (4) Beaver Creek WMA.
 - (a) The quota hunt shall be for two (2) consecutive days beginning the first Saturday in November.
 - (b) The limit shall be one (1) antlered deer during the quota hunt.
 - (c) The youth gun seasons shall be open pursuant to statewide requirements.
- (5) Big Rivers WMA.
 - (a) The youth gun seasons shall be open pursuant to statewide requirements.
 - (b) There shall be a quota hunt for two (2) consecutive days beginning the first Saturday in November.
 - (c) The archery and crossbow quota hunt shall begin the Monday following the third Saturday in October and continue through November 30, except that it shall be closed during the two (2) day quota hunt as established in paragraph (b) of this subsection.
 - (d) A person shall:
 - 1. Obtain a vehicle tag from the department prior to participating in the quota hunt as established in paragraph (c) of this subsection; and
 - 2. Display the vehicle tag in the windshield of the vehicle while hunting.
 - (6) Boatwright WMA. The area shall be open pursuant to statewide requirements, except that on the Swan Lake Unit the:
 - (a) Archery, October youth gun, and crossbow seasons shall only be open through October 14; and
 - (b) December free youth weekend shall be closed.
 - (7) Cedar Creek Lake WMA.
 - (8) Clay WMA.
 - (a) On the main tract, muzzleloader and youth gun seasons shall be open pursuant to statewide requirements, except archery hunting shall be prohibited during the quota fox hunting field trials as established in 301 KAR 2:049.
 - (b) The remainder of the WMA shall be open pursuant to statewide requirements for the archery, crossbow, muzzleloader, and youth gun seasons, except during the quota deer hunt.
 - (c) The quota hunt shall be for two (2) consecutive days beginning the first Saturday in November.
 - (d) A quota hunt participant shall be given one (1) preference point for each antlerless[female] deer checked-in, up to a maximum of four (4) points.
 - (e) Hunters drawn for the quota hunt may harvest up to four (4) deer, only one (1) of which may be antlered.

- (9) Dewey Lake WMA.
 - (a) The December muzzleloader and youth gun seasons shall be open pursuant to statewide requirements.
 - (b) Guns shall be prohibited for deer hunting on the:
 - 1. Western side of the lake, north of the Terry Boat Ramp; and
 - 2. Eastern side of the lake, north of the ridge that begins across the lake from the Terry Boat Ramp, and extends eastward to the WMA boundary.
 - (c) There shall be a quota hunt for two (2) consecutive days beginning the first Saturday in November.
 - (d) There shall be a one (1) deer limit during the quota hunt.
- (10) Dix River WMA. The youth gun and muzzleloader seasons shall be open pursuant to statewide requirements.
- (11) Fishtrap Lake WMA.
 - (a) The quota hunt shall be for two (2) consecutive days beginning on the Saturday before Thanksgiving.
 - (b) The limit for the quota hunt shall be one (1) deer.
 - (c) The youth gun and December muzzleloader seasons shall be open pursuant to statewide requirements.
- (12) Grayson Lake WMA.
 - (a) An open youth hunt shall:
 - 1. Be the first Saturday in November for two (2) consecutive days; and
 - 2. Have a two (2) deer bag limit, only one (1) of which may be an antlered deer.
 - (b) A person who has not checked in shall not enter the Grayson Lake WMA during the open youth hunt, except to:
 - 1. Travel through the WMA on an established public road; or
 - 2. Use an area designated as open by signs.
 - (c) The property of Camp Webb shall be open for a mobility-impaired deer hunting event during the first weekend of October.
 - (d) The crossbow season shall be from the first Saturday in September through the third Monday in January, except that the archery and crossbow seasons shall be closed during the November open youth hunt.
 - (e) The youth gun seasons shall be open pursuant to statewide requirements.
 - (f) The December muzzleloader season shall be open pursuant to statewide requirements.
- (13) Green River Lake WMA and Dennis-Gray WMA.
 - (a) The youth gun seasons shall be open pursuant to statewide requirements.
 - (b) The quota hunt shall be for two (2) consecutive days beginning the first Saturday in November.
 - (c) Fifteen (15) openings shall be reserved in the quota hunt for mobility-impaired persons.
 - (d) The Green River Lake and Dennis-Gray WMAs shall be considered to be located in the Eastern Time Zone.
- (14) Griffith Woods WMA. The December muzzleloader and youth gun seasons shall be open pursuant to statewide requirements.
- (15) Higginson-Henry WMA.
 - (a) The youth gun seasons shall be open pursuant to statewide requirements.
 - (b) There shall be a quota hunt for two (2) consecutive days beginning the first Saturday in November.
 - (c) There shall be an archery and crossbow quota hunt beginning the Monday following the third Saturday in October continuing through November 30, except that it shall be closed during the two (2) day quota hunt as established in paragraph (b) of this subsection.
 - (d) A person shall:
 - 1. Obtain a vehicle tag from the department prior to participating in the quota hunt as established in paragraph (c) of this subsection; and
 - 2. Display the vehicle tag in the windshield of the vehicle while hunting.
- (16) J.C. Williams WMA. The December muzzleloader and youth gun seasons shall be open pursuant to statewide requirements.
- (17) Kentucky River WMA.
 - (a) The December muzzleloader and youth gun seasons shall be open pursuant to statewide requirements.

(b) There shall be a quota hunt for two (2) consecutive days beginning on the first Saturday in November.

(18) Kleber WMA.

(a) The quota hunts shall be for:

1. Two (2) consecutive days beginning the first Saturday in November; and

2. Two (2) consecutive days beginning the first Saturday in December.

(b) The youth gun and December muzzleloader seasons shall be open pursuant to statewide requirements.

(19) Knobs State Forest WMA. The December muzzleloader and youth gun seasons shall be open pursuant to statewide requirements.

(20) Lake Barkley WMA shall be open pursuant to statewide requirements except:

(a) The North Refuge shall be closed from November 1 to February 15; and

(b) Duck Island shall be closed from October 15 to March 15, except that it shall be open for the October muzzleloader season, pursuant to statewide requirements.

(21) Livingston County WMA. The youth gun, muzzleloader, and modern gun seasons shall be open pursuant to statewide requirements, except a person shall not hunt deer with a modern gun during the modern gun deer season.

(22) Curtis Gates Lloyd WMA. The December muzzleloader and youth gun seasons shall be open pursuant to statewide requirements.

(23) Mill Creek WMA.

(a) The youth gun seasons shall be open pursuant to statewide requirements.

(b) The modern gun season shall be open pursuant to statewide requirements for two (2) consecutive days beginning the second Saturday in November.

(24) Miller-Welch Central Kentucky WMA. The archery and crossbow seasons shall be open pursuant to statewide requirements:

(a) On Monday through Thursday, from the first Saturday in September through December 17, except during scheduled field trials as posted on the area bulletin board; and

(b) December 18 through the third Monday in January.

(25) Mud Camp Creek WMA. The youth gun and muzzleloader seasons shall be open pursuant to statewide requirements.

(26) Mullins WMA. The youth gun and December muzzleloader seasons shall be open pursuant to statewide requirements.

(27) Ohio River Islands WMA, Stewart Island Unit.

(a) The muzzleloader season shall be for two (2) consecutive days beginning the third Saturday in October.

(b) The archery season shall be from the first Saturday in September through October 14.

(c) The crossbow season shall be from October 1 through October 14.

(d) The October youth gun season shall be open pursuant to statewide requirements.

(e) The remainder of the WMA shall be open pursuant to statewide requirements.

(28) Paintsville Lake WMA.

(a) The quota hunt shall be for two (2) consecutive days beginning the first Saturday in November.

(b) The December muzzleloader and youth gun seasons shall be open pursuant to statewide requirements.

(c) A person shall not use a gun for deer hunting on:

1. The area extending eastward from the drainage of Glade Branch, along the north edge of the lake, to the No Hunting Area surrounding Rocky Knob Recreation Area and enclosing all property from the WMA boundary downslope to the lake edge; and

2. The islands to the south and that portion of the area extending eastward along the south edge of the lake from the drainage of Shoal Branch to the No Hunting Area surrounding the dam and ranger station, and extending downslope to the edge of the lake.

(29) Peabody WMA.

(a) The youth gun and muzzleloader seasons shall be open pursuant to statewide requirements.

(b) The modern gun season shall be open pursuant to statewide requirements for ten (10) consecutive days beginning the second Saturday in November.

(30) Pennyrile State Forest-Tradewater WMA. The quota hunt shall be for two (2) consecutive days beginning the first Saturday in November.

(31) Ping-Sinking Valley WMA. The December muzzleloader and youth gun seasons shall be open pursuant to statewide requirements.

(32) Pioneer Weapons WMA. Statewide requirements shall apply except that a person:

(a) Shall not use a modern gun;

(b) Shall not use an in-line muzzleloader;

(c) Shall not use a scope;

(d) May use a crossbow during the entire archery season; and

(e) Shall use only open or iron sights on any weapon.

(33) Redbird WMA.

(a) The youth gun seasons shall be open pursuant to statewide requirements.

(b) The modern gun season shall be open pursuant to statewide requirements for two (2) consecutive days beginning the second Saturday in November.

(34) Dr. James R. Rich WMA.

(a) There shall be a quota hunt for two (2) consecutive days beginning on the first Saturday in:

1. November; and

2. December; and

(b) The youth gun and December muzzleloader seasons shall be open pursuant to statewide requirements.

(35) Robinson Forest WMA.

(a) A person shall not hunt deer on the main block of Robinson Forest.

(b) The remainder of the WMA shall be open pursuant to statewide requirements.

(36) Rockcastle River WMA.

(a) The youth gun seasons shall be open pursuant to statewide requirements.

(b) The modern gun season shall be open pursuant to statewide requirements for two (2) consecutive days beginning the second Saturday in November.

(37) Sloughs WMA.

(a) On the Sauerheber Unit, the archery, crossbow, muzzleloader, and youth gun seasons shall be open pursuant to statewide requirements through October 31.

(b) The remainder of the WMA shall be open pursuant to statewide requirements.

(38) South Shore WMA.

(a) The youth gun, October muzzleloader, and modern gun seasons shall be open pursuant to statewide requirements through November 14, except that the use of centerfire rifles and handguns shall be prohibited.

(b) The archery and crossbow seasons shall be open pursuant to statewide requirements, except that the area shall be closed November 15 through January 15.

(c) The December free youth weekend and December muzzleloader season shall be closed.

(39) T.N. Sullivan WMA. The youth gun and December muzzleloader seasons shall be open pursuant to statewide requirements.

(40) R.F. Tarter WMA. The youth gun and muzzleloader seasons shall be open pursuant to statewide requirements.

(41) Taylorsville Lake WMA.

(a) There shall be a quota hunt for two (2) consecutive days beginning the first Saturday in:

1. November; and

2. December.

(b) Seven (7) openings shall be reserved in each quota hunt for mobility-impaired persons.

(c) A quota hunt participant shall be given one (1) preference point for each ~~antlerless~~[female] deer checked in, up to a maximum of four (4) points.

(d) The youth gun and December muzzleloader seasons shall be open pursuant to statewide requirements.

(42) Twin Eagle WMA. The youth gun and December muzzleloader seasons shall be open pursuant to statewide requirements.

(43) Paul Van Booven WMA.

(44) Veteran's Memorial WMA.

(a) The December muzzleloader and youth gun seasons shall be open pursuant to statewide requirements.

(b) There shall be a quota hunt for two (2) consecutive days beginning the first Saturday in November[:

1. ~~November~~; and

2. ~~December for antlerless deer.~~

(c) ~~A participant in the December antlerless-only quota hunt shall be given one (1) preference point for each female deer checked in, up to a maximum of four (4) points.]~~

(45) West Kentucky WMA.

(a) All tracts shall be open pursuant to statewide requirements for the archery and crossbow seasons, except that the statewide archery and crossbow seasons shall be closed during department administered quota or mentor deer hunts[; mentor, and gun deer hunts].

(b) Tracts 1-6 shall be open to shotgun and muzzleloader hunters participating in the quota hunt[and open gun deer hunts].

(c) Tract 7 and "A" tracts shall not be open for department administered quota or mentor deer[or gun deer] hunts, except as established in paragraph (d) of this subsection.

(d) The "A" tracts shall be open to shotgun hunters participating in the mentor hunt.

(e) The quota hunt shall be for four (4) consecutive days beginning the Saturday prior to Thanksgiving.

(f) There shall be a mentor hunt for four (4) consecutive days beginning the Saturday prior to Thanksgiving in which:

1. There shall be no more than two (2) youths per adult;
2. There shall be no more than one (1) adult per youth; and
3. The adult may take a deer.

(g) ~~The gun hunt shall:~~

1. ~~Be for three (3) consecutive days beginning the Saturday preceding the third Monday in January;~~

2. ~~Require a hunter to check in at a designated check station from 4 p.m. to 8 p.m. Central time on the day before the hunt or between 4:30 a.m. and 7 p.m. Central time on hunt days;~~

3. ~~Require a hunter to check out at the designated check station:~~

a. ~~When finished hunting; or~~

b. ~~By 7 p.m. Central time on the final day of the hunt;~~

4. ~~Have an unlimited bag limit, only one (1) of which may be an antlered deer; and~~

5. ~~Require every person to check in during the gun hunt, except for:~~

a. ~~A person traveling on an established public road; or~~

b. ~~A person in an area designated as open by signs.~~

(h) ~~Gun hunters shall not use centerfire rifles or handguns.~~

(i) ~~[(i)] All persons shall check in daily at the designated check-in locations before entering the "A" tracts.~~

(j) ~~[(j)] A participant in the quota hunt, mentor hunt, or open gun hunt shall:~~

1. Sign in for the hunting tract of his or her choice at check-in prior to each day's hunt; and

2. Not hunt outside of that tract, except after noon.

(46) Yatesville WMA.

(a) The youth gun and muzzleloader seasons shall be open pursuant to statewide requirements.

(b) The modern gun season shall be open pursuant to statewide requirements for ten (10) consecutive days beginning the second Saturday in November.

(47) Yellowbank WMA. The December muzzleloader and youth gun deer seasons shall be open pursuant to statewide requirements.

Section 7. State Park Deer Seasons.

(1) A state park may allow archery and crossbow hunting from the first Saturday in September through the third Monday in January for antlered or antlerless deer.

(2) A state park may allow up to sixteen (16) days of modern gun hunting and up to eleven (11) days of muzzleloader hunting from the first Saturday in September through the third Monday in January

for antlered or antlerless deer.

(3) A state park shall be open to deer hunting as established in this subsection and Section 8 of this administrative regulation.

(a) Greenbo Lake State Resort Park. Archery and crossbow deer hunting shall be allowed beginning on the:

1. First Friday of November for three (3) consecutive days;

2. Second Friday of November for three (3) consecutive days; and

3. Deer hunting shall be allowed beginning on the first Tuesday of January for two (2) consecutive days.

(b) Green River Lake State Park.

1. Archery and crossbow deer hunting shall be allowed beginning on the second Thursday of December for four (4) consecutive days.

2. Archery and crossbow deer hunting shall be allowed beginning on the third Thursday of December for four (4) consecutive days.

(c) Dale Hollow Lake State Resort Park.

1. Archery and crossbow deer hunting shall be allowed beginning on the first Monday of November for five (5) consecutive days.

2. Youth deer hunting shall be allowed beginning on the second Saturday of December for two (2) consecutive days.

3. Deer hunting shall be allowed beginning on the first Saturday of January for two (2) consecutive days.

(d) Kenlake State Resort Park.

1. Archery and crossbow deer hunting shall be allowed beginning on the second Thursday of November for four (4) consecutive days.

2. Archery and crossbow deer hunting shall be allowed beginning on the first Saturday in January for two (2) consecutive days.

(e) Kincaid Lake State Park.

1. Deer hunting shall be allowed beginning on the first Thursday of December for four (4) consecutive days.

2. Deer hunting shall be allowed beginning on the second Thursday of December for four (4) consecutive days.

(f) Yatesville Lake State Park. Muzzleloader, archery, and crossbow deer hunting shall be allowed pursuant to statewide requirements on the Monday following the second Saturday of December for three (3) consecutive days.

(g) Jenny Wiley State Resort Park.

1. Deer hunting shall be allowed beginning on the first Saturday of January for two (2) consecutive days.

2. The bag limit shall be two (2) deer, only one (1) of which may be antlered.

3. The hunt shall be open to the first fifteen (15) mobility-impaired persons who check in at the park on the day before the hunt.

4. A person who participates in the hunt shall comply with the requirements established in 301 KAR 3:026.

Section 8. State Park Deer Hunt Requirements.

(1) A person shall not hunt on a state park unless:

(a) Selected by a random drawing as established in Section 3 of this administrative regulation;

(b) The person is a member of a successful applicant's quota hunt party;

(c) The person is participating in a deer hunt established in Section 7 of this administrative regulation; or

(d) The person successfully registers on a first-come, first-served basis as part of a process administered by the Department of Parks, at an area established in subparagraphs 1. through 6. of this paragraph:

1. Blue Licks Battlefield State Resort Park;

2. Carter Caves State Resort Park;

3. John James Audubon State Park;

4. Lake Barkley State Resort Park;

5. My Old Kentucky Home State Park; and

6. Taylorsville Lake State Park.

(2) A person participating in a state park quota hunt, except for the quota hunts at Green River Lake State Park and the Yatesville Lake State Park open deer hunt, shall:

(a) Check in and check out as required in Section 5 of this administrative regulation;

(b) Furnish at check-in a driver's license or other form of government-issued identification;

(c) Check in:

1. Between noon and 8 p.m. Eastern time the day before the hunt at the state park campground if hunting in the Yatesville Lake State Park open deer hunt; or

2. At the park the day before the hunt if hunting in the Jenny Wiley State Resort Park deer hunt; and

(d) Not be eligible to apply for a quota hunt the following year if the person does not check out as required in Section 5 of this administrative regulation.

(3) A person participating in a state park deer hunt shall:

(a) Comply with the requirements established in 301 KAR 2:172; and

(b) Check a harvested deer by completing the telecheck or online check-in process as established in 301 KAR 2:172.

(4) A person participating in a state park deer hunt shall not:

(a) Take more than one (1) antlered deer;

(b) Hunt over bait;

(c) Use:

1. A tree stand except a portable stand;

2. Climbing devices that nail or screw to the tree; or

3. Climbing spikes;

(d) Leave a deer stand unattended for more than twenty-four (24) hours;

(e) Discharge a gun within 100 yards of a maintained road or building; or

(f) Hunt:

1. In an area posted as closed by signs;

2. Outside park boundaries; or

3. From a ground blind, if gun deer hunting is allowed, unless first attaching a hat or vest made of solid, unbroken hunter orange material to the blind so that it is visible from all sides.

(5) A person participating in a state park deer hunt, other than the open hunts at Jenny Wiley State Resort Park and Yatesville Lake State Park and any department-administered state park quota hunt, may take up to two (2) bonus deer per hunt that shall not count toward the statewide limit if the person:

(a) Takes no more than one (1) bonus antlered deer per license year; and

(b) Obtains the valid bonus deer tag from the state park hunt administrators.

(6) A person participating in a state park deer hunt or in possession of harvested wildlife on state park property shall comply with all posted state park rules and regulations concerning the possession, storage, or disposal of harvested wildlife.

Section 9. Other Public Lands.

(1) On Daniel Boone National Forest, Jefferson National Forest, and Land Between the Lakes, a person shall not use bait.

(2) The areas established in paragraphs (a) through (g) of this subsection may schedule a gun, crossbow, or archery deer hunting season between September 1 and January 31:

(a) Big South Fork National River and Recreation Area;

(b) Clark's River National Wildlife Refuge;

(c) Daniel Boone National Forest;

(d) Jefferson National Forest;

(e) Land Between the Lakes National Recreation Area;

(f) Ohio River Islands National Wildlife Refuge; and

(g) Reelfoot National Wildlife Refuge.

(3) An area listed in subsection (2) of this section may issue a bonus permit for antlered or antlerless deer, which shall:

(a) Not count against a hunter's statewide bag limit; and

(b) Only be issued for a hunt that is open to the general public.

(4) At Land Between the Lakes, a person:

(a) Shall not take more than:

1. Two (2) deer during archery hunts; and

2. One (1) deer during quota hunts;

(b) Who is a quota deer hunter shall:

1. Apply in advance at Land Between the Lakes; and

2. Only hunt from one-half (1/2) hour before sunrise until one-

half (1/2) hour after sunset; and

(c) Who harvests a deer shall:

1. Check in the carcass pursuant to U.S. Forest Service requirements; and

2. Affix a game check card pursuant to U.S. Forest Service requirements.

(5) At Reelfoot National Wildlife Refuge:

(a) On the Long Point Unit, a valid hunting license and deer permit from either Kentucky or Tennessee shall be required for deer hunting.

(b) Zone 1 bag limits shall apply during the open archery season and quota youth hunt;

(c) A person shall not take more than two (2) deer by gun during the quota hunt, only one (1) of which shall be antlered;

(d) A quota gun hunt participant shall:

1. Tag deer as instructed by the Refuge; and

2. Comply with the Refuge check-in requirements; and

(e) A person who is archery hunting or in a quota youth hunt shall:

1. Only take deer using the appropriate statewide or additional deer permit; and

2. Check harvested deer through the department's telephone or online check-in systems.

(6) At Otter Creek Outdoor Recreation Area:

(a) The archery and crossbow seasons shall be open pursuant to statewide requirements; and

(b) There shall be a quota hunt for two (2) consecutive days beginning the second Saturday in December.

(7) At Twin Knobs Campground, the area shall be closed to all statewide seasons, except that there shall be a quota hunt on the second Saturday in December during odd-numbered years for mobility-impaired persons.

(8) At Zilpo Campground, the area shall be closed to all statewide seasons, except that there shall be a quota hunt on the second Saturday in December during even-numbered years for mobility-impaired persons.

Section 10. Special Areas under Federal Control.

(1) The areas established in paragraphs (a) through (e) of this subsection may schedule a gun, archery, or crossbow deer hunting season between September 1 and January 31:

(a) Bluegrass Army Depot;

(b) Fort Campbell;

(c) Fort Knox;

(d) Hidden Valley Training Center; and

(e) Wendell Ford Regional Training Center.

(2) An area listed in subsection (1) of this section may issue a bonus permit for antlered or antlerless deer, which shall:

(a) Not count against a hunter's statewide bag limit; and

(b) Only be issued for a hunt that is open to the general public.

(3) Except on the Hidden Valley Training area, on the areas listed in subsection (1) of this section, a deer hunter shall:

(a) Obtain a permit from the area before hunting;

(b) Only hunt on assigned dates;

(c) Remain in assigned areas;

(d) Tag deer with tags issued on the area, unless otherwise established in this section;

(e) Keep the area tag attached to the deer until the carcass is processed; and

(f) Check deer at a designated check station before leaving the area.

(4) At Bluegrass Army Depot, a person shall not take an antlered deer whose outside antler spread is less than fifteen (15) inches.

(5) At Fort Knox, a person shall:

(a) Not take an antlered deer whose outside antler spread is less than twelve (12) inches;

(b) Not use bait; and

(c) Record harvested deer on a Fort Knox harvest log and check harvested deer pursuant to area requirements and as established in 301 KAR 2:172.

(6) At Hidden Valley Training Area, a person shall not use a gun to hunt deer.

RICH STORM, Commissioner

APPROVED BY AGENCY: January 11, 2024

FILED WITH LRC: January 12, 2024 at 11:00 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 28, 2024, at 10:30 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 March 31, 2024. 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 manner in which white-tailed deer may be taken in Kentucky on public land.

(b) The necessity of this administrative regulation: Deer are a public resource entrusted to the state for management. As such, there must be regulations in place to control the method and manner in which deer may be taken.

(c) How this administrative regulation conforms to the content of the authorizing statutes: Conforms to KRS 150.010, 150.170, 150.340, 150.370, and 150.990 as these statutes allow the department to establish bag limits, season structure, penalties, etc. for the taking of wild deer.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation establishes the manner in which deer may be taken on public lands in Kentucky and therefore assists in the effective administration of the abovementioned statutes.

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

(a) How the amendment will change this existing administrative regulation: This amendment removes two additive hunts where the deer densities are below objective, changes the preference point option from female to antlerless deer, and establishes new requirements when utilizing portable stands on public properties.

(b) The necessity of the amendment to this administrative regulation: This amendment will allow for the deer population to increase on two of Kentucky's WMAs that're currently below objective. By changing the preference point option from any female to any antlerless deer, the department is mirroring language used in other regulations (e.g., 301 KAR 2:172) when establishing bag limits. Lastly, the new requirements on portable stands will allow law enforcement officers to better patrol public properties.

(c) How the amendment conforms to the content of the authorizing statutes: Conforms to KRS 150.010, 150.170, 150.340, 150.370, and 150.990 as these statutes allow the department to establish bag limits, season structure, penalties, etc. for the taking of wild deer.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will allow the department to better manage white-tailed deer take on public lands in Kentucky.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Removing the open gun hunt on West Kentucky WMA and the antlerless only hunt on Veteran's Memorial WMA does reduce opportunity for hunters that have historically utilized these hunts. Changing the preference point option from

female to antlerless allows for accrual of preference points when antlerless males or females are harvested instead of just female deer.

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

(a) List 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 required by aforementioned individuals.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The deer population should increase on the West Kentucky and Veteran's Memorial WMAs once these additive hunts are removed.

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

(a) Initially: No cost initially.

(b) On a continuing basis: No cost on a continuing basis; the WMAs affected by this amendment are already required to host staffed quota hunts in one form or another. Reducing two hunts will reduce costs associated with administering them.

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

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No additional fees will be established by this amendment.

(9) TIERING: Is tiering applied? No tiering is applied; all hunters have equal access to Kentucky's public properties and all have the ability to apply for quota hunts.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? No perceived impacts to the aforementioned groups.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.010, 150.170, 150.340, 150.370, and 150.990.

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

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

(c) How much will it cost to administer this program for the first year? No cost.

(d) How much will it cost to administer this program for subsequent years? No cost

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

Revenues (+/-):

Expenditures (+/-): KDFWR will save money historically needed to administer the quota hunts the agency is removing from West Kentucky and Veteran's Memorial WMAs.

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? KDFWR will save the money it historically cost to administer quota hunts on West Kentucky and Veteran's Memorial WMAs. Cost savings unknown, but staff time is largest cost saving associated with the amendment.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? Cost savings unknown, but staff time is largest cost saving associated with the amendment.

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

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

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

Cost Savings (+/-): The department will save money on the staff time it historically took to administer the hunts on West Kentucky and Veteran's Memorial WMAs.

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 significant economic impact intended.

ENERGY AND ENVIRONMENT CABINET
Department for Natural Resources
Division of Conservation
(Amendment)

416 KAR 1:010. Administration of Kentucky Soil Erosion and Water Quality Cost-share Fund.

RELATES TO: KRS 146.080- 146.115, 224.71-100-224.71-140, 262.010 – 262.660

STATUTORY AUTHORITY: KRS 146.110-146.115

NECESSITY, FUNCTION, AND CONFORMITY: KRS 146.110 through 146.115 authorize the Soil and Water Conservation Commission to promulgate administrative regulations governing administration of the Kentucky Soil Erosion and Water Quality Cost-share Fund, which provides cost-share assistance to persons engaged in agricultural and silvicultural production for implementation of best management practices for purposes such as providing cleaner water through the reduction in the loading of sediment, nutrients, and pesticides in Kentucky streams, rivers, and lakes; reducing the loss of topsoil vital to the sustained production of food and fiber; and preventing surface water and groundwater pollution. This administrative regulation establishes criteria for participation in that cost-share program.

Section 1. [Definitions.]

(1) "~~Agricultural or silvicultural production~~" means ~~any farm operation on a tract of land, including all income-producing improvements and farm dwellings, together with other farm buildings and structures incident to the operation and maintenance of the farm, used for the production of livestock, livestock products, poultry, poultry products, milk, milk products, or silviculture products, or for the growing of crops such as tobacco, corn, soybeans, small grains, fruit, and vegetables; or devoted to and meeting the requirements and qualifications for payments to agriculture programs under an agreement with the state or federal government.~~

(2) "~~Agriculture water quality plan~~" is defined by KRS 224.71-100(10).

(3) "~~Animal waste~~" means ~~feces, urine, or other excrement, digestive emission, urea, or similar substance emitted by animals~~

~~(including any form of livestock, poultry, or fish). This includes animal waste that is mixed or commingled with bedding, compost, feed, soil, or any other material typically found with this waste.~~

(4) "~~Applicant~~" means ~~a person who applies for cost-share assistance from the Kentucky Soil Erosion and Water Quality Cost-share Fund.~~

(5) "~~Available funds~~" means ~~moneys budgeted, unobligated, and distributed to the commission for the purposes of KRS 146.115.~~

(6) "~~Best management practices~~" means, ~~for agricultural or silvicultural production, the most effective, practical, and economical means of reducing and preventing water pollution provided by the United States Department of Agriculture Natural Resources Conservation Service and the Soil and Water Conservation Commission.~~

(7) "~~Case file~~" means ~~the collection of materials that are assembled and maintained for each application for cost-share assistance.~~

(8) "~~Conservation district~~" or "~~district~~" is defined by KRS 262.010(3).

(9) "~~Cost-share assistance~~" means ~~cost-share funds awarded by the commission from the Kentucky Soil Erosion and Water Quality Cost-share Fund.~~

(10) "~~District supervisor~~" means ~~a member of the governing board of a conservation district.~~

(11) "~~Eligible land~~" means ~~land on which agricultural or silvicultural production is being conducted.~~

(12) "~~Groundwater~~" means ~~subsurface water occurring in the zone of saturation beneath the water table and any perched water zones below the B soil horizon.~~

(13) "~~Performance and maintenance agreement~~" means ~~a written agreement between an eligible person and the district in which the eligible person agrees to implement and to maintain the best management practices for which cost-share assistance is being awarded.~~

(14) "~~Program year~~" means ~~the period from July 1 to June 30.~~

(15) "~~Soil and Water Conservation Commission~~" or "~~commission~~" means ~~the commission established by KRS 146.090.~~

(16) "~~Surface water~~":

(a) Means ~~those waters having well-defined banks and beds, either constantly or intermittently flowing; lakes and impounded waters, marshes, and wetlands; and any subterranean waters flowing in well-defined channels and having a demonstrable hydrologic connection with the surface; and~~

(b) Does not mean ~~effluent ditches and lagoons used for waste treatment that are situated on property owned, leased, or under valid easement by a permitted discharger.~~

(17) "~~Water priority protection region~~" means ~~an area specifically delineated where water pollution from agricultural or silvicultural production has been scientifically documented.~~

(18) "~~Watershed~~" means ~~all the area from which all drainage passes a given point downstream.~~

Section 2. [Eligibility of Persons.]

(1) Eligible persons. Persons conducting agricultural or silvicultural production shall be eligible to receive cost-share assistance for best management practices if:

(a) The person has prepared an agriculture water quality plan; and

(b) The person agrees to perform and to maintain best management practices for the period of time established by the commission.

(2) Ineligible persons. A person engaged in agricultural or silvicultural production shall not be eligible for further cost-share assistance if the applicant has:

(a) Failed or refused to comply with agriculture water quality planning requirements and has been deemed a "bad actor" pursuant to KRS 224.71-130; or

(b) Failed to comply with practice lifespans or complete previous cost-share projects within five (5) years prior to the application date.

Section 2. [Section 3.] Eligible Best Management Practices.

(1) Purposes of best management practices. The Kentucky Soil Erosion and Water Quality Cost-share Funds shall be used to provide cost-share assistance for development and implementation of best management practices for:

- (a) Providing cleaner water through the reduction in sediment loading of Kentucky streams, rivers, and lakes;
 - (b) Reducing the loss of topsoil vital to sustain production of food and fiber; and
 - (c) Preventing surface water and groundwater pollution.
- (2) Approved best management practices. Complete listings of eligible best management practices are contained in the [2019] Kentucky Soil Erosion and Water Quality Cost-Share Practice Handbook.

Section 3.[~~Section 4.~~] Solicitation of Applications.

- (1) The commission shall establish for each program year a deadline for submittal of applications for cost-share assistance.
- (2) Each conservation district shall provide an opportunity for persons within the district to submit applications in time for the next program year by advertising the availability of cost-share assistance in appropriate news media, such as electronic media, local newspapers, local radio stations, and any newsletters published by the district.

Section 4.[~~Section 5.~~] Contents and Completion of Applications.

- (1) Contents of application. An applicant shall submit to the [conservation-]district in which the eligible land is located the Kentucky Soil and Water Cost Share Program Application, found at <https://dep.gateway.ky.gov/eForms/Main/Forms.aspx>, in order to apply for cost-share assistance. The applicant shall include with the application:
 - (a) An agriculture water quality plan in effect for the eligible land that is compliant with KRS 224.71-120 and updated to be current with the Statewide Agriculture Water Quality Plan authorized by KRS 224.71-110; and
 - (b) If known to the applicant or as made in consultation with the appropriate technical agency, the anticipated total cost of the best management practice to be implemented and the percentage, if any, of the cost that the applicant proposes to bear, which percentage shall not be less than minimums established by the commission for the particular best management practice.
- (2) An applicant applying for cost-share funds for best management practices involving nutrient storage shall include a nutrient management plan as established in the Statewide Agriculture Water Quality Plan.
- (3) (a) Completion of applications. An applicant who does not have an agriculture water quality plan that is compliant with KRS 224.71-120 and updated to be current with the Statewide Agriculture Water Quality Plan authorized by KRS 224.71-110, in effect for the eligible land, or who has not determined the anticipated total cost of the requested best management practice may request technical assistance from the [conservation-]district in developing a best management practices plan and determining costs.
 - (b) If the best management practices plan has been developed and the anticipated total cost determined, the application shall be reviewed in accordance with the eligibility and prioritization criteria established by this administrative regulation.

Section 5.[~~Section 6.~~] Review of Applications.

- (1) Each [conservation-]district shall review and determine the eligibility of all applications submitted to the district by the established deadline.
- (2) The board of supervisors for the district shall vote upon eligibility at a meeting conducted in accordance with the Open Meetings Law, KRS 61.805 to 61.850, and record the outcome in the minutes of the board of supervisors for that meeting.
- (3) A district supervisor who is also an applicant for cost-share assistance shall not vote on eligibility.
- (4) The district shall forward the applications to the commission within fifteen (15) days after determining eligibility.

Section 6.[~~Section 7.~~] Prioritization of Applications. The commission shall prioritize the applications of persons determined by the [conservation-]districts to be eligible for cost-share assistance and shall make the final award of cost-share assistance.

- (1) Classification of priorities. Applications shall be prioritized based on:

- (a) Applicants conducting agricultural or silvicultural production needing animal waste management systems where animal waste has been identified by the Energy and Environment Cabinet as a water pollution problem; and
 - (b) Applicants who are members of agricultural districts.
- (2) Applications within each classification established in subsection (1) of this section shall be prioritized based on:
- (a) 1. Presence of water pollution, based on:
 - a. Notification by a local, state, or federal agency that the applicant's agricultural or silvicultural production has caused or contributed to water pollution;
 - b. Determination of the Energy and Environment Cabinet that a surface water affected by the applicant's agricultural or silvicultural production is not meeting its designated use;
 - c. Identification by the Energy and Environment Cabinet of a water priority protection region encompassing the location of the applicant's agricultural or silvicultural production; or
 - d. Other documentation of water pollution, such as through a biological assessment; or
 - 2. Potential for development of water pollution from agricultural or silvicultural production in the watershed in which the applicant's agricultural or silvicultural production is being conducted;
 - (b) Types of water pollutants:
 - 1. Animal waste;
 - 2. Sediment run-off;
 - 3. Nutrient loading; or
 - 4. Pesticide application, storage or disposal;
 - (c) Proximity of pollutant to groundwater or surface water;
 - (d) Magnitude of water pollution; and
 - (e) Location in a priority watershed as established by the Agriculture Water Quality Authority or Division of Water including a source water protection area.

Section 7.[~~Section 8.~~] Allocation of Cost-share Assistance.

- (1) The available funds received by the commission for the cost-share program shall be held by the [Kentucky-]Division of Conservation and disbursed to the [conservation-]districts based on requests from the districts approved by the commission after a practice has been completed and all paperwork has been signed as complete and submitted for payment. The district shall be granted a share of the Kentucky Soil Erosion and Water Quality Cost-share Fund that shall be held by the division[~~Kentucky Division of Conservation~~] based on the commission's approval of an initial district request in accordance with the prioritization system established in Section 6[~~7~~] of this administrative regulation.
- (2) Any funds granted by the commission and distributed by the division[~~Kentucky Division of Conservation~~] to a district for a practice that results in overpayment shall revert to the commission if the district has not received prior permission to obligate the funds to another applicant within one (1) year from receipt.
- (3) The commission shall retain ten (10) percent of the annual appropriation in a contingency fund to be allocated to assist persons engaged in agricultural or silvicultural productions and implementing the agriculture water quality program mandated by Subchapter 71 of KRS Chapter 224.

Section 8.[~~Section 9.~~] Design of Best Management Practices. Once cost-share assistance has been awarded by the commission, the local district shall designate a technician to develop final design and layout for the approved best management practices.

Section 9.[~~Section 10.~~] Execution of Performance and Maintenance Agreements. After an application has been awarded cost-share assistance and before the applicant has received payment of the cost-share funds, the applicant and the [conservation-]district shall execute a performance and maintenance agreement.

- (1) Requirements of performance and maintenance agreements. The performance and maintenance agreement shall require the applicant to comply with paragraphs (a) through (d) of this subsection.
 - (a) The applicant shall agree to perform those best management practices approved in accordance with this administrative regulation.
 - (b) The applicant shall agree to maintain approved best management practices for the expected life of each practice agreed

upon in the performance and maintenance agreement.

(c) Upon completion of the approved best management practice, the applicant shall notify the district that the practice has been installed and shall provide to the district for its inspection all vouchers, bills, and receipts associated with the practice.

(d) The applicant shall agree that at the time of transfer of ownership of land where a best management practice has been applied using cost-share assistance and the expected life assigned the practice has not expired, the applicant shall execute a contract with the transferee requiring continuation of those practices until completed.

(e) Approved applicants shall complete the practice within one (1) year from the date of approval. Upon request, the ~~division~~[Division of Conservation] shall grant a six (6) month extension per approved application. After two (2) extensions have been granted and expired, the landowner shall forfeit the right to the funds.

(2) Effect of performance and maintenance agreement. Requirements for performance and maintenance of best management practices applied using cost-share assistance shall be established in the performance and maintenance agreement and reviewed with the applicant at the time of application submittal and before completion of a certification of practices.

(3) Refund of funds disbursed.

(a) The district shall require a refund of cost-share assistance funds if the district determines:

1. An approved best management practice has not been maintained in compliance with approved design standards and specifications for the practice during its expected life as agreed in the performance and maintenance agreement; or

2. a. The applicant voluntarily relinquishes control or title to the land on which the best management practice that was installed using cost-share funds and the new owner, heir, or operator does not agree in writing to properly maintain the practice for the remainder of the lifespan.

b. If the applicant voluntarily relinquishes control or title to the land on which the best management practice that was installed using cost-share funds pursuant to clause a. of this subparagraph, then the applicant shall only be responsible for refunding to the district the amount of funds prorated on the number of years remaining in the best management practice maintenance agreement.

(b) 1. If the district determines that the applicant shall refund the amount of the cost-share, the applicant shall have thirty (30) days to make payment to the district. The district may grant the applicant an extension of time to make the refund upon the submission of a written request by the applicant.

2. If the applicant fails to timely refund the amount of the cost-share, the district shall refer the matter to the commission.

3. If the district declines to seek a refund, the district shall state its reason for not doing so and notify the commission and the applicant. The commission shall review the matter to determine whether or not to seek a refund.

4. If the commission becomes aware of a situation in paragraphs (a)1. or (a)2. of this subsection, and the district fails to review the matter, the commission shall conduct a review of the matter and determine whether or not to seek a refund.

5. The commission shall be authorized to recover the amount of the cost-share by initiating a legal action in the Franklin Circuit Court.

(4) Application for future cost-share assistance. Best management practices that have been successfully completed and that later fail as the result of floods, drought, or other natural disasters, and not the fault of the applicant, shall not prohibit the applicant from applying for additional cost-share assistance to restore the practices to their original design standards and specifications.

(5) Certification. Upon notification by the applicant that the approved best management practice has been completed and before disbursement of funds from the district, the appropriate technical agency shall certify to the district that the practice has been installed in accordance with the [2019-]Kentucky Soil Erosion and Water Quality Cost-Share Practice Handbook.

(6) Limitations on awards.

(a) Cost-share assistance awarded to an applicant shall be limited to a maximum of seventy-five (75) percent of the actual cost, not to exceed an amount approved by the commission, for each best

management practice, with the assisted applicant providing twenty-five (25) percent of the cost, which may include in-kind support, with a maximum of \$20,000 per year.

(b) An applicant shall only submit one application per program year.

(c) Cost-share assistance may be used with federal or local cost-share funds on the same practices if the total cost share payment does not exceed seventy-five (75) percent of the practice cost.

(d) Cost-share assistance shall not be awarded to best management practices in progress prior to cost-share approval or previously-installed practices by the applicant.

Section 10.[~~Section 11.~~] Reporting and Accounting. District reporting and accounting. A district shall:

(1) Maintain a control ledger showing the current approved applications to the commission and cost share approved amounts for approved applications, based on estimated cost;

(2) Submit a ~~monthly~~[quarterly] report to the commission indicating any unobligated balance of allocated and disbursed cost-share funds as shown on each ledger;

(3) Submit an annual progress report to the commission showing accomplishments "to date" for the current program year; and

(4) Assemble case files for each approved application, filed by program year and accessible for public inspection, containing:

(a) The approved application for allocated funds;

(b) A copy of the estimated cost sheet;

(c) Certification of practice completion;

(d) Applicant's vouchers, bills, or receipts;

(e) Final designs for best management practices;

(f) The performance and maintenance agreement;

(g) Any amendments to the performance and maintenance agreement; and

(h) A map locating the practices.

Section 11.[~~Section 12.~~] Appeals.

(1) Procedure for filing appeal. An applicant aggrieved by a decision of the commission denying an application or limiting the amount of financial assistance may file a written appeal with the commission. The appeal shall be filed within thirty (30) days of the decision and shall state the basis for the appeal.

(2) Procedure for hearing appeal.

(a) The commission shall notify the applicant and the local district that they may appear before the commission and present testimony or written documentation on the issues presented by the appeal.

(b) The commission shall have sixty (60) days in which to make a decision and to notify the local district and the applicant.

(3) Review of final decision. The decisions of the commission may be appealed to the Franklin Circuit Court.

Section 12.[~~Section 13.~~] Incorporation by Reference.

(1) "[The 2019-]Kentucky Soil Erosion and Water Quality Cost-Share Practice Handbook", December 2023[~~October 2019~~] is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Conservation, 300 Sower Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m., Eastern Standard Time.

(3) This material may also be obtained at the Division of Conservation's Web site at <https://eec.ky.gov/Natural-Resources/Conservation/Pages/State-Cost-Share.aspx>.

REBECCA W. GOODMAN, Secretary

APPROVED BY AGENCY: December 22, 2023

FILED WITH LRC: December 22, 2023 at 11:50 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 26, 2024 at 5:00 p.m. (Eastern Time) in Training Room C of the Energy and Environment Cabinet at 300 Sower Blvd, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to

comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through March 31, 2024. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Dawn Baase, Environmental Scientist Consultant, Department for Natural Resources, Office of the Commissioner, 300 Sower Blvd, 2nd Floor, Frankfort, Kentucky 40601, Phone: (502) 782-6311, Fax: (502) 564-4245, Email: Dawn.Baase@ky.gov

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Dawn Baase

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes criteria for participation in the Kentucky Soil Erosion and Water Quality Cost-share program.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish criteria for participation in the Kentucky Soil Erosion and Water Quality Cost-share program and to establish other program requirements.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 146.110 through 146.115 authorize the Soil and Water Conservation Commission to promulgate administrative regulations governing administration of the Kentucky Soil Erosion and Water Quality Cost-share Fund.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing the requirements to receive cost-share funds.

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

(a) How the amendment will change this existing administrative regulation: This amendment removes the definitions to this administrative regulation, which will be moved to a new administrative regulation that will house all the definitions for 416 KAR Chapter 1. The reporting requirement is amended to require conservation districts to report monthly to the Division of Conservation. It also amends the Kentucky Soil Erosion and Water Quality Cost-Share Practice Handbook incorporated by reference.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to move the definitions from administrative regulation to a new administrative regulation that will house all the definitions for 416 KAR Chapter 1. The reporting requirement is amended from quarterly to monthly to be consistent with other reporting deadlines to the Division of Conservation. Amendments to the Kentucky Soil Erosion and Water Quality Cost-Share Practice Handbook incorporated by reference are necessary to correct grammatical errors, amend nomenclature, and to add best management practices that were previously omitted.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the authorizing statutes by continuing to provide financial assistance to persons implementing best management practices for the purpose of providing cleaner water by reducing sediment loading, reducing topsoil loss, and preventing surface water and groundwater pollution.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will allow for the removal of definitions that are to be moved to a new administrative regulation that will house all the definitions for 416 KAR Chapter 1 in a central location. It also amends the Kentucky Soil Erosion and Water Quality Cost-Share Practice Handbook incorporated by reference, which will assist applicants in selecting best management practices available under the cost-share program.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are 121 conservation districts in the Commonwealth. In FY22 and FY23 an average of 1976 farmers applied for cost-share grants. In FY22 \$4,301,477 in funds were

awarded and \$4,203,631 in FY23.

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

(a) List 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 be required to submit a report indicating any unobligated balance of awarded cost-share funds on a monthly basis.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The entities identified will not cost the entities additional funds.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The entities identified do not have any additional benefits due to the amendments to this administrative regulation.

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

(a) Initially: There is no costs associated with the implementation of this amendment.

(b) On a continuing basis: There will be no costs associated with the implementation of this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This administrative regulation will not require an additional source of funding. The Kentucky Soil Erosion and Water Quality Cost-share Fund was established in 1994 and funded from general funds and pesticide Production Registration Fees. Beginning in 2000, the program has been funded through Tobacco Master Settlement Agreement 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 amendments to the administrative regulation will not require an increase in fees or funding.

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

(9) TIERING: Is tiering applied? No, tiering is not applied to this administrative regulation. All entities may apply to receive cost-share funds. Funding is awarded based on availability and the project proposed.

FISCAL NOTE

(1) What 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 Soil and Water Conservation Commission, Division of Conservation, and county conservation districts.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 146.110-146.115.

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

(a) How much 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 amendments to this administrative regulation will not generate additional revenue for state or local government.

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

(c) How much will it cost to administer this program for the first year? The program associated with this administrative regulation will be administered using the cabinet's current budget.

(d) How much will it cost to administer this program for subsequent years? The program associated with this administrative regulation will be administered using the cabinet's normal budget 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 (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

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

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

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

(c) How much will it cost the regulated entities for the first year? The amendments to this administrative regulation will not cost regulated entities.

(d) How much will it cost the regulated entities for subsequent years? The amendments to this administrative regulation will not cost regulated entities in subsequent years.

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

Cost Savings (+/-): There is no known cost savings.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

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

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Fiscal Management
(Amendment)

907 KAR 1:065. Payments for price-based nursing facility services.

RELATES TO: KRS 142.361, 142.363, 216.380, 42 C.F.R. Parts 430, 431, 432, 433, 435, 440, 441, 442, 447, 455, 456, 482.58, 483.10, 42 U.S.C. 1395tt, 1396, 1396a, 1396b, 1396c, 1396d, 1396g, 1396l, 1396n, 1396o, 1396p, 1396r, 1396r-2, 1396r-5

STATUTORY AUTHORITY: KRS 142.361(5), 142.363(3), 194A.030(2), 194A.050(1), 205.520(3)

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, has responsibility to administer the Medicaid program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes the method for determining amounts payable by the Medicaid program for services provided by a price-based nursing facility.

Section 1. Definitions.

(1) "Ancillary service" means a direct service ~~[for which a charge is customarily billed separately from the per diem rate]~~ including:

(a) Ancillary services pursuant to 907 KAR 1:023; or

(b) If ordered by a physician:

1. Laboratory procedures; or

2. X-rays.

(2) "Appraisal" means an evaluation of a price-based nursing facility building, excluding equipment and land, conducted by the department in accordance with Section 4 of this administrative regulation for the purpose of calculating the depreciated replacement cost of a price-based nursing facility.

(3) "Appraisal base year" means a year in which the department conducts an appraisal of each price-based NF.

(4) "Auxiliary building" means a roofed and walled structure:

(a) Serviced by electricity, heating, and cooling;

(b) Independent of an NF;

(c) Used for administrative or business purposes related to an NF; and

(d) Constructed on the same tract of ground as an NF.

(5) "Capital rate component" means a calculated per diem amount for an NF based on:

(a) The NF's appraised depreciated replacement cost;

(b) A value for land;

(c) A value for equipment;

(d) A rate of return;

(e) A risk factor;

(f) The number of calendar days in the NF's cost report year;

(g) The number of licensed NF beds in the NF; and

(h) The NF's bed occupancy percentage.

(6) "Case-mix" means the time-weighted average price-based NF acuity for Medicaid-eligible and dual-eligible Medicare and Medicaid residents under a Medicare Part A reimbursed stay in a price-based nursing facility, and is based on Minimum Data Set (MDS) 3.0 data classified through the Patient Driven Payment Model (PDPM)[RUG-III, M3 p1, (version 5.20) ~~thirty-four (34) group model~~] resident classification system or equivalent.

(7) "Core based statistical area" or "CBSA" means the designation of metropolitan and micropolitan population centers based on the national census, as published by the Federal Office of Management and Budget.

(8) "Department" means the Department for Medicaid Services or its designee.

(9) "Equipment" means a depreciable tangible asset, other than land or a building, which is used in the provision of care for a resident by an NF staff person.

(10) "Governmental entity" means a unit of government for the purposes of 42 U.S.C. 1396b(w)(6)(A).

(11) "Hospital-based NF" means an NF that:

(a) Is separately identifiable as a distinct part of the hospital; and

(b) If separated into multiple but distinct parts of a single hospital, is combined under one (1) provider number.

(12) "Land" means a surveyed tract or tracts of ground that share a common boundary:

(a) As recorded in a county government office;

(b) Upon which a building licensed as an NF is constructed; and

(c) Including site preparation and improvements.

(13) "Local unit of government" means a city, county, special purpose district, or other governmental unit in the state.

(14) "NF" or "nursing facility" means:

(a) A facility:

1. To which the state survey agency has granted an NF license;

2. For which the state survey agency has recommended to the department certification as a Medicaid provider; and

3. To which the department has granted certification for Medicaid participation; or

(b) A hospital swing bed that provides services in accordance with 42 U.S.C. 1395tt and 1396l, if the swing bed is certified to the department as meeting requirements for the provision of swing bed services in accordance with 42 U.S.C. 1396r(b), (c), (d), 42 C.F.R. 447.280, and 482.58.

(15) "NF building" means a roofed and walled structure serviced by electricity, heating, and cooling and that is also an NF.

(16) "Nursing facility with Medicaid waiver" or "NF-W" means an NF to which the state survey agency has granted a waiver of the nursing staff requirement.

(17) "Provider assessment" means the assessment imposed by KRS 142.361 and 142.363.

(18) "Routine services" means the services covered by the Medicaid program pursuant to 42 C.F.R. 483.10(f)(11)(i).

(19) "Site improvement" means a depreciable asset element, other than an NF building or auxiliary building, on NF land extending beyond an NF's foundation if used for NF-related purposes.

(20) "Standard price" means a facility-specific reimbursement that includes a case-mix adjusted component, noncase-mix adjusted component including an allowance to offset a provider assessment, noncapital-facility related component, and capital rate component.

(21) "State survey agency" means the Cabinet for Health and Family Services, Office of Inspector General, Division of Health Care.

(22) "Time-weighted" means a method of calculating case-mix by determining the number of days that a minimum data set (MDS) record is active over a calendar quarter rather than captured from a single day during the calendar quarter.

Section 2. NF Reimbursement Classifications and Criteria.

(1) An NF or a hospital-based NF shall be reimbursed as a price-based NF pursuant to this administrative regulation if:

(a) It provides NF services to an individual who:

1. Is a Medicaid recipient;

2. Meets the NF patient status criteria pursuant to 907 KAR 1:022; and

3. Occupies a Medicaid-certified bed; and

(b) 1. It has more than ten (10) NF beds and the greater of:

a. Ten (10) of its Medicaid-certified beds participate in the Medicare program; or

b. Twenty (20) percent of its Medicaid certified beds participate in the Medicare program; or

2. It has less than ten (10) NF beds and all of its NF beds participate in the Medicare program.

(2) An NF-W shall be reimbursed as a price-based NF pursuant to this administrative regulation if it meets the criteria established in subsection (1)(a) of this section.

(3) The following shall not be reimbursed as a price-based NF and shall be reimbursed pursuant to 907 KAR 1:025:

(a) An NF with a certified brain injury unit;

(b) An NF with a distinct part ventilator unit;

(c) An NF designated as an institution for mental disease;

(d) A dually-licensed pediatric facility; or

(e) An intermediate care facility for individuals with an intellectual disability.

Section 3. Reimbursement for Federally-Defined Swing Beds and for Skilled Nursing Facility Services in Critical Access Hospital Swing Beds.

(1) The reimbursement rate for a federally-defined swing bed shall be:

(a) The average rate per patient day paid to freestanding price-based NFs for routine services furnished during the preceding calendar year, excluding any payment made pursuant to Section 14 of this administrative regulation; and

(b) Established effective January 1 of each year.

(2)(a) The department shall reimburse a critical access hospital for skilled nursing facility services in a swing bed at the same rate as established by the Centers for Medicare and Medicaid Services for Medicare.

(b) The department shall pay an interim per diem rate as established by CMS for the Medicare program.

(c) The effective date of a rate shall be the same as used by the Medicare program.

(d) A critical access hospital's final reimbursement for skilled nursing facility services in a swing bed shall reflect any adjustment made by the Centers for Medicare and Medicaid Services.

(e) Total payments made to a critical access hospital for skilled nursing facility services provided in a swing bed under this section shall be subject to the payment limitation established in 42 C.F.R. 447.271.

(f) The provisions established in this subsection shall apply to a critical access hospital that complies with all requirements established in KRS 216.380.

Section 4. Price-based NF Appraisal.

(1) The department shall appraise a price-based NF to determine the facility specific capital component in 2009, and every fifth year, in order to calculate the NF's depreciated replacement cost.

(2) The department shall not appraise equipment or land. A provider shall be given the following values for land and equipment:

(a) Ten (10) percent of an NF's average licensed bed value for land; and

(b) \$2,000 per licensed NF bed for equipment.

(3) The department shall utilize the following variables and fields of the nursing home or convalescent center CoreLogic Commercial Express [5200 model of the Marshall & Swift Boeckh Building] Valuation System [(BVS)] to appraise an NF identified in Section 2(1) of this administrative regulation:

(a) Provider number;

(b) Property owner - NF name;

(c) Address;

(d) Zip code;

(e) Section number - the lowest number shall be assigned to the oldest section and a basement, appraised as a separate section, immediately follows the section it is beneath;

(f) Occupancy code - nursing home or substructure;

(g) Average story height;

(h) Construction type;

(i) Number of stories;

(j) Gross floor area (which shall be the determination of the exterior dimensions of all interior areas including stairwells of each floor, specifically excluding outdoor patios, covered walkways, carports, and similar areas). In addition, interior square footage measurements shall be reported for:

1. A non-NF area;

2. A shared service area by type of service; and

3. A revenue-generating area;

(k) Gross perimeter (common walls between sections shall be excluded from both sections);

(l) Construction quality;

(m) Year built;

(n) Building effective age;

(o) Building condition;

(p) Depreciation percent;

(q) Exterior wall material;

(r) Roof covering material and roof pitch;

(s) Heating system;

(t) Cooling system;

(u) Floor finish;

(v) Ceiling finish;

(w) Partition wall structure and finish;

(x) Passenger and freight elevators - actual number;

(y) Fire protection system (sprinklers, manual fire alarms, and automatic fire detection) - percent of gross area served. If both the floor and attic areas are protected by a sprinkler system or automatic detection, the percent of gross area served shall be twice the floor area; and

(z) Miscellaneous additional features, which shall be limited to:

1. Canopies;

2. Entry foyers (sheltered entry ways):

a. The glass and aluminum standard allowance shall be fifty (50) [thirty (30)] dollars per square foot;

b. Bulkhead standard allowance shall be:

(i) Eleven (11) [Seven (7)] dollars per square foot for a wood frame;

(ii) Twelve (12) [Eight (8)] dollars per square foot for a steel frame; or

(iii) Thirty-one (31) [Twenty (20)] dollars per square foot for brick masonry;

3. Loading docks;

4. Code alerts, Wanderguards, or other special electronically-secured doorways, except for a door with a sound detector or sensing unit (the standard allowance shall be \$1,420 [\$1,500] for each fully-functioning door at the time of appraisal);

5. A door with a sound detector or sensing unit shall have a standard allowance of \$865 [\$500] per door;

6. Automatic sliding doors (the standard allowance shall be ~~\$25,450~~~~[\$17,000]~~ per doorway);

7. An automatic door opener shall have a standard allowance of ~~\$9160~~~~[\$6,500]~~ per door;

8. Detached garages or storage sheds (which shall have an attached reinforced concrete floor and a minimum of 200 square feet);

9. Modular buildings or trailers, if the structure has a minimum of 200 square feet, electrical service, and heating or cooling services (the standard allowance shall be ~~eighty (80)~~~~[fifty-six (56)]~~ dollars per square foot);

10. Walk-in coolers or freezers;

11. Laundry chutes (the standard allowance shall be ~~\$2,530~~~~[\$2,100]~~ per floor serviced);

12. Dumb waiters (which shall have a minimum speed of fifty (50) feet per minute. The standard allowance shall be ~~\$20,500~~~~[\$8,000]~~ for the initial two (2) stops for a manual door or ~~\$52,520~~~~[\$21,000]~~ for the initial two (2) stops for an electric door and ~~\$5,050~~~~[\$7,000]~~ per additional stop);

13. Skylights (the standard allowance shall be ~~fifty-seven~~~~[forty (40)]~~ dollars per square foot);

14. Operable built-in oxygen delivery systems (valued at ~~\$425~~~~[\$300]~~ per serviced bed);

15. Carpeted wainscoting (the standard allowance shall be ~~eighty (80)~~~~[sixty (60)]~~ dollars per licensed bed);

16. Balconies;

17. Ceiling fans for which the standard allowance shall be ~~\$375~~~~[\$250]~~ for each ceiling fan without a light and ~~\$675~~~~[\$400]~~ for each ceiling fan with a light;

18. Cupolas for which the standard allowance shall be ~~\$990~~~~[\$720]~~ each;

19. Fireplaces;

20. Concrete-lined utility tunnels for which the standard allowance shall be ~~thirty-two~~~~[twenty-five (25)]~~ dollars per cubic foot; and

21. Mechanical penthouses.

(4) An item listed in subsection (3)(z) of this section shall be subject to the CoreLogic Commercial Express valuation system~~[Marshall & Swift Boeckh BVS model #5200]~~ monetary limit unless a monetary limit is provided for that item in subsection (3)(z) of this section.

(5) The department shall use the corresponding CoreLogic Commercial Express valuation system~~[Marshall & Swift Boeckh BVS]~~ default value for any variable listed in subsection (3) of this section if no other value is stated for that variable in subsection (3) of this section.

(6)(a) Values from the most recent CoreLogic Commercial Express valuation system~~[Marshall & Swift Boeckh BVS]~~ tables shall be used during an appraisal.

(b) An adjustment calculation shall be performed if the most recent CoreLogic Commercial Express valuation system~~[Marshall & Swift Boeckh BVS]~~ tables do not correspond to an appraisal base year.

(7) In addition to an appraisal cited in subsection (1) of this section, the department shall appraise an NF identified in Section 2(1) of this administrative regulation if:

(a) The NF submits written proof of construction costs to the department; and

(b)1. The NF undergoes renovations or additions costing a minimum of \$150,000 and the NF has more than sixty (60) licensed beds; or

2. The NF undergoes renovations or additions costing a minimum of \$75,000 and the NF has sixty (60) or fewer licensed beds.

(8) An auxiliary building shall be:

(a) Appraised if it rests on land, as defined in Section 1(12) of this administrative regulation; and

(b) Appraised separately from an NF building.

(9) To appraise an auxiliary building, the department shall utilize a CoreLogic Commercial Express valuation system~~[Marshall & Swift Boeckh BVS model other than the nursing home or convalescent center #5200]~~ model, if the model better fits the auxiliary building's use and type.

(10) If an NF building has beds licensed for non-NF purposes or a provider conducts business activities not related to the NF, the appraisal shall be adjusted between NF and non-NF activity. The appraiser shall determine if the adjustment shall be made by dividing the number of licensed NF beds by the total number of beds, or through the use of an adjustment factor determined in accordance with appraisal industry standards by the appraiser, regardless of the occupancy factor. For example, an adjustment factor may be used to apportion the appraisal by the percent of NF square footage relative to the square footage on non-NF-related business activities.

(11) Cost of an appraisal shall be the responsibility of the NF being appraised.

(12) A building held for investment, future expansion, or speculation shall not be considered for appraisal purposes.

(13) The department shall not consider the following location factors in rendering an appraisal:

- (a) Climate;
- (b) High-wind zone;
- (c) Degree of slope;
- (d) Position;
- (e) Accessibility; or
- (f) Soil condition.

Section 5. Standard Price Overview.

(1) Rates shall reflect the differential in wages, property values, and cost of doing business in rural and urban designated areas.

(2)~~[(a) Except as provided by paragraph (b) of this subsection, and beginning in 2018,] On July 1 of each year, the department shall utilize the most recent Federal Office of Management and Budget's core based statistical area (CBSA) designations to classify an NF as being in an urban or rural area, with metropolitan areas always being classified as urban. The urban and rural designations shall be based on the location of the NF under the CBSA designation.~~

~~[(b)1. On July 7, 2017, the department shall utilize the most recent Federal Office of Management and Budget's core based statistical area (CBSA) designations to classify an NF as being in an urban or rural area, with metropolitan areas classified as urban. The urban and rural designations shall be based on the location of the NF under the CBSA designation.~~

~~2. On July 7, 2017, a change in designation from:~~

- ~~a. Rural to urban shall take effect on July 1, 2017; and~~
- ~~b. Urban to rural shall take effect July 1, 2018.]~~

(3) The department shall utilize an analysis of fair-market pricing and historical cost for the following data:

- (a) Staffing ratios;
- (b) Wage rates;
- (c) Cost of administration, food, professional support, consultation, and nonpersonnel operating expenses as a percentage of total cost;
- (d) Fringe benefit levels;
- (e) Capital rate component; and
- (f) Noncapital facility-related component.

(4) The following components shall comprise the case-mix adjustable portion of an NF's standard price:

- (a) The personnel cost of:
 - 1. A director of nursing;
 - 2. A registered nurse (RN);
 - 3. A licensed practical nurse (LPN);
 - 4. A nurse aide;
 - 5. An activities staff person; and
 - 6. A medical records staff person; and
- (b) Nonpersonnel operating cost including:
 - 1. Medical supplies; and
 - 2. Activity supplies.

(5) The following components shall comprise the noncase-mix adjustable portion of an NF's standard price:

- (a) Administration to include an allowance to offset a provider assessment;
 - (b) Nondirect care personnel;
 - (c) Food;
 - (d) Professional support; and
 - (e) Consultation.
- (6) The following components shall comprise the facility and

capital component of an NF's standard price:

(a) The noncapital facility-related component, which shall be a fixed, uniform amount for all price-based NFs; and

(b) The NF's capital rate component, which shall be facility specific.

(7) Excluding capital rate components, the following is an example of an urban and a rural price-based NF's standard price based on rebased wages at the ~~2024~~[2008] level:

CBSA Designation	Case-Mix Adjustable Portion of Standard Price	Noncase-Mix Adjustable Portion of Standard Price Without Capital Rate Component	Total Standard Price Excluding Capital Rate Components
Urban	\$160.14 [\$88.05]	\$101.81 [\$62.80]	\$261.95 [\$150.85]
Rural	\$135.87 [\$74.62]	\$89.68 [\$55.63]	\$225.55 [\$130.25]

(8) A price-based NF's standard price may be:

(a) Adjusted for inflation every July 1 using the version of the CMS Nursing Home without Capital Market Basket that was effective on the July 1 that the inflation adjustment occurred; and

(b) Rebased:

1. Effective July 1, 2024; and

2. At least once every four (4) years thereafter.

(9) ~~[Effective July 1, 2004, an NF shall not receive a rate less than its standard price.~~

(10) ~~Effective July 1, 2022:~~

(a) ~~A nursing home relief reimbursement increase of twenty-nine (29) dollars shall be included in the noncase-mix adjustable portion of the per diem rate.~~

(b) ~~The nursing home relief reimbursement increase shall be included in the administration line of the calculation and shall not receive annual inflationary adjustments.~~

(c) ~~The nursing home relief reimbursement increase of twenty-nine (29) dollars shall continue until the standard price is rebased.~~

~~(11)]~~The department shall adjust an NF's standard price if:

(a) A governmental entity imposes a mandatory minimum wage or staffing ratio increase and the increase was not included in the inflation adjustment; or

(b) A new licensure requirement or new interpretation of an existing requirement by the state survey agency results in changes that affect all facilities within the class. The provider shall document that a cost increase occurred as a result of a licensure requirement or policy interpretation.

Section 6. Standard Price Calculation.

(1) Based on the classification of urban or rural, the department shall calculate an individual NF's standard price to be the sum of:

(a) The case-mix adjustable portion of the NF's standard price, adjusted by the NF's current case-mix index pursuant to Section 7 of this administrative regulation;

(b) The noncase-mix adjustable portion of the NF's standard price, which shall include:

1.] an allowance to offset a provider assessment; [and

2. ~~The nursing home relief reimbursement increase of twenty-nine (29) dollars;]~~

(c) The noncapital facility-related component; and

(d) Pursuant to subsection (2) of this section, the capital rate component.

(2) An NF's capital rate component shall be calculated as follows:

(a) The department shall add the total of:

1. The NF's average licensed bed value, which shall:

a. Be determined by dividing the NF's depreciated replacement cost, as determined from an appraisal conducted in accordance with Section 4 of this administrative regulation, adjusted every July 1 using the RS Means Construction Cost Indexes, and applying the total weighted average annual change of the Kentucky cities by the NF's total licensed NF beds; and

b. Not exceed ~~\$79,775~~[\$56,003] effective July 1, ~~2023~~[2016], which shall be adjusted every July 1 thereafter by the same factor

applied to the NF's depreciated replacement cost;

2. A value for land, which shall be ten (10) percent of the NF's average licensed NF bed value, established in accordance with subparagraph 1. of this paragraph; and

3. A value for equipment, which shall be \$2,000 per licensed NF bed;

(b) The department shall multiply the sum of paragraph (a) of this subsection by a rate of return factor, which shall:

1. Be equal to the sum of:

a. The yield on a twenty (20) year treasury bond as of the first business day on or after May 31 of the most recent year; and

b. A risk factor of two (2) percent; and

2. Not be less than nine (9) percent nor exceed twelve (12) percent;

(c) The department shall determine the NF's capital cost-per-bed day by:

1. Dividing the NF's total patient days by the NF's available bed days to determine the NF's occupancy percentage;

2. If the NF's occupancy percentage is less than ninety (90) percent, multiplying ninety (90) percent by 365 days; and

3. If the NF's occupancy percentage exceeds ninety (90) percent, multiplying the NF's occupancy percentage by 365 days; and

(d) The department shall divide the sum of paragraphs (a) and (b) of this subsection by the NF's capital cost-per-bed day established in paragraph (c) of this subsection to determine an NF's capital rate component.

(3) If a change of ownership occurs pursuant to 42 C.F.R. 447.253(d), the new owner shall:

(a) Receive the capital cost rate of the previous owner unless the NF is eligible for a reappraisal pursuant to Section 4(7) of this administrative regulation; and

(b) File an updated provider application with the Medicaid program pursuant to 907 KAR 1:672, Section 3(4).

(4) A new facility shall be:

(a) Classified as a new facility if the facility does not have a July 1, of the current state fiscal year, Medicaid rate;

(b) Determined to be urban or rural; and

(c) Reimbursed at its standard price, which shall:

1. Be based on a case-mix of 1.0;

2. Be adjusted prospectively based upon no less than one (1) complete calendar quarter of available MDS 3.0 data following the facility's Medicaid certification;

3. Utilize ~~\$79,775~~[\$56,003] effective July 1, ~~2023~~[2016], as adjusted through the current state fiscal year as the facility's average licensed NF bed value until the facility is appraised in accordance with Section 4 of this administrative regulation; and

4. Be adjusted, if necessary, following the facility's appraisal if the appraisal determines the facility's average licensed NF bed value to be less than ~~\$79,775~~[\$56,003] effective July 1, ~~2023~~[2016], as adjusted through the current state fiscal year.

(5) The amounts calculated pursuant to subsection (4)(c)3. and 4. of this section shall be adjusted annually consistent with the adjustments made to the depreciated replacement cost, as described in subsection (2)(a)1.b. of this section for the capital component calculation.

Section 7. PDPM Adapted Minimum Data Set (MDS) 3.0[~~Resource Utilization Group (RUG) III~~], and Validation.

(1) A price-based NF's Medicaid MDS data shall be utilized to determine its case-mix index each quarter.

(2) A price-based NF's case-mix index shall be applied to its case-mix adjustable portion of its standard price.

(3) To determine a price-based NF's case-mix index, the department shall:

(a) Calculate case-mix on a time-weighted basis using MDS data:

1. Extracted on the last date of each calendar quarter from the NF's MDS item sets:

a. Included in the PDPM Adapted Minimum Data Set (MDS) - Version 3.0, Resident Assessment and Care Screening; and

b. Transmitted by the NF to the Centers for Medicare and Medicaid Services; and

2. Which, if revised, shall be revised no later than the last date of the quarter following the date on which MDS data was extracted. For example, MDS data submitted after September 30, ~~2023~~[2046], for the purpose of revision to MDS data extracted June 30, ~~2023~~[2046], shall not be utilized;

(b) Classify the data cited in paragraph (a) of this subsection through the Patient Driven Payment Model (PDPM)[~~RUG-III, (M3 p1), version five point twenty (5.20) thirty-four (34) group or equivalent model~~] resident classification system, nursing component; and

(c) Validate the data cited in paragraph (a) of this subsection as follows:

1. The department shall generate a stratified random sample of ~~thirty (30)~~[~~twenty-five (25)~~] percent of the Medicaid residents in a price-based NF;

2. The department shall review one (1) MDS assessment from each resident in the sample referenced in subparagraph 1. of this paragraph; and

3. The department shall review medical records corresponding to the individuals included in the sample identified in subparagraphs 1. and 2. of this paragraph to determine if the medical records accurately support the MDS assessments submitted for the sample residents; and

4. ~~If a review of records cited in subparagraph 3. of this paragraph reveals that the price-based NF fails to meet the minimum accuracy threshold, the department shall determine if the NF fails to meet the minimum accuracy threshold by reviewing 100 percent of the price-based NF's Medicaid MDS assessments:~~

~~a. Extracted in accordance with paragraph (a) of this subsection; and~~

~~b. Selecting one (1) MDS assessment per resident].~~

(4) If the department's review, in accordance with subsection (3)(c)3. and 4. of this section, of a price-based NF's MDS assessment data reveals that the NF fails to meet the MDS data minimum accuracy threshold, the department shall conduct another review of the same data utilizing an individual or individuals not involved in the initial validation process if the price-based NF requests a reconsideration within ten (10) business days of being notified of the findings of the review cited in subsection (3)(c)4. of this section.

(5) Only MDS data extracted in accordance with subsection (3)(a)2. of this section shall be allowed during a review or reconsideration.

(6) If a reconsideration of a price-based NF's MDS assessment data, in accordance with subsection (4) of this section, confirms that the NF fails to meet the minimum accuracy threshold, the department shall:

(a) Conduct a conference with the NF to review preliminary findings of the reconsideration; and

(b) Send the final results of the reconsideration to the NF within ten (10) business days of the conference.

(7) In performing validation reviews on MDS data, the department shall:

(a) Notify the NF at the time of the MDS assessment review of any assessment that is not validated and allow the NF to provide supporting documentation that had been utilized to support the assessment;

(b) Consider all MDS supporting documentation provided by the NF prior to the exit conference; and

(c) Not consider MDS supporting documentation provided by the NF after the exit conference has occurred.

(8)(a) Reconsideration of a price-based NF's MDS assessment data validation shall be provided if the NF:

1. Requests a reconsideration and clearly identifies each specific resident's review and MDS elements that are being disputed;

2. States the basis on which the department's decision on each issue is believed to be erroneous; and

3. Provides a summary supporting the NF's position.

(b) After a reconsideration of a price-based NF's MDS assessment data has been completed, the NF may appeal the department decision regarding the data in accordance with 907 KAR 1:671, Section 9.

(9)(a) The department shall refer any suspected intentional alteration of clinical documentation or creation of documentation after an MDS assessment has been transmitted to the Office of Inspector General (OIG) for investigation of possible fraud.

(b) A fraud investigation may result in a felony or misdemeanor criminal conviction.

(10) An NF's rate shall be effective beginning on the first date of the second quarter following the MDS extraction date.

(11) An MDS validation review, if conducted, shall be initiated in the month containing the corresponding rate effective date.

(12) A rate sanction shall be applied on the rate effective date following the validation review initiation date.

(13) MDS assessment accuracy thresholds and corresponding rate sanctions shall be established in accordance with this subsection.

(a) If a price-based NF's percentage of accurate MDS assessments is between sixty-five (65) and seventy-nine (79) percent, the price-based NF's rate shall be sanctioned by fifty (50) cents per patient day.

(b) If a price-based NF's percentage of accurate MDS assessments is between forty (40) and sixty-four (64) percent, the price-based NF's rate shall be sanctioned by sixty (60) cents per patient day.

(c) If a price-based NF's percentage of accurate MDS assessments is below forty (40) percent, the price-based NF's rate shall be sanctioned by seventy (70) cents per patient day.

(d) Rate sanctions shall not be applied:

1. Until the rates effective July 1, 2025 are in effect; and

2. Except for those rates that are effective on and after July 1, 2025 as specified in subsection (14) of this section.

(14) Beginning with rates effective July 1, 2025, upon conclusion of a departmental review of MDS data, in accordance with this section of this administrative regulation:

(a) The department shall recalculate the facility's case mix index based on the review's findings; and

(b) If a recalculated case mix index results in a change to the NF's established rate or rates, the rate or rates shall be recalculated and any payment adjustment shall be made.

(15) For rates effective April 1, 2024, through June 30, 2024, the rate shall be equal to the rate effective January 1, 2024.

(16) Beginning July 1, 2024, the PDPM case-mix index shall be phased in using the following schedule:

(a) For rates effective July 1, 2024 through September 30, 2024, the case-mix index shall be comprised of twenty-five (25) percent of the PDPM CMI and seventy-five (75) percent of the RUG-III CMI that was in effect prior to the transition.

(b) For rates effective October 1, 2024 through December 31, 2024, the case-mix index shall be comprised of fifty (50) percent of the PDPM CMI and fifty (50) percent of the RUG-III CMI that was in effect prior to the transition.

(c) For rates effective January 1, 2025 through March 31, 2025, the case-mix index shall be comprised of seventy-five (75) percent of the PDPM CMI and twenty-five (25) percent of the RUG-III CMI that was in effect prior to the transition.

(d) Beginning April 1, 2025, the case-mix index shall be comprised of one-hundred (100) percent of the PDPM CMI and zero (0) percent of the RUG-III CMI that was in effect prior to the transition.

Section 8. Limitation on Charges to Residents.

(1) Except for applicable deductible and coinsurance amounts, an NF that receives reimbursement for a resident pursuant to Section 6 of this administrative regulation shall not charge a resident or his representative for the cost of routine or ancillary services.

(2) An NF may charge a resident or his representative for an item pursuant to 42 C.F.R. 483.10(f)(11)(ii) if:

(a) The item is requested by the resident;

(b) The NF informs the resident in writing that there will be a charge; and

(c) Medicare, Medicaid, or another third party does not pay for the item.

(3) An NF shall:

(a) Not require a resident, or responsible representative of the resident, to request any item or services as a condition of admission or continued stay; and

(b) Inform a resident, or responsible representative of the resident, requesting an item or service for which a charge will be made in writing that there will be a charge and the amount of the charge.

(4) Reserved bed days, per resident, for an NF or an NF-W shall be:

(a) Reimbursed for a maximum of thirty (30)~~fourteen (14)~~ days per calendar year due to hospitalization. Accumulated bed reserve days shall follow a resident if the resident relocates to another facility within a calendar year rather than starting over at zero due to relocation;

(b) Reimbursed for a maximum of ten (10) days during a calendar year for leaves of absence other than hospitalization. Accumulated bed reserve days shall follow a resident if the resident relocates to another facility within a calendar year rather than starting over at zero due to the relocation;

(c) Reimbursed at seventy-five (75) percent of a facility's rate~~if the facility's occupancy percent is ninety-five (95) percent or greater for the calendar quarter preceding the bed reserve day; and~~

~~(d) Reimbursed at fifty (50) percent of a facility's rate if the facility's occupancy percent is less than ninety-five (95) percent for the calendar quarter preceding the bed reserve day].~~

(5) Except for oxygen therapy, durable medical equipment (DME) and supplies shall:

(a) Be furnished by an NF; and

(b) Not be billed to the department under a separate DMS claim pursuant to 907 KAR 1:479, Section 6(3).

(6) Except as otherwise covered pursuant to Title 907 KAR, dentures, lenses, frames, or hearing aids shall be paid for through the resident's patient liability or spend down amounts and limited to one (1) replacement per item per calendar year.

Section 9. Reimbursement for Required Services Under the Preadmission Screening Resident Review (PASRR).

(1) Prior to an admission of an individual, a price-based NF shall conduct a level I PASRR in accordance with 907 KAR 1:755, Section 4.

(2) The department shall reimburse an NF for services delivered to an individual if the NF complies with the requirements of 907 KAR 1:755.

(3) Failure to comply with 907 KAR 1:755 may be grounds for termination of the NF's participation in the Medicaid Program.

Section 10. Price-Based NF Protection Period and Budget Constraints.

(1) A county-owned hospital-based nursing facility shall not receive a rate that is less than the rate that was in effect on June 30, 2002.

(2) For each year of the biennium, a price-based NF shall:

(a) Receive an adjustment pursuant to Section 5(8) and (11) of this administrative regulation; or

(b) Except for a county-owned hospital-based nursing facility pursuant to subsection (1) of this section, not receive an increase if the price-based NF's rate is greater than its standard price.

Section 11. Cost Report.

(1) A Medicare cost report and the Supplemental Medicaid Schedules shall be submitted pursuant to time frames established in the CMS Medicare Provider Reimbursement Manual - Part 2 (Pub. 15-2) Sections 102, 102.1, 102.3, and 104, using the Instructions for Completing the Medicaid Supplemental Schedules.

(2) A copy of a price-based NF's Medicare cost report shall be submitted for the most recent fiscal year end.

Section 12. Ancillary Services.

(1) Except for oxygen therapy and for ancillary services provided to an individual in a critical access hospital swing bed, the department shall reimburse for an ancillary service that meets the criteria established in 907 KAR 1:023 utilizing a per diem component to the rates, updated every July 1. Prior year utilization based on

claims and the corresponding outpatient procedure code rate listed in the Medicaid Physician Fee Schedule established in 907 KAR 3:010, Section 3 shall be divided by the number of the provider's paid Medicaid days for the same time period.

(2) The department shall reimburse for an oxygen therapy utilizing the Medicaid DME Program fee schedule established in 907 KAR 1:479.

(3) Respiratory therapy and respiratory therapy supplies shall be a routine service.

(4) Reimbursement for ancillary services provided to an individual in a critical access hospital swing bed shall be included in the critical access hospital swing bed reimbursement established in Section 3(2) of this administrative regulation.

Section 13. Appeal Rights. A price-based NF may appeal a department decision as to the application of this administrative regulation in accordance with 907 KAR 1:671.

Section 14. Supplemental Payments to Nonstate Government-Owned or Operated Nursing Facilities.

(1) Beginning July 1, 2001, subject to state funding made available for this provision by a transfer of funds from a governmental entity, the department shall make a supplemental payment to a qualified nursing facility.

(2) To qualify for a supplemental payment under this section, a nursing facility shall:

(a) Be owned or operated by a local unit of government pursuant to 42 C.F.R. 447.272(a)(2);

(b) Have at least 140 or more Medicaid-certified beds; and

(c) Have a Medicaid occupancy rate at or above seventy-five (75) percent.

(3) For each state fiscal year, the department shall calculate the maximum supplemental payment that it may make to qualifying nursing facilities in accordance with 42 C.F.R. 447.272.

(4) Using the data reported by a nursing facility on a Schedule NF-7 submitted to the department as of December 31, 2000, the department shall identify each nursing facility that meets the criteria established in subsection (2) of this section.

(5) The department shall determine a supplemental payment factor for a qualifying nursing facility by dividing the qualifying nursing facility's total Medicaid days by the total Medicaid days for all qualifying nursing facilities.

(6) The department shall determine a supplemental payment for a qualifying nursing facility by applying the supplemental payment factor established in subsection (5) of this section to the total amount available for funding under this section.

(7) Total payments made under this section shall not exceed the amount determined in subsection (3) of this section.

(8) Payments made under this section shall:

(a) Apply to services provided on or after April 1, 2001; and

(b) Be made on a quarterly basis.

Section 15. Federal Approval and Federal Financial Participation. The department's coverage of services pursuant to this administrative regulation shall be contingent upon:

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

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

Section 16. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Medicare Provider Reimbursement Manual - Part 2 (Pub. 15-2), Sections 102, 102.1, 102.3, and 104", October 2007;

(b) The "Instructions for Completing the Medicaid Supplemental Schedules", April 2015;

(c) The "Supplemental Medicaid Schedules", April 2015; and

(d) PDPM Adapted Minimum Data Set (MDS), October 1, 2023["Minimum Data Set (MDS) - Version 3.0, Resident Assessment and Care Screening", 10/1/2016].

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

(a) Department for Medicaid Services, 275 East Main Street,

Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.; and

(b) Following location on the department's Web site: <https://chfs.ky.gov/agencies/dms/dafm/Pages/default.aspx>.

LISA D. LEE, Commissioner
ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY:

FILED WITH LRC: January 11, 2024 at 2:25 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on March 25, 2024, 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 March 18, 2024, 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 March 31, 2024. 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: 502-564-7476; Fax: 502-564-7091; CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation revises reimbursement for nursing facilities participating in Kentucky Department for Medicaid Services for all non-managed care recipients.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish price-based nursing facility reimbursement provisions.

(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 price-based nursing facility reimbursement provisions.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the authorizing statutes by establishing updated reimbursement rates for nursing facilities providing care to Kentucky Medicaid recipients.

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

(a) How the amendment will change this existing administrative regulation: This amendment will change the existing administrative regulation by documenting the changes to the nursing facility price based reimbursement. Changes include transitioning from RUG-III to a Patient Driven Payment Model (PDPM) case mix classification system, rebasing the price based standard price components, updating the reappraisal system and processes, and revising the bed hold policy.

(b) The necessity of the amendment to this administrative regulation: The amendment of this administrative regulation is necessary to update the price-based nursing facility reimbursement provisions.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes by continuing to establish price-based nursing facility reimbursement provisions.

(d) How the amendment will assist in the effective administration of the statutes: This amendment assists in the effective administration of the authorizing statutes by establishing updated reimbursement rates for nursing facilities providing care to Kentucky Medicaid recipients.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are 257 nursing facilities participating with Medicaid that may 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: Nursing facilities will not have to take any actions to comply 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 cost to the entities to comply with this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Entities will receive a higher reimbursement from Medicaid, and the current reimbursement increase is now scheduled to be incorporated into the base rate for nursing facilities in the future.

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

(a) Initially: DMS anticipates that expenditures for nursing facilities will be consistent with appropriations in the current executive branch state budget.

(b) On a continuing basis: DMS anticipates that expenditures for nursing facilities will be consistent with appropriations in the current executive branch state budget.

(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: The department anticipates that rebasing and utilizing a PDPM, as well as moving ancillary services into the per diem rate will be budget neutral.

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

(9) TIERING: Is tiering applied? Tiering was not applied 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? The Department for Medicaid Services will be affected by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.030(2), 194A.050(1)

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The Department for Medicaid Services (DMS) anticipates no revenue for state or local government will result from the amendment.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties,

fire departments, or school districts) for subsequent years? DMS anticipates no revenue for state or local government will result from the amendment.

(c) How much will it cost to administer this program for the first year? DMS anticipates that expenditures for nursing facilities will be consistent with appropriations in the current executive branch state budget.

(d) How much will it cost to administer this program for subsequent years? DMS anticipates that expenditures for nursing facilities will be consistent with appropriations in the current executive branch state budget.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

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

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

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

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

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

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

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 42 U.S.C. 1396r(f)(6) and 42 C.F.R. 483.20.

(2) State compliance standards. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with a requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry.

(3) Minimum or uniform standards contained in the federal mandate. 42 C.F.R. 483.20 requires a nursing facility to conduct a resident assessment of each resident.

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

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Neither stricter nor additional standards nor responsibilities are imposed.

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

907 KAR 1:479. Medical supplies, equipment, and appliances~~[Durable medical equipment]~~ covered benefits and reimbursement.

RELATES TO: KRS 205.520, 205.560, 205.6333, 42 C.F.R. Part 414, 424.57, 440.230, 440.70, 45 C.F.R. Part 160, 162.1002, Part 164, 42 U.S.C. 1320d, 1395m, 1395w-4, 1396d(i)

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3)

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, has responsibility to administer the Medicaid program. KRS 205.520(3) authorizes the cabinet~~[, by administrative regulation,]~~ to comply with any requirement that may be imposed, or opportunity presented, by federal law to qualify for federal Medicaid funds. This administrative regulation establishes the provisions relating to coverage and reimbursement requirements for ~~[durable medical equipment,]~~ medical supplies, equipment, and appliances (MSEA)~~[prosthetics, and orthotics]~~.

Section 1. Definitions. (1) ~~["Certificate of Medical Necessity" or "CMN" means a form required by the department to document medical necessity for durable medical equipment, medical supplies, prosthetics, or orthotics.~~

~~(2) ["CMS" means the Centers for Medicare and Medicaid Services.~~

~~(2) [(3)] "Covered benefit" or "covered service" means an item of MSEA[durable medical equipment, a prosthetic, an orthotic, or a medical supply] for which coverage is provided by the department.~~

~~(3) [(4)] "Customized" means that an item has been constructed, fitted, or altered to meet the unique medical needs of an individual Medicaid recipient and does not include the assemblage of modular components or the addition of various accessories that do not require unique construction, fitting, or alteration to individual specifications.~~

~~(4) [(5)] "Date of service" means:~~

~~(a) 1. The date the MSEA[durable medical equipment, prosthetic, orthotic, or supply (DMEPOS)] is provided to the recipient; or~~

~~2. Thirty (30) days from the scheduled date of delivery with:~~

~~a. Proof from the provider the recipient was unable to be reached after a good faith effort to deliver; and~~

~~b. Product is unable to be resold due to customization for the recipient;~~

~~(b) For mail order MSEA[DMEPOS], the later of the shipping date or the date the recipient was discharged home or to a place where normal life activities take place, except as limited by 42 C.F.R. 440.70(c)(1)[from an inpatient hospital stay or nursing facility];~~

~~(c) For MSEA[DMEPOS] delivered to a recipient's home immediately subsequent to a hospital inpatient stay, the date of final discharge; or~~

~~(d) Up to two (2) calendar days prior to discharge from a hospital or nursing facility if:~~

~~1. The item was provided for purposes of fitting or training of the patient;~~

~~2. The item is ready for use in the recipient's home; and~~

~~3. Billing is not done prior to the date of the recipient's discharge from the facility.~~

~~(5) [(6)] "Department" means the Department for Medicaid Services or its designee.~~

~~(6) [(7)] "DMEPOS" means durable medical equipment, prosthetics, orthotics, or supplies.~~

~~(7) [(8)] "Durable medical equipment" or "DME" means medical equipment that:~~

~~(a) Withstands repeated use;~~

~~(b) Is primarily and customarily used to serve a medical purpose;~~

~~(c) Is generally not useful to a person in the absence of an illness~~

or injury; and

(d) Is appropriate for use in the home or community.

(8)[(9)] "Healthcare common procedure coding system" or "HCPCS" means a collection of codes acknowledged by the Centers for Medicare and Medicaid Services (CMS) that represents procedures or items.

(9)[(10)] "Home" means a place in which normal life activities take place, and as limited by 42 C.F.R. 440.70(c)(1)[where the recipient resides excluding:

(a) A nursing facility;

(b) A hospital;

(c) An intermediate care facility for individuals with an intellectual disability; or

(d) An institution for mental diseases as defined by 42 U.S.C. 1396d(i)].

(10)[(11)] "Incidental" means that a medical procedure or service:

(a) Is performed at the same time as a more complex primary procedure or service; and

(b) 1. Requires little additional resources; or

2. Is clinically integral to the performance of the primary procedure or service.

(11)[(12)] "Invoice price" means an itemized account of a manufacturer's actual charges that are billed to a supplier for goods or services provided by the manufacturer or distributor.

(12)[(13)] "Medicaid Program MSEA[DME] Fee Schedule" means a list, located at <https://www.chfs.ky.gov/agencies/dms/Pages/feesrates.aspx>[<http://chfs.ky.gov/dms>], that:

(a) Contains the current Medicaid maximum allowable amount established by the department for a covered item of MSEA[durable medical equipment, a prosthetic, an orthotic, or a medical supply]; and

(b) Is updated at least yearly[quarterly to coincide with the quarterly updates made by the Centers for Medicare and Medicaid Services as required by 42 U.S.C. 1395m and 1395w-4 and 42 C.F.R. Part 414].

(13) "Medical supplies, equipment, and appliances" or "MSEA":

(a) Means:

1. Durable medical equipment;

2. DMEPOS;

3. Orthotics; and

4. A medical supply item;

(b) Includes:

1. Prosthetics;

2. Orthotics;

3. Beds;

4. Canes;

5. Walkers;

6. Wheelchairs;

7. Traction equipment;

8. Oxygen;

9. Oxygen equipment; and

10. Routine maintenance of a rental item; and

(c) Does not mean:

1. Items which are covered under other areas and disciplines within Title 907 KAR, such as frames, lenses, hearing aids, and pacemakers; or

2. Routine maintenance of a purchased item. Routine maintenance includes testing, cleaning, regulating, and accessing equipment described as the type of servicing an owner may perform in the operator's manual for the item.

(14) "Medical supply" means an item that is:

(a) Consumable;

(b) Nonreusable;

(c) Disposable; and

(d) Primarily and customarily used to serve a medical purpose.

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

(16) "Medicare accreditation" means having met the quality standards established in 42 U.S.C. 1395m(a)(20).

(17) "Mutually exclusive" means that two (2) MSEA[DMEPOS]

items:

(a) Are not reasonably provided in conjunction with each other during the same patient encounter on the same date of service;

(b) Represent duplicate or very similar items; or

(c) Represent medically inappropriate use of HCPCS codes.

(18) "Nutritional supplement" means a liquid or powder administered enterally or orally that is specially formulated to supply complete diagnosis-appropriate nutrition, including kilocalories, protein, vitamins, and minerals.

(19) "Orthotic" means a mechanical device or brace that is designed to support or correct a defect or deformity or to improve the function of a movable part of the body.

(20) "Prescriber" means a physician, podiatrist, optometrist, dentist, advanced practice registered nurse, physician assistant, or chiropractor who:

(a) Is acting within the legal scope of clinical practice under the licensing laws of the state in which the health care provider's medical practice is located;

(b) If the individual is an enrolled Kentucky Medicaid provider, is in compliance with all requirements of:

1. 907 KAR 1:671; and

2. 907 KAR 1:672;

(c) Is in good standing with the appropriate licensure board and CMS; and

(d) Has the legal authority to write an order for a medically necessary item of MSEA[durable medical equipment, a medical supply, a prosthetic, or an orthotic] for a recipient.

(21) "Prior authorization" means approval that a supplier shall obtain from the department before being reimbursed.

(22) "Prosthetic" means an item that replaces all or part of the function of a body part or organ.

(23) "Reasonableness" means:

(a) The expense of the item does not exceed the therapeutic benefits that could ordinarily be derived from use of the item;

(b) The item is not substantially more costly than a medically-appropriate alternative; and

(c) The item does not serve the same purpose as an item already available to the recipient.

(24) "Supplier" means a Medicare-certified provider of MSEA[durable medical equipment, medical supplies, prosthetics, or orthotics] who is enrolled in the Kentucky Medicaid Program.

(25) "Usual and customary charge" means the uniform amount that a supplier bills to the general public for a specific covered benefit.

Section 2. General Coverage. (1) Except as provided in subsection (2) of this section, coverage for an item of MSEA[durable medical equipment, a medical supply, a prosthetic, or an orthotic] shall:

(a) Be based on medical necessity and reasonableness;

(b) Be clinically appropriate pursuant to the criteria established in 907 KAR 3:130;

(c) Require prior authorization in accordance with Section 7 of this administrative regulation;

(d) Be provided in compliance with 42 C.F.R. 440.230(c); and

(e) Be restricted to an item used primarily in the home and community.

(2)(a) Except as provided in paragraph (b) of this subsection, the criteria referenced in subsection (1) of this section that was in effect on the date the MSEA[durable medical equipment, prosthetic, orthotic, or medical supply] is provided shall be used as the basis for the determination of coverage, subject to medical necessity override by the department to ensure compliance with 42 C.F.R. 440.230(c).

(b) If criteria referenced in subsection (1) of this section does not exist or is unavailable for a given item or service, the Medicare criteria in effect on the date the MSEA[durable medical equipment, prosthetic, orthotic, or medical supply] is provided shall be used as the basis for the determination of coverage, subject to medical necessity override by the department to ensure compliance with 42 C.F.R. 440.230(c).

(3) [Unless specifically exempted by the department, a DME item, medical supply, prosthetic, or orthotic shall require a CMN that shall be kept on file by the supplier for the period of time mandated

by 45 C.F.R. 164.316.

(4) An item [for which a CMN is not required] shall require a prescriber's written order.

(4)(5) If Medicare is the primary payor for a recipient who is dually eligible for both Medicare and Medicaid, the supplier shall comply with Medicare's CMN requirement and a separate Medicaid CMN shall not be required.

(6) A required CMN shall be:

(a) The appropriate Medicare CMN in use at the time the item or service is prescribed;

(b) A MAP-1000, Certificate of Medical Necessity, Durable Medical Equipment; or

(c) A MAP-1000B, Certificate of Medical Necessity, Metabolic Formulas and Foods.

(7) A CMN shall contain:

(a) The recipient's name and address;

(b) A complete description of the item or service ordered;

(c) The recipient's diagnosis;

(d) The expected start date of the order;

(e) The length of the recipient's need for the item;

(f) The medical necessity for the item;

(g) The prescriber's name, address, telephone number, and National Provider Identifier (NPI), if applicable; and

(h) The prescriber's signature and date of signature.

(8) Except as specified in subsections (5)(9) and (6)(10) of this section, a prescriber shall examine a recipient within sixty (60) calendar days prior to the initial order of a MSEA[DME item, medical supply, prosthetic, or orthotic].

(5)(9) Except as specified in subsection (11) of this section, A prescriber shall not be required to examine a recipient prior to subsequent orders for the same MSEA[DME] item[, medical supply, prosthetic, or orthotic] unless there is a change in the order.

(6)(10) A prescriber shall not be required to examine a recipient prior to the repair of MSEA [a DME item, prosthetic, or orthotic].

(7)(11) A change in supplier shall require a new CMN signed and dated by a prescriber who shall have seen the recipient within sixty (60) calendar days prior to the order.

(12) A CMN shall be updated with each request for prior authorization.

(13) The department shall only purchase a new MSEA[DME] item.

(8)(14) A new MSEA[DME] item that is placed with a recipient initially as a rental item shall be considered a new item by the department at the time of purchase.

(9)(15) A used MSEA[DME] item that is placed with a recipient initially as a rental item shall be replaced by the supplier with a new item prior to purchase by the department.

(10)(16) A supplier shall not bill Medicaid for the MSEA[a DME item, medical supply, prosthetic, or orthotic] before the item is provided to the recipient.

(11)(17) A supplier shall not ship supplies to a recipient unless the supplier has:

(a) First had direct contact with the recipient, [or] the recipient's caregiver, or an authorized representative, such as a case manager for a 1915(c) waiver participant; and

(b) Verified:

1. That the recipient wishes to receive the shipment of supplies;

2. The quantity of supplies in the shipment; and

3. Whether or not there has been a change in the use of the supply.

(12)(18) A verification referenced in subsection (11)(17) of this section for each recipient shall be documented in a file regarding the recipient.

(13)(19) If a supplier ships more than a one (1) month supply of an item, the supplier shall assume the financial risk of nonpayment if the recipient's Medicaid eligibility lapses or a HCPCS code is discontinued.

(14)(20) A supplier shall have an order from a prescriber before dispensing any MSEA[DMEPOS] item to a recipient.

(15)(21) A supplier shall have a written order on file prior to submitting a claim for reimbursement.

Section 3. Purchase or Rental of Medical Supplies, Equipment, and Appliances[Durable Medical Equipment]. (1) Except as established on the Medicaid Program MSEA[DME] Fee Schedule, MSEA[durable medical equipment] shall be covered through purchase or rental based upon anticipated duration of medical necessity.

(2)(a) A MAP 1001 form shall be completed if a recipient requests an item or service not covered by the department.

(b) A recipient shall be financially responsible for an item or service requested by the recipient via a MAP 1001 that is not covered by the department.

(c) A MAP 1001 shall be completed as follows:

1. The MSEA[DME] supplier shall ensure that the recipient or authorized representative reads and understands the MAP 1001;

2. The recipient or authorized representative shall indicate on the MAP 1001 if the recipient chooses to receive a noncovered service;

3. The MSEA[DME] supplier shall complete the supplier information on the MAP 1001;

4. The MSEA[DME] supplier shall provide a copy of the completed MAP 1001 to the recipient; and

5. The MSEA[DME] supplier shall maintain the completed MAP 1001 on file for at least the period of time mandated by 45 C.F.R. 164.316.

(d) If an item or service was denied due to the supplier not meeting the timeframes to obtain a prior authorization or the item or service does not meet medical necessity for a prior authorization, the MAP 1001 shall not be used to obligate the recipient for payment.

Section 4. Special Coverage. (1) An augmentative communication device or other electronic speech aid shall be covered for a recipient who is permanently unable to communicate through oral speech if:

(a) Medical necessity is established based on a review by the department of an evaluation and recommendation submitted by a speech-language pathologist; and

(b) The item is prior authorized by the department.

(2) A customized MSEA[DME] item shall be covered only if a noncustomized medically appropriate equivalent is not commercially available.

(3) A physical therapy or occupational therapy evaluation shall be required for:

(a) A power wheelchair; or

(b) A wheelchair for a recipient who, due to a medical condition, is unable to be reasonably accommodated by a standard wheelchair.

(4) Orthopedic shoes and attachments shall be covered if medically necessary for:

(a) A congenital defect or deformity;

(b) A deformity due to injury; or

(c) Use as a brace attachment.

(5) A therapeutic shoe or boot shall be covered if medically necessary to treat a nonhealing wound, ulcer, or lesion of the foot.

(6) An enteral or oral nutritional supplement shall be covered if:

(a) The item is prescribed by a licensed prescriber;

(b) Except for an amino acid modified preparation or a low-protein modified food product specified in subsection (7) of this section, it is the total source of a recipient's daily intake of nutrients;

(c) The item is prior authorized; and]

(d) Nutritional intake is documented on the medical record; and[on the CMN]

(e) The Women, Infants and Children's Program (WIC) is unable to provide coverage of a formula. A letter from WIC shall be obtained and submitted with a prior authorization request.

(7) An amino acid modified preparation or a low-protein modified food product shall be covered:

(a) If prescribed for the treatment of an inherited metabolic condition specified in KRS 205.560(1)(c);

(b) If not covered through the Medicaid outpatient pharmacy program;

(c) Regardless of whether it is the sole source of nutrition; and

(d) If the item is prior authorized.

(8) ~~An MSEA[A—DME]~~ item intended to be used for postdischarge rehabilitation in the home may be delivered to a hospitalized recipient within two (2) calendar days prior to discharge home for the purpose of rehabilitative training.

(9) An electric breast pump shall be covered;

(a) 1. Within six (6) weeks prior to birth; or

2. Within six (6) weeks after birth; and

(b) For up to one replacement per child, [for the following:

(a) Medical separation of mother and infant;

(b) Inability of an infant to nurse normally due to a significant feeding problem; or

(c) An illness or injury that interferes with effective breast feeding].

(10) Rental of an airway clearance vest system for a three (3) month trial period shall be required before purchase of the equipment.

(11) Non-sole source nutrition:

(a) Shall be provided for a twelve (12) month period; and

(b) 1. For adults, shall be medically necessary; or

2. For children, services shall be determined by assessing the child via a growth chart as measured by height and weight. The following criteria shall be utilized, a child that is:

a. Below the fiftieth (50th) percentile shall meet the guidelines for receiving non-sole source nutrition;

b. Above the fiftieth (50th) percentile, but has a valid diagnosis to support the request, shall meet the guidelines for receiving non-sole source nutrition. For example, disorders of significant mental or physical health including trauma, significant weight loss, chronic illness, or cancers; and

c. Above the fiftieth (50th) percentile and without a supporting diagnosis shall be referred to the medical director who may approve non-sole source nutrition services.

Section 5. Coverage of Repairs and Replacement of Equipment.

(1) The department shall not be responsible for repair or replacement of ~~the MSEA[a—DME item, prosthetic, or orthotic]~~ if the repair or replacement is covered by a warranty.

(2) Reasonable repair to a purchased ~~MSEA[DME item, prosthetic, or orthotic]~~ shall be covered:

(a) During a period of medical need;

(b) If necessary to make the item serviceable;

(c) If a warranty is not in effect on the requested repair; and

(d) In accordance with Section 6(3) of this administrative regulation.

(3) Extensive maintenance to purchased equipment, as recommended by the manufacturer and performed by an authorized technician, shall be considered to be a repair.

(4) The replacement of a medically necessary ~~MSEA[DME item, medical supply, prosthetic, or orthotic]~~ shall be covered for the following:

(a) Loss of the item;

(b) Irreparable damage or wear; or

(c) A change in a recipient's condition that requires a change in equipment.

(5) Suspected malicious damage, culpable neglect, or wrongful disposition of ~~MSEA[a—DME item, medical supply, prosthetic, or orthotic]~~ shall be reported by the supplier to the department if the supplier is requesting prior authorization for replacement of the item.

Section 6. Limitations on Coverage. (1) The following items shall be excluded from Medicaid coverage through the MSEA[DME] program:

(a) An item covered for Medicaid payment through another Medicaid program;

(b) Equipment that is not primarily and customarily used for a medical purpose;

(c) Physical fitness equipment;

(d) Equipment used primarily for the convenience of the recipient or caregiver;

(e) A home modification;

(f) Routine maintenance of MSEA[DME] that includes:

1. Testing;

2. Cleaning;

3. Regulating; and

4. Assessing the recipient's equipment;

(g) Except as specified in Section 7(1)(j) of this administrative regulation, backup equipment; or

(h) An item determined not medically necessary, clinically appropriate, or reasonable by the department.

(2) Except if Medicare is the primary payer, the following diabetic supplies (HCPCS codes) shall be covered as a pharmacy benefit at the point of sale:

(a) A4206, a syringe with needle (sterile, 1cc or less);

(b) A4250, urine test or reagent strips or tablets;

(c) A4252, blood ketone test or reagent strip;

(d) A4253, blood glucose test or reagent strips;

(e) A4256, calibrating solutions;

(f) A4258, lancet device;

(g) A4259, lancets; or

(h) E0607, home blood glucose monitor.

(3) An estimated repair shall not be covered if the repair cost equals or exceeds:

(a) The purchase price of a replacement item; or

(b) The total reimbursement amount for renting a replacement item of equipment for the estimated remaining period of medical need.

(4) ~~MSEA[Durable medical equipment, prosthetics, orthotics, and medical supplies]~~ shall be included in the facility reimbursement for a recipient residing in a hospital, nursing facility, or intermediate care facility or institution for individuals with an intellectual or developmental disability.

Section 7. Prior Authorization Requirements and Process. (1) Prior authorization shall be required for the following:

(a) An item or repair billed to the department at \$500 or more;

(b) Rental of equipment as indicated on the Medicaid Program MSEA[DME] Fee Schedule excluding oxygen services after twelve (12) ~~[continuous]~~ months of service;

(c) Orthopedic shoes;

(d) An adjustment to a prosthetic or orthotic;

(e) An augmentative communication device;

(f) A customized MSEA[DME] item;

(g) A replacement ~~MSEA[DME item, prosthetic, or orthotic]~~ if replacement is prior to the:

1. Usual and customary lifetime of the item; or

2. Limitation set by the department as indicated in the Medicaid Program MSEA[DME] Fee Schedule;

(h) A nutritional supplement;

(i) An amino acid modified preparation or a low-protein modified food product;

(j) 1. A loaner item for a member-owned piece of equipment that is being repaired; and

2. Any loaner item for a member-owned piece of equipment shall be the equivalent or better of the item that is being repaired;

(k) A MSEA[DMEPOS] item denoted by a general or nonspecific HCPCS code;

(l) An item designated on the Medicaid Program MSEA[DME] Fee Schedule as requiring prior authorization;

(m) An item that exceeds the quantity limitation established in the Medicaid Program MSEA[DME] Fee Schedule; or

(n) An item designated by an HCPCS code not indicated on the Medicaid Program MSEA[DME] Fee Schedule that is determined by the department to be a covered benefit.

(2)(a) If an item requires prior authorization, a supplier shall:

1.a. Submit all required documentation prior to the date of service; or

b. Within one (1) year from the date of service with department approval; and

2. Submit a written request to the department for prior authorization, which shall include the prescriber's order; and

3. Submit a completed CMN to the department within ninety (90) business days of the date of the request for prior authorization.

(b) If the required prior authorization submittals required by paragraph (a) of this subsection are not submitted within the established time frames, the prior authorization request shall be denied.

(3) If an item requires an evaluation or recommendation by a specialist, the evaluation or recommendation shall be in writing and submitted with a prior authorization~~[with the CMN]~~.

(4) The supplier shall not bill a recipient for the MSEA[a DME item, medical supply, prosthetic, or orthotic] if the supplier has not completed the prior authorization process within the timeframe specified in subsection (2) of this section.

(5) If a supplier provides an item that requires prior authorization before the prior authorization is received, the supplier shall assume the financial risk that the prior authorization might not be subsequently approved.

~~(6) [A supplier may initially obtain a faxed CMN from a prescriber to expedite the prior authorization process, but a signed, original CMN subsequently shall be required.]~~

(7) —A supplier shall request prior authorization by mailing, faxing, or electronically submitting the following information to the department:

(a) A completed prior authorization form MAP-9; and

(b) ~~A completed CMN; and~~

~~(c) —If requested by the department, additional information required to establish medical necessity, clinical appropriateness, or reasonableness.~~

~~(7) [(8)]~~ The following additional information shall be required for prior authorization of a customized item:

~~(a) [An estimate of the fitting time;~~

~~(b) An estimate of the fabrication time;~~

~~(c) —A description of the materials used in customizing the item; and~~

~~(b) [(d)]~~ An itemized estimate of the cost of the item, including the cost of labor.

~~(8) [(9)]~~ The following additional information shall be required for prior authorization of a repair to purchased equipment:

(a) A description of the nature of the repair;

(b) An itemization of the parts required for the repair;

(c) An itemization of the labor time involved in the repair; and

(d) A copy of the manufacturer's warranty indicating the purchase date or a written notice from the MSEA[DME] supplier stating that the requested repair is not covered by the warranty.

~~(9) [(10)]~~ An item shall be prior authorized based on:

(a) Medical necessity and the corresponding prior-authorized period of medical necessity; and

(b) 1. Clinical appropriateness pursuant to the criteria established in 907 KAR 3:130; or

2. Medicare criteria if the criteria referenced in subparagraph 1. of this paragraph does not exist or is unavailable.

~~(10) [(11)]~~ A prior authorization period shall be extended as indicated by~~[upon the provision of a new CMN indicating current medical necessity and]~~:

(a) Clinical appropriateness pursuant to the criteria established in 907 KAR 3:130; or

(b) Medicare criteria if the criteria referenced in paragraph (a) of this subsection does not exist or is unavailable.

~~(11) [(12)]~~ (a) Prior authorization by the department shall not:

1. Be a guarantee of recipient eligibility; or

2. Guarantee reimbursement.

(b) Eligibility verification shall be the responsibility of the supplier.

~~(12) [(13)]~~ Upon review and determination by the department that removing prior authorization shall be in the best interest of Medicaid recipients, the prior authorization requirement for a specific covered benefit shall be discontinued, at which time the covered benefit shall be available to all recipients without prior authorization.

~~(13) [(14)]~~ If it is determined by the department to be in the best interest of Medicaid recipients, the department may designate that an item of MSEA[durable medical equipment] suitable for use in the home or community may be provided, if prior authorized, to a recipient ~~[temporarily residing in a hospital that does not bill patients, Medicaid, or other third-party payers for any health care services].~~

~~(14) [(15)]~~ (a) For purposes of obtaining prior authorization, a signed invoice price quote from the manufacturer shall be acceptable documentation.

(b) If the invoice price differs from the manufacturer's invoice price quote, the supplier shall amend the prior authorization and

shall maintain documentation of the quote and the invoice.

Section 8. Reimbursement for Covered Services. (1) Except for an item specified in subsections (2) and ~~(4) [(5)]~~ of this section, a new item that is purchased shall be reimbursed at the lesser of:

(a) The supplier's usual and customary charge for the item;

(b) The purchase price specified in the Medicaid Program MSEA[DME] Fee Schedule; or

(c) If indicated in the Medicaid Program MSEA[DME] Fee Schedule as manually priced, which shall be the manufacturer's suggested retail price minus eighteen (18) percent [invoice price plus twenty (20) percent] for an item not utilizing a billing code.

(2) Pursuant to 45 C.F.R. 162.1002, the department shall recognize U.S. Department for Health and Human Services quarterly HCPCS code updates.

(a) An item denoted by an HCPCS code not currently on the Medicaid Program MSEA[DME] Fee Schedule that has been determined by the department to be a covered service shall be manually priced, which shall be the manufacturer's suggested retail price minus eighteen (18) percent for an item not utilizing a billing code [using the actual invoice price plus twenty (20) percent].

(b) 1. The department shall post HCPCS code change information on its Web site accessible at <https://www.chfs.ky.gov/agencies/dms/Pages/feesrates.aspx> [<http://chfs.ky.gov/dms>].

2. The information may also be obtained by writing the Department for Medicaid Services at 275 East Main Street, Frankfort, Kentucky 40621.

~~[(3) If a copayment is required, copayment provisions, including any provider deduction, shall be as established in 907 KAR 1:604.]~~

~~(3) [(4)]~~ For a service covered under Medicare Part B, reimbursement shall be in accordance with 907 KAR 1:006.

~~(4) [(5)]~~ Reimbursement for the purchase of an item that has been rented for ~~[less than] ten (10) months~~ shall be the purchase price specified in subsection (1) of this section minus the cumulative rental payment made to the supplier.

~~(5) [(6)]~~ A rental item shall be reimbursed as follows, but reimbursement shall not exceed the supplier's usual and customary charge for the item:

(a) The rental price specified in the Medicaid Program MSEA[DME] Fee Schedule; or

(b) If indicated in the Medicaid Program MSEA[DME] Fee Schedule as manually priced:

1. Ten (10) percent of the purchase price per month for the monthly rental of an item; or

2. Two and one-half (2.5) percent of the purchase price per week for the weekly rental of an item that is needed for less than one (1) month.

~~(6) [(a)] [(7)]~~ If reimbursement for a rental item has been made for a period of ten (10) ~~[consecutive]~~ months by the same provider within a two (2) year period, the item shall be considered to be purchased and shall become the property of the recipient.~~[(3)]~~

(b) A provider may demonstrate that a break in service or need for a rental item has occurred due to hospitalization during the two (2) year period. In the event of a successful demonstration, reimbursement shall be provided for each demonstrated month that a break in need occurred until a cumulative ten (10) month period has been reached.

~~(7) [(8)]~~ Labor costs for a repair shall be billed in quarter hour increments using the HCPCS codes for labor specified in the Medicaid Program MSEA[DME] Fee Schedule and shall be reimbursed the lesser of:

(a) The supplier's usual and customary charge; or

(b) The reimbursement rate specified in the Medicaid Program MSEA[DME] Fee Schedule.

~~(8) [(9)]~~ Reimbursement shall include instruction and training provided to the recipient by the supplier.

~~(9) [(10)]~~ The rental price of an item shall include rental of the item and the cost of:

(a) Shipping and handling;

(b) Delivery and pickup;

(c) Setup;

(d) Routine maintenance; and

(e) Essential medical supplies required for proper use of the equipment.

~~(10) [(44)]~~ The purchase price of a prosthetic or orthotic shall include:

- (a) Acquisition cost and applicable design and construction;
- (b) Required visits with a prosthetist, ~~[or]~~ orthotist, or other appropriate MSEA provider for fitting prior to receipt of the item;
- (c) Proper fitting and adjustment of the item for a period of one (1) year;
- (d) Required modification, if not a result of physical growth or excessive change in stump size, for a period of one (1) year; and
- (e) A warranty covering defects in material and workmanship.

Section 9. Conditions for Provider Participation. A participating ~~MSEA~~~~[DME]~~ provider shall:

- (1) Have an active Medicare ~~MSEA~~~~[DME]~~ provider number;
- (2) Adhere to all CMS supplier standards in accordance with 42 C.F.R. 424.57;
- (3)(a) Provide proof of Medicare accreditation, by an approved Medicare accreditation entity, to the department every three (3) years unless exempt from Medicare accreditation by CMS; or
- (b) If exempt from Medicare accreditation by CMS, provide a letter to the department on company letterhead that indicates the CMS exemption status;
- (4) Be enrolled in the Kentucky Medicaid Program in accordance with:
 - (a) 907 KAR 1:671; and
 - (b) 907 KAR 1:672;
- (5) Comply with the requirements regarding the confidentiality of personal medical records pursuant to 42 U.S.C. 1320d and 45 C.F.R. Parts 160 and 164; and
- (6) Comply with the following:
 - (a) A supplier shall bill Medicaid rather than a recipient for a covered service;
 - (b) A supplier shall not bill a recipient for a service that is denied by the department on the basis that the service is incidental to, or mutually exclusive with, a covered service; and
 - (c) A supplier may bill a recipient for a service not covered by Medicaid if the provider informed the recipient of noncoverage prior to providing the service and a completed MAP 1001 form is signed and included in the medical record.

Section 10. Managed Care Organizations and Reimbursement. A managed care organization shall not be required to reimburse the same amount as the department reimburses for a service or item covered pursuant to this administrative regulation, except as otherwise required by applicable law, such as any reimbursement required pursuant to KRS 205.6333.

Section 11. Federal Approval and Federal Financial Participation. The department's coverage and reimbursement for services pursuant to this administrative regulation shall be contingent upon:

- (1) Receipt of federal financial participation for the coverage and reimbursement; and
- (2) Centers for Medicare and Medicaid Services' approval for the coverage and re-imbursement.

Section 12. Appeal Rights. (1) If an individual is denied prior authorization for ~~MSEA~~~~[DMEPOS]~~ based upon an application of this administrative regulation, the ~~MSEA~~~~[DME]~~ supplier involved in the prior authorization request may appeal the denial. To appeal the denial, the ~~MSEA~~~~[DME]~~ supplier shall submit to the department, within thirty (30) calendar days of the prior authorization denial, a written request, by mail or fax, for a reconsideration review.

(2) Upon receipt of a reconsideration request and any supporting documentation, the department shall:

- (a) Conduct a reconsideration review within thirty (30) calendar days from the receipt of the request;
- (b) Base the reconsideration review decision solely upon information that is:
 - 1. Contained in the individual's medical records; and
 - 2. Submitted with the written request pursuant to subsection (1)

of this section; and

(c) Issue a notification of approval or denial within five (5) working days of a reconsideration review.

(3) If an outcome of a services reconsideration review results in a denial, the department shall grant an appeal.

(4) An appeal of a department decision regarding a Medicaid recipient who is:

- (a) Enrolled with a managed care organization shall be in accordance with 907 KAR 17:010; or
 - (b) Not enrolled with a managed care organization shall be in accordance with 907 KAR 1:563.
- (5) An appeal of a department decision regarding a Medicaid provider based upon an application of this administrative regulation shall be in accordance with 907 KAR 1:671.

Section 13. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) Form MAP-9, "Prior Authorization for Health Services", July 2010;
- (b) ~~[Form MAP-1000, "Certificate of Medical Necessity, Durable Medical Equipment", July 2010;~~
- ~~(c) Form MAP-1000B, "Certificate of Medical Necessity, Metabolic Formulas and Foods", July 2010 edition; and~~
- ~~(d) Form MAP 1001, "Advance Member Notice", September 2006.~~
- (2) This material may be inspected, copied, or obtained, subject to applicable copyright law:
 - (a) At the Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.; or
 - (b) Online at the department's Web site at <https://www.chfs.ky.gov/agencies/dms/dpo/bpb/Pages/dme.aspx> [~~http://www.chfs.ky.gov/dms/incorporated.htm~~].

LISA D. LEE, Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY:

FILED WITH LRC: January 11, 2024 at 2:25 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on March 25, 2024, 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 March 18, 2024, 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 March 31, 2024. 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 Specialist, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; Phone: 502-564-7476; Fax: 502-564-7091; CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the provisions relating to coverage and reimbursement requirements for durable medical supplies, equipment, and orthotics.

(b) The necessity of this administrative regulation: This

administrative regulation is necessary to establish the provisions relating to coverage and reimbursement requirements for medical supplies, equipment, and appliances.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms with 42 C.F.R. part 414 by establishing provisions relating to coverage and reimbursement requirements for durable medical supplies, equipment, and appliances.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the authorizing statutes by establishing the provisions relating to coverage and reimbursement requirements for medical supplies, equipment, and appliances.

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

(a) How the amendment will change this existing administrative regulation: The amendment changes the administrative regulation by updating reimbursement rates for rental items and makes updates to the rates of reimbursement for covered services. This amendment updates terminology related to medical supplies, equipment, and appliances. Furthermore, the date of service is expanded to include reimbursement for custom items. In addition, home is expanded to include the community. Additionally, the requirement of and references to a Certificate of Medical Necessity have been removed. Language related to electric breast pumps has been updated to match modern benefits. The requirement of a copayment has also been removed. Additionally, new language has been added related to the requirements for non-sole source nutrition.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to update the reimbursement rates and to update language associated with durable medical supplies, equipment, and appliances.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by updating the reimbursement rates and to update language associated with durable medical supplies, equipment, and appliances.

(d) How the amendment will assist in the effective administration of the statutes: The amendment conforms to the content of the authorizing statutes by updating the reimbursement rates and to update language associated with durable medical supplies, equipment, and appliances.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The administrative regulation affects DME providers enrolled in the Medicaid program. DMS estimates that more than 2,900 MSEA providers are 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: MSEA providers will not be required to take any new action to comply.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): DMS does not anticipate any expenses for this population.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): MSEA providers will be able to receive higher reimbursements for certain MSEA and will be able to provide some MSEA with lessened regulatory burden.

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

(a) Initially: DMS does not anticipate additional costs on an initial basis in implementing the amendments to this administrative regulation.

(b) On a continuing basis: DMS does not anticipate additional costs on a continuing basis in implementing the amendments to this

administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Sources of funding to be used 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: Neither an increase in fees nor funding will be necessary to implement the amendments.

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

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

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 42 C.F.R. 440.230.

(2) State compliance standards. KRS 194A.030(2) requires the Department for Medicaid Services to "serve as the single state agency in the commonwealth to administer Title XIX of the Federal Social Security Act."

(3) Minimum or uniform standards contained in the federal mandate. The Department for Medicaid Services is required to provide MSEA as a Medicaid benefit.

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

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

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Medicaid Services (DMS) will be affected by the amendment to this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.030(2), 194A.050(1), 205.520(3)

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

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

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

(c) How much will it cost to administer this program for the first year? DMS does not anticipate additional costs in administering this program in the first year.

(d) How much will it cost to administer this program for subsequent years? DMS does not anticipate additional costs in administering this program in subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

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

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

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

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

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

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

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

907 KAR 13:010. Private duty nursing service coverage provisions and requirements.

RELATES TO: KRS 205.520

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 42 C.F.R. 440.80, 440.330, 42 U.S.C. 1396u-7

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, has a responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds. This administrative regulation establishes the Medicaid Program coverage provisions and requirements regarding private duty nursing services.

Section 1. Provider Participation.

(1) To be eligible to provide services under this administrative regulation, a provider shall be:

(a) Currently enrolled in the Kentucky Medicaid Program in accordance with 907 KAR 1:672;

(b) Except as established in subsection (2) of this section, currently participating in the Kentucky Medicaid Program in accordance with 907 KAR 1:671; and

(c) 1. A private duty nursing agency; or
 2. A licensed home health agency.

(2) In accordance with 907 KAR 17:015, Section 3(3), a provider of a service to an enrollee shall not be required to be currently participating in the fee-for-service Medicaid Program.

Section 2. Coverage and Limit.

(1) The department shall reimburse for a private duty nursing service or supply if the service or supply is:

(a) Provided:

1. By a:

a. Registered nurse employed by a:

(i) Private duty nursing agency that meets the requirements established in Section 1 of this administrative regulation; or

(ii) Home health agency that meets the requirements established in Section 1 of this administrative regulation; or

b. Licensed practical nurse employed by a:

(i) Private duty nursing agency that meets the requirements established in Section 1 of this administrative regulation; or

(ii) Home health agency that meets the requirements established in Section 1 of this administrative regulation;

2. To a recipient in the recipient's home, except as provided in subsection (2) of this section; and

3. Under the direction of the recipient's physician in accordance with 42 C.F.R. 440.80;

(b) 1. Prescribed for the recipient by a physician; and

2. Stated in the recipient's plan of treatment developed by the prescribing physician;

(c) Established as being needed for the recipient in the recipient's home;

(d) Prior authorized; and

(e) Medically necessary.

(2) A private duty nursing service may be covered in a setting other than in the recipient's home, if the service is provided during a normal life activity of the recipient that requires the recipient to be out of his or her home.

~~[(3)(a) There shall be a limit of private duty nursing services per recipient of 2,000 hours per twelve (12) consecutive month period.~~

~~(b) The limit established in paragraph (a) of this subsection may be exceeded if services in excess of the limit are determined to be medically necessary.]~~

Section 3. No Duplication of Service. The department shall not reimburse for any of the following services provided during the same time that a private duty nursing service is provided to a recipient:

(1) A personal care service;

(2) A skilled nursing service or visit; or

(3) A home health aide service.

Section 4. Conflict of Interest. The department shall not reimburse for a private duty nursing service provided to a recipient if the individual providing the service is:

(1) An immediate family member of the recipient; or

(2) A legally responsible individual who maintains his or her primary residence with the recipient.

Section 5. Records Maintenance, Protection, and Security.

(1)(a) A provider shall maintain a current health record for each recipient.

(b) 1. A health record shall document each service provided to the recipient including the date of the service and the signature of the individual who provided the service.

2. The individual who provided the service shall date and sign the health record on the date that the individual provided the service.

(2)(a) A provider shall maintain a health record regarding a recipient for at least five (5) years from the date of the service.

(b) If the United States Department of Health and Human Services secretary requires a longer document retention period than the period referenced in paragraph (a) of this subsection, pursuant to 42 C.F.R. 431.17, the period established by the secretary shall be the required period.

(3) A provider shall comply with 45 C.F.R. Part 164.

Section 6. Medicaid Program Participation Compliance.

(1) A provider shall comply with:

(a) 907 KAR 1:671;

(b) 907 KAR 1:672; and

(c) All applicable state and federal laws.

(2)(a) If a provider receives any duplicate payment or

overpayment from the department, regardless of reason, the provider shall return the payment to the department.

(b) Failure to return a payment to the department in accordance with paragraph (a) of this subsection may be:

1. Interpreted to be fraud or abuse; and
2. Prosecuted in accordance with applicable federal or state law.

Section 7. Third Party Liability. A provider shall comply with KRS 205.622.

Section 8. Use of Electronic Signatures.

(1) The creation, transmission, storage, and other use of electronic signatures and documents shall comply with the requirements established in KRS 369.101 to 369.120.

(2) A provider that chooses to use electronic signatures shall:

(a) Develop and implement a written security policy that shall:

1. Be adhered to by each of the provider's employees, officers, agents, or contractors;
2. Identify each electronic signature for which an individual has access; and
3. Ensure that each electronic signature is created, transmitted, and stored in a secure fashion;

(b) Develop a consent form that shall:

1. Be completed and executed by each individual using an electronic signature;
2. Attest to the signature's authenticity; and
3. Include a statement indicating that the individual has been notified of his or her responsibility in allowing the use of the electronic signature; and

(c) Provide the department, immediately upon request, with:

1. A copy of the provider's electronic signature policy;
2. The signed consent form; and
3. The original filed signature.

Section 9. Auditing Authority. The department shall have the authority to audit any claim, medical record, or documentation associated with any claim or medical record.

Section 10. Federal Approval and Federal Financial Participation. The department's coverage of services pursuant to this administrative regulation shall be contingent upon:

- (1) Receipt of federal financial participation for the coverage; and
- (2) Centers for Medicare and Medicaid Services' approval for the coverage.

Section 11. Appeal Rights.

(1) An appeal of an adverse action by the department regarding a service and a recipient who is not enrolled with a managed care organization shall be in accordance with 907 KAR 1:563.

(2) An appeal of an adverse action by a managed care organization regarding a service and an enrollee shall be in accordance with 907 KAR 17:010.

LISA D. LEE, Commissioner

ERIC FRIEDLANDER, Secretary

APPROVED BY AGENCY: January 5, 2024

FILED WITH LRC: January 11, 2023 at 2:25 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on March 25, 2024, 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 March 18, 2024, 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 March 31, 2024. 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 Specialist, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; Phone: 502-564-7476; Fax: 502-564-7091; CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the Department for Medicaid Services' policy requirements regarding private duty nursing services and supplies.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the Department for Medicaid Services' policy requirements regarding private duty nursing services and supplies.

(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 Department for Medicaid Services' policy requirements regarding private duty nursing services and supplies.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the authorizing statutes by establishing the Department for Medicaid Services' policy requirements regarding private duty nursing services and supplies.

(2) If 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 coordinates with amendments made to 907 KAR 13:015 in order to implement an increased rate for the reimbursement for private duty nursing services and increases the number of units that can be reimbursed per twelve month period. The specific amendments to this administrative regulation remove a unit limitation. On an ongoing basis the unit limitation will be in 907 KAR 13:015.

(b) The necessity of the amendment to this administrative regulation: These amendments are necessary to increase the rate for the reimbursement for private duty nursing services and to increase the number of units that can be reimbursed per twelve month period.

(c) How the amendment conforms to the content of the authorizing statutes: The amendments conform to the content of the authorizing statutes by establishing an increased rate for the reimbursement for private duty nursing services and increases the number of units that can be reimbursed per twelve month period.

(d) How the amendment will assist in the effective administration of the statutes: The amendments will assist in the effective administration of the authorizing statutes by establishing an increased rate for the reimbursement for private duty nursing services and increases the number of units that can be reimbursed per twelve month period.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Private Duty Nursing organizations will be affected by this regulation. There are currently 23 Private Duty Nursing organizations.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: As appropriate, providers may need to refer to 907 KAR 13:015 to determine reimbursement rates.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Providers and provider groups will not incur additional costs as a result of the changes to this administrative regulation.

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

entities identified in question (3): Providers and provider groups will benefit due to removing unit limits as established by this updated administrative regulation.

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

(a) Initially: DMS does not anticipate any additional costs in implementing this amendment on an initial basis.

(b) On a continuing basis: DMS does not anticipate any additional costs in implementing this amendment on a continuing basis.

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

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

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

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

FISCAL NOTE

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.030(2), 194A.050(1), 205.520(3)

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

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

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

(c) How much will it cost to administer this program for the first year? DMS does not anticipate any additional costs in implementing this amendment on an initial basis.

(d) How much will it cost to administer this program for subsequent years? DMS does not anticipate any additional costs in implementing 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.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

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

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? DMS does not anticipate that cost savings will be generated for regulated entities

as a result of the amendments to this administrative regulation in subsequent years.

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

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

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

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

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. There is no federal mandate to establish the reimbursement rate or unit limits in an administrative regulation.

(2) State compliance standards. KRS 194A.030(2) states, "The Department for Medicaid Services shall serve as the single state agency in the Commonwealth to administer Title XIX of the Federal Social Security Act."

(3) Minimum or uniform standards contained in the federal mandate. There is no federal mandate to establish the reimbursement rate in an administrative regulation.

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

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

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

907 KAR 13:015. Private duty nursing service or supply reimbursement provisions and requirements.

RELATES TO: KRS 205.520

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3)

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, has a responsibility to administer the Medicaid program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds. This administrative regulation establishes the Department for Medicaid Services' reimbursement provisions and requirements regarding private duty nursing services and supplies.

Section 1. General Requirements. For the department to reimburse for a private duty nursing service or supply under this administrative regulation, the:

(1) Provider shall meet the provider requirements established in 907 KAR 13:010; and

(2) The service or supply shall meet the coverage and related requirements established in 907 KAR 13:010.

Section 2. Reimbursement. The department shall:

(1) Reimburse for private duty nursing services at a specific rate that is established pursuant to the current fee schedule utilized by the department and authorized by state and federal law. As appropriate, billing and reimbursement information shall be included in the Medicaid Physician Fee Schedule established in 907 KAR 3:010, available at <https://www.chfs.ky.gov/agencies/dms/Pages/feesrates.aspx>, [of nine (9) dollars] per fifteen (15) minutes, which shall constitute one (1) unit;

(2) Not reimburse for more than:

(a) Ninety-six (96) units per recipient per twenty-four (24) hour period; or

(b) 35,040[8,000] units per twelve (12) consecutive month period per recipient; and

(3) Reimburse for supplies as established on the Private Duty Nursing Supplies Fee Schedule posted at <https://www.chfs.ky.gov/agencies/dms/Pages/feesrates.aspx>.

Section 3. Not Applicable to Managed Care Organizations. A managed care organization shall not be required to reimburse the same amount as established in this administrative regulation for a service or supply covered pursuant to 907 KAR 13:010 and this administrative regulation.

Section 4. Federal Approval and Federal Financial Participation. The department's reimbursement for services or supplies 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 5. Appeal Rights. (1) An appeal of a negative action regarding a Medicaid recipient shall be in accordance with 907 KAR 1:563.

(2) An appeal of a negative action regarding Medicaid eligibility of an individual shall be in accordance with 907 KAR 1:560.

(3) An appeal of a negative action regarding a Medicaid provider shall be in accordance with 907 KAR 1:671. [A provider may appeal an action by the department as established in 907 KAR 1:674].

[Section 6. Incorporation by Reference.

(1) "Private Duty Nursing Supplies Fee Schedule", April 2014, is incorporated by reference.

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

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

(b) ~~Online at the department's Web site at <http://www.chfs.ky.gov/dms/incorporated.htm>.]~~

LISA D. LEE, Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: January 5, 2024

FILED WITH LRC: January 11, 2024 at 2:25 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on March 25, 2024, 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 March 18, 2024, 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 March 31, 2024. 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 Specialist, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; Phone: 502-564-7476; Fax: 502-564-7091; CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the Department for Medicaid Services' reimbursement provisions and requirements regarding private duty nursing services and supplies.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the Department for Medicaid Services' reimbursement provisions and requirements regarding private duty nursing services and supplies.

(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 Department for Medicaid Services' reimbursement provisions and requirements regarding private duty nursing services and supplies.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the authorizing statutes by establishing the Department for Medicaid Services' reimbursement provisions and requirements regarding private duty nursing services and supplies.

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

(a) How the amendment will change this existing administrative regulation: This amendment implements an increased rate for the reimbursement for private duty nursing services, with a specific rate to be set in the current fee schedule. The regulation also increases the number of units that can be reimbursed per twelve month period from 8,000 to 35,040.

(b) The necessity of the amendment to this administrative regulation: These amendments are necessary to increase the rate for the reimbursement for private duty nursing services and to increase the number of units that can be reimbursed per twelve month period.

(c) How the amendment conforms to the content of the authorizing statutes: The amendments conform to the content of the authorizing statutes by establishing an increased rate for the reimbursement for private duty nursing services and increases the number of units that can be reimbursed per twelve month period.

(d) How the amendment will assist in the effective administration of the statutes: The amendments will assist in the effective administration of the authorizing statutes by establishing an increased rate for the reimbursement for private duty nursing services and increases the number of units that can be reimbursed per twelve month period.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Private duty nursing organizations will be affected by this regulation. There are currently 23 private duty nursing organizations.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: As appropriate, providers may need to

refer to this administrative regulation to determine reimbursement rates.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Providers and provider groups will not incur additional costs as a result of the changes to this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Providers and provider groups will benefit due to the additional clarity provided by the amendments included in this updated administrative regulation.

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

(a) Initially: DMS does not anticipate any additional costs in implementing this amendment on an initial basis.

(b) On a continuing basis: DMS does not anticipate any additional costs in implementing this amendment on a continuing basis.

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

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

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

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

FISCAL NOTE

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.030(2), 194A.050(1), 205.520(3)

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

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

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

(c) How much will it cost to administer this program for the first year? DMS does not anticipate any additional costs in implementing this amendment on an initial basis.

(d) How much will it cost to administer this program for subsequent years? DMS does not anticipate any additional costs in implementing 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.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

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

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

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

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

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

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

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*.

BOARDS AND COMMISSIONS
Board of Licensed Professional Counselors
(New Administrative Regulation)

201 KAR 36:100. Counseling compact.

RELATES TO: KRS 335.560

STATUTORY AUTHORITY: KRS 335.515, 335.560

NECESSITY, FUNCTION, AND CONFORMITY: KRS 335.560, Section 16.B.1. requires the Board of Licensed Professional Counselors to review any rule adopted by the Counseling Compact pursuant to Section 11 of KRS 335.560 within sixty (60) days of adoption for the purpose of filing the rule as an emergency administrative regulation pursuant to KRS 13A.190 and for filing the rule as an accompanying ordinary administrative regulation pursuant to KRS Chapter 13A. This administrative regulation incorporates by reference the rules adopted by the Counseling Compact.

Section 1. The Board of Licensed Professional Counselors shall comply with all rules of the Counseling Compact, which includes the Counseling Compact Rules as of October 25, 2023.

Section 2. Incorporation by Reference.

(1) The following material is incorporated by reference: "The Counseling Compact Rules", October 25, 2023, and as revised.

(2)

(a) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Board of Licensed Professional Counselors, 500 Mero Street, 2 SC 32, Frankfort, Kentucky 40602, Monday through Friday, 8 a.m. to 4:30 p.m.; or

(b) This material may also be obtained on the Board of Licensed Professional Counselors' Web site at <https://lpc.ky.gov/>.

(3) This material may also be obtained at:

(a) The Counseling Compact Commission, 108 Wind Haven Drive, Suite A, Nicholasville, Kentucky 40356.

(b) <https://counselingcompact.org/contact-us/>.

DR. HANNAH COYT, Board Chair

APPROVED BY AGENCY: December 13, 2023

FILED WITH LRC: December 19, 2023 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on March 26, 2024, at 2:00 p.m. EST in Room 127CW, The Mayo-Underwood Building, 500 Mero Street, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing no later than five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until 11:59 p.m. on March 29, 2024. Written notification of intent to attend the public hearing or written comments on the proposed administrative regulation should be made by using the Public Protection Cabinet website at the follow address: https://ppc.ky.gov/reg_comment.aspx. 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: Sara Boswell Janes, Staff Attorney III, Department of Professional Licensing, Office of Legal Services, 500 Mero Street, 2 NC WK#2, phone (502) 782-2709 (office), fax (502) 564-4818, email Sara.Janes@ky.gov, link to public comment portal: https://ppc.ky.gov/reg_comment.aspx.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Sara Boswell Janes

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation implements KRS 335.560, the Counseling Compact.

(b) The necessity of this administrative regulation: This administrative regulation is necessary because KRS 335.560, SECTION 16.B.1. requires rules adopted by the Counseling Compact to be promulgated as administrative regulations pursuant to KRS Chapter 13A.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the specific requirements of the authorizing statute, KRS 335.560, SECTION 16.B.1. which requires rules adopted by the Counseling Compact to be promulgated as administrative regulations pursuant to KRS Chapter 13A.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation conforms to the content of KRS 335.560 which requires this promulgation.

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect the 4429 active and 66 inactive licensees in some capacity, and will also affect new applicants for licensure.

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

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

(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 additional cost imposed by this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will be in compliance with the regulation.

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

(a) Initially: There is no additional cost.

(b) On a continuing basis: There is no additional cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operations are funded by fees paid by credential holders and applicant.

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

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

(9) TIERING: Is tiering applied? Tiering was not applied as the changes apply to all 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? Kentucky Board of Licensed Professional Counselors.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 335.515, 335.560. Interstate compacts are specifically authorized under the federal constitution (Article 1, Section 10, Clause 3- the Compacts Clause) and take precedence over any conflicting state law pursuant to the Compacts Clause and the Contracts Clause, U.S. Constitution, Article 1, Section 10, Clause 1.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. 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? No additional cost.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: There is no cost associated with the 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? 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 (+/-): N/A

Expenditures (+/-): N/A

Other Explanation:

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

**ENERGY AND ENVIRONMENT CABINET
Department for Natural Resources
Division of Conservation
(New Administrative Regulation)**

416 KAR 1:001. Definitions for 416 KAR Chapter 1.

RELATES TO: KRS 146.080-146.115, 224.71-100-224.71-140, 262.610-262.660

STATUTORY AUTHORITY: KRS 146.110-146.115, 262.090, 262.610, 262.660

NECESSITY, FUNCTION, AND CONFORMITY: KRS 146.110 through 146.115 authorizes the Soil and Water Conservation Commission to promulgate administrative regulations governing administration of the Kentucky Soil Erosion and Water Quality Cost-share Fund. KRS 262.660 authorizes the Soil and Water Conservation Commission to promulgate administrative regulations governing the administration of the Equipment Revolving Loan Fund as expressed in KRS 262.610 through 262.650. This administrative regulation establishes definitions for 416 KAR Chapter 1.

Section 1. Definitions.

(1) "Agricultural or silvicultural production" means any farm operation on a tract of land, including all income-producing improvements and farm dwellings, together with other farm buildings and structures incident to the operation and maintenance of the farm, used for the production of livestock, livestock products, poultry, poultry products, milk, milk products, or silviculture products, or for the growing of crops such as tobacco, corn, soybeans, small grains, fruit, and vegetables; or devoted to and meeting the requirements and qualifications for payments to agriculture programs under an agreement with the state or federal government.

(2) "Agriculture water quality plan" is defined by KRS 224.71-100(10).

(3) "Animal waste" means feces, urine, or other excrement, digestive emission, urea, or similar substance emitted by animals, including any form of livestock, poultry, or fish. This includes animal waste that is mixed or commingled with bedding, compost, feed, soil, or any other material typically found with this waste.

(4) "Applicant" for purposes of 416 KAR 1:010, means a person who applies for cost-share assistance from the Kentucky Soil Erosion and Water Quality Cost-share Fund.

(5) "Available funds" means moneys budgeted, unobligated, and distributed to the commission for the purposes of KRS 146.115.

(6) "Best management practices" means, for agricultural or silvicultural production, the most effective, practical, and economical means of reducing and preventing water pollution provided by the United States Department of Agriculture Natural Resources Conservation Service or the Soil and Water Conservation Commission.

(7) "Case file" means the collection of materials that are assembled and maintained for each application for cost-share assistance.

(8) "Conservation district" or "district" is defined by KRS 262.010(3).

(9) "Cost-share assistance" means cost-share funds awarded by the commission from the Kentucky Soil Erosion and Water Quality Cost-share Fund.

(10) "Direct aid" means appropriated funds awarded to conservation districts by the commission.

(11) "District supervisor" means a member of the governing board of a conservation district.

(12) "Division" means the Kentucky Division of Conservation.

(13) "Eligible land" means land on which agricultural or silvicultural production is being conducted.

(14) "Equipment" means heavy or specialized equipment purchased through the Equipment Revolving Loan Program for the purpose of conserving soil resources, the prevention and control of soil erosion, and the conservation and protection of water resources related to those purposes.

(15) "Groundwater" means subsurface water occurring in the zone of saturation beneath the water table and any perched water zones below the B soil horizon.

(16) "Infrastructure" is defined by KRS 262.010(5).

(17) "Performance and maintenance agreement" means a written agreement between an eligible person and the district in which the eligible person agrees to implement and to maintain the best management practices for which cost-share assistance is being awarded.

(18) "Primary applicant":

(a) For purposes of 416 KAR 1:020 means:

1. A conservation district applying on its own for equipment;

2. The person applying jointly with a conservation district for equipment; or

3. A conservation district applying for infrastructure.
- (b) The primary applicant is responsible for monthly payments, insurance, liability, and operational and reporting requirements.
- (19) "Program year" means the period from July 1 to June 30.
- (20) "Soil and Water Conservation Commission" or "commission" means the commission established by KRS 146.090.
- (21) "Surface water":
 - (a) Means those waters having well-defined banks and beds, either constantly or intermittently flowing; lakes and impounded waters, marshes, and wetlands; and any subterranean waters flowing in well-defined channels and having a demonstrable hydrologic connection with the surface; and
 - (b) Does not mean effluent ditches and lagoons used for waste treatment that are situated on property owned, leased, or under valid easement by a permitted discharger.
- (22) "Surplus equipment" means heavy or specialized equipment no longer needed or has become unsuitable for use by the district.
- (23) "Water priority protection region" means an area specifically delineated where water pollution from agricultural or silvicultural production has been scientifically documented.
- (24) "Watershed" means all the area from which all drainage passes a given point downstream.

REBECCA W. GOODMAN, Secretary

APPROVED BY AGENCY: December 22, 2023

FILED WITH LRC: December 22, 2023 at 11:50 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 26, 2024 at 5:00 p.m. (Eastern Time) in Training Room C of the Energy and Environment Cabinet at 300 Sower Blvd, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through March 31, 2024. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Dawn Baase, Environmental Scientist Consultant, Department for Natural Resources, Office of the Commissioner, 300 Sower Blvd, 2nd Floor, Frankfort, Kentucky 40601, phone (502) 782-6311, fax (502) 564-4245, email Dawn.Baase@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Dawn Baase

- (1) Provide a brief summary of:
 - (a) What this administrative regulation does: This administrative regulation defines terms used in 416 KAR Chapter 1 for administering Soil and Water Conservation Commission programs.
 - (b) The necessity of this administrative regulation: This administrative regulation is necessary to define terms to administer and implement the Soil and Water Conservation Commission cost-share and equipment loan programs.
 - (c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 146.110 through 146.115 authorize the Soil and Water Conservation Commission to promulgate administrative regulations governing the administration of the Kentucky Soil Erosion and Water Quality Cost-share Fund. KRS 262.660 authorizes the Soil and Water Conservation Commission to promulgate administrative regulations to administer the equipment loan fund as expressed in KRS 262.610 through 262.650. This administrative regulation defines terms in 416 KAR Chapter 1 for the administration of Soil and Water Conservation Commission programs.
 - (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative

regulation assists in governing the statutes and Soil and Water Conservation Commission cost-share and equipment loan programs by defining the terms necessary to administer such 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 is a new administrative regulation.
 - (b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation.
 - (c) How the amendment conforms to the content of the authorizing statutes: This is a new administrative regulation.
 - (d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation.
- (3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects the 121 conservation districts in the Commonwealth.
- (4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
 - (a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The entities identified do not have any actions or requirements due 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): The entities identified will not have costs due to this administrative regulation.
 - (c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The entities identified will not have benefits accrued due to this administrative regulation.
- (5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
 - (a) Initially: There is no cost associated with implementing this administrative regulation.
 - (b) On a continuing basis: There will be no costs associated with 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 funding for implementation of the amendments to this administrative regulation will be with a combination of general and restricted funds.
- (7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: This administrative regulation will not require an increase in fees or funding.
- (8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees.
- (9) TIERING: Is tiering applied? No, tiering is not applied to this administrative regulation as it only contains definitions for 416 KAR Chapter 1.

FISCAL NOTE

- (1) What 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 Soil and Water Conservation Commission, Division of Conservation, and county conservation districts.
- (2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 146.110-146.115, 262.090, 262.610, and 262.660.
- (3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. This administrative regulation will not affect the expenditures and revenues of a state or local government agency.
 - (a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation does not generate additional revenue for state or local government.

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

(c) How much will it cost to administer this program for the first year? This administrative regulation will be administered using the cabinet's current budget.

(d) How much will it cost to administer this program for subsequent years? The program associated with this administrative regulation will be administered using the cabinet's normal budget 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 (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

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

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

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

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

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

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

Cost Savings (+/-): There is no known cost savings.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

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

**ENERGY AND ENVIRONMENT CABINET
Department for Natural Resources
Division of Conservation
(New Administrative Regulation)**

416 KAR 001:020. Equipment Revolving Loan Program.

RELATES TO: KRS 262.610-262.650

STATUTORY AUTHORITY: KRS 262.090, 262.610, 262.660

NECESSITY, FUNCTION, AND CONFORMITY: KRS 262.660 authorizes the Soil and Water Conservation Commission to promulgate administrative regulations governing the administration of the Equipment Revolving Loan Fund as expressed in KRS 262.610 through 262.650. This administrative regulation establishes the requirements and procedures for participation in the Equipment Revolving Loan Program.

Section 1. Applicability.

(1) The provisions of this administrative regulation shall apply to persons and conservation districts applying for Equipment Revolving Loan Program funding for heavy or specialized equipment and infrastructure.

(2) The Equipment Revolving Loan Program shall be limited to the:

(a) Purchase cost of heavy or specialized equipment used for conserving soil resources, prevention and control of soil erosion, and conservation and protection of water resources related to those purposes; and

(b) Purchase or lease costs for infrastructure, including costs of improvements to infrastructure, if sought by a conservation district.

(3) The Equipment Revolving Loan Program shall not be used to reimburse for previous purchases of equipment or infrastructure.

(4) Equipment purchased using funds from the Equipment Revolving Loan Program shall not be used for activities that do not comply with subsection (2)(a) of this section, including clear cutting operations or strip mining activities.

Section 2. General Requirements.

(1) Conservation districts, or a district jointly with a person residing within the district, that purchase heavy or specialized equipment using funds from the Equipment Revolving Loan Program shall comply with the requirements in paragraphs (a) through (e) of this subsection.

(a) A person residing within the district shall be the primary applicant when applying jointly with a conservation district. When a person residing within the district is the primary applicant, the district shall procure the equipment and execute a lease agreement with the person.

(b) Any two (2) or more conservation districts may combine efforts to purchase an eligible piece of equipment, with one district designated as the primary applicant.

(c) The primary applicant shall provide one-third (1/3) the amount of the total cost of the equipment.

(d) The district shall adhere to the provisions in KRS Chapter 45A.

(e) All equipment shall be new, or warranted as new, from a licensed equipment dealer.

(2) Conservation districts that use funds from the Equipment Revolving Loan Program for infrastructure shall comply with the requirements in paragraphs (a) through (d) of this subsection.

(a) Adhere to the provisions in KRS Chapters 45A and 56.

(b) Provide, at a minimum, ten (10) percent of the total purchase cost or lease payments.

(c) Pay for all necessary property taxes and maintain infrastructure.

(d) Not convey or encumber any interest in infrastructure without prior division approval, as long as the division holds title to the infrastructure.

(3) Conservation districts who are also the primary applicant for infrastructure may:

(a) Add costs incurred for completing Finance and Administration Cabinet requirements pursuant to KRS Chapter 56 to the total loan amount advanced by the division. Those funds shall be included in the total funds the primary applicant agrees to repay; and

(b) Sublease portions of purchased infrastructure that are not essential to the operation of the district to a capable party or vendor, with the district maintaining primary occupancy of the infrastructure. The primary applicant shall ensure taxes and insurance requirements are maintained.

(4) Districts shall grant access to the division, Finance and Administration Cabinet, and Auditor of Public Accounts to any books, documents, papers, records, or other evidence directly related to the loan for the purpose of financial audit or program review.

(5) Any legal action brought to enforce the terms of a promissory note or loan shall be filed in a court in Franklin County, Kentucky.

Section 3. Equipment Revolving Loan Program Application Procedures.

(1) Conservation districts, or a district applying jointly with a person residing within the district, seeking funding for the purchase of heavy or specialized equipment, or districts seeking funding for infrastructure shall apply to the Soil and Water Conservation Commission by submitting an application to the Division of

Conservation.

(2) Prior to applying to the commission, funding requests for equipment and infrastructure shall be voted upon by the board of supervisors for a district at a meeting conducted in accordance with the Open Meetings Law, KRS 61.805 through 61.850.

(3) Upon district approval pursuant to subsection (2) of this section, applications shall be submitted in accordance with subsections (4) through (6) of this section.

(4) A district requesting funding for heavy or specialized equipment shall:

(a) Complete a Conservation District Equipment Loan Application, DOC-01, which includes a copy of the district's most recent Annual Financial Report, a minimum of three (3) bids for each piece of equipment, and documentation demonstrating how the model procurement code shall be followed; and

(b) Submit completed applications to the division. If two (2) or more districts are applying jointly, each district shall complete an application. The district designated as the primary applicant shall submit applications from all parties in one application package, including all required documentation, to the division.

(5) A district requesting funding jointly with a person residing within the district for heavy or specialized equipment shall:

(a) Complete a Conservation District Equipment Loan Application, DOC-01, which includes a copy of the district's most recent Annual Financial Report and documentation demonstrating how the model procurement code shall be followed;

(b) Require the person residing within the district to complete and submit a Joint Equipment Loan Application, DOC-02, which includes a copy of the person's credit report, and a minimum of three (3) bids for each piece of equipment; and

(c) Submit applications, including the required documentation, from all parties in one application package to the division.

(6) A district requesting funding for infrastructure shall:

(a) Complete an Infrastructure Equipment Loan Application, DOC-03, which includes a copy of the district's most recent Annual Financial Report, current Annual Budget, and documentation demonstrating how the model procurement code shall be followed; and

(b) Submit completed applications to the division. If two (2) or more districts are applying jointly, each district shall complete an application. The district designated as the primary applicant shall submit applications from all parties in one (1) application package, including all required documentation, to the division.

(7) The division shall review submitted applications for administrative completeness.

(a) A district shall be notified of application deficiencies and have the opportunity to make corrections.

(b) Complete applications shall be referred to the commission for consideration.

(8) A district shall be notified of the commission's final decision on the request for funds from the Equipment Revolving Loan Program.

(9) For loans on heavy or specialized equipment, the district shall submit to the division:

(a) The signed loan contract;

(b) A filing fee in an amount established in KRS 355.9-525. The filing fee shall be made by check payable to the Kentucky State Treasurer; and

(c) In cases when the district applies jointly with a person residing within the district, the legally executed lease agreement in accordance with Section 2(1)(a) of this administrative regulation.

(10) Infrastructure loans are contingent upon the district complying with the Finance and Administration Cabinet requirements pursuant to KRS Chapters 45A and 56.

(11) Upon completion of the requirements established in subsections (9) and (10) of this section, the division shall file:

(a) A lien on purchased equipment with the Kentucky Secretary of State office; and

(b) Titles to infrastructure at the courthouse in the county where the infrastructure project is located.

Section 4. Interest Rates.

(1) Loan interest rates shall be determined by the Soil and Water Conservation Commission.

(2)(a) The commission may adjust interest rates for new loans at each commission meeting.

(b) Interest rates shall not be adjusted by the commission for open loans.

(3) The factors in paragraphs (a) and (b) of this subsection shall be considered by the commission when recommending an interest rate adjustment, and by the Commissioner of the Department for Natural Resources when making the final determination on the interest rate adjustment.

(a) The available balance in the fund.

(b) The current interest rate as established by the Federal Open Market Committee.

Section 5. Loan Repayment Terms.

(1) Repayment terms for equipment purchases shall be:

(a) Three (3) to five (5) years for loans of less than \$100,000; or
(b) Five (5) to seven (7) years for loans over \$100,000.

(2) Repayment terms for infrastructure shall be determined by the commission.

(3) Monthly loan payments shall be submitted to the division by the tenth day of each month accompanied by the Equipment Loan Monthly Report, DOC-04, in accordance with Section 7(6) of this administrative regulation. Loan payments shall be submitted by check made payable to the Kentucky State Treasurer.

(4) Repayment penalties shall be applied if a loan is paid off in fewer than eighteen (18) months. The calculated penalty shall be the amount of interest lost by the early payoff.

(5) If a person fails to submit monthly payments under a joint application, the district shall be responsible for delinquent payments.

Section 6. Insurance Requirements.

(1) The primary applicant purchasing equipment using funds from the Equipment Revolving Loan Program shall carry property insurance coverage in accordance with paragraphs (a) and (b) of this subsection.

(a) Insurance coverage for property or assets against all risk of physical loss or damage, including flood and rising water, to the equipment. The insurance shall be for the full replacement value of the equipment, parts, attachments, and accessories purchased with the Equipment Revolving Loan Program funds regardless of where the equipment is stored. The primary applicant is responsible for the total value of the loan even in the event of loss.

(b) Liability coverage, to include bodily injury and property damage, with a combined single limit of a minimum of \$500,000 per occurrence.

(2) Districts purchasing infrastructure using funds from the Equipment Revolving Loan Program shall carry property insurance coverage in accordance with paragraphs (a) and (b) of this subsection.

(a) Insurance coverage for real property against all risk of physical loss or damage, including flood and rising water, to the infrastructure. The insurance shall be for the full replacement value of the infrastructure purchased with the Equipment Revolving Loan Program funds. The division and primary applicant shall receive remuneration in proportion to the amount of equity each party holds in the infrastructure at time of loss. The primary applicant is responsible for the total value of the loan even in the event of loss.

(b) Liability coverage, to include bodily injury and property damage, with a combined single limit of a minimum of \$1 million per occurrence.

(3) All insurance policies shall include the Commonwealth of Kentucky as an additional insured and loss payee.

(4) Insurance coverage shall be maintained until the loan is fully amortized, or until the district or primary applicant has been formally released of further responsibility by the division.

(5) Copies of all insurance policies, endorsements, and certificates of renewal shall be submitted to the division within sixty (60) days of issuance or amendment.

Section 7. Operational, Reporting, and Record Keeping Requirements.

(1) Equipment purchased using funds from the Equipment Revolving Loan Program shall meet the operational requirements in paragraphs (a) through (d) of this subsection.

(a) Operated within the district, or districts, identified in the loan contract unless they approve for the operation outside county boundaries.

(b) Advertised by publication in accordance with the provisions of KRS Chapter 424, at a minimum, annually to inform the public of availability for use. The publication area shall be the district, or districts, identified in the loan contract. The primary applicant shall be the responsible person for publishing advertisements. If the primary applicant is a district or districts, alternative internet and publication procedures may be utilized if the requirements of KRS 424.145 are met.

(c) Made readily available for rental or hire by the public.

(d) Rented or operated for a minimum of twenty (20) days within a six (6) month period.

(2) Equipment shall not be used more than sixty-five (65) percent of the time on:

(a) Land owned by district supervisors or employees of the district when the district is the primary applicant; and

(b) Lands owned by the primary applicant when a district applies jointly with a person residing within the district.

(3) Lease or rental fees on equipment shall be established sufficient to assist in amortization payments, operation and maintenance, operator costs, and transportation of equipment to jobs. Districts shall notify the commission within thirty (30) days of any changes to approved lease or rental fees.

(4) Administrative fees may be charged to the person by the district, when a district applies jointly with a person residing within the district for equipment, not to exceed five (5) percent of the monthly amortization amount.

(5) Equipment shall be maintained, kept in working order, and reasonably protected from the weather.

(6) Reporting requirements for equipment and infrastructure loans are established in paragraphs (a) and (b) of this subsection.

(a) A person residing within the district, who is the primary applicant of an equipment loan, shall document and report monthly to the district, at a minimum, the information in Section 5 of the Equipment Loan Monthly Report, DOC-04.

(b) A district shall complete and submit, to the division by the tenth day of each month, the Equipment Loan Monthly Report, DOC-04. If two (2) or more districts applied jointly, the district designated as the primary applicant shall complete and submit the Equipment Loan Monthly Report, DOC-04, to the division.

(7) Districts using funding from the Equipment Revolving Loan Program shall maintain records on the:

(a) Description of the equipment or infrastructure;

(b) Terms of the purchase or lease;

(c) Terms of the loan;

(d) Description of insurance coverage and premiums paid;

(e) Major repairs and circumstances impairing the use of purchased equipment or infrastructure; and

(f) Dollar amount paid to the division for the purpose of amortizing the loan.

Section 8. Default on a Contract.

(1) Failure to make payments over a three (3) month period or to comply with the requirements in accordance with Sections 5 through 7 of this administrative regulation shall constitute a default on a contract.

(2) The division shall notify the primary applicant in writing of a default and describe the cause of the default with reasonable specificity. The notice shall provide the primary applicant with thirty (30) days from mailing to cure the default. The notice shall be complete upon mailing by certified mail, return receipt requested, to the mailing address listed on the application.

(3) For equipment purchases:

(a) Resolutions and remedies for an uncured default are established in subparagraphs (1) and (2) of this paragraph.

1. When a person residing within the district is the primary

applicant, the district shall repossess equipment that was purchased using funds from the Equipment Revolving Loan Program. The district shall be responsible for delinquent payments in accordance with Section 5(5) of this administrative regulation and any remaining payments. Following repossession, the district shall:

a. Lease the equipment to another person residing within the district with the approval of the commission;

b. Enroll as the primary applicant; or

c. Sell the equipment pursuant to KRS Chapter 45A.

2. When a district is the primary applicant, the district shall sell the equipment pursuant to KRS Chapter 45A.

(b) If a district fails to comply with paragraph (a) of this subsection, direct aid will be withheld until the outstanding loan balance is paid.

(c) 1. A person that is aggrieved by the decision of the district to repossess equipment pursuant to paragraph (a) of this subsection may file a written appeal with the commission. An appeal shall be filed within thirty (30) days of the repossession and shall state the basis for the appeal.

2. Procedure for hearing appeal.

a. The commission shall notify the district and person that they may appear before the commission to present testimony or written documentation on the issues presented by the appeal. Any hearing for an appeal shall conform to the requirements of KRS Chapter 13B.

b. The commission shall have 100 days to make a final decision and to notify the district and person.

3. Final decisions of the commission may be appealed by the district or person to a court in Franklin County, Kentucky.

(4) For infrastructure:

(a) Resolutions and remedies for an uncured default are established in subparagraphs 1. and 2. of this paragraph.

1. Purchased infrastructure shall be disposed as surplus property pursuant to the provisions of KRS Chapters 45A and 56; or

2. Terminate the lease agreement.

(b) If the primary applicant fails to remedy any default on a contract:

1. The division shall notify the Finance and Administration Cabinet; and

2. Direct aid shall be withheld until the outstanding loan balance is paid.

(c) A district that is aggrieved by the Finance and Administration Cabinet's decision may seek a review of the decision pursuant to KRS 45A.230.

Section 9. Loan Completion.

(1) Once the loan contract has been satisfied, the division shall issue a letter of completion formally releasing the loan.

(2) Upon receipt of a letter of completion:

(a) Purchased equipment and infrastructure shall be the property of the primary applicant;

(b) For infrastructure loans, the primary applicant shall file a transfer of title at the courthouse in the county where the infrastructure is located and take full possession of the infrastructure; or

(c) The primary applicant shall be responsible for meeting the requirements of lease agreement or terminate the lease agreement.

(3) The district shall:

(a) Maintain all records for equipment and infrastructure for five (5) years past the release of the title or termination of loan agreement; and

(b) Submit to the division, within ninety (90) days from the receipt of the letter of completion, all loan records related to the equipment or infrastructure, and for equipment purchases a lien termination fee in an amount established in KRS 355.9-525. The filing fee shall be made by check payable to the Kentucky State Treasurer.

(4) For equipment purchases, the division shall file a lien release with the Kentucky Secretary of State's office.

Section 10. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Conservation District Equipment Loan Application", DOC-01, December 2023;

(b) "Equipment Loan Monthly Report", DOC-04, December 2023;

(c) "Infrastructure Equipment Loan Application", DOC-03, December 2023; and

(d) "Joint Equipment Loan Application", DOC-02, December 2023.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Conservation, 300 Sower Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m., Eastern Standard Time.

(3) This material may also be obtained at the Division of Conservation's Web site at <https://eec.ky.gov/Natural-Resources/Conservation/Pages/Equipment-Revolving-Loan-Program.aspx>.

REBECCA W. GOODMAN, Secretary

APPROVED BY AGENCY: December 22, 2023

FILED WITH LRC: December 22, 2023 at 11:50 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 26, 2024 at 5:00 p.m. (Eastern Time) in Training Room C of the Energy and Environment Cabinet at 300 Sower Blvd, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through March 31, 2024. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Dawn Baase, Environmental Scientist Consultant, Department for Natural Resources, Office of the Commissioner, 300 Sower Blvd, 2nd Floor, Frankfort, Kentucky 40601, phone (502) 782-6311, fax (502) 564-4245, email Dawn.Baase@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Dawn Baase

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes requirements and procedures for participation in the Equipment Revolving Loan Program.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to govern the Equipment Revolving Loan Program and are due to the passage of HB-130 during the 2023 Regular Legislative Session.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 262.610 authorizes the Soil and Water Conservation Commission to acquire and to make available, or to assist in acquiring or making available to persons and soil and water conservation districts, heavy or specialized equipment or infrastructure, which they cannot economically obtain. KRS 262.660 authorizes the Soil and Water Conservation Commission to promulgate administrative regulations to administer the equipment loan fund expressed in KRS 262.610 to 262.650.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing the requirements to receive equipment loan funds to purchase heavy or specialized equipment, or infrastructure.

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

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

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

(c) How the amendment conforms to the content of the

authorizing statutes: This is a new administrative regulation.

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects the 121 conservation districts and persons residing within the district boundaries.

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

(a) List 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 be required to follow application procedures, comply with insurance requirements, operational, reporting, and record keeping requirements, and repayment terms. In addition, conservation districts shall adhere to provisions of KRS Chapter 45A for both equipment and infrastructure loans, and KRS Chapter 56 for infrastructure loans.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The entities identified do not have any required costs due to this administrative regulation, as it is a voluntary program.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Entities participating in the Equipment Revolving Loan Program will benefit by spreading loan payments over time in lieu of purchasing with a lump sum amount.

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

(a) Initially: There are no costs to the administrative body associated with the implementation of this administrative regulation.

(b) On a continuing basis: There are no costs to the administrative body associated with 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: This administrative regulation will not require an additional source of funding. The Equipment Revolving Loan Fund was established in 1948 with appropriations from the legislature in 1948, 1960, 1968, and 1976, in the amount of \$400,000, \$200,000, \$250,000, and \$1,000,000 respectively. Additional funding comes in the form of interest payments on each loan.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish or increase any fees. However, conservation districts applying jointly with a person residing within the district to purchase heavy or specialized equipment may charge the person an administrative fee for completing and submitting the required monthly report. The administrative fee charged to the person is limited to no more than five (5) percent of the total loan amount.

(9) TIERING: Is tiering applied? (Explain why or why not) No, tiering is not applied to this administrative regulation. All soil and water conservation districts and eligible persons may apply for funding through the Equipment Revolving Loan Program. Funding is awarded based on the availability of funds.

FISCAL NOTE

(1) What 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 Soil and Water Conservation Commission, Division of Conservation, and county conservation districts.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 262.090, 262.610, and 262.660.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? Equipment purchased by a conservation district will generate additional revenue for the district when it is rented to the public. Additionally, when a district applies jointly with a person residing within the district, the district may charge the person an administrative fee for completing and submitting the required monthly report. The administrative fee charged to the person is limited to no more than five (5) percent of the total loan amount. In the case of a district purchasing infrastructure, additional revenue may be generated if a portion of the infrastructure is subleased to another entity.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? Equipment purchased by a conservation district will generate additional revenue for the district when it is rented to the public. Additionally, when a district applies jointly with a person residing within the district, the district may charge the person an administrative fee for completing and submitting the required monthly report. The administrative fee charged to the person is limited to no more than five (5) percent of the total loan amount. In the case of a district purchasing infrastructure, additional revenue may be generated if a portion of the infrastructure is subleased to another entity.

(c) How much will it cost to administer this program for the first year? The program associated with this administrative regulation will be administered using the cabinet's current budget.

(d) How much will it cost to administer this program for subsequent years? It is not anticipated to need additional funding will be necessary to administer the program in subsequent years. A significant increase in applications may require additional staff to process paperwork and loan payments. The program associated with this administrative regulation cannot be administered using funds from the Equipment Revolving Loan Program.

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

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

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

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

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

(c) How much will it cost the regulated entities for the first year? This administrative regulation will not require any costs to regulated entities as it voluntary program.

(d) How much will it cost the regulated entities for subsequent years? This administrative regulation will not require costs to regulated entities as it voluntary program.

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

Cost Savings (+/-): There is no known cost savings.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an

administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] This administrative regulation will not have a negative or adverse economic impact.

CABINET FOR HEALTH AND FAMILY SERVICES
Office of the Secretary
(New Administrative Regulation)

915 KAR 1:001. Definitions for 915 KAR Chapter 1.

RELATES TO: KRS Chapter 218B

STATUTORY AUTHORITY: KRS 218B.140

NECESSITY, FUNCTION, AND CONFORMITY: KRS 218B.140

requires the Cabinet for Health and Family Services to promulgate administrative regulations to administer the medicinal cannabis program in the Commonwealth. This administrative regulation establishes definitions of terms used by the cabinet in administrative regulations pertaining to cannabis businesses and the medicinal cannabis program.

Section 1. Definitions.

(1) "Accreditation Body" means an impartial non-profit organization that operates in conformance with the International Organization for Standardization (ISO) and International Electrotechnical Commission (IEC) standard 17011 and is a signatory to the International Laboratory Accreditation Cooperation (ILAC) Mutual Recognition Arrangement (MRA) for Testing.

(2) "Advertising" means the publication, dissemination, solicitation, or circulation, for a fee, that is visual, oral, written, or electronic to induce directly or indirectly an individual to patronize a cannabis business or to purchase medicinal cannabis.

(3) "Advertising device" means any billboard, sign, notice, poster, display, or other device, including the structure erected or used in connection with the display or device and all lighting or other attachments used in connection with the display or device, that is:

(a) Operated or owned by a person or entity who is earning compensation directly or indirectly from a third party or parties for the placement of a message on the device; and

(b) Intended to attract the attention of operators of motor vehicles on the highways.

(4) "Applicant" means a person or entity, including any parent entity, who applies for a cannabis business license to operate as a cultivator, processor, producer, dispensary, or safety compliance facility in the Commonwealth.

(5) "Appropriate signs" means exterior signage that accurately reflects a cannabis business's legal name, business name, "doing business as" name, or trade name and contact information on record with the cabinet.

(6) "Cabinet" means the Cabinet for Health and Family Services.

(7) "Cannabis business" is defined by KRS 218B.010(3).

(8) "Cannabis business activities" means growing, cultivating, processing, producing, packaging, labeling, transporting, dispensing, or testing medicinal cannabis.

(9) "Cannabis business agent" is defined by KRS 218B.010(4).

(10) "Cannabis business category" means one (1) of the following: Tier I cultivator, Tier II cultivator, Tier III cultivator, Tier IV cultivator, processor, producer, dispensary, or safety compliance facility.

(11) "Canopy" means the total surface area within a cultivation area that is dedicated to live plant production.

(12) "Cardholder" is defined by KRS 218B.010(5).

(13) "Certificate of accreditation" means a document issued by an accreditation body evidencing that a safety compliance facility is in compliance with International Organization for Standardization Standard ISO and IEC 17025 and other requirements relevant to the operation of laboratories conducting tests on medicinal cannabis and other items used in the growing, processing, or dispensing of medicinal cannabis.

(14) "Certificate of analysis" means a document that confirms that the test performed by a safety compliance facility on a harvest

batch or production batch meets the testing requirements set forth by the cabinet.

(15) "Chain of custody" means the process used by employees or agents of a cannabis business or authorized agents of the cabinet to record the possession and transfer of medicinal cannabis samples or test samples from the time the samples are collected until testing is completed and the samples are destroyed.

(16) "Cultivation activities" means the activities involved with growing, cultivating, and selling medicinal cannabis, including planting, raising, harvesting, trimming, testing, packaging, labeling, transferring, transporting, and storing medicinal cannabis.

(17) "Cultivator" is defined by KRS 218B.010(6).

(18) "Daycare center" means "child-care center" as defined by KRS 199.894(3), "family child-care home" as defined by KRS 199.894(5), and registered childcare providers in the Child Care Assistance Program as regulated by 922 KAR 2:180.

(19) "Designated caregiver" is defined by KRS 218B.010(8).

(20) "Dispensary" is defined by KRS 218B.010(9).

(21) "Disqualifying felony offense" is defined by KRS 218B.010(11).

(22) "Enclosed, locked facility" is defined by KRS 218B.010(12).

(23) "Food grade" means a non-toxic material that is safe for direct contact with food.

(24) "Harvest batch" means a group of packages created from harvested medicinal cannabis plants of the same strain which were harvested at the same time. Packages of raw plant material are created from a harvest batch.

(25) "Licensee" means the recipient of a license from the cabinet authorizing a cannabis business to operate in Kentucky for the term of the license.

(26) "Limited access area" means:

(a) An area on a cultivator or producer's site or within its facility where seedlings or medicinal cannabis plants are growing; seedlings, medicinal cannabis plants, or medicinal cannabis are being loaded into or out of transport vehicles; medicinal cannabis is being packaged for sale or stored; medicinal cannabis waste is processed, stored, or destroyed; and security alarm and surveillance system devices are stored or maintained;

(b) An area on a processor or producer's site or within its facility where medicinal cannabis is being processed; medicinal cannabis is being loaded into or out of transport vehicles; medicinal cannabis is being packaged for sale or stored; medicinal cannabis waste is processed, stored, or destroyed; and security alarm and surveillance system devices are stored or maintained;

(c) An area on a safety compliance facility's site or within its facility where medicinal cannabis is being loaded into or out of transport vehicles, stored, tested, or destroyed and where security alarm and surveillance system devices are stored or maintained; or

(d) An area on a dispensary's site or within its building where medicinal cannabis is being loaded into or out of transport vehicles, stored, or destroyed and where security alarm and surveillance system devices are stored or maintained.

(27) "Local government" means a city, county, urban-county government, consolidated local government, charter county government, or unified local government.

(28) "Medicinal cannabis" is defined by KRS 218B.010(15).

(29) "Medicinal cannabis accessories" is defined by KRS 218B.010(16).

(30) "Medicinal cannabis practitioner" is defined by KRS 218B.010(17).

(31) "Medicinal cannabis product" is defined by KRS 218B.010(18).

(32) "Medicinal cannabis waste" means:

(a) Solid, liquid, semi-solid, or contained gaseous materials that are generated by a cultivator, processor, producer, or safety compliance facility;

(b) Unused, surplus, returned, recalled, contaminated, or expired medicinal cannabis;

(c) Medicinal cannabis plant material that is not used in the growing, harvesting, processing, or testing of medicinal cannabis, including flowers, stems, trim, leaves, seeds, dead medicinal cannabis plants, dead seedlings, unused medicinal cannabis plant parts, unused seedling parts, or roots;

(d) Medicinal cannabis that exceeds any maximum allowable testing limit or fails to meet any other standards or requirements set forth in 915 KAR 001:110;

(e) Spent hydroponic nutrient solution;

(f) Containers used for:

1. Growing seedlings or medicinal cannabis plants or for use in the growing of medicinal cannabis; and

2. Processing of medicinal cannabis.

(g) Used or unused fertilizers and pesticides;

(h) Used or unused solvents, chemicals, or excipients;

(i) Samples that have been tested;

(j) Excess samples that will not be tested; and

(k) Wastewater.

(33) "Minor" is defined by KRS 218B.010(19).

(34) "Pesticide" means:

(a) Any substance or mixture of substances intended to prevent, destroy, control, repel, attract, or mitigate any pest;

(b) Any substance or mixture of substances intended to be used as a plant regulator, defoliant, or desiccant;

(c) Any herbicide used to manipulate or control undesirable vegetation;

(d) Any fungicide used to kill or prevent the growth of fungi and their spores; and

(e) Any substance or mixture of substances intended to be used as a spray adjuvant, once they have been mixed with an EPA-registered product.

(35) "Processing activities" means the activities involved with processing raw plant material and medicinal cannabis into medicinal cannabis products, including acquiring, purchasing, possessing, processing, preparing, manufacturing, manipulating, blending, packaging, labeling, transferring, transporting, supplying, or selling medicinal cannabis or medicinal cannabis products to other cannabis businesses in the Commonwealth.

(36) "Processor" is defined by KRS 218B.010(21).

(37) "Producer" is defined by KRS 218B.010(23).

(38) "Product example" means a limited amount of medicinal cannabis or medicinal cannabis product that has been designated by a dispensary for display on its premises for the sole purpose of product education for cardholders.

(39) "Production batch" means a group of packages created from a production run of medicinal cannabis and indicates the medicinal cannabis in the packages has changed forms chemically or physically, which severs previous test results from those packages and requires new testing to be completed.

(40) "Qualifying medical condition" is defined by KRS 218B.010(26).

(41) "Raw plant material" is defined by KRS 218B.010(27).

(42) "Registered qualified patient" is defined by KRS 218B.010(28).

(43) "Registry identification card" is defined by KRS 218B.010(29).

(44) "Safety compliance facility" is defined by KRS 218B.010(30).

(45) "Sample" means medicinal cannabis randomly selected from a harvest batch or production batch and collected by an employee or agent of a cannabis business or an authorized agent of the cabinet for testing by a safety compliance facility. "Sample" includes both a primary sample and a reserve sample.

(46) "Sampler" means an employee or agent of a cultivator, processor, producer, safety compliance facility, or dispensary that is authorized by his or her employer to collect samples or test samples in accordance with the contracted safety compliance facility's standard operating procedures and 915 KAR 1:060.

(47) "Seedling" is defined by KRS 218B.010(32).

(48) "Serious violation" is defined by KRS 218B.010(33).

(49) "Smoking" is defined by KRS 218B.010(34).

(50) "Test sample" means an amount of medicinal cannabis or medicinal cannabis products, or amount of soil, growing medium, water, or solvents used to grow or process medicinal cannabis, dust, or other particles obtained from the swab of a counter or equipment used in the growing or processing of medicinal cannabis, or other item used in the growing or processing of medicinal cannabis in a facility taken by an employee or agent of a cannabis business or an

authorized agent of the cabinet and provided to a safety compliance facility for testing.

(51) "Transport vehicle" means a vehicle that is used to transport seeds, seedlings, medicinal cannabis plants, medicinal cannabis, and medicinal cannabis products between cannabis businesses or between a dispensary and registered qualified patients or designated caregivers.

(52) "Visiting qualified patient" is defined by KRS 218B.010(38).

SAM FLYNN, Executive Director

ERIC FRIEDLANDER, Secretary

APPROVED BY AGENCY: January 3, 2024

FILED WITH LRC: January 4, 2024 at 11:50 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on March 25, 2024, 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 March 18, 2024, 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 March 31, 2024. 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 502-564-7476; 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 definitions of terms used by the Cabinet for Health and Family Services in administrative regulations pertaining to cannabis businesses and the medicinal cannabis program.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to carry out the requirements of KRS Chapter 218B, specifically KRS 218B.140.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 218B.140 requires the Cabinet for Health and Family Services to promulgate administrative regulations for the medicinal cannabis program. This administrative regulation sets out definitions of terms used in administrative regulations pertaining to cannabis businesses and the medicinal cannabis program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides the definitions of terms used in administrative regulations pertaining to cannabis businesses and the medicinal cannabis program.

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

(a) How the amendment will change this existing administrative regulation: 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 affects cannabis businesses and the Kentucky Medical Cannabis Program within the Cabinet for Health and Family Services.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: None.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): None.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Not applicable.

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

(a) Initially: This administrative regulation establishes definitions for terms used by the cabinet in administrative regulations pertaining to cannabis businesses and the medicinal cannabis program. There is no anticipated cost to implement this administrative regulation.

(b) On a continuing basis: This administrative regulation establishes definitions for terms used by the cabinet in administrative regulations pertaining to cannabis businesses and the medicinal cannabis program. There is no anticipated cost to implement this administrative regulation on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: State general funds provided by the commonwealth

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

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

(9) TIERING: Is tiering applied? Tiering is not applied. All cannabis businesses 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? This administrative regulation impacts the Kentucky Medical Cannabis Program 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 218B.140.

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

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

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

(c) How much will it cost to administer this program for the first year? This administrative regulation establishes definitions for terms used by the cabinet in administrative regulations pertaining to cannabis businesses and the medicinal cannabis program. There is no anticipated cost to implement this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? This administrative regulation establishes definitions for terms used by the cabinet in administrative regulations pertaining to cannabis businesses and the medicinal cannabis program. There is no anticipated cost to implement this administrative regulation on a continuing basis.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? The cabinet does not anticipate any cost savings in the first year.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? The cabinet does not anticipate any cost savings in subsequent years.

(c) How much will it cost the regulated entities for the first year? The cabinet does not anticipate any cost for the cannabis businesses arising out of this administrative regulation in the first year.

(d) How much will it cost the regulated entities for subsequent years? The cabinet does not anticipate any cost for the cannabis businesses arising out of this administrative regulation in subsequent years.

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

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

CABINET FOR HEALTH AND FAMILY SERVICES

Office of the Secretary

(New Administrative Regulation)

915 KAR 1:030. Cultivator.

RELATES TO: KRS Chapter 218B

STATUTORY AUTHORITY: KRS 218B.140

NECESSITY, FUNCTION, AND CONFORMITY: KRS 218B.140 requires the Cabinet for Health and Family Services to promulgate administrative regulations establishing requirements and procedures for medicinal cannabis cultivator operations in the Commonwealth. This administrative regulation establishes those requirements and procedures.

Section 1. General Requirements.

(1) No person or entity shall engage in the business of planting, growing, cultivating, raising, harvesting, trimming, storing, testing, packaging, labeling, transferring, transporting, selling, or offering to sell medicinal cannabis seeds, seedlings, medicinal cannabis plants, medicinal cannabis, or medicinal cannabis products to a cannabis business without first being issued a license by the cabinet. A cultivator shall not sell or transfer, or allow the sale or transfer, of medicinal cannabis seeds, seedlings, medicinal cannabis plants, medicinal cannabis, or medicinal cannabis products to any person or entity in the Commonwealth who does not hold a cannabis business license issued by the cabinet.

(2) A cultivator shall:

(a) Conduct cultivation activities in an enclosed, locked facility in accordance with KRS 218B.095(5);

(b) Conduct a criminal background check into the criminal history of each person seeking to become a principal officer, board member, agent, volunteer, or employee before that person begins work and shall retain records of these background checks for five (5)

years and provide same to the cabinet during subsequent inspections or upon request; and

(c) Comply with all applicable requirements of KRS Chapter 218B, specifically KRS 218B.095 and 218B.105, and 915 KAR Chapter 1.

(3) A cultivator shall not:

(a) Employ, take on as a volunteer, or have as a board member, principal officer, or agent any person who was convicted of a disqualifying felony offense or is younger than twenty-one (21) years of age; or

(b) Sell or transfer, or allow the sale or transfer, of medicinal cannabis seeds, seedlings, medicinal cannabis plants, medicinal cannabis, or medicinal cannabis products to any person or entity in the Commonwealth who does not hold a cannabis business license issued by the cabinet.

(4) The qualifications that a cultivator shall meet to receive a license are continuing qualifications to maintain the license throughout the licensure period.

Section 2. Plans of Operation.

(1) Prior to its first day of cultivation activities in the Commonwealth, a cultivator shall establish standard operating procedures for the following:

(a) Employment policies and procedures;

(b) Security including:

1. Staff identification measures, including use of employee identification badges;

2. Monitoring of attendance of staff and visitors;

3. Alarm systems;

4. Video surveillance;

5. Monitoring and tracking inventory, including use of the Commonwealth's electronic monitoring system and seed to sale tracking system established pursuant to KRS 218B.140;

6. Personnel security;

7. Transportation of medicinal cannabis;

8. Cash management and anti-fraud procedures;

9. Measures to prevent loitering, which shall include signage; and

10. Storage of seeds, seedlings, medicinal cannabis plants, medicinal cannabis, or medicinal cannabis products;

(c) The process for receiving, growing, cultivating, harvesting, handling, packaging, labeling, storing, transporting, and disposing of seeds, seedlings, medicinal cannabis plants, medicinal cannabis, or medicinal cannabis products and a process for handling, tracking, transporting, storing, and disposing of medicinal cannabis waste;

(d) Workplace safety, including conducting safety checks;

(e) Contamination;

(f) Maintenance, cleaning, and sanitation of equipment used to grow and cultivate medicinal cannabis;

(g) Maintenance and sanitation of the cultivator's facility;

(h) Application of pesticides, fertilizers, and herbicides to medicinal cannabis at any point during the growing, cultivating, and harvesting processes;

(i) Proper handling and storage of any chemical or substance used in growing medicinal cannabis;

(j) Logging the use of all pesticides and chemical applications applied to medicinal cannabis and medicinal cannabis products;

(k) Quality control, including strict regulation of the amount of delta-9 tetrahydrocannabinol content in each medicinal cannabis harvest batch, proper labeling, and minimization of medicinal cannabis contamination;

(l) Recordkeeping and inventory control;

(m) Investigation of complaints and potential adverse events received from other cannabis businesses, cardholders, or medicinal cannabis practitioners regarding the cultivator's operations;

(n) Preventing unlawful diversion of medicinal cannabis;

(o) Recall plan; and

(p) Any other standard operating procedures required for all cannabis businesses in KRS Chapter 218B and 915 KAR Chapter 1;

(2) A cultivator shall make its standard operation procedures available to the cabinet upon request and during any inspection of the cultivator's site and facility.

Section 3. Cultivator Facilities.

(1) A cultivator shall only plant, grow, cultivate, and harvest medicinal cannabis in an enclosed, locked facility on the specific site licensed by the cabinet and identified on its license issued by the cabinet.

(2) All cultivation activities, excluding disposal, destruction, or transport of medicinal cannabis, shall take place within a building or secure structure that meets all applicable state and local building codes and specifications in addition to the following:

(a) Has a complete roof enclosure supported by connecting walls, constructed of solid materials extending from the ground to the roof;

(b) Is secure against unauthorized entry;

(c) Has commercial grade door locks on all external doors that are locked at all times;

(d) Restricts access to only authorized personnel to limited access areas identified with signage and daily records of entry and exit;

(e) Contains adequate plumbing to carry sufficient quantities of water to locations throughout the facility and convey any sewage and waste from the facility without cross contamination of potable water and waste;

(f) Stores toxic cleaning compounds, sanitizing agents, pesticides, fertilizers, and herbicides in a manner that is in accordance with applicable local, state, and federal laws and regulations;

(g) Maintains proper ventilation;

(h) Maintains pest control;

(i) Maintains adequate indoor and exterior lighting to facilitate video surveillance at all times; and

(j) Maintains adequate on-site parking for employees, agents, visitors, transporters of medicinal cannabis, or cabinet staff.

(3) A cultivator shall clearly mark all limited access areas on its premises with proper signage. All areas of ingress and egress to a limited access area shall be clearly identified by the posting of a sign which shall be not less than twelve (12) inches wide and twelve (12) inches long, composed of letters not less than one-half inch in height, which shall state: "Do Not Enter. Limited Access Area. Access Limited to Authorized Personnel and Escorted Visitors."

(4) A cultivator shall have a secure area for the loading and unloading of medicinal cannabis seeds, seedlings, medicinal cannabis plants, and medicinal cannabis into and from a transport vehicle.

Section 4. Inventory.

(1) A cultivator shall, within twenty-four (24) hours of receipt, record in the Commonwealth's designated electronic monitoring system and seed to sale tracking system each medicinal cannabis seed, seedling, or plant that it acquires.

(2) A cultivator shall only grow medicinal cannabis plants from seeds and seedlings located physically in its facility.

(3) Canopy. A cultivator shall not exceed the indoor growth area specified in KRS 218B.105(3) for its respective cultivator tier. The surface area of the plant canopy shall be calculated in square feet. Measurement shall include all of the area within the boundaries where the cultivation of medicinal cannabis plants occurs. If a tiered or shelving system is used in the cultivation area, the surface of each tier or shelf shall be included in the calculation. Calculation of the area of the plant canopy shall not include square footage within a cultivator's enclosed, locked facility used for the storage of supplies, pesticides, fertilizers, or other products as well as square footage used for quarantine, office space, or other non-cultivation activities.

Section 5. Employees Records and Identification.

(1) A cultivator shall keep an individual employment record for all employees, including:

(a) Full legal name;

(b) Detailed job description;

(c) Documentation of completed criminal background check;

(d) Record of all training received or acquired by the employee;

(e) Dates of employment;

(f) Records of days and hours worked; and

(g) Any disciplinary actions taken by the cultivator.

(2) Employment records shall be maintained, either electronically or in hard copy, for at least five (5) years after the employee's last date of employment with the cultivator.

(3) A cultivator shall create an identification badge for each employee, agent, or volunteer. The badge shall be conspicuously worn by employees, agents, or volunteers at all times that they are on the licensed premises or during transport of medicinal cannabis. The badge shall contain:

(a) The individual's name, photo, and employee identification number;

(b) A phone number and email address for the cultivator; and

(c) A phone number and email address for the Kentucky Medical Cannabis Program.

Section 6. Visitors to Cultivator Facilities.

(1) A cultivator site and facility shall not be open to the general public.

(2) A cultivator shall complete the following steps when admitting a visitor to its site and facility:

(a) Require the visitor to sign a visitor log upon entering and leaving the facility;

(b) Check the visitor's government-issued identification to verify that the name on the identification provided matches the name in the visitor log;

(c) Issue a visitor identification badge with the visitor's name and company, if applicable, and a badge number;

(d) Escort the visitor while the visitor remains on the site or in the facility keeping a record of the areas of the site and the facility visited; and

(e) Ensure that the visitor does not touch any medicinal cannabis plant or medicinal cannabis located in a limited access area.

(3) No one under the age of eighteen (18) shall be permitted to enter a cultivator's site or facility. A person who is at least eighteen (18) years of age may enter and remain on the cultivator's premises if that person is present to perform contract work, including electrical, plumbing, or security maintenance, that does not involve handling medicinal cannabis or is a government employee and is at the cannabis business in the course of his or her official duties.

(4) A cultivator shall post a sign in a conspicuous location at each entrance of its site and facility that states "THESE PREMISES ARE UNDER CONSTANT VIDEO SURVEILLANCE. NO ONE UNDER THE AGE OF 18 IS PERMITTED TO ENTER."

(5) The cultivator shall maintain the visitor log required under this section for five (5) years and make the visitor log available to the cabinet, law enforcement, and other federal or state government officials upon request to perform the government officials' functions and duties. The visitor log shall include the date, the full name of each visitor, the visitor identification badge number, the time of arrival, the time of departure, and the purpose of the visit, including the areas of the site and the facility visited.

(6) This section does not limit the right of the cabinet or its authorized agents, or other federal, state, or local government officials from entering any area of a cultivator's site and facility if necessary to perform the governmental officials' functions and duties.

(7) A principal officer, board member, agent, financial backer, employee, or volunteer of a cultivator shall not receive any type of consideration or compensation for allowing a visitor to enter a limited access area.

Section 7. Security and Surveillance.

(1) A cultivator shall have security and surveillance systems, utilizing commercial-grade equipment, to prevent unauthorized entry and to prevent and detect an adverse loss. The security and surveillance systems shall include the following:

(a) A professionally monitored security alarm system that includes:

1. Coverage of all facility entrances and exits; rooms with exterior windows, exterior walls, roof hatches or skylights; storage rooms, including those that contain medicinal cannabis and safes; and the perimeter of the facility;

2. An audible security alarm system signal, known as a panic alarm, generated by the manual activation of a device intended to signal a life-threatening or emergency situation requiring law enforcement response;

3. A silent alarm signal, known as a holdup alarm, generated by the manual activation of a device intended to signal a robbery in progress;

4. A failure notification system that provides an audible, text, or visual notification of any failure in the systems. The failure notification system shall provide by telephone, e-mail, or text message an alert to a designated security person within the facility within five (5) minutes after the failure;

5. Smoke and fire alarms;

6. Auxiliary power sufficient to maintain operation for at least twenty-four (24) hours following a power outage;

7. The ability to ensure all access doors are not solely controlled by an electronic access panel to prevent locks from becoming released during a power outage; and

8. Motion detectors for exterior lighting.

(b) A professionally monitored security surveillance system that is operational twenty-four (24) hours a day, seven (7) days a week, and records all activity in images capable of clearly revealing facial detail. The security and surveillance system shall include:

1. Fixed camera placement that allows for a clear image of all individuals and activities in and around the following:

a. All limited access areas;

b. A room or area containing a security alarm and surveillance system storage device or equipment;

c. Entrances to and exits from the facility. Entrances and exits shall be recorded from both indoor and outdoor vantage points;

d. Rooms with exterior windows, exterior walls, roof hatches, or skylights and storage rooms, including those that may contain medicinal cannabis and safes and excluding restrooms; and

e. Twenty (20) feet from the exterior of the perimeter of the facility.

2. Auxiliary power sufficient to maintain operation for at least twenty-four (24) hours following a power outage;

3. Ability to operate under the normal lighting conditions of each area under surveillance;

4. Ability to immediately produce a clear, color, still photograph in a digital format that is easily accessible;

5. Ability to clearly and accurately display the date and time. The date and time shall be synchronized and set correctly and may not significantly obscure the picture;

6. Ability to record all images captured by each surveillance camera in a format that may be easily accessed for a minimum of thirty (30) days, unless otherwise required for investigative or litigation purposes. The recordings shall be kept:

a. At the cultivator's facility:

(i) In a locked cabinet, closet or other secure place to protect it from tampering or theft; and

(ii) In a limited access area or other room to which access is limited to authorized individuals; or

b. At a secure location other than the location of the cultivator's facility if approved by the cabinet.

(2) Regarding inspection, servicing, alteration of, and any upgrade to, the security alarm and surveillance systems:

(a) The systems shall be inspected and all devices tested once every year by a qualified alarm system vendor and a qualified surveillance system vendor;

(b) A cultivator shall conduct maintenance inspections once every month to ensure that any repairs, alterations, or upgrades to the security alarm and surveillance systems are made for the proper operation of the systems;

(c) A cultivator shall retain at the facility, for at least five (5) years, records of all inspections, servicing, alterations, and upgrades performed on the security alarm and surveillance systems and shall make the records available to the cabinet and its authorized agents within two (2) business days following a request; and

(d) In the event of a mechanical malfunction of the security alarm or surveillance system that a cultivator anticipates shall exceed an eight (8) hour period, the cultivator shall notify the cabinet

immediately via electronic mail to kymedcanreporting@ky.gov and, with cabinet approval, provide alternative security measures that may include closure of the facility.

(3) Regarding records retention, a cultivator shall:

(a) Have a secure electronic back-up system for all electronic records;

(b) Within three (3) business days following a request for records under this paragraph, provide up to four (4) screen captures of an unaltered copy of a video surveillance recording to the cabinet or its authorized agents, law enforcement, or other federal, state, or local government officials if necessary to perform the governmental officials' functions and duties; and

(c) If a cultivator has been notified in writing by the cabinet or its authorized agents, law enforcement, or other federal, state, or local government officials of a pending criminal or administrative investigation for which a recording may contain relevant information, retain an unaltered copy of the recording for two (2) years or until the investigation or proceeding is closed or the entity conducting the investigation or proceeding notifies the cultivator that it is not necessary to retain the recording, whichever is later.

(4) During all non-working hours, all entrances to and exits from the cultivator's facility shall be securely locked.

(5) A cultivator shall install lighting to ensure proper surveillance inside and outside of the facility.

(6) A cultivator shall limit access to a room containing the equipment operating the security alarm and surveillance monitoring systems to:

(a) Persons who are essential to maintaining security and surveillance operations;

(b) Federal, state, and local law enforcement;

(c) Security alarm and surveillance system service employees;

(d) The cabinet or its authorized agents; and

(e) Other persons with the prior written approval of the cabinet.

(7) A cultivator shall make available to the cabinet or its authorized agents, upon request, a current list of authorized employees and service employees or contractors who have access to areas containing the equipment operating the security alarm and surveillance monitoring systems; and

(8) A cultivator shall keep rooms housing the equipment operating the security alarm and surveillance monitoring systems locked at all times and shall not use these rooms for any other purpose or function.

Section 8. Requirements for Cultivating and Growing Medicinal Cannabis.

(1) A cultivator who uses a pesticide on medicinal cannabis shall be certified to apply pesticides by the Kentucky Department of Agriculture pursuant to KRS Chapter 217B and:

(a) A cultivator who is certified to apply pesticides by the Kentucky Department of Agriculture shall not use, or be eligible to use, a Category 10 license to apply pesticides to medicinal cannabis in violation of the product label;

(b) A cultivator shall not use any pesticide in violation of the product label;

(c) A cultivator who uses a pesticide on growth medium used for multiple medicinal cannabis cultivation cycles shall comply with the longest of any planting restriction interval on the product label prior to reusing the growth medium;

(d) The cabinet may perform pesticide testing on a random basis or if its authorized agents have reason to believe that a pesticide may have been applied to medicinal cannabis in violation of the product label; and

(e) Medicinal cannabis seeds, seedlings, plants, and materials bearing pesticide residue in violation of the label or testing standards established by the cabinet shall be subject to forfeiture or destruction without compensation.

(2) The cabinet shall publish a list of approved pesticides and any other chemical applications for use in growing and cultivating medicinal cannabis on the Web site for the Kentucky Medical Cannabis Program, <https://kymedcan.ky.gov>. This list shall be reviewed and updated annually by the cabinet.

(3) A cultivator shall maintain a log of the use of all pesticides and any other chemical applications applied to medicinal cannabis

and medicinal cannabis products for a minimum of five (5) years, including:

- (a) The date of application;
 - (b) The name of the individual making the application;
 - (c) The product that was applied;
 - (d) The section, including the square footage, that received the application;
 - (e) The amount of product that was applied; and,
 - (f) A copy of the label of the product that was applied.
- (4) A cultivator shall:
- (a) Use appropriate nutrient practices;
 - (b) Use a fertilizer or hydroponic solution of a type, formulation, and at a rate to support healthy growth of plants; and
 - (c) Maintain a log of the type and amounts of fertilizer and any growth additives used.
- (5) A cultivator shall perform visual inspections of growing medicinal cannabis plants and harvested medicinal cannabis plant material to ensure there are no visible insects, mold, mildew, pests, rot, grey or black plant material, or inorganic material, including plastic, glass, and metal shavings.
- (6) A cultivator shall have a separate and secure area for temporary storage of medicinal cannabis that is awaiting disposal by the cultivator.
- (7) A cultivator shall install a system to monitor, record, and regulate:
- (a) Temperature;
 - (b) Humidity;
 - (c) Ventilation;
 - (d) Lighting; and
 - (e) Water supply.

Section 9. Electronic Monitoring System and Seed to Sale Tracking System.

(1) A cultivator shall use the electronic monitoring system and seed to sale tracking system prescribed by the cabinet containing the requirements in KRS Chapter 218B, specifically KRS 218B.140, and in accordance with written instructions provided by the cabinet.

(2) A cultivator shall establish inventory controls and procedures to conduct inventory reviews at its facility.

(a) A cultivator shall prepare quarterly physical inventory reports that includes any necessary adjustments and the reason(s) for an adjustment and that demonstrates the physical inventory reconciles with the inventory recorded in the Commonwealth's designated electronic monitoring system and seed to sale tracking system, including any medicinal cannabis that has been or is in the process of being destroyed; and

(b) A written or electronic record shall be created and maintained of each inventory conducted under this section that includes the date of the inventory, a summary of the inventory findings, and the employee identification numbers and titles or positions of the individuals who conducted the inventory.

Section 10. Equipment, operation, and maintenance.

(1) A cultivator shall have a written process in place to maintain the sanitation and operation of equipment that comes into contact with medicinal cannabis to prevent contamination. The cultivator shall provide a copy of the written process to the cabinet upon request.

(2) As part of the written process required under this section, a cultivator shall:

- (a) Routinely calibrate, check, and inspect automatic, mechanical, or electronic equipment as well as any scales, balances, or other measurement devices used in the cultivator's operations to ensure accuracy; and
- (b) Maintain an accurate log recording the:
 1. Maintenance of equipment;
 2. Cleaning of equipment; and
 3. Calibration of equipment.

Section 11. Sanitation and Safety in a Cultivator Facility.

(1) A cultivator shall maintain its site and facility in a sanitary condition to limit the potential for contamination of the medicinal cannabis grown in the facility, including:

(a) Equipment and surfaces, including floors, counters, walls, and ceilings, shall be cleaned and sanitized as frequently as necessary to protect against contamination, using a sanitizing agent registered by the United States Environmental Protection Agency, in accordance with the instructions printed on the label. All equipment and utensils used by a cultivator shall be capable of being adequately cleaned;

(b) Trash shall be properly and routinely removed to prevent pest infestation;

(c) Floors, walls, and ceilings shall be kept in good repair;

(d) Equipment, counters, and surfaces used for packaging and labeling of medicinal cannabis shall be food grade quality;

(e) Adequate protection against pests shall be provided through the use of integrated pest management practices and techniques that identify and manage plant pathogens and pest problems; and

(f) Toxic cleaning compounds, sanitizing agents, pesticides, herbicides, and other chemicals shall be labeled and stored in a manner that prevents contamination of seeds, seedlings, medicinal cannabis plants, and medicinal cannabis.

(2) All employees and volunteers shall conform to sanitary practices while on duty, including:

(a) Maintaining adequate personal cleanliness;

(b) Washing hands thoroughly in an adequate hand-washing area before starting work and at any other time when hands may have become soiled or contaminated;

(c) Wearing proper clothing, including gloves, hair nets, headbands, caps, beard covers, or other effective hair restraints where appropriate;

(d) Removing all unsecured jewelry and other objects that might fall into medicinal cannabis, equipment, or containers, and removing hand jewelry that cannot be adequately sanitized during periods in which medicinal cannabis is manipulated by hand. If such hand jewelry cannot be removed, it may be covered by material which can be maintained in an intact, clean, and sanitary condition and which effectively protects the medicinal cannabis from contamination by these objects;

(e) Storing clothing or other personal belongings in areas other than where medicinal cannabis is exposed or where equipment is cleaned;

(f) Confining the following to areas other than where medicinal cannabis may be exposed or where equipment is cleaned: eating food, chewing gum, drinking beverages, or using tobacco; and

(g) Taking any other necessary precautions to protect against contamination of medicinal cannabis with microorganisms or foreign substances including perspiration, hair, cosmetics, tobacco, chemicals, and medicines applied to the skin.

(3) A cultivator shall:

(a) Provide its employees, volunteers, and visitors with adequate and convenient hand-washing facilities furnished with running water at a temperature suitable for sanitizing hands. Effective nontoxic sanitizing cleansers and sanitary towel service or suitable drying devices shall also be provided;

(b) Provide its employees, volunteers, and visitors with adequate, readily accessible restrooms that are maintained in a sanitary condition and in good repair;

(c) Ensure that its facility is provided with a water supply sufficient for its operations, which shall be derived from a source that is a public water system, or a nonpublic system that is capable of providing a safe, potable, and adequate supply of water to meet the operational needs of the facility; and

(d) Comply with all other applicable federal, state, and local building code requirements and occupational safety and health requirements.

Section 12. Storage Requirements.

(1) A cultivator shall have separate locked limited access areas for storage of seeds, seedlings, medicinal cannabis plants, and medicinal cannabis that are expired, damaged, deteriorated, mislabeled, contaminated, recalled, or whose containers or packaging have been opened or breached until the seeds, seedlings, medicinal cannabis plants, and medicinal cannabis are destroyed or otherwise disposed of as required under Section 15 of this administrative regulation.

(2) A cultivator shall maintain all storage areas in a clean and orderly condition and free from infestation by insects, rodents, birds, and pests.

Section 13. Management and Disposal of Medicinal Cannabis Waste.

(1) A cultivator shall dispose of undesired, excess, unauthorized, obsolete, adulterated, misbranded, or deteriorated medicinal cannabis in such a manner as to render the medicinal cannabis unusable. A cultivator shall record medicinal cannabis waste as required in the Commonwealth's designated electronic monitoring system and seed to sale tracking system.

(2) Medicinal cannabis that is rendered unusable shall be discarded into a locked dumpster or other approved, locked container for removal from the facility by a waste removal company selected by the cultivator or may be composted in a secured area at the cultivation site for future use at the facility. Medicinal cannabis shall be rendered unusable by:

(a) Controlled incineration; or

(b) Grinding and incorporating the medicinal cannabis with one (1) or more of the non-consumable, solid wastes listed below, such that the resulting mixture is majority non-cannabis waste:

1. Paper waste;
2. Cardboard waste;
3. Food waste;
4. Yard or garden waste;
5. Grease or other compostable oil waste; or
6. Soil or other used growth media.

(3) The disposal of medicinal cannabis shall be performed under video surveillance from the time the destruction begins to when it is placed in a locked dumpster or other approved, locked container and removed from the cultivator's site and facility.

(4) The employee overseeing the disposal of medicinal cannabis shall maintain and make available a separate record of every disposal indicating:

(a) The date and time of disposal;

(b) The manner of disposal;

(c) The unique identification codes associated with the medicinal cannabis scheduled for destruction;

(d) The reasoning for and description of the disposal;

(e) The name, employee identification number, and signature of the employee overseeing the disposal of the medicinal cannabis; and

(f) If the medicinal cannabis waste for disposal contains plant material that was prepared for sale to a dispensary or processor, the harvest batch number, strain, volume, and weight of the plant material being disposed of.

(5) The disposal of other waste from the cultivator that does not include medicinal cannabis, including hazardous waste and liquid waste, shall be performed in a manner consistent with applicable federal, state, and local requirements.

Section 14. Requirements for Cultivators to Deliver Raw Plant Material to Dispensaries for Sale.

(1) A cultivator that delivers medicinal cannabis to licensed dispensaries for sale to cardholders shall comply with the requirements of KRS Chapter 218B and 915 KAR Chapter 1, including 915 KAR 1:080, 915 KAR 1:100, and 915 KAR 1:110.

(2) A cultivator that delivers medicinal cannabis to a licensed dispensary for sale to cardholders shall not:

(a) Deliver, transfer, or sell raw plant material to a dispensary for more than fair market value;

(b) Supply a dispensary with more than the amount of raw plant material reasonably required by a dispensary to maintain an inventory sufficient for normal retail operations; and

(c) Deliver, transfer, or sell raw plant material to a dispensary with a delta-9 tetrahydrocannabinol content of more than thirty-five percent (35%).

(3) Any raw plant material to be sold as a medicinal cannabis product by a cultivator to a dispensary shall:

(a) Be free of seeds and stems;

(b) Be free of dirt, sand, debris, or other foreign matter; and

(c) Not contain a level of pesticides, herbicides, poisons, toxins,

mold, mildew, insects, bacteria, or any other chemical substance higher than the levels established in the standards for testing within 915 KAR 1:110.

(4) A cultivator shall prepare raw plant material for sale to dispensaries in a safe and sanitary manner, including:

(a) Raw plant material shall be handled on food grade stainless steel benches or tables;

(b) Proper sanitation shall be maintained;

(c) Proper rodent, bird, and pest exclusion practices shall be employed; and

(d) Prior to packaging, the raw plant material shall have passed all required safety compliance facility tests established in 915 KAR 1:110.

(5) In addition to other packaging and labeling requirements established in 915 KAR 1:100, all raw plant material packaged and sold by a cultivator in the Commonwealth shall be marked or labeled as "NOT INTENDED FOR CONSUMPTION BY SMOKING."

(6) Except for transfer of samples to a safety compliance facility for testing, no medicinal cannabis shall be sold or transferred to another cannabis business until all required testing is complete and the representative sample passed inspection. Cultivators shall not sell medicinal cannabis directly to cardholders.

Section 15. Complaints About or Recall of Medical Medicinal Cannabis Products.

(1) A cannabis business shall immediately notify the cabinet via electronic mail to kymedcanreporting@ky.gov as well as the cultivator from which it obtained any medicinal cannabis in question upon becoming aware of any defects or quality issues with the medicinal cannabis or any complaint made to the cannabis business by another cannabis business, a cardholder, or medicinal cannabis practitioner who reports an adverse event from using medicinal cannabis purchased by the cannabis business from the cultivator. A cultivator shall investigate the report as follows:

(a) A cultivator shall immediately investigate a complaint to determine if a voluntary or mandatory recall of seeds, seedlings, medicinal cannabis plants, postharvest plant material, or medicinal cannabis is necessary or if any further action is required;

(b) If a cultivator determines that further action is not required, the cultivator shall notify the cabinet of its decision and, within twenty-four (24) hours, submit a written report to the cabinet stating its rationale for not taking further action. The cabinet shall review the written report and consult with the cultivator as needed. If the cabinet disagrees with the cultivator's decision, the cabinet shall take all necessary steps allowable under KRS Chapter 218B and 915 KAR Chapter 1 to ensure public health and safety, including but not limited to issuing a cease-and-desist order to pause the sale and distribution of the medicinal cannabis at issue until resolution of the matter; and

(c) If a cultivator determines that further action is required, the cultivator shall initiate a voluntary or mandatory recall in accordance with the requirements of this section.

(2) Voluntary recalls. If a cultivator voluntarily initiates a recall, the cultivator shall recall seeds, seedlings, medicinal cannabis plants, postharvest plant material, or medicinal cannabis from the market at its discretion for reasons that do not pose a risk to public health and safety and shall notify the cabinet at the time the cultivator begins the recall via electronic mail to kymedcanreporting@ky.gov.

(3) Mandatory recalls. If a cultivator discovers that a condition relating to the seeds, seedlings, medicinal cannabis plants, postharvest plant material, or medicinal cannabis grown at its facility poses a risk to public health and safety, the cultivator shall:

(a) Immediately notify the cabinet by phone and electronic mail to kymedcanreporting@ky.gov; and

(b) Secure, isolate, and prevent the distribution of the seeds, seedlings, medicinal cannabis plants, postharvest plant material, or medicinal cannabis that may have been affected by the condition and remains in its possession. The cultivator shall not dispose of affected seeds, seedlings, medicinal cannabis plants, postharvest plant material, or medicinal cannabis prior to notifying the cabinet and coordinating the disposal with the cabinet.

(4) If a cultivator fails to cooperate with the cabinet in a recall, or fails to immediately notify the cabinet of a need for a recall under this

section, the cabinet may seek a cease and desist order and the cultivator may be subject to any other penalties or sanctions provided for in KRS Chapter 218B and 915 KAR Chapter 1:020.

(5) A cultivator's recall plan as required under this administrative regulation shall include:

(a) Designation of one or more employees to serve as the recall coordinator(s). A recall coordinator shall be responsible for, among other duties, accepting the recalled seeds, seedlings, medicinal cannabis plants, postharvest plant material, or medicinal cannabis;

(b) Procedures for identifying and isolating the affected seeds, seedlings, medicinal cannabis plants, postharvest plant material, or medicinal cannabis to prevent or minimize its distribution to cardholders and other cannabis businesses;

(c) Procedures to retrieve and dispose of the affected seeds, seedlings, medicinal cannabis plants, postharvest plant material, or medicinal cannabis;

(d) A communications plan to notify those affected by the recall, including:

1. The manner in which the cultivator shall notify other cannabis businesses in possession of seeds, seedlings, medicinal cannabis plants, postharvest plant material, or medicinal cannabis subject to the recall; and

2. The use of press releases and other appropriate notifications to ensure that cardholders are notified of the recall if affected medicinal cannabis was dispensed to cardholders.

(e) Procedures for notifying the cabinet; and

(f) Procedures for entering information relating to the recall into the Commonwealth's designated electronic monitoring system and seed to sale tracking system.

(6) A cultivator shall follow the procedures outlined in its recall plan unless the cultivator obtains prior written approval of the cabinet, or the cabinet notifies the cultivator in writing to perform other procedures. A cultivator shall conduct recall procedures in a manner that maximizes the recall of affected seeds, seedlings, medicinal cannabis plants, postharvest plant material, and medicinal cannabis and minimizes risks to public health and safety.

(7) A cultivator shall coordinate the disposal of recalled seeds, seedlings, medicinal cannabis plants, postharvest plant material, and medicinal cannabis with the cabinet. The cabinet or its authorized agents may oversee the disposal to ensure that the recalled seeds, seedlings, medicinal cannabis plants, postharvest plant material, and medicinal cannabis are disposed of in a manner that shall not pose a risk to public health and safety.

(8) The cultivator shall enter information relevant to the recall into the Commonwealth's designated electronic monitoring system and seed to sale tracking system as part of the inventory, which may include the following:

(a) The total amount of recalled seeds, seedlings, medicinal cannabis plants, postharvest plant material, and medicinal cannabis, including types and harvest batches, if applicable;

(b) The total amount of recalled seeds, seedlings, medicinal cannabis plants, postharvest plant material, or medicinal cannabis returned to the cultivator, including types, forms, and harvest batches, if applicable;

(c) The names of the recall coordinators;

(d) From whom the recalled seeds, seedlings, medicinal cannabis plants, postharvest plant material, or medicinal cannabis were received;

(e) The means of transport of the recalled seeds, seedlings, medicinal cannabis plants, postharvest plant material, medicinal cannabis, or medicinal cannabis products;

(f) The reason for the recall;

(g) The number of recalled samples, types, forms, and harvest batches, if applicable, sent to safety compliance facilities, the names and addresses of the safety compliance facilities, the dates of testing, and the results by sample; and

(h) The manner of disposal of the recalled seeds, seedlings, medicinal cannabis plants, postharvest plant material, and medicinal cannabis, including:

1. The name of the individual overseeing the disposal of the recalled seeds, seedlings, medicinal cannabis plants, postharvest plant material, or medicinal cannabis;

2. The name of the disposal company, if applicable;

3. The method of disposal;

4. The date of disposal; and

5. The amount disposed of by types, forms, and harvest batches, if applicable.

(9) The cabinet may initiate a mandatory recall upon receipt of information that a condition relating to the seeds, seedlings, medicinal cannabis plants, postharvest plant material, or medicinal cannabis grown or sold by a cultivator poses a risk to public health and safety.

Section 16. Increase of Canopy Limits.

(1) Pursuant to KRS 218B.140(3), if a need for additional medicinal cannabis cultivation in the Commonwealth is demonstrated by cannabis businesses or the cabinet's own analysis, the cabinet may through the promulgation of administrative regulations increase the canopy size limits for cultivators by up to three (3) times the limits established in KRS 218B.105. Any increase in the canopy size limits adopted by the cabinet shall not result in an increase in licensure application or renewal fees established by the cabinet.

(2) In making its determination whether to increase canopy limits for cultivators, the cabinet may consider factors including the population of the Commonwealth, the number of active cardholders, changes to the list of qualifying medical conditions for medicinal cannabis, market supply and demand, the amount of medicinal cannabis being sold by dispensaries, the amount of allowable canopy space being utilized by cultivators, workforce development opportunities, and any other factors that the cabinet deems relevant to its analysis.

Section 17. Duty to Report.

(1) At the time a cultivator submits a license renewal application to the cabinet, a cultivator shall report to the cabinet via electronic mail to kymedcanreporting@ky.gov the following:

(a) The average amount of allowable canopy space being utilized by the cultivator during the current licensure period. If a cultivator is not utilizing the full amount of allowable canopy space during the current licensure period, the cultivator shall provide a written explanation to the cabinet of the reasons for not utilizing all available canopy space;

(b) The total amount of raw plant material sold during the current licensure period and the average price per pound; and

(c) The number of current employees, respective job titles, and hourly wage; and

(2) A cultivator shall participate in market surveys distributed by the cabinet throughout a licensure period and provide full and complete responses.

SAM FLYNN, Executive Director

ERIC FRIEDLANDER, Secretary

APPROVED BY AGENCY: January 3, 2024

FILED WITH LRC: January 4, 2024 at 11:50 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on March 25, 2024, 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 March 18, 2024, 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 March 31, 2024. 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

VOLUME 50, NUMBER 8– FEBRUARY 1, 2024

Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-7476; 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 requirements and procedures for medicinal cannabis cultivators to operate in the commonwealth.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to carry out the requirements of KRS Chapter 218B, specifically KRS 218B.140.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 218B.140 authorizes the Cabinet for Health and Family Services to promulgate administrative regulations establishing requirements and procedures for cultivators to operate in the commonwealth. This administrative regulation sets out those requirements and procedures.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides the requirements and procedures for cultivators to operate in the commonwealth.

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

(a) How the amendment will change this existing administrative regulation: 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 affects cultivators that have applied for and subsequently received licenses to conduct medicinal cannabis cultivation activities in the commonwealth.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The requirements to operate as a cultivator and remain in good standing throughout the licensure period are provided in this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Cultivators will have to pay an initial application fee, and if approved for a license, an initial license fee and a renewal license fee if it desires to continue operating as a cannabis business following the expiration of its initial license.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Cultivators that receive a license from the Cabinet for Health and Family Services are authorized to conduct medicinal cannabis cultivation activities in the commonwealth for the term of the license (i.e., 1 year from the date of license issuance).

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

(a) Initially: \$1,200,000

(b) On a continuing basis: \$1,200,000

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: State general funds provided by the commonwealth.

(7) Provide an assessment of whether an 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 is anticipated that an increase in funding will be necessary to implement this regulation as additional staff and resources are necessary to administer and enforce licensure of cultivators.

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

regulation does not establish or increase any fees.

(9) TIERING: Is tiering applied? Tiering is not applied. All cultivators 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? This administrative regulation impacts the Kentucky Medical Cannabis Program 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 218B.010, 218B.080, 218B.085, 218B.090, 218B.095, 218B.100, 218B.105, 218B.140.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The cabinet will receive initial application fees and initial license fees paid by cultivators during the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The cabinet will receive annual renewal license fees from cultivators that desire to continue operating in the commonwealth following the expiration of their existing license.

(c) How much will it cost to administer this program for the first year? The cabinet estimates that it will cost \$1,200,000 to license and regulate cultivators in the first year.

(d) How much will it cost to administer this program for subsequent years? The cabinet estimates that it will cost \$1,200,000 to regulate licensed cultivators 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: It is anticipated that an increase in funding will be necessary to implement this regulation as additional staff and resources are necessary to administer and enforce licensure of cultivators.

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative 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 cabinet does not anticipate any cost savings in the first year.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? The cabinet does not anticipate any cost savings in subsequent years.

(c) How much will it cost the regulated entities for the first year? A cultivator will pay an initial application fee and, if issued a license, an initial license fee in order to conduct cultivation activities in the commonwealth.

(d) How much will it cost the regulated entities for subsequent years? If it desires to continue cannabis business operations in the commonwealth, a cultivator will pay an annual renewal license fee. The renewal license fee is refundable if the renewal application is denied.

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 annual cost estimate to administer all aspects of the Kentucky Medical Cannabis Program is \$9,135,398. A significant portion of those funds will go toward licensing and enforcement of cannabis businesses operating in the commonwealth, including cultivators, as well implementation and continued operation of the electronic monitoring system and seed to sale tracking system required by KRS 218B.140. The Kentucky Medical Cannabis Program will have a major economic impact on the Cabinet for Health and Family Services, and it is anticipated that an increase in funding will be necessary to administer all of the administrative regulations contained in 915 KAR Chapter 1 related to cannabis businesses.

CABINET FOR HEALTH AND FAMILY SERVICES
Office of the Secretary
(New Administrative Regulation)

915 KAR 1:040. Processor.

RELATES TO: KRS Chapter 218B

STATUTORY AUTHORITY: KRS 218B.140

NECESSITY, FUNCTION, AND CONFORMITY: KRS 218B.140 requires the Cabinet for Health and Family Services to promulgate administrative regulations establishing requirements and procedures for medicinal cannabis processor operations in the Commonwealth. This administrative regulation sets out those requirements and procedures.

Section 1. General Requirements.

(1) No person or entity may engage in processing activities in the Commonwealth without first being issued a license by the cabinet. A processor shall not sell or transfer, or allow the sale or transfer, of medicinal cannabis or medicinal cannabis products to any person or entity in the Commonwealth who does not hold a cannabis business license issued by the cabinet.

(2) A processor shall:

(a) Only acquire or purchase raw plant material and medicinal cannabis from a cultivator, processor, or producer in the Commonwealth;

(b) Conduct processing activities in a secure facility on the specific site licensed by the cabinet and identified on its license issued by the cabinet;

(c) Conduct a criminal background check into the criminal history of each person seeking to become a principal officer, board member, agent, volunteer, or employee before that person begins work and shall retain records of these background checks for five (5) years and provide same to the cabinet during subsequent inspections or upon request; and

(d) Comply with all applicable requirements of KRS Chapter 218B, specifically KRS 218B.095 and 218B.115, and 915 KAR Chapter 1.

(3) A processor shall not employ, take on as a volunteer, or have as a board member, principal officer, or agent any person who was convicted of a disqualifying felony offense or is younger than twenty-one (21) years of age.

(4) The qualifications that a processor shall meet to receive a license are continuing qualifications to maintain the license throughout the licensure period.

Section 2. Plans of Operation.

(1) Prior to its first day of processing activities in the Commonwealth, a processor shall establish standard operating procedures for the following:

(a) Employment policies and procedures;

(b) Security, including:

1. Staff identification measures and use of employee identification badges;

2. Monitoring of attendance of staff and visitors;

3. Alarm systems;

4. Video surveillance;

5. Monitoring and tracking inventory, including use of the

Commonwealth's electronic monitoring system and seed to sale tracking system established pursuant to KRS 218B.140;

6. Personnel security;

7. Transportation of medicinal cannabis;

8. Cash management and anti-fraud procedures;

9. Measures to prevent loitering, which shall include signage; and

10. Storage of medicinal cannabis and medicinal cannabis products;

(c) The process for receiving, handling, processing, packaging, labeling, storing, transporting, and disposing of medicinal cannabis and medicinal cannabis products and a process for handling, tracking, transporting, storing, and disposing of medicinal cannabis waste;

(d) Workplace safety, including conducting safety checks;

(e) Contamination;

(f) Maintenance, cleaning, and sanitation of equipment used to process medicinal cannabis;

(g) Maintenance and sanitation of the processor's facility;

(h) Extraction method(s), including standards for processing of raw plant material, refining of medicinal cannabis extracts, and manufacturing of medicinal cannabis products, including safety protocols and equipment;

(i) Proper handling and storage of any solvent, gas, or other chemical or substance used in processing medicinal cannabis;

(j) Quality control, including strict regulation of the amount of delta-9 tetrahydrocannabinol content in each harvest or production batch in accordance with KRS 218B.115(2), proper labeling, and minimization of medicinal cannabis contamination;

(k) Recordkeeping and inventory control;

(l) Investigation of complaints and potential adverse events received from other cannabis businesses, cardholders, or medicinal cannabis practitioners regarding the processor's operations;

(m) Preventing unlawful diversion of medicinal cannabis;

(n) Recall plan; and

(o) Any other standard operating procedures required for all cannabis businesses in KRS Chapter 218B and 915 KAR Chapter 1.

(2) A processor shall make its standard operation procedures available to the cabinet upon request and during any inspection of the processor's site and facility.

Section 3. Processor Facilities.

(1) A processor shall only process medicinal cannabis within a building or secure structure on the specific site licensed by the cabinet and identified on its license issued by the cabinet. The building or secure structure shall meet all applicable state and local building codes and specifications as well as the following requirements:

(a) Has a complete roof enclosure supported by connecting permanent walls, constructed of solid materials extending from the ground to the roof;

(b) Is secure against unauthorized entry;

(c) Has a foundation, slab, or equivalent base to which the floor is securely attached;

(d) Has commercial grade door locks on all external doors that are locked at all times;

(e) Restricts access to only authorized personnel to locked and secure areas identified with signage and daily records of entry and exit;

(f) Contains adequate plumbing to carry sufficient quantities of water to locations throughout the facility and convey sewage and waste from the facility without cross contamination of potable water and waste;

(g) Stores toxic cleaning compounds, sanitizing agents, solvents, gas, or other chemicals or substances used in processing medicinal cannabis in a manner that is in accordance with applicable local, state, and federal laws and regulations;

(h) Maintains exhaust and ventilation systems to mitigate noxious gasses or other fumes used or created as part of processing activities;

(i) Maintains pest control;

(j) Maintains adequate indoor and exterior lighting to facilitate

video surveillance at all times; and

(k) Maintains adequate on-site parking for employees, agents, visitors, transporters of medicinal cannabis, or cabinet staff.

(2) A processor shall clearly mark all limited access areas on its premises with proper signage. All areas of ingress and egress to a limited access area shall be clearly identified by the posting of a sign which shall be not less than twelve (12) inches wide and twelve (12) inches long, composed of letters not less than one-half inch in height, which shall state: "Do Not Enter. Limited Access Area. Access Limited to Authorized Personnel and Escorted Visitors."

(3) A processor shall have a secure area for the loading and unloading of medicinal cannabis into and from a transport vehicle.

Section 4. Electronic Monitoring System and Seed to Sale Tracking System.

(1) Except as provided in this section, a processor shall not possess, process, produce, or manufacture:

(a) Raw plant material with a delta-9 tetrahydrocannabinol content of more than thirty-five (35) percent;

(b) Medicinal cannabis products intended for oral consumption as an edible, oil, or tincture with more than ten (10) milligrams of delta-9 tetrahydrocannabinol per serving;

(c) Any medicinal cannabis product not described in this section with a delta-9 tetrahydrocannabinol content of more than seventy (70) percent; or

(d) Any medicinal cannabis product that contains vitamin E acetate.

(2) A processor may possess unfinished medicinal cannabis products not ready for retail sale that exceed the delta-9 tetrahydrocannabinol limits in this section. However, all finished medicinal cannabis products intended for sale to cardholders shall comply with the delta-9 tetrahydrocannabinol limits in this section.

(3) A processor shall use the electronic monitoring system and seed to sale tracking system prescribed by the cabinet containing the requirements in KRS Chapter 218B, specifically KRS 218B.140. A processor shall use the electronic monitoring system and seed to sale tracking system in accordance with written instructions provided by the cabinet.

(4) A processor shall record in the Commonwealth's designated electronic monitoring system and seed to sale tracking system all medicinal cannabis received, sold, disposed, or otherwise transferred by the processor.

(5) A processor shall establish inventory controls and procedures to conduct inventory reviews and comprehensive inventories at its facility to include:

(a) A processor shall prepare quarterly physical inventory reports that includes any necessary adjustments and the reason(s) for an adjustment and that demonstrates the physical inventory reconciles with the inventory recorded in the Commonwealth's designated electronic monitoring system and seed to sale tracking system, including any medicinal cannabis that has been or is in the process of being destroyed; and

(b) A written or electronic record shall be created and maintained of each inventory conducted under this section that includes the date of the inventory, a summary of the inventory findings, and the employee identification numbers and titles or positions of the individuals who conducted the inventory.

Section 5. Employees Records and Identification.

(1) A processor shall keep an individual employment record for all employees, including:

- (a) Full legal name;
- (b) Detailed job description;
- (c) Documentation of completed criminal background check;
- (d) Record of all training received or acquired by the employee;
- (e) Dates of employment;
- (f) Records of days and hours worked; and
- (g) Any disciplinary actions taken by the processor.

(2) Employment records shall be maintained, either electronically or in hard copy, for at least five (5) years after the employee's last date of employment with the processor.

(3) A processor shall create an identification badge for each employee, agent, or volunteer. This badge shall be conspicuously

worn by employees, agents, or volunteers at all times that they are on the licensed premises or during transport of medicinal cannabis or medicinal cannabis products. The badge shall contain:

- (a) The individual's name, photo, and employee identification number;
- (b) A phone number and email address for the processor; and
- (c) A phone number and email address for the Kentucky Medical Cannabis Program.

Section 6. Visitors to Processor Facilities.

(1) A processor site and facility shall not be open to the general public.

(2) A processor shall complete the following steps when admitting a visitor to its site and facility:

(a) Require the visitor to sign a visitor log upon entering and leaving the facility;

(b) Check the visitor's government-issued identification to verify that the name on the identification provided matches the name in the visitor log;

(c) Issue a visitor identification badge with the visitor's name and company, if applicable, and a badge number;

(d) Escort the visitor while the visitor remains on the site or in the facility keeping a record of the areas of the site and the facility visited; and

(e) Ensure that the visitor does not touch any medicinal cannabis or medicinal cannabis product located in a limited access area.

(3) No one under the age of eighteen (18) shall be permitted to enter a processor's site or facility. A person who is at least eighteen (18) years of age or older may enter and remain on the processor's premises if that person is present to perform contract work, including electrical, plumbing, or security maintenance, that does not involve handling medicinal cannabis or is a government employee and is at the cannabis business in the course of his or her official duties.

(4) A processor shall post a sign in a conspicuous location at each entrance of its site and facility that states "THESE PREMISES ARE UNDER CONSTANT VIDEO SURVEILLANCE. NO ONE UNDER THE AGE OF 18 IS PERMITTED TO ENTER."

(5) The processor shall maintain the visitor log required under this section for five (5) years and make the visitor log available to the cabinet, law enforcement, and other federal or state government officials upon request to perform the government officials' functions and duties. The visitor log shall include the date, the full name of each visitor, the visitor identification badge number, the time of arrival, the time of departure, and the purpose of the visit, including the areas of the site and the facility visited.

(6) This section does not limit the right of the cabinet or its authorized agents, or other federal, state, or local government officials from entering any area of a processor's site and facility if necessary to perform the governmental officials' functions and duties.

(7) A principal officer, board member, agent, financial backer, employee, or volunteer of a processor may not receive any type of consideration or compensation for allowing a visitor to enter a limited access area.

Section 7. Security and Surveillance.

(1) A processor shall have security and surveillance systems, utilizing commercial-grade equipment, to prevent unauthorized entry and to prevent and detect an adverse loss. The security and surveillance systems shall include the following:

(a) A professionally monitored security alarm system that includes:

1. Coverage of all facility entrances and exits; rooms with exterior windows, exterior walls, roof hatches or skylights; storage rooms, including those that contain medicinal cannabis and safes; and the perimeter of the facility.

2. An audible security alarm system signal, known as a panic alarm, generated by the manual activation of a device intended to signal a life-threatening or emergency situation requiring law enforcement response;

3. A silent alarm signal, known as a holdup alarm, generated by the manual activation of a device intended to signal a robbery in

progress;

4. A failure notification system that provides an audible, text, or visual notification of any failure in the systems. The failure notification system shall provide by telephone, e-mail, or text message an alert to a designated security person within the facility within five (5) minutes after the failure;

5. Smoke and fire alarms;

6. Auxiliary power sufficient to maintain operation for at least twenty-four (24) hours following a power outage;

7. The ability to ensure all access doors shall not be solely controlled by an electronic access panel to prevent locks from becoming released during a power outage; and

8. Motion detectors for exterior lighting.

(b) A professionally monitored security surveillance system that is operational twenty-four (24) hours a day, seven (7) days a week, and records all activity in images capable of clearly revealing facial detail. The security and surveillance system shall include:

1. Fixed camera placement that allows for a clear image of all individuals and activities in and around the following:

a. All limited access areas;

b. A room or area containing a security alarm and surveillance system storage device or equipment;

c. Entrances to and exits from the facility. Entrances and exits shall be recorded from both indoor and outdoor vantage points;

d. Rooms with exterior windows, exterior walls, roof hatches, or skylights and storage rooms, including those that may contain medicinal cannabis and safes and excluding restrooms; and

e. Twenty (20) feet from the exterior of the perimeter of the facility.

2. Auxiliary power sufficient to maintain operation for at least twenty-four (24) hours following a power outage;

3. Ability to operate under the normal lighting conditions of each area under surveillance;

4. Ability to immediately produce a clear, color, still photograph in a digital format that is easily accessible;

5. Ability to display the date and time clearly and accurately. The date and time shall be synchronized and set correctly and may not significantly obscure the picture;

6. Ability to record all images captured by each surveillance camera in a format that may be easily accessed for a minimum of thirty (30) days, unless otherwise required for investigative or litigation purposes. The recordings shall be kept:

a. At the processor's facility:

(i) In a locked cabinet, closet, or other secure place to protect it from tampering or theft; and

(ii) In a limited access area or other room to which access is limited to authorized individuals; or

b. At a secure location other than the location of the processor's facility if approved by the cabinet.

(2) Regarding inspection, servicing or alteration of, and any upgrade to, the site's and facility's security alarm and surveillance systems:

(a) The systems shall be inspected and all devices tested once every year by a qualified alarm system vendor and a qualified surveillance system vendor;

(b) A processor shall conduct maintenance inspections once every month to ensure that any repairs, alterations, or upgrades to the security alarm and surveillance systems are made for the proper operation of the systems;

(c) A processor shall retain at the facility, for at least five (5) years, records of all inspections, servicing, alterations, and upgrades performed on the security alarm and surveillance systems and shall make the records available to the cabinet and its authorized agents within two (2) business days following a request; and

(d) In the event of a mechanical malfunction of the security alarm or surveillance system that a processor anticipates shall exceed an eight (8) hour period, the processor shall notify the cabinet immediately via electronic mail to kymedcanreporting@ky.gov and, with cabinet approval, provide alternative security measures that may include closure of the facility.

(3) Regarding records retention, a processor shall:

(a) Have a secure electronic back-up system for all electronic

records;

(b) Within three (3) business days following a request for records under this paragraph, provide up to four (4) screen captures of an unaltered copy of a video surveillance recording to the cabinet or its authorized agents, law enforcement, or other federal, state, or local government officials if necessary to perform the governmental officials' functions and duties; and

(c) If a processor has been notified in writing by the cabinet or its authorized agents, law enforcement, or other federal, state, or local government officials of a pending criminal or administrative investigation for which a recording may contain relevant information, retain an unaltered copy of the recording for two (2) years or until the investigation or proceeding is closed or the entity conducting the investigation or proceeding notifies the processor that it is not necessary to retain the recording, whichever is later.

(4) During all non-working hours, all entrances to and exits from the processor's facility shall be securely locked.

(5) A processor shall install lighting to ensure proper surveillance inside and outside of the facility.

(6) A processor shall limit access to a room containing the equipment operating the security alarm and surveillance monitoring systems to:

(a) Persons who are essential to maintaining security and surveillance operations;

(b) Federal, state, and local law enforcement;

(c) Security alarm and surveillance system service employees;

(d) The cabinet or its authorized agents; and

(e) Other persons with the prior written approval of the cabinet.

(7) A processor shall make available to the cabinet or its authorized agents, upon request, a current list of authorized employees and service employees or contractors who have access to areas containing the equipment operating the security alarm and surveillance monitoring systems.

(8) A processor shall keep rooms housing the equipment operating the security alarm and surveillance monitoring systems locked at all times and may not use these rooms for any other purpose or function.

Section 8. Forms of Medicinal Cannabis.

(1) A processor may process medicinal cannabis for sale to a cannabis business in forms including:

(a) Edible;

(b) Oil;

(c) Topical forms, including gel, creams, ointments, and cosmetics;

(d) A form medically appropriate for administration by vaporization or nebulization;

(e) Tincture;

(f) Dermal patch;

(g) Suppositories;

(h) Beverages; and

(i) Raw plant material.

(2) In addition to other packaging and labeling requirements established in 915 KAR 1:100, all raw plant material packaged and sold by a processor in this Commonwealth shall be marked or labeled as "NOT INTENDED FOR CONSUMPTION BY SMOKING." Processors delivering raw plant material to dispensaries for sale shall comply with the requirements contained in 915 KAR 1:030, Section 14.

(3) Except for transfer of samples to a safety compliance facility for testing, no medicinal cannabis shall be sold or transferred to another cannabis business until all required testing is complete and the representative sample passed inspection. Processors shall not sell medicinal cannabis directly to cardholders.

Section 9. Requirements for Processing Medicinal Cannabis.

(1) A processor may only use the methods, equipment, solvents, and gases set forth in this section in the processing and manufacture of medicinal cannabis and medicinal cannabis products.

(2) A processor may use hydrocarbon solvent-based extraction methods in a spark-free and properly ventilated environment, isolated from any open flame or ignition source, and may use the following solvents, at a minimum of ninety-nine per cent purity, in a

professional grade, closed-loop extraction system designed to recover the solvents:

- (a) Propane;
- (b) N-butane;
- (c) Isobutane; and
- (d) Heptane.

(3) A processor may use carbon dioxide-based extraction methods using food grade carbon dioxide at a minimum of ninety-nine percent (99%) purity in a professional grade, closed-loop system in which each vessel is rated to a minimum pressure to accommodate the specific extraction protocol, including supercritical, liquid, and subcritical.

(4) A processor may use ethanol at a minimum of ninety-nine percent (99%) purity to produce extracts for use in the manufacture of medicinal cannabis products.

(5) A processor may use food grade glycerin and propylene glycol in the manufacture of medicinal cannabis products.

(6) A processor may use non-solvent extraction methods involving the mechanical separation of cannabinoids from plant material to produce medicinal cannabis extracts for use in the manufacture of medicinal cannabis products.

(7) A processor may use non-cannabis ingredients in the manufacture of medicinal cannabis products that meet the following conditions:

(a) The non-cannabis ingredients are nontoxic and safe for human consumption; and

(b) The non-cannabis ingredients were not prepared or stored in a private residence.

(8) A processor using hydrocarbon solvent-based or carbon dioxide extraction methods shall designate at least one (1) individual to train and supervise employees in the use of extraction equipment and associated solvents who has earned, at minimum, a Bachelor's Degree in engineering or physical sciences from an accredited university, or who has at least three (3) years of experience in the operation of the equipment being used in the facility or similar equipment.

(9) A processor shall maintain a log of the use of all extraction methods, equipment, solvents, and gases used in the processing and manufacture of medicinal cannabis products for a minimum of five (5) years.

(10) A processor may only process the parts of the medicinal cannabis plant that are free of dirt, sand, debris, or other foreign matter.

(11) Prior to processing, a processor shall perform visual inspections of the raw plant material to ensure there are no visible insects, mold, mildew, pests, rot, grey or black plant material, or inorganic material, including plastic, glass, and metal shavings.

(12) A processor shall have a separate and secure area for temporary storage of medicinal cannabis that is awaiting disposal by the processor.

(13) A processor shall process medicinal cannabis in a safe and sanitary manner, which includes:

(a) Medicinal cannabis, raw plant material, and other product used in the processing of medicinal cannabis shall be handled on food-grade stainless steel benches or tables;

(b) Proper sanitation shall be maintained;

(c) Proper rodent, bird and pest exclusion practices shall be employed;

(d) Prior to packaging, the medicinal cannabis shall have passed all required testing established within 915 KAR 1:110; and

(e) Any person making human-consumable products or substances that will be used to make human-consumable products, shall be Good Manufacturing Practices-compliant and permitted by the Department of Public Health within the cabinet.

(14) A processor shall install a system to monitor, record, and regulate:

- (a) Temperature;
- (b) Humidity;
- (c) Ventilation;
- (d) Lighting; and
- (e) Water supply.

Section 10. Equipment, Operation and Maintenance.

(1) A processor shall have a written process in place to maintain the sanitation and operation of equipment that comes into contact with medicinal cannabis to prevent contamination. The processor shall provide a copy of the written process to the cabinet upon request.

(2) As part of the written process required under this section, a processor shall:

(a) Routinely calibrate, check and inspect automatic, mechanical, or electronic equipment as well as any scales, balances, or other measurement devices used in the processor's operations to ensure accuracy; and

(b) Maintain an accurate log recording:

- 1. Maintenance of equipment;
- 2. Cleaning of equipment; and
- 3. Calibration of equipment.

Section 11. Sanitation and Safety in a Processor Facility.

(1) A processor shall maintain its site and facility in a sanitary condition to limit the potential for contamination of the medicinal cannabis processed in the facility, including:

(a) Equipment and surfaces, including floors, counters, walls, and ceilings, shall be cleaned and sanitized as frequently as necessary to protect against contamination, using a sanitizing agent registered by the United States Environmental Protection Agency, in accordance with the instructions printed on the label. All equipment and utensils used by a processor shall be capable of being adequately cleaned;

(b) Trash shall be properly and routinely removed to prevent pest infestation;

(c) Floors, walls, and ceilings shall be kept in good repair;

(d) Equipment, counters, and surfaces for processing shall be food grade quality and may not react adversely with any solvent being used;

(e) Adequate protection against pests shall be provided through the use of integrated pest management practices and techniques that identify and manage plant pathogens and pest problems; and

(f) Toxic cleaning compounds, sanitizing agents, solvents, and any other allowable chemicals used in the processing of medicinal cannabis shall be labeled and stored in a manner that prevents contamination of medicinal cannabis.

(2) All employees and volunteers shall conform to sanitary practices while on duty, including:

(a) Maintaining adequate personal cleanliness;

(b) Washing hands thoroughly in an adequate hand-washing area before starting work and at any other time when hands may have become soiled or contaminated;

(c) Wearing proper clothing, including gloves, hair nets, headbands, caps, beard covers, or other effective hair restraints where appropriate;

(d) Removing all unsecured jewelry and other objects that might fall into medicinal cannabis, equipment, or containers, and removing hand jewelry that cannot be adequately sanitized during periods in which medicinal cannabis is manipulated by hand. If such hand jewelry cannot be removed, it may be covered by material which can be maintained in an intact, clean, and sanitary condition and which effectively protects the medicinal cannabis from contamination by these objects;

(e) Storing clothing or other personal belongings in areas other than where medicinal cannabis is exposed or where equipment is cleaned;

(f) Confining the following to areas other than where medicinal cannabis may be exposed or where equipment is cleaned: eating food, chewing gum, drinking beverages, or using tobacco; and

(g) Taking any other necessary precautions to protect against contamination of medicinal cannabis with microorganisms or foreign substances including perspiration, hair, cosmetics, tobacco, chemicals, and medicines applied to the skin.

(3) A processor shall:

(a) Provide its employees, volunteers, and visitors with adequate and convenient hand-washing facilities furnished with running water at a temperature suitable for sanitizing hands. Effective nontoxic sanitizing cleansers and sanitary towel service or

suitable drying devices shall also be provided;

(b) Provide its employees, volunteers, and visitors with adequate, readily accessible restrooms that are maintained in a sanitary condition and in good repair;

(c) Ensure that its facility is provided with a water supply sufficient for its operations, which shall be derived from a source that is a public water system, or a nonpublic system that is capable of providing a safe, potable, and adequate supply of water to meet the operational needs of the facility; and

(d) Comply with all other applicable federal, state, and local building code requirements and occupational safety and health requirements.

Section 12. Storage Requirements.

(1) A processor shall have separate locked limited access areas for storage of medicinal cannabis that is expired, damaged, deteriorated, mislabeled, contaminated, recalled, or whose containers or packaging have been opened or breached until the medicinal cannabis is destroyed or otherwise disposed of as required under Section 13 of this administrative regulation.

(2) A processor shall maintain all storage areas in a clean and orderly condition and free from infestation by insects, rodents, birds and pests.

Section 13. Management and Disposal of Medicinal Cannabis Waste.

(1) A processor shall dispose of undesired, excess, unauthorized, obsolete, adulterated, misbranded, or deteriorated medicinal cannabis in such a manner as to render the medicinal cannabis unusable. A processor shall record medicinal cannabis waste as required in the Commonwealth's designated electronic monitoring system and send to sale tracking system.

(2) Medicinal cannabis that is rendered unusable shall be discarded into a locked dumpster or other approved, locked container for removal from the facility by a waste removal company selected by the processor. Medicinal cannabis shall be rendered unusable by:

(a) Controlled incineration; or

(b) Grinding and incorporating the medicinal cannabis with one

(1) or more of the non-consumable, solid wastes listed below, such that the resulting mixture is majority non-cannabis waste:

1. Paper waste;
2. Cardboard waste;
3. Food waste;
4. Yard or garden waste;
5. Grease or other compostable oil waste; or
6. Soil or other used growth media.

(3) The disposal of medicinal cannabis shall be performed under video surveillance from the time the destruction begins to when it is placed in a locked dumpster or other approved, locked container and removed from the processor's site and facility.

(4) The employee overseeing the disposal of medicinal cannabis shall maintain and make available a separate record of every disposal indicating the following:

(a) The date and time of disposal;

(b) The manner of disposal;

(c) The unique identification codes associated with the medicinal cannabis scheduled for destruction;

(d) The reasoning for and description of the disposal;

(e) The name, employee identification number, and signature of the employee overseeing the disposal of the medicinal cannabis; and

(f) If the medicinal cannabis waste for disposal contains plant material that was prepared for sale to a dispensary, the harvest or production batch number, strain, volume, and weight of the plant material being disposed of.

(5) The disposal of other waste from the processor that does not include medicinal cannabis, including hazardous waste and liquid waste, shall be performed in a manner consistent with applicable federal, state, and local requirements.

Section 14. Complaints About or Recall of Medicinal Cannabis and Medicinal Cannabis Products.

(1) A cannabis business shall immediately notify the cabinet via electronic mail to kymedcanreporting@ky.gov as well as the processor from which it obtained any medicinal cannabis in question upon becoming aware of any defects or quality issues with the medicinal cannabis or any complaint made to the cannabis business by another cannabis business, a cardholder, or medicinal cannabis practitioner who reports an adverse event from using medicinal cannabis purchased by the cannabis business from the processor. A processor shall investigate the report as follows:

(a) A processor shall immediately investigate a complaint to determine if a voluntary or mandatory recall of medicinal cannabis and medicinal cannabis products is necessary or if any further action is required;

(b) If a processor determines that further action is not required, the processor shall notify the cabinet of its decision via electronic mail to kymedcanreporting@ky.gov and, within twenty-four (24) hours, submit a written report to the cabinet stating its rationale for not taking further action. The cabinet shall review the written report and consult with the processor as needed. If the cabinet disagrees with the processor's decision, the cabinet shall take all necessary steps allowable under KRS Chapter 218B and 915 KAR Chapter 1 to ensure public health and safety, including issuing a cease-and-desist order to pause the sale and distribution of the medicinal cannabis at issue until resolution of the matter; and

(c) If a processor determines that further action is required, the processor shall initiate a voluntary or mandatory recall in accordance with the requirements of this section.

(2) Voluntary recalls. If a processor voluntarily initiates a recall, the processor shall recall seeds, seedlings, medicinal cannabis plants, postharvest plant material, or medicinal cannabis from the market at its discretion for reasons that do not pose a risk to public health and safety and shall notify the cabinet at the time the processor begins the recall via electronic mail to kymedcanreporting@ky.gov.

(3) Mandatory recalls. If a processor discovers that a condition relating to medicinal cannabis processed at its facility poses a risk to public health and safety, the processor shall:

(a) Immediately notify the cabinet by phone and electronic mail to kymedcanreporting@ky.gov; and

(b) Secure, isolate, and prevent the distribution of the medicinal cannabis that may have been affected by the condition and remains in its possession. The processor shall not dispose of affected medicinal cannabis prior to notifying the cabinet and coordinating the disposal with the cabinet.

(4) If a processor fails to cooperate with the cabinet in a recall, or fails to immediately notify the cabinet of a need for a recall under this section, the cabinet may seek a cease-and-desist order and the processor may be subject to any other penalties or sanctions provided for in KRS Chapter 218B and 915 KAR Chapter 1:020.

(5) A processor's recall plan as required under this administrative regulation shall include the following:

(a) Designation of one or more employees to serve as the recall coordinators. A recall coordinator shall be responsible for, among other duties, accepting the recalled medicinal cannabis;

(b) Procedures for identifying and isolating the affected medicinal cannabis to prevent or minimize its distribution cardholders and other cannabis businesses;

(c) Procedures to retrieve and dispose of the medicinal cannabis;

(d) A communications plan to notify those affected by the recall, including:

1. The manner in which the processor shall notify other cannabis businesses in possession of medicinal cannabis subject to the recall; and

2. The use of press releases and other appropriate notifications to ensure that cardholders shall be notified of the recall if affected medicinal cannabis was dispensed to cardholders.

(e) Procedures for notifying the cabinet; and

(f) Procedures for entering information relating to the recall into the Commonwealth's designated electronic monitoring system and seed to sale tracking system.

(6) A processor shall follow the procedures outlined in its recall plan unless the processor obtains prior written approval of the cabinet or the cabinet notifies the processor in writing to perform other procedures. A processor shall conduct recall procedures in a manner that maximizes the recall of affected medicinal cannabis and minimizes risks to public health and safety.

(7) A processor shall coordinate the disposal of recalled medicinal cannabis with the cabinet. The cabinet or its authorized agents may oversee the disposal to ensure that the recalled medicinal cannabis is disposed of in a manner that will not pose a risk to public health and safety.

(8) The processor shall enter information relevant to the recall into the Commonwealth's designated electronic monitoring system and seed to sale tracking system as part of the inventory, which may include the following:

(a) The total amount of recalled medicinal cannabis, including types, harvest batches, and production batches, if applicable;

(b) The total amount of recalled medicinal cannabis returned to the processor, including types, forms, harvest batches, and production batches, if applicable;

(c) The names of the recall coordinators;

(d) From whom the recalled medicinal cannabis was received;

(e) The means of transport of the recalled medicinal cannabis;

(f) The reason for the recall;

(g) The number of recalled samples, types, forms, harvest batches, and production batches, if applicable, sent to safety compliance facilities, the names and addresses of the safety compliance facilities, the dates of testing, and the results by sample; and

(h) The manner of disposal of the recalled medicinal cannabis, including:

1. The name of the individual overseeing the disposal of the recalled medicinal cannabis;

2. The name of the disposal company, if applicable;

3. The method of disposal;

4. The date of disposal; and

5. The amount disposed of by types, forms, harvest batches, and production batches, if applicable.

(9) The cabinet may initiate a mandatory recall upon receipt of information that a condition relating to the medicinal cannabis processed by a processor poses a risk to public health and safety.

Section 15. Duty to Report.

(1) At the time a processor submits a license renewal application to the cabinet, a processor shall report to the cabinet via electronic mail to kymedcanreporting@ky.gov the following:

(a) Any significant issues with the supply and demand of medicinal cannabis experienced by the processor;

(b) The total amount of raw plant material processed during the current licensure period and the average price per pound; and

(c) The number of current employees, their respective job titles, and hourly wage; and

(2) A processor shall participate in market surveys distributed by the cabinet throughout a licensure period and provide full and complete responses.

SAM FLYNN, Executive Director

ERIC FRIEDLANDER, Secretary

APPROVED BY AGENCY: January 3, 2024

FILED WITH LRC: January 4, 2024 at 11:50 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on March 25, 2024, 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 March 18, 2024, 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 March 31, 2024. 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 502-564-7476; 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 requirements and procedures for medicinal cannabis processors to operate in the commonwealth.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to carry out the requirements of KRS Chapter 218B, specifically KRS 218B.140.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 218B.140 authorizes the Cabinet for Health and Family Services to promulgate administrative regulations establishing requirements and procedures for processors to operate in the commonwealth. This administrative regulation sets out those requirements and procedures.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides the requirements and procedures for processors to operate in the commonwealth.

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

(a) How the amendment will change this existing administrative regulation: 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 affects processors that have applied for and subsequently received licenses to conduct medicinal cannabis processing activities in the commonwealth.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The requirements to operate as a processor and remain in good standing throughout the licensure period are provided in this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Processors will have to pay an initial application fee, and if approved for a license, an initial license fee and a renewal license fee if it desires to continue operating as a cannabis business following the expiration of its initial license.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Processors that receive a license from the Cabinet for Health and Family Services are authorized to conduct medicinal cannabis processing activities in the commonwealth for the term of the license (i.e., 1 year from the date of license issuance).

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

- (a) Initially: \$1,200,000
- (b) On a continuing basis: \$1,200,000
- (6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: State general funds provided by the commonwealth.
- (7) Provide an assessment of whether an 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 is anticipated that an increase in funding will be necessary to implement this regulation as additional staff and resources are necessary to administer and enforce licensure of processors.
- (8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish or increase any fees.
- (9) TIERING: Is tiering applied? Tiering is not applied. All processors 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? This administrative regulation impacts the Kentucky Medical Cannabis Program 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 218B.010, 218B.080, 218B.085, 218B.090, 218B.095, 218B.100, 218B.115, 218B.140.
 - (3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.
 - (a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The cabinet will receive initial application fees and initial license fees paid by processors during the first year.
 - (b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The cabinet will receive annual renewal license fees from processors that desire to continue operating in the commonwealth following the expiration of their existing license.
 - (c) How much will it cost to administer this program for the first year? The cabinet estimates that it will cost \$1,200,000 to license and regulate processors in the first year.
 - (d) How much will it cost to administer this program for subsequent years? The cabinet estimates that it will cost \$1,200,000 to regulate licensed processors 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: It is anticipated that an increase in funding will be necessary to implement this regulation as additional staff and resources are necessary to administer and enforce licensure of processors.
 - (4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative 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 cabinet does not anticipate any cost savings in the first year.
 - (b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? The cabinet does not anticipate any cost savings in subsequent years.
 - (c) How much will it cost the regulated entities for the first year? A processor will pay an initial application fee and, if issued a license, an initial license fee in order to conduct processing activities in the commonwealth.
 - (d) How much will it cost the regulated entities for subsequent years? If it desires to continue cannabis business operations in the

commonwealth, a processor will pay an annual renewal license fee. The renewal license fee is refundable if the renewal application is denied.

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 annual cost estimate to administer all aspects of the Kentucky Medical Cannabis Program is \$9,135,398. A significant portion of those funds will go toward licensing and enforcement of cannabis businesses operating in the commonwealth, including processors, as well implementation and continued operation of the electronic monitoring system and seed to sale tracking system required by KRS 218B.140. The Kentucky Medical Cannabis Program will have a major economic impact on the Cabinet for Health and Family Services, and it is anticipated that an increase in funding will be necessary to administer all of the administrative regulations contained in 915 KAR Chapter 1 related to cannabis businesses.

CABINET FOR HEALTH AND FAMILY SERVICES

Office of the Secretary

(New Administrative Regulation)

915 KAR 1:050. Producer.

RELATES TO: KRS Chapter 218B

STATUTORY AUTHORITY: KRS 218B.140

NECESSITY, FUNCTION, AND CONFORMITY: KRS 218B.140 requires the Cabinet for Health and Family Services to promulgate administrative regulations establishing requirements and procedures for medicinal cannabis producer operations in the Commonwealth. This administrative regulation establishes those requirements and procedures.

Section 1. General Requirements.

- (1) No person or entity may engage in cultivation activities or processing activities in the Commonwealth without first being issued a license by the cabinet. A producer shall not sell or transfer, or allow the sale or transfer, of medicinal cannabis or medicinal cannabis products to any person or entity in the Commonwealth who does not hold a cannabis business license issued by the cabinet.
- (2) A producer shall comply with all applicable requirements of KRS Chapter 218B, specifically KRS 218B.095 and 218B.120, and 915 KAR Chapter 1, specifically 915 KAR 1:030 and 915 KAR 1:040.
- (3) A producer shall not employ, take on as a volunteer, or have as a board member, principal officer, or agent any person who was convicted of a disqualifying felony offense or is younger than twenty-one (21) years of age.
- (4) A producer may conduct cultivation and processing activities at separate locations, but shall not operate more than one (1) cultivation and one (1) processing facility per license issued by the cabinet.
- (5) If a producer intends to conduct cultivation and processing activities at the same licensed location, the producer shall, prior to its first day of cultivation and processing activities at the same location, provide the cabinet with:
 - (a) A written plan for keeping strictly separated all cultivation activities from the processing activities; and
 - (b) A site map or blueprint showing which portions of its facility are designated for cultivation activities and which portions are designated for processing activities.
- (6) A producer shall not exceed 50,000 square feet of total canopy size at an enclosed, locked facility.

(7) The qualifications that a producer shall meet to receive a license are continuing qualifications to maintain the license throughout the licensure period.

(8) If a need for additional medicinal cannabis cultivation or processing is demonstrated by cannabis businesses or the cabinet's own analysis, the cabinet may offer currently licensed cultivators or processors with the option to become licensed as a producer at the expiration of their current license. In making this determination, the cabinet may consider factors including:

- (a) The population of the Commonwealth;
- (b) The number of active cardholders;
- (c) Changes to the list of qualifying medical conditions for medicinal cannabis;
- (d) Market supply and demand;
- (e) Geographic distribution of cannabis businesses;
- (f) The desire of cultivators or processors to receive a producer license;
- (g) The demonstrated experience of the cultivators and processors;
- (h) Workforce development opportunities; and
- (i) Any other factors that the cabinet deems relevant to its analysis.

Section 2. Increase of Canopy Limits.

(1) If a need for additional medicinal cannabis cultivation is demonstrated by cannabis businesses or the cabinet's own analysis, the cabinet may through the promulgation of administrative regulations increase the canopy size limits for producers by up to three (3) times the limits established in KRS 218B.120. Any increase in the canopy size limits adopted by the cabinet shall not result in an increase in licensure application or renewal fees established by the cabinet.

(2) In making its determination whether to increase canopy limits for producers, the cabinet may consider factors including:

- (a) The population of the Commonwealth;
- (b) The number of active cardholders;
- (c) Changes to the list of qualifying medical conditions for medicinal cannabis;
- (d) Market supply and demand;
- (e) The amount of medicinal cannabis being sold by dispensaries;
- (f) The amount of allowable canopy space being utilized by producers;
- (g) Workforce development opportunities; and
- (h) Any other factors that the cabinet deems relevant to its analysis.

Section 3. Duty to Report.

(1) At the time a producer submits a license renewal application to the cabinet, a producer shall report the following to the cabinet via electronic mail to kymedcanreporting@ky.gov:

- (a) The average amount of allowable canopy space being utilized by the producer during the current licensure period. If a producer is not utilizing the full amount of allowable canopy space during the current licensure period, the producer shall provide a written explanation to the cabinet of the reasons for not utilizing all available canopy space;
- (b) Any significant issues with the supply and demand of medicinal cannabis experienced by the producer;
- (c) The total amount of raw plant material sold during the current licensure period and the average price per pound;
- (d) The total amount of raw plant material processed during the current licensure period and the average price per pound; and
- (e) The number of current employees, their respective job titles, and hourly wage.

(2) A producer shall participate in market surveys distributed by the cabinet throughout a licensure period and provide full and complete responses.

SAM FLYNN, Executive Director

ERIC FRIEDLANDER, Secretary

APPROVED BY AGENCY: January 3, 2024

FILED WITH LRC: January 4, 2024 at 11:50 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on March 25, 2024, 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 March 18, 2024, 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 March 31, 2024. 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 502-564-7476; 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 requirements for medicinal cannabis producers to operate in the commonwealth.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to carry out the requirements of KRS Chapter 218B, specifically KRS 218B.140(c).

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 218B.140 requires the Cabinet for Health and Family Services to promulgate administrative regulations establishing requirements for producers to operate in the commonwealth. This administrative regulation sets out those requirements.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides the requirements for producers to operate in the commonwealth.

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

(a) How the amendment will change this existing administrative regulation: 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 affects producers that desire to conduct medicinal cannabis cultivation and processing activities in the commonwealth.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The requirements to operate as a producer and remain in good standing throughout the licensure period are provided in this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Producers will have to pay an initial application fee, and if approved for a license, an initial license fee and a renewal license fee if it desires to continue operating as a cannabis business following the expiration

of its initial license.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Producers that receive a license from the Cabinet for Health and Family Services are authorized to conduct medicinal cannabis cultivation and processing activities in the commonwealth for the term of the license (i.e., 1 year from the date of license issuance).

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

(a) Initially: \$1,200,000

(b) On a continuing basis: \$1,200,000

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: State general funds provided by the commonwealth.

(7) Provide an assessment of whether an 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 is anticipated that an increase in funding will be necessary to implement this regulation as additional staff and resources are necessary to administer and enforce licensure of producers.

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

(9) TIERING: Is tiering applied? Tiering is not applied. All producers 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? This administrative regulation impacts the Kentucky Medical Cannabis Program 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 218B.010, 218B.080, 218B.085, 218B.090, 218B.095, 218B.100, 218B.105, 218B.115, 218B.120, 218B.140.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The cabinet will receive initial application fees and initial license fees paid by producers during the first year that license category is offered.

(b) How 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 cabinet will receive annual renewal license fees from producers that desire to continue operating in the commonwealth following the expiration of their existing license.

(c) How much will it cost to administer this program for the first year? The cabinet estimates that it will cost \$1,200,000 to license and regulate producers in the first year that license category is offered.

(d) How much will it cost to administer this program for subsequent years? The cabinet estimates that it will cost \$1,200,000 to regulate licensed producers 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: It is anticipated that an increase in funding will be necessary to implement this regulation as additional staff and resources are necessary to administer and enforce licensure of producers.

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative 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 cabinet does not anticipate any cost savings in the first year.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? The cabinet does not anticipate any cost savings in subsequent years.

(c) How much will it cost the regulated entities for the first year? A producer will pay an initial application fee and, if issued a license, an initial license fee during the first year that license category is offered.

(d) How much will it cost the regulated entities for subsequent years? If it desires to continue cannabis business operations in the commonwealth, a producer will pay an annual renewal license fee. The renewal license fee is refundable if the renewal application is denied.

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 annual cost estimate to administer all aspects of the Kentucky Medical Cannabis Program is \$9,135,398. A significant portion of those funds will go toward licensing and enforcement of cannabis businesses operating in the commonwealth, including producers, as well implementation and continued operation of the electronic monitoring system and seed to sale tracking system required by KRS 218B.140. The Kentucky Medical Cannabis Program will have a major economic impact on the Cabinet for Health and Family Services, and it is anticipated that an increase in funding will be necessary to administer all of the administrative regulations contained in 915 KAR Chapter 1 related to cannabis businesses.

CABINET FOR HEALTH AND FAMILY SERVICES Office of the Secretary (New Administrative Regulation)

915 KAR 1:060. Safety compliance facility.

RELATES TO: KRS Chapter 218B

STATUTORY AUTHORITY: KRS 218B.140

NECESSITY, FUNCTION, AND CONFORMITY: KRS 218B.140 requires the Cabinet for Health and Family Services to promulgate administrative regulations establishing requirements and procedures for safety compliance facilities that provide testing services to medicinal cannabis businesses in the Commonwealth. This administrative regulation sets out those requirements and procedures.

Section 1. General Requirements.

(1) A safety compliance facility shall not collect, handle, receive, or conduct tests on medicinal cannabis samples unless it has been issued a license by the cabinet. Prior to conducting any testing of a sample at the request of a cannabis business, a safety compliance facility shall enter into a written contract with the cannabis business for testing services. A safety compliance facility shall provide a copy of their contracts with cannabis businesses to the cabinet within two (2) business days of receipt of the request.

(2) The cabinet shall post a list of licensed safety compliance facilities on the Web site for the Kentucky Medical Cannabis Program, <https://kymedcan.ky.gov>.

(3) A safety compliance facility shall employ at least one (1) director to oversee and be responsible for the testing operations of the facility. A director shall have earned, from a college or university accredited by a national or regional accrediting authority, at least one of the following:

(a) A doctorate of science or an equivalent degree in chemistry, biology, or a subdiscipline of chemistry or biology;

(b) A master's level degree in a chemical or biological science and a minimum of two (2) years post-degree experience related to

laboratory testing of medicinal or pharmaceutical products; or

(c) A bachelor's degree in a biological science and a minimum of four (4) years post-degree experience related to laboratory testing of medicinal or pharmaceutical products.

(4) A principal officer, board member, employee, volunteer, or agent of a cultivator, processor, producer, or dispensary shall not be employed by or affiliated with a safety compliance facility that has a contract with that respective cannabis business.

(5) A license issued by the cabinet to a safety compliance facility is valid only for the specific site licensed and identified on the license.

(6) A safety compliance facility shall:

(a) Conduct a criminal background check into the criminal history of each person seeking to become a principal officer, board member, agent, volunteer, or employee before that person begins work and shall retain records of these background checks for five (5) years and provide same to the cabinet during subsequent inspections or upon request;

(b) Maintain and adhere to proper standards of accuracy for testing and comply with the testing requirements contained in 915 KAR 1:110;

(c) Comply with all required analytes standards for the relevant test methods of cannabinoids, terpenoids, residual solvents and processing chemicals, residual pesticides, heavy metals, microbial impurities, mycotoxins, water activity, yeast, mold, and vitamin E acetate;

(d) Accurately and honestly report all medicinal cannabis test results;

(e) Only allow authorized individuals to perform medicinal cannabis testing and sign reports;

(f) Only accept a sample or test sample from a cannabis business employee or agent or an authorized representative of the cabinet;

(g) Maintain a certificate of accreditation in good standing from an accreditation body and provide a copy to the cabinet during subsequent inspections or upon request. The certificate of accreditation shall attest to the safety compliance facility's competence to perform testing, including all the required analytes for the relevant test methods required, and shall be obtained by the safety compliance facility prior to collecting, receiving, or testing any medicinal cannabis sample or test sample;

(h) Develop and maintain standard operating procedures for a laboratory approved by the accreditation body that issued the certificate of accreditation to the safety compliance facility and provide copies to the cabinet during subsequent inspections or upon request;

(i) Properly enter medicinal cannabis test results into the Commonwealth's designated electronic monitoring system and seed to sale tracking system as required by the cabinet and in accordance with written instructions provided by the cabinet; and

(j) Comply with all applicable requirements of KRS Chapter 218B, specifically KRS 218B.095 and 218B.125, and 915 KAR Chapter 1.

(7) A safety compliance facility shall not employ, take on as a volunteer, or have as a board member, principal officer, or agent any person who was convicted of a disqualifying felony offense or is younger than twenty-one (21) years of age.

(8) The qualifications that a safety compliance facility shall meet to receive a license are continuing qualifications to maintain the license throughout the licensure period.

Section 2. Selecting and Collecting Samples for Testing.

(1) A sampler is an employee or agent of a cultivator, processor, producer, safety compliance facility, or dispensary that is authorized by his or her employer to collect samples or test samples in accordance with the contracted safety compliance facility's standard operating procedures and this administrative regulation. A sampler shall obtain an amount for a sample or test sample on behalf of his or her employer sufficient to be aliquoted into a primary sample and a reserve sample, which shall be equal in amount. The primary sample and reserve sample shall be in the amounts specified in the safety compliance facility's standard operating procedures.

(2) A safety compliance facility shall ensure that samples and test samples are selected and collected in accordance with standard operating procedures established by the safety compliance facility and required by this administrative regulation. The standard operating procedures for sampling shall be written and provided to the cabinet and each cannabis business that the safety compliance facility contracts with for testing prior to collecting, receiving, or testing any medicinal cannabis. These standard operating procedures shall be in place prior to the first day that the safety compliance facility collects, receives, or tests a sample.

(3) Samples shall consist of enough samples from a harvest batch or production batch to ensure that the required attributes in the products are homogenous and consistent with the safety compliance facility's standard operating procedures for selecting and collecting samples. Test samples shall consist of enough samples of the item identified for testing to ensure any required testing can be accomplished in accordance with the safety compliance facility's standard operating procedures.

(4) The sampling policies and procedures shall include:

(a) A step-by-step guide for obtaining samples and test samples;

(b) Random taking of samples or test samples throughout the harvest batch or production batch;

(c) Using appropriate sampling equipment, including protocols relating to the sanitizing of equipment and tools, protective garb, and sampling containers;

(d) Using consistent collection procedures for samples and test samples;

(e) Transporting samples in a manner that does not endanger the integrity of the samples and that is in accordance with transportation requirements for samples contained in 915 KAR 1:080;

(f) Creating a unique sample identification number that will be linked to the harvest batch or production batch number assigned by the cultivator, processor, or producer in the Commonwealth's designated electronic monitoring system and seed to sale tracking system; and

(g) The process for properly documenting a chain of custody for each sample or test sample and retaining those records for a minimum of two (2) years.

(5) An employee or agent of a safety compliance facility shall only enter a facility operated by a cultivator, processor, producer, or dispensary for the purpose of:

(a) Selecting and collecting samples and test samples and shall have access to limited access areas in the facility for these purposes; and

(b) Providing training to cannabis business agents as provided in KRS 218B.125(7).

(6) An employee or agent of a safety compliance facility shall comply with all visitor requirements for entry into the cultivator, processor, producer, or dispensary's facility.

(7) An authorized cannabis business employee collecting any samples for testing shall follow the standard operating procedures established by the contracted safety compliance facility conducting the testing for sampling and documenting the chain of custody.

Section 3. Standards for testing. A safety compliance facility shall follow:

(1) The methodologies and parameters that are contained in the scope of the certificate of accreditation issued to the safety compliance facility; and

(2) The testing requirements contained in 915 KAR 1:110.

Section 4. Quality Assurance Program.

(1) Prior to its first day of collecting or receiving samples or test samples in the Commonwealth, a safety compliance facility shall establish and implement a written quality assurance program to ensure that measurements are accurate, errors are controlled, and equipment, devices, or instruments used for testing are routinely and properly calibrated in accordance with the equipment, device, or instrument manufacturer recommendations regarding calibration and frequency.

(2) The quality assurance program required under this section shall include the following components:

- (a) An organizational chart that includes the testing responsibilities of employees;
 - (b) A description of sampling procedures to be utilized;
 - (c) Appropriate chain of custody protocols;
 - (d) Analytical procedures;
 - (e) Data reduction and validation procedures; and
 - (f) A plan for implementing corrective action, when necessary.
- (3) A safety compliance facility shall provide a copy of its written quality assurance program to the cabinet upon request or during subsequent inspections or investigations.

Section 5. Cabinet Request for Testing. If the cabinet requests that a safety compliance facility conduct tests on any samples or test samples collected by the cabinet, the safety compliance facility shall comply with the request and directions of the cabinet and provide the cabinet with a written report of the results from a sample tested under this section within seven (7) calendar days of receipt of the sample, or sooner if requested by the cabinet.

Section 6. Ownership Prohibition. The following individuals shall not have a management or a direct or indirect financial or other ownership interest in a safety compliance facility:

- (1) An owner, principal officer, board member, financial backer, employee, volunteer, or agent of a cultivator, processor, producer, or dispensary; and
- (2) A medicinal cannabis practitioner.

Section 7. Plans of Operation.

(1) In addition to any other standard operating procedures required by this administrative regulation, a safety compliance facility shall establish standard operating procedures for the following prior to its first day of collecting or receiving samples or test samples in the Commonwealth:

- (a) Employment policies and procedures;
- (b) Security, including:
 - 1. Staff identification measures and use of employee identification badges;
 - 2. Monitoring of attendance of staff and visitors;
 - 3. Alarm systems;
 - 4. Video surveillance;
 - 5. Monitoring and tracking samples and test results, including use of the Commonwealth's electronic monitoring system and seed to sale tracking system established pursuant to KRS 218B.140;
 - 6. Personnel security;
 - 7. Transportation of medicinal cannabis;
 - 8. Cash management and anti-fraud procedures;
 - 9. Measures to prevent loitering, which shall include signage; and
 - 10. Storage of medicinal cannabis and medicinal cannabis products;
- (c) Recordkeeping;
- (d) The process for receiving, handling, packaging, labeling, storing, transporting, and disposing of medicinal cannabis samples;
- (e) Employee qualifications, supervision, and training;
- (f) Workplace safety;
- (g) Waste disposal and sanitation;
- (h) Inventory management, including intake, labeling, and storage of samples and test samples;
- (i) Contamination;
- (j) Maintenance, cleaning, and sanitation of equipment used to test samples;
- (k) Maintenance, cleaning, and sanitation of the safety compliance facility;
- (l) Proper handling and storage of any chemical or substance used in testing medicinal cannabis;
- (m) Investigation of complaints and potential adverse events received from other cannabis businesses, registered qualified patients, designated caregivers, or medicinal cannabis practitioners regarding the safety compliance facility's operations;
- (n) Preventing unlawful diversion of medicinal cannabis; and
- (o) Any other standard operating procedures required for all

cannabis businesses in KRS Chapter 218B and 915 KAR Chapter 1.

(2) A safety compliance facility shall make its standard operation procedures available to the cabinet upon request and during any inspection or investigation.

Section 8. Facilities.

(1) A safety compliance facility shall only test samples in a facility on the specific site licensed by the cabinet and identified on its license issued by the cabinet. The facility shall meet all applicable state and local building codes and specifications in addition to the following:

- (a) Has a complete roof enclosure supported by connecting permanent walls, constructed of solid materials extending from the ground to the roof;
 - (b) Is secure against unauthorized entry;
 - (c) Has a foundation, slab, or equivalent base to which the floor is securely attached;
 - (d) Has commercial grade door locks on all external doors that are locked at all times;
 - (e) Restricts access to only authorized personnel to limited access areas identified with signage and daily records of entry and exit;
 - (f) Contains adequate plumbing to carry sufficient quantities of water to locations throughout the facility and convey sewage and waste from the facility without cross contamination of potable water and waste;
 - (g) Stores toxic cleaning compounds, sanitizing agents, and substances used in testing samples in a manner that is in accordance with applicable local, state, and federal laws and regulations;
 - (h) Maintains proper ventilation;
 - (i) Maintains pest control;
 - (j) Maintains adequate indoor and exterior lighting to facilitate video surveillance at all times; and
 - (k) Maintains adequate on-site parking for employees, agents, visitors, transporters of medicinal cannabis, or cabinet staff.
- (2) A safety compliance facility shall clearly mark all limited access areas on its premises with proper signage. All areas of ingress and egress to a limited access area shall be clearly identified by the posting of a sign which shall be not less than twelve (12) inches wide and twelve (12) inches long, composed of letters not less than one-half inch in height, which shall state: "Do Not Enter. Limited Access Area. Access Limited to Authorized Personnel and Escorted Visitors."

(3) A safety compliance facility shall have a secure area for the loading and unloading of medicinal cannabis samples into and from a transport vehicle.

Section 9. Employee Records and Identification.

(1) A safety compliance facility shall keep an individual employment record for all employees, including:

- (a) Full legal name;
- (b) Detailed job description;
- (c) Documentation of completed criminal background check;
- (d) Record of all training received or acquired by the employee;
- (e) Dates of employment;
- (f) Records of days and hours worked; and
- (g) Any disciplinary actions taken by the safety compliance facility.

(2) Employment records shall be maintained, either electronically or in hard copy, for at least five (5) years after the employee's last date of employment with the safety compliance facility.

(3) A safety compliance facility shall create an identification badge for each employee, agent, or volunteer. This badge shall be conspicuously worn by employees or agents at all times that they are on the licensed premises or during transport of samples or test samples. The badge shall contain:

- (a) The individual's name, photo, and employee identification number;
- (b) A phone number and email address for the safety compliance facility; and

(c) A phone number and email address for the Kentucky Medical Cannabis Program.

Section 10. Visitors to Safety Compliance Facilities.

(1) A safety compliance facility shall not be open to the general public.

(2) A safety compliance facility shall complete the following steps when admitting a visitor to its site and facility:

(a) Require the visitor to sign a visitor log upon entering and leaving the facility;

(b) Check the visitor's government-issued identification to verify that the name on the identification provided matches the name in the visitor log;

(c) Issue a visitor identification badge with the visitor's name and company, if applicable, and a badge number;

(d) Escort the visitor while the visitor remains in the facility keeping a record of the areas of the facility visited; and

(e) Ensure that the visitor does not touch any medicinal cannabis located in a limited access area.

(3) No one under the age of eighteen (18) shall be permitted to enter a safety compliance facility. A person who is at least eighteen (18) years of age may enter and remain on the premises if that person is present to perform contract work, including electrical, plumbing, or security maintenance, that does not involve handling medicinal cannabis or is a government employee and is at the facility in the course of his or her official duties.

(4) A safety compliance facility shall post a sign in a conspicuous location at each entrance of its facility that states "THESE PREMISES ARE UNDER CONSTANT VIDEO SURVEILLANCE. NO ONE UNDER THE AGE OF 18 IS PERMITTED TO ENTER."

(5) A safety compliance facility shall maintain the visitor log required under this section for five (5) years and make the visitor log available to the cabinet, law enforcement, and other federal or state government officials upon request to perform the government officials' functions and duties. The visitor log shall include the date, the full name of each visitor, the visitor identification badge number, the time of arrival, the time of departure, and the purpose of the visit, including the areas of the site and the facility visited.

(6) This section does not limit the right of the cabinet or its authorized agents, or other federal, state, or local government officials from entering any area of a safety compliance facility if necessary to perform the governmental officials' functions and duties.

(7) A principal officer, board member, agent, financial backer, or employee of a safety compliance facility may not receive any type of consideration or compensation for allowing a visitor to enter a limited access area.

Section 11. Security and Surveillance.

(1) A safety compliance facility shall have security and surveillance systems, utilizing commercial-grade equipment, to prevent unauthorized entry and to prevent and detect an adverse loss. The security and surveillance systems shall include the following:

(a) A professionally monitored security alarm system that includes:

1. Coverage of all facility entrances and exits, storage rooms, including those that contain medicinal cannabis and safes, and the perimeter of the facility;

2. Smoke and fire alarms;

3. Auxiliary power sufficient to maintain operation for at least twenty-four (24) hours following a power outage;

4. The ability to ensure all access doors are not solely controlled by an electronic access panel to prevent locks from becoming released during a power outage; and

5. Motion detectors for exterior lighting.

(b) A professionally monitored security surveillance system that is operational twenty-four (24) hours a day, seven (7) days a week, and records all activity in images capable of clearly revealing facial detail. The security and surveillance system shall include:

1. Fixed camera placement that allows for a clear image of all individuals and activities in and around the following:

a. All limited access areas;

b. A room or area containing a security alarm and surveillance system storage device or equipment;

c. Entrances to and exits from the facility; and

d. Twenty (20) feet from the exterior of the perimeter of the facility.

2. Ability to operate under the normal lighting conditions of each area under surveillance;

3. Ability to immediately produce a clear, color, still photograph in a digital format that is easily accessible;

4. Ability to display the date and time clearly and accurately. The date and time shall be synchronized and set correctly and may not significantly obscure the picture; and

5. Ability to record all images captured by each surveillance camera in a format that may be easily accessed for a minimum of thirty (30) days, unless otherwise required for investigative or litigation purposes. The recordings shall be kept:

a. At the safety compliance facility:

(i) In a locked cabinet, closet or other secure place to protect it from tampering or theft; and

(ii) In a limited access area or other room to which access is limited to authorized individuals; or

b. At a secure location other than the location of the safety compliance facility if approved by the cabinet.

(2) The following requirements apply to the inspection, servicing or alteration of, and any upgrade to, the security alarm and surveillance systems:

(a) The systems shall be inspected and all devices tested once every year by a qualified alarm system vendor and a qualified surveillance system vendor;

(b) A safety compliance facility shall conduct maintenance inspections once every month to ensure that any repairs, alterations, or upgrades to the security alarm and surveillance systems are made for the proper operation of the systems;

(c) A safety compliance facility shall retain at the facility, for at least five (5) years, records of all inspections, servicing, alterations, and upgrades performed on the security alarm and surveillance systems and shall make the records available to the cabinet and its authorized agents within two (2) business days following a request; and

(d) In the event of a mechanical malfunction of the security alarm or surveillance system that a safety compliance facility anticipates will exceed an eight (8) hour period, the safety compliance facility shall notify the cabinet immediately via electronic mail to kymedcanreporting@ky.gov, with cabinet approval, provide alternative security measures that may include closure of the facility.

(3) A safety compliance facility shall meet the following requirements regarding records retention:

(a) Have a secure electronic back-up system for all electronic records;

(b) Within three (3) business days following a request for records under this paragraph, provide up to four (4) screen captures of an unaltered copy of a video surveillance recording to the cabinet or its authorized agents, law enforcement, or other federal, state, or local government officials if necessary to perform the governmental officials' functions and duties; and

(c) If a safety compliance facility has been notified in writing by the cabinet or its authorized agents, law enforcement, or other federal, state, or local government officials of a pending criminal or administrative investigation for which a recording may contain relevant information, retain an unaltered copy of the recording for two (2) years or until the investigation or proceeding is closed or the entity conducting the investigation or proceeding notifies the cultivator that it is not necessary to retain the recording, whichever is later.

(4) During all non-working hours, all entrances to and exits from the safety compliance facility shall be securely locked.

(5) A safety compliance facility shall install lighting to ensure proper surveillance inside and outside of the facility.

(6) A safety compliance facility shall limit access to a room containing the equipment operating the security alarm and surveillance monitoring systems to:

(a) Persons who are essential to maintaining security and surveillance operations;

- (b) Federal, state, and local law enforcement;
- (c) Security alarm and surveillance system service employees;
- (d) The cabinet or its authorized agents; and
- (e) Other persons with the prior written approval of the cabinet.

(7) A safety compliance facility shall make available to the cabinet or its authorized agents, upon request, a current list of authorized employees and service employees or contractors who have access to areas containing the equipment operating the security alarm and surveillance monitoring systems.

(8) A safety compliance facility shall keep rooms housing the equipment operating the security alarm and surveillance monitoring systems locked at all times and may not use these rooms for any other purpose or function.

Section 12. Electronic Monitoring System and Seed to Sale Tracking System. A safety compliance facility shall use the electronic monitoring system and seed to sale tracking system prescribed by the cabinet containing the requirements in KRS Chapter 218B, specifically KRS 218B.140. A safety compliance facility shall use the electronic monitoring system and seed to sale tracking system in accordance with written instructions provided by the cabinet.

Section 13. Equipment, Operation, and Maintenance.

(1) A safety compliance facility shall have a written process in place to maintain the sanitation and operation of equipment that comes into contact with samples to prevent contamination. A safety compliance facility shall provide a copy of the written process to the cabinet upon request.

(2) As part of the written process required under this section, a safety compliance facility shall:

- (a) Routinely check and inspect automatic, mechanical, or electronic equipment as well as any measurement devices used in the safety compliance facility's operations to ensure accuracy; and
- (b) Maintain an accurate log recording the:
 1. Maintenance of equipment;
 2. Cleaning of equipment; and
 3. Calibration of equipment.

Section 14. Sanitation and Safety in a Safety Compliance Facility.

(1) A safety compliance facility shall maintain its site and facility in a sanitary condition to limit the potential for contamination of samples. The following requirements shall apply:

- (a) Equipment and surfaces, including floors, counters, walls, and ceilings, shall be cleaned and sanitized as frequently as necessary to protect against contamination, using a sanitizing agent registered by the United States Environmental Protection Agency, in accordance with the instructions printed on the label. All equipment and utensils used by a safety compliance facility shall be capable of being adequately cleaned;
- (b) Trash shall be properly and routinely removed;
- (c) Floors, walls, and ceilings shall be kept in good repair;
- (d) Adequate protection against pests shall be provided; and
- (e) Toxic cleaning compounds, sanitizing agents, and other chemicals shall be labeled and stored in a manner that prevents contamination of samples, and in a manner that otherwise complies with other applicable laws, rules, and regulations.

(2) All employees shall conform to sanitary practices while on duty, including:

- (a) Maintaining adequate personal cleanliness;
- (b) Washing hands thoroughly in an adequate hand-washing area before starting work and at any other time when hands may have become soiled or contaminated;
- (c) Wearing proper clothing, including gloves, hair nets, headbands, caps, beard covers, or other effective hair restraints where appropriate;
- (d) Removing all unsecured jewelry and other objects that might fall into medicinal cannabis, equipment, or containers, and removing hand jewelry that cannot be adequately sanitized during periods in which medicinal cannabis is manipulated by hand. If such hand jewelry cannot be removed, it may be covered by material which can be maintained in an intact, clean, and sanitary condition and which

effectively protects the medicinal cannabis from contamination by these objects;

(e) Storing clothing or other personal belongings in areas other than where medicinal cannabis is exposed or where equipment is cleaned;

(f) Confining the following to areas other than where medicinal cannabis may be exposed or where equipment is cleaned: eating food, chewing gum, drinking beverages, or using tobacco; and

(g) Taking any other necessary precautions to protect against contamination of medicinal cannabis with microorganisms or foreign substances including perspiration, hair, cosmetics, tobacco, chemicals, and medicines applied to the skin.

(3) A safety compliance facility shall provide its employees and visitors with adequate and convenient hand-washing facilities furnished with running water at a temperature suitable for sanitizing hands. Effective nontoxic sanitizing cleansers and sanitary towel service or suitable drying devices shall also be provided.

(4) A safety compliance facility shall provide its employees and visitors with adequate, readily accessible restrooms that are maintained in a sanitary condition and in good repair.

(5) A safety compliance facility shall ensure that its facility is provided with a water supply sufficient for its operations, which shall be derived from a source that is a public water system, or a nonpublic system that is capable of providing a safe, potable, and adequate supply of water to meet the operational needs of the facility.

(6) A safety compliance facility shall comply with all other applicable federal, state, and local building code requirements and occupational safety and health requirements.

Section 15. Storage Requirements.

(1) A safety compliance facility shall have separate locked limited access areas for storage of all samples and test samples until they can be tested and destroyed or otherwise disposed of as required under Section 16 of this administrative regulation.

(2) A safety compliance facility shall maintain all storage areas in a clean and orderly condition and free from infestation by insects, rodents, birds, and pests.

Section 16. Management and Disposal of Medicinal Cannabis Waste.

(1) A safety compliance facility shall dispose of samples in such a manner as to render the medicinal cannabis unusable. A safety compliance facility shall record medicinal cannabis waste as required in the Commonwealth's designated electronic monitoring system and seed to sale tracking system.

(2) Medicinal cannabis that is rendered unusable shall be discarded into a locked dumpster or other approved, locked container for removal from the facility by a waste removal company selected by the safety compliance facility. Medicinal cannabis shall be rendered unusable by:

- (a) Controlled incineration; or
- (b) Grinding and incorporating the medicinal cannabis with one (1) or more of the non-consumable, solid wastes listed below, such that the resulting mixture is majority non-cannabis waste:

1. Paper waste;
2. Cardboard waste;
3. Food waste;
4. Yard or garden waste;
5. Grease or other compostable oil waste; or
6. Soil or other used growth media.

(3) The disposal of medicinal cannabis shall be performed under video surveillance from the time the destruction begins to when it is placed in a locked dumpster or other approved, locked container and removed from the safety compliance facility location.

(4) The employee overseeing the disposal of medicinal cannabis shall maintain and make available a separate record of every disposal indicating the following:

- (a) The date and time of disposal;
- (b) The manner of disposal;
- (c) The unique identification codes associated with the medicinal cannabis scheduled for destruction;
- (d) The reasoning for and description of the disposal;

(e) The name, employee identification number, and signature of the employee overseeing the disposal of the medicinal cannabis; and

(f) The harvest batch or production batch number and weight of the plant material being disposed of.

(5) The disposal of other waste from the safety compliance facility that does not include medicinal cannabis, including hazardous waste and liquid waste, shall be performed in a manner consistent with applicable federal, state, and local requirements.

Section 17. Duty to Report.

(1) At the time a safety compliance facility submits a license renewal application to the cabinet, a safety compliance facility shall report to the cabinet via electronic mail to kymedcanreporting@ky.gov the following:

(a) A list of the cannabis businesses that the safety compliance facility has contracted with for sample testing;

(b) A list of non-testing activities allowed under KRS 218B.125 that the safety compliance facility engaged in during the licensure period, a list of its customers for each activity, and the compensation received for each activity. If the safety compliance facility produced and sold educational materials related to the use of medicinal cannabis, the safety compliance facility shall provide copies of those educational materials to the cabinet upon request;

(c) Any issues with accomplishing sample testing in a timely manner; and

(d) The number of current employees, their respective job titles, and hourly wage.

(2) A safety compliance facility shall participate in surveys distributed by the cabinet throughout a licensure period and provide full and complete responses.

SAM FLYNN, Executive Director

ERIC FRIEDLANDER, Secretary

APPROVED BY AGENCY: January 3, 2024

FILED WITH LRC: January 4, 2024 at 11:50 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on March 25, 2024, 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 March 18, 2024, 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 March 31, 2024. 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 502-564-7476; 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 requirements and procedures for safety compliance facilities that provide testing services to medicinal cannabis businesses in the commonwealth.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to carry out the requirements of KRS Chapter 218B, specifically KRS 218B.140.

(c) How this administrative regulation conforms to the content of

the authorizing statutes: KRS 218B.140 authorizes the Cabinet for Health and Family Services to promulgate administrative regulations establishing requirements and procedures for safety compliance facilities that provide testing services to medicinal cannabis businesses in the commonwealth. This administrative regulation sets out those requirements and procedures.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides the requirements and procedures for safety compliance facilities to operate in the commonwealth.

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

(a) How the amendment will change this existing administrative regulation: 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 affects safety compliance facilities that have applied for and subsequently received licenses to provide testing services to medicinal cannabis businesses in the commonwealth.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The requirements to operate as a safety compliance facility and remain in good standing throughout the licensure period are provided in this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Safety compliance facilities will have to pay an initial application fee, and if approved for a license, an initial license fee and then a renewal license fee if it desires to continue operating as a cannabis business following the expiration of its initial license.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): A safety compliance facility that receives a license from the Cabinet for Health and Family Services is authorized to provide testing and other services to medicinal cannabis businesses in the commonwealth for the term of the license (i.e., 1 year from the date of license issuance).

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

(a) Initially: \$1,200,000

(b) On a continuing basis: \$1,200,000

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: State general funds provided by the commonwealth.

(7) Provide an assessment of whether an 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 is anticipated that an increase in funding will be necessary to implement this regulation as additional staff and resources are necessary to administer and enforce licensure of safety compliance facilities.

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

(9) TIERING: Is tiering applied? Tiering is not applied. All safety compliance facilities 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? This administrative regulation impacts the Kentucky Medical Cannabis Program 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 218B.010, 218B.080, 218B.085, 218B.090, 218B.095, 218B.100, 218B.125, 218B.140.

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

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

The cabinet will receive initial application fees and initial license fees paid by safety compliance facilities during the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The cabinet will receive annual renewal license fees from safety compliance facilities that desire to continue operating in the commonwealth following the expiration of their existing license.

(c) How much will it cost to administer this program for the first year? The cabinet estimates that it will cost \$1,200,000 to license and regulate cultivators in the first year.

(d) How much will it cost to administer this program for subsequent years? The cabinet estimates that it will cost \$1,200,000 to regulate licensed cultivators 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: It is anticipated that an increase in funding will be necessary to implement this regulation as additional staff and resources are necessary to administer and enforce licensure of safety compliance facilities.

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative 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 cabinet does not anticipate any cost savings in the first year.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? The cabinet does not anticipate any cost savings in subsequent years.

(c) How much will it cost the regulated entities for the first year? Safety compliance facilities will pay an initial application fee and, if issued a license, an initial license fee in order to conduct testing and other activities in the commonwealth.

(d) How much will it cost the regulated entities for subsequent years? If it desires to continue cannabis business operations in the commonwealth, a safety compliance facility will pay an annual renewal license fee. The renewal license fee is refundable if the renewal application is denied.

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 annual cost estimate to administer all aspects of the Kentucky Medical Cannabis Program is \$9,135,398. A significant portion of those funds will go toward licensing and enforcement of cannabis businesses operating in the commonwealth, including safety compliance facilities, as well implementation and continued operation of the electronic monitoring system and seed to sale tracking system required by KRS 218B.140. The Kentucky Medical Cannabis Program will have a major economic impact on the Cabinet for Health and Family Services, and it is anticipated that an

increase in funding will be necessary to administer all of the administrative regulations contained in 915 KAR Chapter 1 related to cannabis businesses.

CABINET FOR HEALTH AND FAMILY SERVICES
Office of the Secretary
(New Administrative Regulation)

915 KAR 1:070. Dispensary.

RELATES TO: KRS Chapter 218B

STATUTORY AUTHORITY: KRS 218B.140

NECESSITY, FUNCTION, AND CONFORMITY: KRS 218B.140 requires the Cabinet for Health and Family Services to promulgate administrative regulations establishing requirements and procedures for medicinal cannabis dispensaries in the Commonwealth. This administrative regulation establishes those requirements and procedures.

Section 1. General Requirements.

(1) No person or entity may dispense, sell, or deliver medicinal cannabis to cardholders without first being issued a license by the cabinet.

(2) The cabinet shall post a list of licensed dispensaries on the Web site for the Kentucky Medical Cannabis Program, <https://kymedcan.ky.gov>.

(3) A dispensary shall:

(a) Conduct a criminal background check into the criminal history of each person seeking to become a principal officer, board member, agent, volunteer, or employee before that person begins work and shall retain records of these background checks for five (5) years and provide same to the cabinet during subsequent inspections or upon request;

(b) Not acquire medicinal cannabis for retail sale from any person or business other than a cannabis business licensed by the cabinet;

(c) Not sell or dispense medicinal cannabis products intended for consumption by vaporizing to a cardholder who is younger than twenty-one (21) years of age or to a designated caregiver for a registered qualified patient who is younger than twenty-one (21) years of age;

(d) Not sell medicinal cannabis directly to a minor;

(e) Not co-locate in a shared space or have any financial arrangement with a medicinal cannabis practitioner;

(f) Not acquire, possess, dispense, sell, offer for sale, transfer, or transport:

1. Raw plant material with a delta-9 tetrahydrocannabinol (THC) content of more than thirty-five (35) percent;

2. Medicinal cannabis products intended for oral consumption as an edible, oil, or tincture with more than ten (10) milligrams of THC per serving;

3. Any medicinal cannabis product not otherwise described in this provision with a THC content of more than seventy (70) percent; or

4. Any medicinal cannabis product that contains vitamin E acetate;

(g) Prohibit a cardholder from self-administering or a designated caregiver from assisting with administering medicinal cannabis on the premises of the licensed dispensary location;

(h) Only dispense or sell medicinal cannabis that has passed the testing requirements contained in 915 KAR 1:110;

(i) Only dispense or sell medicinal cannabis to a cardholder in a sealed and properly labeled package as required by 915 KAR 1:100;

(j) Maintain adequate on-site parking for employees, agents, visitors, transporters of medicinal cannabis, or cabinet staff; and

(k) Comply with all applicable requirements of KRS Chapter 218B, specifically KRS 218B.095 and 218B.110, and 915 KAR Chapter 1.

(4) A dispensary shall not employ, take on as a volunteer, or have as a board member, principal officer, or agent any person who was convicted of a disqualifying felony offense or is younger than twenty-one (21) years of age.

(5) The qualifications that a dispensary shall meet to receive a license are continuing qualifications to maintain the license throughout the licensure period.

Section 2. Dispensing Medicinal Cannabis.

(1) A dispensary shall only dispense medicinal cannabis to a registered qualified patient, visiting qualified patient, or designated caregiver who:

(a) Presents a valid registry identification card issued by the cabinet; or

(b) Presents a valid out-of-state registry identification card and documentation of having been diagnosed with a qualifying medical condition if the individual is a visiting qualified patient without a valid registry card issued by the cabinet.

(2) Prior to dispensing medicinal cannabis to registered qualified patients, designated caregivers, and visiting qualified patients who have a registry identification card issued by the cabinet, the dispensary shall:

(a) Verify the validity of the registry identification card through use of the Commonwealth's designated electronic monitoring system;

(b) Verify that the individual presenting the registry identification card is at least eighteen (18) years of age and is the person identified on the registry identification card by examining at least one (1) other form of government-issued photo identification; and

(c) Verify the amount of medicinal cannabis that the registered qualified patients, designated caregivers, and visiting qualified patients who have a registry identification card issued by the cabinet is legally permitted to purchase pursuant to KRS 218B.025 by checking the Commonwealth's designated electronic monitoring system. If a medicinal cannabis practitioner sets forth recommendations, requirements, or limitations as to the form or dosage of medicinal cannabis on the written certification issued to the individual, the medicinal cannabis dispensed shall conform to those recommendations, requirements, or limitations.

(3) Prior to dispensing medicinal cannabis to visiting qualified patients that do not have a registry identification card issued by the cabinet, the dispensary shall:

(a) Review the out-of-state registry identification card presented by the individual to determine any issues with its validity, including checking any expiration date;

(b) Verify that the individual presenting the registry identification card is at least eighteen (18) years of age and is the person identified on the registry identification card by examining at least one (1) other form of government-issued photo identification;

(c) Examine documentation provided by the individual of having been diagnosed with a qualifying medical condition. This documentation shall consist of contemporaneous records containing an express statement of diagnosis of a qualifying medical condition and may include a written certification from a physician, patient history and physical report, or a physician summary report; and

(d) Inform the individual that he or she is not be permitted to purchase more medicinal cannabis than the amount determined by the cabinet to constitute an uninterrupted ten (10) day supply of medicinal cannabis during a given eight (8) day period.

(4) A dispensary shall maintain records that include specific notations of the type and amount of medicinal cannabis being dispensed to a cardholder and whether it was dispensed directly to a registered qualified patient or visiting qualified patient, or to a registered qualified patient's designated caregiver. Each entry shall include the date and time the medicinal cannabis was dispensed. The data required to be recorded by this provision shall be entered into the Commonwealth's designated electronic monitoring system and seed to sale tracking system in accordance with written instructions provided by the cabinet.

(5) Prior to the completion of the transaction, the employee conducting the transaction at the dispensary shall prepare a receipt of the transaction, provide a copy of the receipt to the cardholder, and retain a copy of the receipt for the dispensary's records for a minimum of two (2) years. The receipt shall include the following information:

(a) The dispensary's name, address, and license number;
(b) The name of the cardholder;
(c) The date and time the medicinal cannabis was dispensed;
(d) Any requirement or limitation noted by the medicinal cannabis practitioner on the cardholder's written certification as to the form or amount of medicinal cannabis that the individual should use;

(e) The form and the quantity of medicinal cannabis dispensed;
(f) Any medicinal cannabis accessories or educational materials included in the transaction; and

(g) The amount paid by the cardholder for the medicinal cannabis and other items.

(6) When dispensing medicinal cannabis to visiting qualified patients with an out-of-state registry identification card and required documentation of having been diagnosed with a qualifying medical condition, a dispensary may assess a convenience fee to be collected by the dispensary as part of the transaction. The convenience fee shall not exceed fifteen (15) dollars per transaction.

Section 3. Limitations on Dispensing Medicinal Cannabis.

In addition to other dispensing requirements contained in KRS Chapter 218B and this administrative regulation, a dispensary shall not dispense to a cardholder:

(1) A quantity of medicinal cannabis that is greater than the amount indicated on the individual's written certification, if any;

(2) A form or dosage of medicinal cannabis that is listed as a restriction or limitation on the individual's written certification;

(3) A quantity of medicinal cannabis that is greater than the cardholder is legally permitted to purchase at the time of the transaction;

(4) Any expired medicinal cannabis or medicinal cannabis products; and

(5) Any medicinal cannabis or medicinal cannabis products that have been identified as part of a recall.

Section 4. Dispensary Facilities.

(1) A dispensary shall only sell medicinal cannabis within a building or secure structure located on the specific site licensed by the cabinet and identified on its license issued by the cabinet. The building or secure structure shall meet all applicable state and local building codes and specifications in addition to the following:

(a) Has a complete roof enclosure supported by connecting permanent walls, constructed of solid materials extending from the ground to the roof;

(b) Is secure against unauthorized entry;

(c) Has a foundation, slab, or equivalent base to which the floor is securely attached;

(d) Has commercial grade door locks on all external doors that are locked at all times;

(e) Restricts access to only authorized personnel to limited access areas identified with signage and daily records of entry and exit;

(f) Contains adequate plumbing to carry sufficient quantities of water to locations throughout the facility and convey sewage and waste from the facility without cross contamination of potable water and waste;

(g) Properly stores toxic cleaning compounds or sanitizing agents in a manner that is in accordance with applicable local, state, and federal laws and regulations;

(h) Maintains pest control; and

(i) Maintains adequate indoor and exterior lighting to facilitate video surveillance at all times.

(2) A dispensary shall only dispense medicinal cannabis to a cardholder in an indoor, enclosed, secure facility between the hours of 8 a.m. and 8 p.m.

(3) A dispensary shall not be located at the same site and location used for growing, cultivating, or processing medicinal cannabis or in the same office space as a medicinal cannabis practitioner or other physician.

(4) A dispensary shall not permit a person under eighteen (18) years of age to enter or remain on its premises. A dispensary shall not permit an individual who is not a cardholder to enter or remain its premises except in accordance with KRS 218B.095(6) and

Section 10 of this administrative regulation.

(5) A dispensary shall post a sign in a conspicuous location at each entrance of the facility that reads: "THESE PREMISES ARE UNDER CONSTANT VIDEO SURVEILLANCE. NO ONE UNDER THE AGE OF 18 IS PERMITTED TO ENTER."

(6) A dispensary shall clearly mark all limited access areas on its premises with proper signage. All areas of ingress and egress to a limited access area shall be clearly identified by the posting of a sign which shall be not less than twelve (12) inches wide and twelve (12) inches long, composed of letters not less than one-half inch in height, which shall state: "Do Not Enter. Limited Access Area. Access Limited to Authorized Personnel and Escorted Visitors."

(7) A dispensary shall have a secure area for the loading and unloading of medicinal cannabis into and from a transport vehicle.

Section 5. Items and Services Provided at a Dispensary.

(1) A dispensary shall dispense medicinal cannabis, medicinal cannabis products, and medicinal cannabis accessories in accordance with this administrative regulation.

(2) A dispensary may operate a delivery service for registered qualified patients and designated caregivers in accordance with the delivery service requirements established in 915 KAR 001:080, Section 2.

(3) A dispensary may dispense medicinal cannabis to cardholders via a drive-thru window or curbside pickup service if:

(a) The dispensary notifies the cabinet via electronic mail to kymedcanreporting@ky.gov of its intent to dispense medicinal cannabis via a drive-thru window or curbside pickup service;

(b) The dispensary provides the cabinet with detailed written plans and procedures for drive-thru and curbside pickup operations, including operating hours, how payment will be accomplished, how medicinal cannabis products will be provided to cardholders, and safety and security measures to ensure safe operations;

(c) The cabinet approves the dispensary's proposed written plans and procedures; and

(d) The dispensary complies with the dispensing requirements contained in Sections 2 and 3 of this administrative regulation.

(4) A dispensary may display product examples that have been designated by the dispensary for the purpose of product education for cardholders if:

(a) There is a sign or label conspicuously displayed on or near the product example that clearly states "PRODUCT EXAMPLE FOR DISPLAY PURPOSES ONLY. NOT FOR SALE OR CONSUMPTION" in bold, capital letters;

(b) The product example is packaged in a secure jar protected by a plastic, glass, or metal mesh screen to allow cardholders to see the medicinal cannabis or medicinal cannabis product;

(c) The product example is recorded in the Commonwealth's electronic monitoring system and seed to sale tracking system as a product example; and

(d) At the point a product example has noticeably degraded to where it is no longer representative of a new product, the dispensary shall destroy the product example in accordance with Section 14 of this administrative regulation.

(5) Dispensaries may utilize inducements to assist cardholders. Inducements shall not persuade or influence the use of medicinal cannabis outside of medicinal cannabis practitioner recommendations or limitations or the amounts allowed by KRS Chapter 218B. Authorized inducements are as follows:

(a) The use of coupons and discounts; and

(b) The giving away of educational materials and branded merchandise.

(6) Pursuant to KRS 218B.110(1)(e), a dispensary may accept returns of medicinal cannabis and medicinal cannabis products from a cardholder, but only for the purpose of disposal. A dispensary may not offer anything of monetary value in return for medicinal cannabis or medicinal cannabis products received from a cardholder. All medicinal cannabis and medicinal cannabis product returns and their subsequent destruction shall be documented by the dispensary.

(7) A dispensary may sell branded merchandise, including t-shirts, mugs, water bottles, and hats.

(8) A dispensary shall not sell any medicinal cannabis accessory

that is used solely for the purpose of smoking medicinal cannabis, including rolling papers and lighters.

Section 6. Educational Materials and Product Information.

(1) When dispensing medicinal cannabis, a dispensary shall disseminate evidence-based educational materials and product information regarding dosage, directions for use, and impairment to cardholders who purchase medicinal cannabis as follows:

(a) A dispensary may provide the educational material and product information required under this section to cardholders through the use of a quick response (QR) code that links to the information required under this section. The QR code shall be labeled as "Educational Materials" directly above or below the code and shall be large enough to be smart-phone readable. The QR code may appear on the receipt provided to the cardholder or on a separate sheet of paper provided to the cardholder;

(b) Upon request of the cardholder purchasing the medicinal cannabis, a dispensary shall provide hardcopies of any materials required under this provision; and

(c) Upon request of the cabinet, a dispensary shall provide the cabinet with copies of the educational material required under this section within five (5) business days of receipt of the request.

(2) The educational materials and product information required by this section shall include the following information:

(a) The method or methods for administering individual servings of medicinal cannabis;

(b) Dosage or serving size information;

(c) Side effects and impairment;

(d) How to obtain appropriate services or treatment for medicinal cannabis abuse;

(e) Any side effects and contraindications associated with medicinal cannabis that may cause harm to the patient; and

(f) How to properly store medicinal cannabis and medicinal cannabis products.

Section 7. Secret Shoppers. The cabinet may utilize secret shoppers to assist with reviewing a dispensary's compliance with KRS Chapter 218B and 915 KAR Chapter 1, including attempting to purchase medicinal cannabis or medicinal cannabis products. The cabinet may conduct an inspection or investigation resulting from a secret shopper's experience.

Section 8. Plans of Operation.

(1) Prior to its first day of selling or dispensing medicinal cannabis in the Commonwealth, a dispensary shall establish standard operating procedures for the following:

(a) Employment policies and procedures;

(b) Security, including:

1. Staff identification measures, including use of identification badges;

2. Monitoring of attendance of staff and visitors;

3. Alarm systems;

4. Video surveillance;

5. Monitoring and tracking inventory, including use of the Commonwealth's electronic monitoring system and seed to sale tracking system established pursuant to KRS 218B.140;

6. Personnel security;

7. Transportation of medicinal cannabis;

8. Cash management and anti-fraud procedures;

9. Measures to prevent loitering, which shall include signage; and

10. Storage of medicinal cannabis and medicinal cannabis products;

(c) Recordkeeping;

(d) The process for receiving, handling, transporting, storing, selling, and disposing of medicinal cannabis;

(e) Employee qualifications, supervision, and training;

(f) Workplace safety;

(g) Waste disposal;

(h) Maintenance, cleaning, and sanitation of facility;

(i) Investigation of complaints and potential adverse events received from other cannabis businesses, cardholders, or medicinal cannabis practitioners;

- (j) Preventing unlawful diversion of medicinal cannabis;
- (k) Recall plan;
- (l) Contamination;
- (m) Maintaining confidentiality of cardholder information, including information and documentation provided by visiting qualified patients; and
- (n) Any other standard operating procedures required for all cannabis businesses in KRS Chapter 218B and 915 KAR Chapter 1.

(2) A dispensary shall make its standard operation procedures available to the cabinet upon request and during any inspection of the dispensary.

Section 9. Employees Records and Identification.

(1) A dispensary shall keep an individual employment record for all employees, including:

- (a) Full legal name;
- (b) Detailed job description;
- (c) Documentation of completed criminal background check;
- (d) Record of all training received or acquired by the employee;
- (e) Dates of employment;
- (f) Records of days and hours worked; and
- (g) Any disciplinary actions taken by the dispensary.

(2) Employment records shall be maintained, either electronically or in hard copy, for at least five (5) years after the employee's last date of employment with the dispensary.

(3) A dispensary shall create an identification badge for each employee, agent, or volunteer. This badge shall be conspicuously worn by employees, agents, or volunteers at all times that they are on the licensed premises or during transport of medicinal cannabis. The badge shall contain:

- (a) The individual's name, photo, and employee identification number;
- (b) The phone number and email address for the dispensary; and
- (c) The phone number and email address for the Kentucky Medical Cannabis Program.

Section 10. Visitor Access to Limited Access Areas.

(1) Except as provided in this section, only authorized employees or agents of a dispensary shall enter a limited access area.

(2) A dispensary shall require visitors requiring access to a limited access area in the dispensary's facility to:

- (a) Sign a visitor log upon entering and leaving the limited access area and detail the need for entry;
- (b) Check the visitor's government-issued identification to verify that the name on the identification provided matches the name in the visitor log;
- (c) Issue a visitor identification badge with the visitor's name and company, if applicable, and a badge number;
- (d) Escort the visitor while the visitor remains in a limited access area; and
- (e) Ensure that the visitor does not touch any medicinal cannabis located in a limited access area.

(3) The visitor log required by this section shall:

- (a) Be maintained for five (5) years and available to the cabinet, law enforcement, and other federal or state government officials upon request to perform the government officials' functions and duties; and
- (b) Include the full name of each visitor, the visitor identification badge number, the time of arrival, the time of departure, and the purpose of the visit, including the areas of the site and facility visited.

(4) This section does not limit the right of the cabinet or its authorized agents, or other federal, state, or local government officials, from entering any area of a dispensary if necessary to perform the government officials' functions and duties.

(5) A principal officer, board member, agent, financial backer, employee, or volunteer of a dispensary may not receive any type of consideration or compensation for allowing a visitor to enter a limited access area.

Section 11. Security and Surveillance.

(1) A dispensary shall have security and surveillance systems, utilizing commercial-grade equipment, to prevent unauthorized entry, and to prevent and detect an adverse loss. The security and surveillance systems shall include the following:

(a) A professionally monitored security alarm system that includes the following:

1. Coverage of all facility entrances and exits; rooms with exterior windows, exterior walls, roof hatches or skylights; storage rooms, including those that contain medicinal cannabis, and safes; and the perimeter of the facility;
2. An audible security alarm system signal, known as a panic alarm, generated by the manual activation of a device intended to signal a life-threatening or emergency situation requiring law enforcement response;
3. A silent alarm signal, known as a holdup alarm, generated by the manual activation of a device intended to signal a robbery in progress;
4. A failure notification system that provides an audible, text, or visual notification of any failure in the systems. The failure notification system shall provide by telephone, e-mail, or text message an alert to a designated security person within the facility within five minutes after the failure;
5. Smoke and fire alarms;
6. Auxiliary power sufficient to maintain operation for at least twenty-four (24) hours following a power outage;
7. The ability to ensure all access doors are not solely controlled by an electronic access panel to prevent locks from becoming released during a power outage; and
8. Motion detectors for exterior lighting.

(b) A professionally monitored security surveillance system that is operational twenty-four (24) hours a day, seven (7) days a week, and records all activity in images capable of clearly revealing facial detail. The security and surveillance system shall include:

1. Fixed camera placement that allows for a clear image of all individuals and activities in and around the following:
 - a. All limited access areas;
 - b. A room or area containing a security alarm and surveillance system storage device or equipment;
 - c. Entrances to and exits from the facility. Entrances and exits shall be recorded from both indoor and outdoor vantage points;
 - d. Rooms with exterior windows, exterior walls, roof hatches, or skylights and storage rooms, including those that may contain medicinal cannabis and safes and excluding restrooms; and
 - e. Five (5) feet from the exterior of the perimeter of the facility;
2. Auxiliary power sufficient to maintain operation for at least twenty-four (24) hours following a power outage;
3. Ability to operate under the normal lighting conditions of each area under surveillance;
4. Ability to immediately produce a clear, color, still photograph in a digital format that is easily accessible;
5. Ability to clearly and accurately display the date and time. The date and time shall be synchronized and set correctly and may not significantly obscure the picture;
6. Ability to record all images captured by each surveillance camera in a format that may be easily accessed for a minimum of thirty (30) days, unless otherwise required for investigative or litigation purposes. The recordings shall be kept:
 - a. At the dispensary:
 - (i) In a locked cabinet, closet, or other secure place to protect it from tampering or theft; and
 - (ii) In a limited access area or other room to which access is limited to authorized individuals; or
 - b. At a secure location other than the location of the dispensary if approved by the cabinet.

(2) The following requirements apply to the inspection, servicing or alteration of, and any upgrade to, the security alarm and surveillance systems:

- (a) The systems shall be inspected and all devices tested once every year by a qualified alarm system vendor and a qualified surveillance system vendor;
- (b) The dispensary shall conduct maintenance inspections once every month to ensure that any repairs, alterations, or upgrades to

the security alarm and surveillance systems are made for the proper operation of the systems;

(c) The dispensary shall retain at the facility, for at least five (5) years, records of all inspections, servicing, alterations, and upgrades performed on the security alarm and surveillance systems and shall make the records available to the cabinet and its authorized agents within two (2) business days following a request; and

(d) In the event of a mechanical malfunction of the security alarm or surveillance system that a dispensary anticipates will exceed an eight (8) hour period, the dispensary shall notify the cabinet immediately via electronic mail to kymedcanreporting@ky.gov and, with cabinet approval, provide alternative security measures that may include closure of the facility.

(3) A dispensary shall meet the following requirements regarding records retention:

(a) Have a secure electronic back-up system for all electronic records;

(b) Within three (3) business days following a request for records under this paragraph, provide up to four (4) screen captures of an unaltered copy of a video surveillance recording to the cabinet or its authorized agents, law enforcement, or other federal, state, or local government officials if necessary to perform the governmental officials' functions and duties; and

(c) If a dispensary has been notified in writing by the cabinet or its authorized agents, law enforcement, or other federal, state, or local government officials of a pending criminal or administrative investigation for which a recording may contain relevant information, retain an unaltered copy of the recording for two (2) years or until the investigation or proceeding is closed or the entity conducting the investigation or proceeding notifies the dispensary that it is not necessary to retain the recording, whichever is later.

(4) A dispensary shall install commercial-grade, nonresidential doors and door locks on each external door of the facility. Keys or key codes for all doors shall remain in the possession of designated authorized individuals.

(5) During all non-working hours, all entrances to and exits from the dispensary shall be securely locked.

(6) A dispensary shall limit access to a room containing the equipment operating the security alarm and surveillance monitoring systems to:

(a) Persons who are essential to maintaining security and surveillance operations;

(b) Federal, state, and local law enforcement;

(c) Security alarm and surveillance system service employees;

(d) The cabinet or its authorized agents; and

(e) Other persons with the prior written approval of the cabinet.

(7) A dispensary shall make available to the cabinet or its authorized agents, upon request, a current list of authorized employees and service employees or contractors who have access to areas containing the equipment operating the security alarm and surveillance monitoring systems.

(8) A dispensary shall keep rooms housing the equipment operating the security alarm and surveillance monitoring systems locked at all times and may not use these rooms for any other purpose or function.

Section 12. Electronic Monitoring System and Seed to Sale Tracking System.

(1) A dispensary shall use the electronic monitoring system and seed to sale tracking system prescribed by the cabinet containing the requirements in KRS Chapter 218B, specifically KRS 218B.140, and in accordance with written instructions provided by the cabinet.

(2) A dispensary shall establish inventory controls and procedures to conduct inventory reviews at its facility.

(a) A dispensary shall prepare a quarterly physical inventory report that includes any necessary adjustments, and the reason(s) for an adjustment, and that demonstrates the physical inventory reconciles with the inventory recorded in the Commonwealth's designated electronic monitoring system and seed to sale tracking system, including any medicinal cannabis that has been or is in the process of being destroyed; and

(b) A written or electronic record shall be created and maintained of each inventory conducted under this section that includes the date of the inventory, a summary of the inventory findings, and the employee identification numbers and titles or positions of the individuals who conducted the inventory.

Section 13. Storage Requirements.

(1) A dispensary shall have separate locked limited access areas for storage of:

(a) Medicinal cannabis and medicinal cannabis products that are ready for sale to cardholders; and

(b) Medicinal cannabis that is expired, damaged, deteriorated, mislabeled, contaminated, recalled, or whose containers or packaging have been opened or breached until the medicinal cannabis is returned to another cannabis business, destroyed, or otherwise disposed of as required under Section 14 of this administrative regulation.

(2) A dispensary shall maintain all storage areas in a clean and orderly condition and free from infestation by insects, rodents, birds, and pests.

(3) A dispensary shall store medicinal cannabis and medicinal cannabis products in a manner that prevents degradation of active compounds and spoilage.

(4) A dispensary shall routinely review medicinal cannabis and medicinal cannabis products in its inventory available for sale to identify any products that are past their respective expiration date and remove those products from the saleable inventory.

Section 14. Management and Disposal of Medicinal Cannabis Waste.

(1) A dispensary shall dispose of expired, undesired, excess, unauthorized, obsolete, adulterated, misbranded, or deteriorated medicinal cannabis in such a manner as to render the medicinal cannabis unusable. A dispensary shall record medicinal cannabis waste as required in the Commonwealth's designated electronic monitoring system and seed to sale tracking system.

(2) Medicinal cannabis that is rendered unusable shall be discarded into a locked dumpster or other approved, locked container for removal from the dispensary by a waste removal company selected by the dispensary. Medicinal cannabis shall be rendered unusable by:

(a) Controlled incineration; or

(b) Grinding and incorporating the medicinal cannabis with one

(1) or more of the non-consumable, solid wastes listed below, such that the resulting mixture is majority non-cannabis waste:

1. Paper waste;

2. Cardboard waste;

3. Food waste;

4. Yard or garden waste;

5. Grease or other compostable oil waste; or

6. Soil or other used growth media.

(3) The disposal of medicinal cannabis shall be performed under video surveillance from the time the destruction begins to when it is placed in a locked dumpster or other approved, locked container and removed from the dispensary's location.

(4) The employee overseeing the disposal of medicinal cannabis shall maintain and make available a separate record of every disposal indicating the following:

(a) The date and time of disposal;

(b) The manner of disposal;

(c) The unique identification code(s) associated with the medicinal cannabis scheduled for destruction;

(d) The reasoning for and description of the disposal;

(e) The name, employee identification number, and signature of the employee overseeing the disposal of the medicinal cannabis; and

(f) If the medicinal cannabis waste for disposal contains raw plant material that was prepared for sale at the dispensary, the harvest batch, strain, volume, and weight of the plant material being disposed.

(5) The disposal of other waste from the dispensary that does not include medicinal cannabis, including hazardous waste and liquid waste, shall be performed in a manner consistent with

applicable federal, state, and local requirements.

Section 15. Sanitation and Safety in a Dispensary.

(1) A dispensary shall maintain its facility in a sanitary condition to limit the potential for contamination or adulteration of the medicinal cannabis stored in or dispensed at the facility. The following requirements shall apply:

- (a) Trash shall be properly and routinely removed;
- (b) Floors, walls, and ceilings shall be kept in good repair;
- (c) Adequate protection against pests shall be provided; and
- (d) Toxic cleaning compounds, sanitizing agents, and other chemicals shall be labeled and stored in a manner that prevents contamination of medicinal cannabis, and in a manner that otherwise complies with other applicable laws, rules, and regulations.

(2) All employees shall conform to sanitary practices while on duty, including:

- (a) Maintaining adequate personal cleanliness;
- (b) Washing hands thoroughly in an adequate hand-washing area before starting work and at any other time when hands may have become soiled or contaminated; and
- (c) Confining the following to areas other than where medicinal cannabis may be exposed: eating food, chewing gum, drinking beverages, or using tobacco.

(3) A dispensary shall provide its employees and visitors with adequate and convenient hand-washing facilities furnished with running water at a temperature suitable for sanitizing hands. Effective nontoxic sanitizing cleansers and sanitary towel service or suitable drying devices shall also be provided.

(4) A dispensary shall provide employees, agents, volunteers, cardholders, and visitors with adequate, readily accessible restrooms that are maintained in a sanitary condition and in good repair.

(5) A dispensary shall comply with all other applicable federal, state, and local building code requirements and occupational safety and health requirements.

Section 16. Complaints About or Recall of Medicinal Cannabis and Medicinal Cannabis Products.

(1) A dispensary shall immediately notify the cabinet via electronic mail to kymedcanreporting@ky.gov as well as the cannabis business from which it received any medicinal cannabis in question upon becoming aware of any defects or quality issues with the medicinal cannabis or any complaint made to the dispensary by another cannabis business, a cardholder, or medicinal cannabis practitioner who reports an adverse event from using medicinal cannabis purchased from the dispensary. A dispensary shall investigate the report as follows:

(a) A dispensary shall immediately investigate a complaint to determine if a voluntary or mandatory recall of medicinal cannabis and medicinal cannabis products is necessary or if any further action is required;

(b) If a dispensary determines that further action is not required, the dispensary shall notify the cabinet of its decision via electronic mail to kymedcanreporting@ky.gov and, within twenty-four (24) hours, submit a written report to the cabinet stating its rationale for not taking further action. The cabinet shall review the written report and consult with the dispensary as needed. If the cabinet disagrees with the dispensary's decision, the cabinet shall take all necessary steps allowable under KRS Chapter 218B and 915 KAR Chapter 1 to ensure public health and safety, including issuing a cease and desist order to pause the sale and distribution of the medicinal cannabis at issue until resolution of the matter; and

(c) If a dispensary determines that further action is required, the dispensary shall initiate a voluntary or mandatory recall in accordance with the requirements of this section.

(2) Voluntary recalls. If a dispensary voluntarily initiates a recall, the dispensary shall recall medicinal cannabis from the market at its discretion for reasons that do not pose a risk to public health and safety and shall notify the cabinet at the time the dispensary begins the recall via electronic mail to kymedcanreporting@ky.gov.

(3) Mandatory recalls. If a dispensary discovers that a condition relating to medicinal cannabis sold at its facility poses a risk to public health and safety, the dispensary shall:

(a) Immediately notify the cabinet by phone and electronic mail to kymedcanreporting@ky.gov; and

(b) Secure, isolate, and prevent the distribution of the medicinal cannabis that may have been affected by the condition and remains in its possession. The dispensary shall not dispose of affected medicinal cannabis prior to notifying the cabinet and coordinating the disposal with the cabinet.

(4) If a dispensary fails to cooperate with the cabinet in a recall, or fails to immediately notify the cabinet of a need for a recall under this section, the cabinet may seek a cease and desist order and the dispensary may be subject to any other penalties or sanctions provided for in KRS Chapter 218B and 915 KAR Chapter 1:020.

(5) A dispensary's recall plan as required under this administrative regulation shall include the following:

(a) Designation of one (1) or more employees to serve as the recall coordinators. A recall coordinator shall be responsible for, among other duties, accepting the recalled medicinal cannabis;

(b) Procedures for identifying and isolating the affected medicinal cannabis to prevent or minimize its distribution cardholders and other cannabis businesses;

(c) Procedures to retrieve and dispose of the medicinal cannabis;

(d) A communications plan to notify those affected by the recall, including:

1. The manner in which the dispensary shall notify other cannabis businesses in possession of medicinal cannabis subject to the recall; and

2. The use of press releases and other appropriate notifications to ensure that cardholders shall be notified of the recall if affected medicinal cannabis was dispensed to cardholders.

(e) Procedures for notifying the cabinet; and

(f) Procedures for entering information relating to the recall into the Commonwealth's designated electronic monitoring system and seed to sale tracking system.

(6) A dispensary shall follow the procedures outlined in its recall plan unless the dispensary obtains prior written approval of the cabinet or the cabinet notifies the dispensary in writing to perform other procedures. A dispensary shall conduct recall procedures in a manner that maximizes the recall of affected medicinal cannabis and minimizes risks to public health and safety.

(7) Upon receiving notification of a recall from a cannabis business or the cabinet, a dispensary shall cease dispensing the affected medicinal cannabis immediately.

(8) A dispensary shall coordinate the disposal of recalled medicinal cannabis with the cabinet. The cabinet or its authorized agents may oversee the disposal to ensure that the recalled medicinal cannabis is disposed of in a manner that will not pose a risk to public health and safety.

(9) The dispensary shall enter information relevant to the recall into the Commonwealth's designated electronic monitoring system and seed to sale tracking system as part of the inventory, which may include the following:

(a) The total amount of recalled medicinal cannabis, including types, harvest batches, and production batches, if applicable;

(b) The total amount of recalled medicinal cannabis returned to the dispensary, including types, forms, harvest batches, and production batches, if applicable;

(c) The names of the recall coordinators;

(d) From whom the recalled medicinal cannabis was received;

(e) The means of transport of the recalled medicinal cannabis;

(f) The reason for the recall;

(g) The number of recalled samples, types, forms, harvest batches, and production batches, if applicable, sent to safety compliance facilities, the names and addresses of the safety compliance facilities, the dates of testing, and the results by sample; and

(h) The manner of disposal of the recalled medicinal cannabis, including:

1. The name of the individual overseeing the disposal of the recalled medicinal cannabis;

2. The name of the disposal company, if applicable;

3. The method of disposal;

4. The date of disposal; and

5. The amount disposed of by types, forms, harvest batches, and production batches, if applicable.

(10) The cabinet may initiate a mandatory recall upon receipt of information that a condition relating to the medicinal cannabis sold by the dispensary poses a risk to public health and safety.

Section 17. Duty to Report.

(1) At the time a dispensary submits a license renewal application to the cabinet, a dispensary shall report to the cabinet via electronic mail to kymedcanreporting@ky.gov the following:

(a) A list of the cannabis businesses whose medicinal cannabis products are sold at the dispensary;

(b) A list of the forms of medicinal cannabis sold at the dispensary and their average sale price;

(c) Any significant issues with the supply and demand of medicinal cannabis experienced by the dispensary; and

(d) The number of current employees, their respective job titles, and hourly wage.

(2) A dispensary shall participate in surveys distributed by the cabinet throughout a licensure period and provide full and complete responses.

SAM FLYNN, Executive Director
ERIC FRIEDLANDER, Secretary

APPROVED BY AGENCY: January 3, 2024

FILED WITH LRC: January 4, 2024 at 11:50 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on March 25, 2024, 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 March 18, 2024, 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 March 31, 2024. 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 502-564-7476; 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 requirements and procedures for medicinal cannabis dispensaries to operate in the commonwealth.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to carry out the requirements of KRS Chapter 218B, specifically KRS 218B.140.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 218B.140 authorizes the Cabinet for Health and Family Services to promulgate administrative regulations establishing requirements and procedures for dispensaries to operate in the commonwealth. This administrative regulation sets out those requirements and procedures.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides the requirements and

procedures for dispensaries to operate in the commonwealth.

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

(a) How the amendment will change this existing administrative regulation: 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 affects dispensaries that have applied for and subsequently received licenses to dispense and sell medicinal cannabis to cardholders in the commonwealth.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The requirements to operate as a dispensary and remain in good standing throughout the licensure period are provided in this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Dispensaries will have to pay an initial application fee, and if approved for a license, an initial license fee and a renewal license fee if it desires to continue operating as a cannabis business following the expiration of its initial license.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Dispensaries that receive a license from the Cabinet for Health and Family Services are authorized to dispense and sell medicinal cannabis in the commonwealth for the term of the license (i.e., 1 year from the date of license issuance).

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

(a) Initially: \$1,200,000

(b) On a continuing basis: \$1,200,000

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: State general funds provided by the commonwealth.

(7) Provide an assessment of whether an 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 is anticipated that an increase in funding will be necessary to implement this regulation as additional staff and resources are necessary to administer and enforce licensure of dispensaries.

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

(9) TIERING: Is tiering applied? Tiering is not applied. All dispensaries 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? This administrative regulation impacts the Kentucky Medical Cannabis Program 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 218B.010, 218B.080, 218B.085, 218B.090, 218B.095, 218B.100, 218B.110, 218B.140.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The cabinet will receive initial application fees and initial license fees paid by dispensaries during the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The cabinet will receive annual renewal license fees from dispensaries that desire to continue operating in the commonwealth following the expiration of their existing license.

(c) How much will it cost to administer this program for the first year? The cabinet estimates that it will cost \$1,200,000 to license and regulate dispensaries in the first year.

(d) How much will it cost to administer this program for subsequent years? The cabinet estimates that it will cost \$1,200,000 to regulate licensed dispensaries 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: It is anticipated that an increase in funding will be necessary to implement this regulation as additional staff and resources are necessary to administer and enforce licensure of dispensaries.

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative 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 cabinet does not anticipate any cost savings in the first year.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? The cabinet does not anticipate any cost savings in subsequent years.

(c) How much will it cost the regulated entities for the first year? A dispensary will pay an initial application fee and, if issued a license, an initial license fee in order to conduct dispensary operations in the commonwealth.

(d) How much will it cost the regulated entities for subsequent years? If it desires to continue cannabis business operations in the commonwealth, a dispensary will pay an annual renewal license fee. The renewal license fee is refundable if the renewal application is denied.

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 annual cost estimate to administer all aspects of the Kentucky Medical Cannabis Program is \$9,135,398. A significant portion of those funds will go toward licensing and enforcement of cannabis businesses operating in the commonwealth, including dispensaries, as well implementation and continued operation of the electronic monitoring system and seed to sale tracking system required by KRS 218B.140. The Kentucky Medical Cannabis Program will have a major economic impact on the Cabinet for Health and Family Services, and it is anticipated that an increase in funding will be necessary to administer all of the administrative regulations contained in 915 KAR Chapter 1 related to cannabis businesses.

CABINET FOR HEALTH AND FAMILY SERVICES
Office of the Secretary
(New Administrative Regulation)

915 KAR 1:080. Transportation and delivery of medicinal cannabis.

RELATES TO: KRS Chapter 218B, 304.39-110

STATUTORY AUTHORITY: KRS 218B.140

NECESSITY, FUNCTION, AND CONFORMITY: KRS 218B.140

requires the Cabinet for Health and Family Services to promulgate administrative regulations establishing procedures for the secure transportation, including delivery services provided by dispensaries, of medicinal cannabis by cannabis businesses. This administrative regulation establishes those procedures.

Section 1. Transportation of Medicinal Cannabis Between Cannabis Businesses.

(1) A cannabis business shall only transport medicinal cannabis, including seeds, seedlings, and plants, to other cannabis businesses as follows:

(a) A cannabis business shall use a global positioning system (GPS) to ensure safe, efficient delivery of the medicinal cannabis to other cannabis businesses.

(b) Vehicles permitted to transport medicinal cannabis shall:

1. Be equipped with a locked storage compartment that is part of the transport vehicle or have a locked storage container that has a separate key or combination pad;

2. Have no markings that would either identify or indicate that the vehicle is being used to transport medicinal cannabis;

3. Maintain a current state vehicle registration;

4. Be equipped with an alarm system; and

5. Be insured as required by Kentucky law, specifically KRS 304.39-110.

(c) A transport vehicle shall be staffed with a delivery team consisting of at least two (2) individuals and comply with the following:

1. The delivery team shall have a copy of the cannabis business license for the business transporting the medicinal cannabis;

2. At least one (1) delivery team member shall remain with the vehicle at all times that the vehicle contains medicinal cannabis;

3. Each delivery team member shall have access to a secure form of communication, such as a cellular telephone, at all times that the vehicle contains medicinal cannabis in order to contact cannabis businesses and law enforcement through the 911 emergency system;

4. Each delivery team member shall conspicuously wear an employee identification badge at all times during transport of medicinal cannabis and shall, upon demand, produce it to the cabinet or its authorized agents, law enforcement, or other federal or state government officials if necessary to perform the government officials' functions and duties;

5. Each delivery team member shall have a valid driver's license; and

6. While on duty, a delivery team member shall not wear any clothing or symbols that may indicate ownership or possession of medicinal cannabis.

(d) A delivery team shall proceed in a transport vehicle from a cannabis business facility, where the medicinal cannabis is loaded, directly to the other cannabis business, where the medicinal cannabis is unloaded, without making unnecessary stops. A delivery team may deliver medicinal cannabis to multiple cannabis businesses during one (1) transport.

(e) A cannabis business shall immediately report to the cabinet, via electronic mail to kymedcanreporting@ky.gov, any vehicle accidents, diversions, losses, or other reportable events that occur during transport of medicinal cannabis.

(f) A transport vehicle is subject to inspection by the cabinet or its authorized agents, law enforcement, or other federal or state government officials if necessary to perform the government officials' functions and duties. A transport vehicle may be inspected

by the cabinet or its authorized agents while on the premises of a cannabis business during the course of an inspection or investigation.

(g) Transport manifest. A cannabis business shall generate a printed or electronic transport manifest that accompanies every transport vehicle transporting medicinal cannabis to other cannabis businesses and contains the following information:

1. The date the transport manifest was created;
2. The name, address, telephone number, and license number of the cannabis business transporting the medicinal cannabis and the name of and contact information for a representative of the cannabis business who has direct knowledge of the transport;
3. If applicable, the name, address, and telephone number of the contracted third party that is transporting medicinal cannabis on behalf of the cannabis business and the name of and contact information for a representative of the third party who has direct knowledge of the transport;
4. The name, address, telephone number, and license number of the cannabis business receiving the delivery;
5. The quantity, by weight or unit, of the medicinal cannabis being transported to a cannabis business along with the unique identifier for each harvest batch, production batch, or package;
6. A statement regarding whether the medicinal cannabis being transported to a cannabis business has been tested and, if so, the unique identifier for the harvest batch or production batch test;
7. The date and approximate time of departure;
8. The date and approximate time of arrival;
9. The transport vehicle's make and model and license plate number;
10. The name of each member of the delivery team accompanying the transport;
11. The driver's license number of the delivery team member driving the transport vehicle;
12. The signature of a delivery team member once delivery has been accomplished; and
13. The name and signature of a representative of the cannabis business receiving the medicinal cannabis that confirms receipt of the delivery.

(h) When a delivery team delivers medicinal cannabis to multiple cannabis businesses during one (1) transport, the transport manifest shall correctly reflect the specific medicinal cannabis in transit to each cannabis business location.

(i) A cannabis business shall provide a copy of the transport manifest to the cannabis business receiving the medicinal cannabis described in the transport manifest. To maintain confidentiality, a cannabis business may prepare separate manifests for each recipient.

(j) All medicinal cannabis in transport shall be shielded from public view and placed in a locked storage compartment that is part of the transport vehicle or in a locked storage container that has a separate key or combination pad.

(k) A cannabis business shall, if requested, provide a copy of any printed or electronic transport manifest to the cabinet or its authorized agents, law enforcement, or other federal or state government officials if necessary to perform the government officials' functions and duties.

(2) Evidence of adverse loss during transport.

(a) If a cannabis business receiving a delivery of medicinal cannabis discovers a discrepancy in the transport manifest upon delivery, the cannabis business shall report the discrepancy to the cabinet within eight (8) hours of discovery via electronic mail to kymedcanreporting@ky.gov.

(b) If a cannabis business transporting medicinal cannabis discovers a discrepancy in the transport manifest, the cannabis business shall:

1. Conduct an investigation;
2. Amend the cannabis business's standard plan of operation, if necessary, to prevent future discrepancies between the quantity or description of inventory listed in the transport manifest and the quantity or description of inventory delivered; and
3. Electronically submit the following reports of the investigation to the cabinet via electronic mail to kymedcanreporting@ky.gov:
 - a. A written preliminary report of the investigation shall be

submitted to the cabinet within seven (7) calendar days of discovering the discrepancy; and

b. A final written report of the investigation shall be submitted to the cabinet within thirty (30) calendar days of discovering the discrepancy.

(c) If a cannabis business transporting medicinal cannabis discovers evidence of, or reasonably suspects, a theft or diversion of medicinal cannabis during transport, the cannabis business shall report its findings or suspicions to the cabinet within eight (8) hours of discovery via electronic mail to kymedcanreporting@ky.gov.

(3) An employee or agent of a safety compliance facility, cultivator, processor, producer, or third-party contractor who transports medicinal cannabis samples from a cultivator, processor, or producer to a safety compliance facility shall:

- (a) Protect the physical integrity of the sample;
- (b) Keep the composition of the sample intact; and
- (c) Protect the sample against factors that interfere with the validity of testing results, including the factors of time and temperature.

(4) A cannabis business may contract with a third-party for transportation and delivery to other cannabis businesses if:

(a) The third-party contractor complies with the transportation requirements of this section;

(b) The cannabis business conducts a criminal background check into the criminal history of each employee or agent of the third-party contractor that will transport medicinal cannabis on its behalf and shall not allow any such employee or agent to work for the cannabis business that:

1. Was convicted of a disqualifying felony offense; or
2. Is younger than twenty-one (21) years of age;
- (c) The cannabis business provides the third-party contractor with a copy of its license and identification badges for the third-party contractor's employees or agents that will transport medicinal cannabis. The badges shall be conspicuously worn at all times during transport of medicinal cannabis and shall contain:

1. The individual's name, photo, and an employee identification number;
2. A phone number and email address for the cannabis business; and
3. A phone number and email address for the Kentucky Medical Cannabis Program;

(d) The cannabis business notifies the cabinet via electronic mail to kymedcanreporting@ky.gov of all third parties it has contracted with to transport medicinal cannabis prior to the third party commencing with any transportation of medicinal cannabis and confirms that it has satisfied the requirements of subsection (b) and (c) of this subsection. The cannabis business shall provide the cabinet with any additional information requested by the cabinet regarding the contracted third party's operations.

Section 2. Delivery Services Provided by Dispensaries.

(1) A dispensary may operate a delivery service for registered qualified patients and designated caregivers.

(2) In order to deliver medicinal cannabis, medicinal cannabis accessories, and educational material to registered qualified patients and designated caregivers, a dispensary shall:

(a) Follow all requirements for dispensing and selling medicinal cannabis to registered qualified patients and designated caregivers in accordance with KRS Chapter 218B and 915 KAR 1:070 prior to delivery;

(b) Accomplish delivery on the date an order is received and processed through the Commonwealth's designated electronic monitoring system and seed to sale tracking system;

(c) Accomplish delivery between the hours of 7:00 a.m. and 9:00 p.m.;

(d) Prepare a delivery manifest for each delivery or series of deliveries that includes the names of the delivery team members, address for each delivery, estimated date and time of delivery, and actual date and time of delivery;

(e) Prepare a receipt for each delivery containing the following information:

1. The dispensary's name, address, and license number;
2. The name and address of the registered qualified patient or

designated caregiver;

3. The date the medicinal cannabis was dispensed;

4. Any requirement or limitation noted by the medicinal cannabis practitioner on the registered qualified patient or designated caregiver's written certification as to the form or amount of medicinal cannabis that the individual should use;

5. The form and the quantity of medicinal cannabis dispensed;

6. Any medicinal cannabis accessories or educational materials included in the delivery order; and

7. The amount paid by the registered qualified patient or designated caregiver for the medicinal cannabis and other items.

(f) At the time of delivery, check the registry identification card of the registered qualified patient or designated caregiver to verify the person accepting delivery is the same person who placed the order. The registered qualified patient or designated caregiver who placed the order shall sign the receipt to confirm receipt of all items delivered and receive a copy of the receipt; and

(g) Only deliver medicinal cannabis, medicinal cannabis accessories, and educational material to the Kentucky address identified for the individual in the Commonwealth's designated electronic monitoring system.

(3) Delivery vehicle and delivery team requirements.

(a) Transport vehicles used for the delivery of medicinal cannabis by dispensaries to registered qualified patients or designated caregivers shall:

1. Be equipped with a locked storage compartment that is part of the transport vehicle or have a locked storage container that has a separate key or combination pad;

2. Have no markings that would either identify or indicate that the vehicle is being used to transport medicinal cannabis;

3. Maintain a current state vehicle registration;

4. Be equipped with an alarm system; and

5. Be insured as required by Kentucky law for commercial vehicles.

(b) A transport vehicle shall be staffed with a delivery team consisting of at least two (2) dispensary employees. At least one (1) delivery team member shall remain with the transport vehicle at any time that it contains medicinal cannabis.

(c) Delivery team members delivering medicinal cannabis shall:

1. Have a copy of the cannabis business license for the dispensary delivering the medicinal cannabis;

2. Have an employee identification badge issued by the dispensary that shall be conspicuously worn at all times during delivery of medicinal cannabis;

3. Have a valid driver's license; and

4. Not make unnecessary stops.

(d) All medicinal cannabis in transport for delivery to registered qualified patients or designated caregivers shall be shielded from public view and placed in a locked storage compartment that is part of the transport vehicle or in a locked storage container that has a separate key or combination pad.

(e) If a transport vehicle delivering medicinal cannabis is involved in any accident or experiences any type of failure rendering the vehicle immobile or requiring the use of a tow truck, the delivery team shall notify the cabinet immediately via electronic mail to kymedcanreporting@ky.gov.

SAM FLYNN, Executive Director

ERIC FRIEDLANDER, Secretary

APPROVED BY AGENCY: January 3, 2024

FILED WITH LRC: January 4, 2024 at 11:50 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on March 25, 2024, 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 March 18, 2024, 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 March 31, 2024. 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 502-564-7476; 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 the secure transportation, including delivery services provided by dispensaries, of medicinal cannabis by cannabis businesses and their employees or agents.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to carry out the requirements of KRS Chapter 218B, specifically KRS 218B.140.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 218B.140 authorizes the Cabinet for Health and Family Services to promulgate administrative regulations establishing procedures for the secure transportation, including delivery services provided by dispensaries, of medicinal cannabis by cannabis businesses and their employees or agents. This administrative regulation sets out those procedures.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides procedures for the secure transportation of medicinal cannabis by cannabis businesses and their employees or agents.

(2) If 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 affects cannabis businesses that have applied for and subsequently received licenses to conduct medicinal cannabis activities in the commonwealth.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Cannabis businesses must review and comply with the transportation procedures contained in this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Each cannabis business will decide how to transport medicinal cannabis in accordance with this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Cannabis businesses will be able to transport medicinal cannabis, medicinal cannabis products, and medicinal cannabis accessories throughout the commonwealth.

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

(a) Initially: It is anticipated that an increase in funding will be necessary to implement this administrative regulation as additional staff and resources are necessary to administer and enforce

transportation procedures. The cabinet estimates that the total staffing costs for the program in the first year will be approximately \$1,800,000, and a portion of those staffing costs will go toward regulating transportation of medicinal cannabis, medicinal cannabis products, and medicinal cannabis accessories.

(b) On a continuing basis: It is anticipated that an increase in funding will be necessary to administer this administrative regulation as additional staff and resources are necessary to enforce transportation procedures. The cabinet estimates that the total staffing costs for the program on a continuing basis following the first year will be approximately \$2,400,000, and a portion of those staffing costs will go toward regulating transportation of medicinal cannabis, medicinal cannabis products, and medicinal cannabis accessories.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: State general funds provided by the commonwealth.

(7) Provide an assessment of whether an 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 is anticipated that an increase in funding will be necessary to implement this regulation as additional staff and resources are necessary to administer and enforce this administrative regulation.

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

(9) TIERING: Is tiering applied? Tiering is not applied. All cannabis businesses 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? This administrative regulation impacts the Kentucky Medical Cannabis Program 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 218B.010, 218B.095, 218B.100, 218B.105, 218B.110, 218B.115, 218B.120, 218B.125, 218B.140.

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

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

This administrative regulation is not expected to generate revenue for state or local government in the first year.

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

(c) How much will it cost to administer this program for the first year? It is anticipated that an increase in funding will be necessary to implement this administrative regulation as additional staff and resources are necessary to administer and enforce the transportation procedures. The cabinet estimates that the total staffing costs for the program in the first year will be approximately \$1,800,000, and a portion of those staffing costs will go toward regulating transportation of medicinal cannabis.

(d) How much will it cost to administer this program for subsequent years? It is anticipated that an increase in funding will be necessary to administer this administrative regulation as additional staff and resources are necessary to enforce the transportation procedures. The cabinet estimates that the total staffing costs for the program on a continuing basis following the first year will be approximately \$2,400,000, and a portion of those staffing costs will go toward regulating transportation of medicinal cannabis.

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 cabinet does not anticipate any cost savings in the first year.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? The cabinet does not anticipate any cost savings in subsequent years.

(c) How much will it cost the regulated entities for the first year? Each cannabis business will decide how to transport medicinal cannabis in accordance with this administrative regulation.

(d) How much will it cost the regulated entities for subsequent years? Each cannabis business will decide how to transport medicinal cannabis in accordance with this administrative regulation.

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] The annual cost estimate to administer all aspects of the Kentucky Medical Cannabis Program is \$9,135,398. A significant portion of those funds will go toward licensing and enforcement of cannabis businesses operating in the commonwealth as well implementation and continued operation of the electronic monitoring system and seed to sale tracking system required by KRS 218B.140. The Kentucky Medical Cannabis Program will have a major economic impact on the Cabinet for Health and Family Services, and it is anticipated that an increase in funding will be necessary to administer all of the administrative regulations contained in 915 KAR Chapter 1 related to cannabis businesses.

CABINET FOR HEALTH AND FAMILY SERVICES

Office of the Secretary

(New Administrative Regulation)

915 KAR 1:090. Advertising.

RELATES TO: KRS Chapter 218B

STATUTORY AUTHORITY: KRS 218B.140

NECESSITY, FUNCTION, AND CONFORMITY: KRS 218B.140 requires the Cabinet for Health and Family Services to promulgate administrative regulations establishing restrictions on advertising, marketing, and signage for cannabis businesses. This administrative regulation establishes those restrictions.

Section 1. Advertising by Cannabis Businesses.

(1) Cannabis businesses shall not advertise medicinal cannabis sales in print, broadcast, online, by paid in-person solicitation of customers, or by any other advertising device, except that cannabis businesses may:

(a) Place appropriate signs on their property identifying their business;

(b) Place listings in business directories;

(c) Place listings in trade or medical publications;

(d) Sponsor health or not-for-profit charity or advocacy events; and

(e) Maintain an informational Web site and social media presence as provided in Section 2 of this administrative regulation.

(2) Cultivators, processors, and producers shall not display any signage, logos, products, or other identifying characteristics on the outside of their respective facilities to alert the public that medicinal cannabis is grown, processed, produced, or stored at the facility.

(3) A cannabis business shall not make any deceptive, false, or misleading assertions or statements on any advertising, advertising device, sign, listing, or informational material.

Section 2. Informational Web site and Social Media Presence.

(1) A cannabis business may maintain an informational Web site and social media presence that provides:

- (a) A description of their business and services;
- (b) A listing of medicinal cannabis or medicinal cannabis products cultivated, processed, produced, or sold by the cannabis business;
- (c) Educational materials and product information; and
- (d) Certificates of analysis provided by safety compliance facilities for its respective harvest batches and production batches.

(2) The Web site and social media presence may also provide contact information for the cannabis business and a listing of the dispensaries where its medicinal cannabis or medicinal cannabis products are sold, if applicable.

(3) A cannabis business shall provide the cabinet with a list of all informational Web site and social media accounts maintained by the cannabis business, including links to the respective webpages, and shall not block or prohibit the cabinet from accessing those informational Web site and any social media postings. A cannabis business shall continually update the list required under this provision and notify the cabinet of any changes within two (2) business days of the activation or deactivation of any informational Web site or social media account.

(4) An informational Web site or social media presence for a cannabis business shall not:

- (a) Contain statements that are deceptive, false, or misleading;
- (b) Contain any content that can reasonably be considered to target individuals under the age of eighteen (18), including images of minors, cartoons, toys, or similar images and items typically marketed towards minors, or references to products that are commonly associated with minors or marketed by minors;
- (c) Encourage the transportation of medicinal cannabis products across state lines or otherwise encourage illegal activity; and
- (d) Display consumption of medicinal cannabis.

(5) An informational Web site or social media presence for a cannabis business shall conspicuously display the following statements:

- (a) "Medicinal cannabis is for use by cardholders only"; and
 - (b) "Keep out of reach of children."
- (6) A cannabis business that maintains an informational Web site or social media presence shall utilize appropriate measures to ensure that individuals attempting to access the allowable content are eighteen (18) years of age or older.

Section 3. Removal of Objectionable and Non-conforming Advertising.

(1) A cannabis business shall remove any advertising, advertising device, sign, listing, sponsorship, or online material that the cabinet determines to be in violation of this administrative regulation.

(2) The cabinet shall provide written notice to a cannabis business of any violation of this administrative regulation and specify a reasonable time period for the cannabis business to remove any advertising, advertising device, sign, listing, sponsorship, or online material that the cabinet finds objectionable.

Section 4. Advertising to Other Cannabis Businesses.

(1) Cultivators, processors, producers, or dispensaries may directly promote their business, services, medicinal cannabis, medicinal cannabis products, medicinal cannabis accessories, educational materials, and product information to other cultivators, processors, producers, or dispensaries.

(2) A safety compliance facility shall only promote its medicinal cannabis testing services and other activities allowed by KRS 218B.125 to other cannabis businesses.

SAM FLYNN, Executive Director
ERIC FRIEDLANDER, Secretary

APPROVED BY AGENCY: January 3, 2024

FILED WITH LRC: January 4, 2024 at 11:50 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on March 25, 2024, 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 March 18, 2024, 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 March 31, 2024. 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 502-564-7476; 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 restrictions on advertising, marketing, and signage in regard to operations or establishments owned by cannabis businesses necessary to prevent the targeting of minors.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to carry out the requirements of KRS Chapter 218B, specifically KRS 218B.140(1)(c)(18).

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 218B.140 requires the Cabinet for Health and Family Services to promulgate administrative regulations establishing restrictions on advertising, marketing, and signage in regard to operations or establishments owned by cannabis businesses necessary to prevent the targeting of minors. This administrative regulation sets out those restrictions.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides the advertising restrictions for cannabis businesses.

(2) If 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 affects cannabis businesses that have applied for and subsequently received licenses to conduct medicinal cannabis activities in the commonwealth.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this

administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Cannabis businesses shall review and comply with the advertising restrictions contained in this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Each cannabis business will decide whether and how much to invest in the allowable activities provided for in this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Cannabis businesses will be able to properly provide cardholders and other cannabis businesses with information regarding their products, services, and educational materials.

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

(a) Initially: It is anticipated that an increase in funding will be necessary to implement this administrative regulation as additional staff and resources are necessary to administer and enforce the advertising restrictions. The cabinet estimates that the total staffing costs for the program in the first year will be approximately \$1,800,000, and a portion of those staffing costs will go toward regulating cannabis business advertising.

(b) On a continuing basis: It is anticipated that an increase in funding will be necessary to administer this administrative regulation as additional staff and resources are necessary to enforce the advertising restrictions. The cabinet estimates that the total staffing costs for the program on a continuing basis following the first year will be approximately \$2,400,000, and a portion of those staffing costs will go toward regulating cannabis business advertising.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: State general funds provided by the commonwealth.

(7) Provide an assessment of whether an 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 is anticipated that an increase in funding will be necessary to implement this regulation as additional staff and resources are necessary to administer and enforce the advertising restrictions.

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

(9) TIERING: Is tiering applied? Tiering is not applied. All cannabis businesses 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? This administrative regulation impacts the Kentucky Medical Cannabis Program 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 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.

(a) How much 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 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 is not expected to generate revenue for state or local government for subsequent years.

(c) How much will it cost to administer this program for the first year? It is anticipated that an increase in funding will be necessary to implement this administrative regulation as additional staff and resources are necessary to administer and enforce the advertising restrictions. The cabinet estimates that the total staffing costs for the program in the first year will be approximately \$1,800,000, and a portion of those staffing costs will go toward regulating cannabis business advertising.

(d) How much will it cost to administer this program for subsequent years? It is anticipated that an increase in funding will be necessary to administer this administrative regulation as additional staff and resources are necessary to enforce the advertising restrictions. The cabinet estimates that the total staffing costs for the program on a continuing basis following the first year will be approximately \$2,400,000, and a portion of those staffing costs will go toward regulating cannabis business advertising.

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? Due to the advertising restrictions established in KRS 218B.095, cannabis businesses are not likely to spend as much on advertising as they otherwise would without restrictions in place.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? Due to the advertising restrictions established in KRS 218B.095, cannabis businesses are not likely to spend as much on advertising as they otherwise would without restrictions in place.

(c) How much will it cost the regulated entities for the first year? Each cannabis business will decide whether and how much to invest in the allowable activities provided for in this administrative regulation.

(d) How much will it cost the regulated entities for subsequent years? Each cannabis business will decide whether and how much to invest in the allowable activities provided for in this administrative regulation.

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] The annual cost estimate to administer all aspects of the Kentucky Medical Cannabis Program is \$9,135,398. A significant portion of those funds will go toward licensing and enforcement of cannabis businesses operating in the commonwealth as well implementation and continued operation of the electronic monitoring system and seed to sale tracking system required by KRS 218B.140. The Kentucky Medical Cannabis Program will have a major economic impact on the Cabinet for Health and Family Services, and it is anticipated that an increase in funding will be necessary to administer all of the administrative regulations contained in 915 KAR Chapter 1 related to cannabis businesses.

**CABINET FOR HEALTH AND FAMILY SERVICES
Office of the Secretary
(New Administrative Regulation)**

915 KAR 1:100. Packaging and labeling of medicinal cannabis.

RELATES TO: KRS Chapter 218

STATUTORY AUTHORITY: KRS 218B.140, 15 U.S.C. secs. 1471 to 1476

NECESSITY, FUNCTION, AND CONFORMITY: KRS 218B.140 requires the Cabinet for Health and Family Services to promulgate administrative regulations establishing standards for the packaging and labeling of medicinal cannabis transferred, sold, or distributed by cannabis businesses. This administrative regulation establishes those standards.

Section 1. General Requirements for Packaging and Labeling of Medicinal Cannabis.

(1) Packaging and labeling of any medicinal cannabis or medicinal cannabis product shall not bear:

(a) Any resemblance to the trademarked, characteristic, or product-specialized packaging of any commercially available food or beverage product and not be visually reminiscent of major brands of edible noncannabis products;

(b) Any statement, artwork, or design that could reasonably lead an individual to believe that the package contains anything other than medicinal cannabis;

(c) The logo of the cabinet or any seal, flag, crest, coat of arms, or other insignia that could reasonably mislead an individual to believe that the product has been endorsed, manufactured, or approved for use by any state, county, or municipality or any agency thereof; and

(d) Any cartoon, image, graphic, or feature that may make the package attractive to children or minors.

(2) A cannabis business shall package and label at its facility each form of medicinal cannabis prepared for sale to cardholders. The original seal of a package may not be broken, except:

(a) For testing at a safety compliance facility;

(b) By a dispensary for the purpose of displaying product examples for the benefit of cardholders; or

(c) As needed by the cabinet or its authorized agents as part of an inspection or investigation.

Section 2. Packaging of Medicinal Cannabis for Sale to Cardholders.

(1) Pursuant to KRS 218B.140(1)(c)(13), a cannabis business shall comply with 15 U.S.C. secs. 1471 to 1476 when packaging and labeling medicinal cannabis and medicinal cannabis products for sale to cardholders.

(2) When packaging medicinal cannabis and medicinal cannabis products for sale to cardholders, a cannabis business shall ensure each product package:

(a) Is child-resistant and requires at least a two (2) step process of initial opening;

(b) Has a tamper-evident seal;

(c) Minimizes exposure to oxygen;

(d) Contains the following warnings:

1. The typical length of time for the medicinal cannabis to take effect;

2. The statements "For medicinal use by cardholders only. KEEP OUT OF REACH OF CHILDREN"; and

3. For raw plant material packaged for sale to a cardholder, the statement "NOT INTENDED FOR CONSUMPTION BY SMOKING";

(e) Discloses the strain of medicinal cannabis, form of medicinal cannabis, and standard amount of delta-9 tetrahydrocannabinol (THC) and cannabidiol (CBD) in the medicinal cannabis, including:

1. If the medicinal cannabis product is intended for oral consumption as an edible, oil, or tincture, potency shall be stated as milligrams per serving for total THC and total CBD, as applicable, and milligrams per package for total THC and total CBD, as

applicable; and

2. For concentrates, total THC and total CBD, as applicable, shall be stated in percentages;

(f) Discloses the amount of medicinal cannabis the product is considered the equivalent to, if applicable;

(g) Discloses any possible allergens;

(h) Is light-resistant and opaque;

(i) Clearly and conspicuously displays the standardized symbol in navy blue provided in Appendix A, which is incorporated by reference, indicating that a product contains medicinal cannabis;

(j) Is resealable, if applicable;

(k) Contains the name, address, and license number of the cannabis business packaging the medicinal cannabis;

(l) Protects the medicinal cannabis from contamination;

(m) Does not impart any toxic or deleterious substance to the medicinal cannabis; and

(n) Provides the telephone number for the National Poison Control Center.

Section 3. Labeling of Medicinal Cannabis for Sale to Cardholders.

(1) Medicinal cannabis and medicinal cannabis products prepared for sale to cardholders shall include a label that is firmly affixed to the packaging holding medicinal cannabis or firmly affixed to any outer packaging if used.

(2) The label required by this section may contain a quick response (QR) code that links to some or all of the information required under this section. The QR code shall be:

(a) Labeled as "Specific Product Information" directly above or below the QR code; and

(b) Large enough to be smart-phone readable.

(3) The label required by this section shall:

(a) Be made of weather-resistant and tamper-resistant materials;

(b) Be legible;

(c) List the strain, form, and net weight of the medicinal cannabis included in the package;

(d) List any ingredients;

(e) List the specific amount of THC and CBD in the medicinal cannabis included in the package as stated on the certificate of analysis for the medicinal cannabis's harvest batch or production batch. The specific amount of THC and CBD may be expressed in milligrams or by percentage, as applicable;

(f) List the percentage of total terpenes and the three (3) most prevalent terpenes expressed in the medicinal cannabis, as applicable;

(g) Provide the name and license number of the cannabis business that cultivated the medicinal cannabis;

(h) Provide the name and license number of the cannabis business that processed the medicinal cannabis, if applicable;

(i) Provide the identifier that is unique to the particular harvest batch or production batch of medicinal cannabis in the package;

(j) List the date the medicinal cannabis was harvested or processed;

(k) List the date the medicinal cannabis was packaged;

(l) List the name and license number of the safety compliance facility that tested the medicinal cannabis and the date the medicinal cannabis was tested;

(m) List the expiration date of the medicinal cannabis; and

(n) If the medicinal cannabis product is intended for oral consumption as an edible, oil, or tincture, provide a nutritional fact panel, the number of individual servings contained within the package, and the amount of THC per serving, which shall not exceed ten (10) milligrams per serving.

Section 4. Packaging and Labeling Requirements for Sale or Transfer of Medicinal Cannabis Between Cannabis Businesses.

(1) All medicinal cannabis sold or otherwise transferred between cannabis businesses for the purpose of processing or packaging and labeling for retail sale to cardholders shall:

(a) Regarding packaging:

1. Fully enclose the medicinal cannabis so that it cannot be seen from outside the packaging;

2. Protect the medicinal cannabis from contamination; and
3. Not impart any toxic or deleterious substance to the medicinal cannabis.

(b) A label shall be firmly affixed to the packaging holding medicinal cannabis or firmly affixed to outer packaging if used that, at a minimum, contains the following information:

1. Name, address, phone number, and license number of the cannabis business that is selling or otherwise transferring the medicinal cannabis to another cannabis business;
2. Name, address, phone number, and license number of the cannabis business receiving the medicinal cannabis;
3. The type and amount of medicinal cannabis in the package;
4. An identifier that is unique to the particular harvest batch or production batch of medicinal cannabis in the package;
5. The date the medicinal cannabis was harvested and, if applicable, processed;
6. The date the medicinal cannabis was packaged; and
7. A statement confirming that the medicinal cannabis in the package has been tested, and:

a. Affix a QR code to the label that directs the purchaser to the certificate of analysis for the medicinal cannabis harvest batch or production batch contained in the package; or

b. Provide a hardcopy or electronic copy of the certificate of analysis for the medicinal cannabis harvest batch or production batch contained in the package to the purchaser at the time of sale.

(2) Any sale or transfer of medicinal cannabis between cannabis businesses shall be documented in the Commonwealth's designated electronic monitoring system and seed to sale tracking system.

Section 5. Incorporation by Reference. (1) "Appendix A: Standardized symbol indicating a product contains medicinal cannabis", dated January 4, 2024, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Cabinet for Health and Family Services, Office of the Secretary, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8:30 a.m. to 4:30 p.m. This material may also be viewed on the Kentucky Medical Cannabis Program's Web site at <https://kymedcan.ky.gov>.

SAM FLYNN, Executive Director
ERIC FRIEDLANDER, Secretary

APPROVED BY AGENCY: January 3, 2024

FILED WITH LRC: January 4, 2024 at 11:50 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on March 25, 2024, 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 March 18, 2024, 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 March 31, 2024. 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 502-564-7476; 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 packaging and labeling of medicinal cannabis transferred, sold, or distributed by cannabis businesses.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to carry out the requirements of KRS Chapter 218B, specifically KRS 218B.140(1)(c)(13).

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 218B.140 authorizes the Cabinet for Health and Family Services to promulgate administrative regulations establishing standards for the packaging and labeling of medicinal cannabis transferred, sold, or distributed by cannabis businesses. This administrative regulation sets out those procedures.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides standards for the packaging and labeling of medicinal cannabis transferred, sold, or distributed by cannabis businesses.

(2) If 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 affects cannabis businesses that have applied for and subsequently received licenses to conduct medicinal cannabis activities in the commonwealth.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Cannabis businesses shall review and comply with the packaging and labeling standards contained in this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Each cannabis business will decide how to package and label medicinal cannabis in accordance with this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Cannabis businesses will be able to properly package and label medicinal cannabis and medicinal cannabis products.

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

(a) Initially: It is anticipated that an increase in funding will be necessary to implement this administrative regulation as additional staff and resources are necessary to administer and enforce packaging and labeling requirements. The cabinet estimates that the total staffing costs for the program in the first year will be approximately \$1,800,000, and a portion of those staffing costs will go toward regulating packaging and labeling requirements.

(b) On a continuing basis: It is anticipated that an increase in funding will be necessary to administer this administrative regulation as additional staff and resources are necessary to enforce packaging and labeling requirements. The cabinet estimates that the total staffing costs for the program on a continuing basis following the first year will be approximately \$2,400,000, and a portion of those staffing costs will go toward regulating packaging and labeling requirements.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: State general funds provided by the commonwealth.

(7) Provide an assessment of whether an 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 is anticipated that an increase in funding will be necessary to implement this regulation as additional staff and resources are necessary to administer and enforce this administrative regulation.

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

(9) TIERING: Is tiering applied? Tiering is not applied. All cannabis businesses 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? This administrative regulation impacts the Kentucky Medical Cannabis Program 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 218B.010, 218B.095, 218B.100, 218B.105, 218B.110, 218B.115, 218B.120, 218B.125, 218B.140.

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

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

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

(c) How much will it cost to administer this program for the first year? It is anticipated that an increase in funding will be necessary to implement this administrative regulation as additional staff and resources are necessary to administer and enforce the transportation procedures. The cabinet estimates that the total staffing costs for the program in the first year will be approximately \$1,800,000, and a portion of those staffing costs will go toward regulating packaging and labeling requirements.

(d) How much will it cost to administer this program for subsequent years? It is anticipated that an increase in funding will be necessary to administer this administrative regulation as additional staff and resources are necessary to enforce the transportation procedures. The cabinet estimates that the total staffing costs for the program on a continuing basis following the first year will be approximately \$2,400,000, and a portion of those staffing costs will go toward regulating packaging and labeling requirements.

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 cabinet does not anticipate any cost savings in the first year.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? The cabinet does not anticipate any cost savings in subsequent years.

(c) How much will it cost the regulated entities for the first year? Each cannabis business will decide how to package and label

medicinal cannabis in accordance with this administrative regulation.

(d) How much will it cost the regulated entities for subsequent years? Each cannabis business will decide how to package and label medicinal cannabis in accordance with this administrative regulation.

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation: Each cannabis business will decide how to package and label medicinal cannabis in accordance with 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)] The annual cost estimate to administer all aspects of the Kentucky Medical Cannabis Program is \$9,135,398. A significant portion of those funds will go toward licensing and enforcement of cannabis businesses operating in the commonwealth as well implementation and continued operation of the electronic monitoring system and seed to sale tracking system required by KRS 218B.140. The Kentucky Medical Cannabis Program will have a major economic impact on the Cabinet for Health and Family Services, and it is anticipated that an increase in funding will be necessary to administer all of the administrative regulations contained in 915 KAR Chapter 1 related to cannabis businesses.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 15 U.S.C. secs. 1471 to 1476 ("Special Packaging of Household Substances for Protection of Children").

(2) State compliance standards. KRS 218B.140(1)(c)(13) states that the cabinet shall promulgate administrative regulations to establish standards "for the packaging and labeling of medicinal cannabis sold or distributed by cannabis businesses which shall comply with 15 U.S.C. secs. 1471 to 1476 and shall include: a. Standards for packaging that requires at least a two (2) step process of initial opening; b. A warning label which may include the length of time it typically takes for the product to take effect, how long the effects of the product typically last, and any other information deemed appropriate or necessary by the cabinet; c. The amount of medicinal cannabis the product is considered the equivalent to; d. Disclosing ingredients, possible allergens, and certain bioactive components, including cannabinoids and terpenoids, as determined by the cabinet; e. A nutritional fact panel; f. Opaque, child-resistant packaging; g. A requirement that all raw plant material packaged or sold in this state be marked or labeled as "NOT INTENDED FOR CONSUMPTION BY SMOKING"; h. A requirement that medicinal cannabis products be clearly marked with an identifiable and standardized symbol indicating that the product contains cannabis; i. A requirement that all medicinal cannabis product packaging include an expiration date; and j. A requirement that medicinal cannabis products and their packaging not be visually reminiscent of major brands of edible noncannabis products or otherwise present an attractive nuisance to minors[.]"

(3) Minimum or uniform standards contained in the federal mandate. The Consumer Product Safety Commission ("Commission") may establish standards for child-resistant or "special" packaging of household substances, including food, drugs, or cosmetics, if it finds that special packaging is required to protect children from serious personal injury or serious illness from using or ingesting the substance and the special packaging required is technically feasible, practicable, and appropriate for such substance. Child-resistant or special packaging must be designed or constructed to be: (1) significantly difficult for children under 5 years of age to open or obtain a toxic or harmful amount of the substance contained therein within a reasonable time; and (2) not difficult for normal adults to use properly. The Commission promulgated performance requirements for special packaging in 16 C.F.R. 1700.15 and 1700.20.

(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 additional requirements. It requires packages containing medicinal cannabis for sale to cardholders to be child-resistant. This administrative regulation also includes additional packaging requirements provided in KRS 218B.140(1)(c)(13), including a two (2) step process of initial opening, a warning label, disclosing ingredients, and opaque packaging marked with an identifiable and standardized symbol indicating that the product contains medicinal cannabis.

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. KRS 218B.140(1)(c)(13) expressly provides that medicinal cannabis packaging comply with 15 U.S.C. secs. 1471 to 1476, meaning be properly child-resistant, and include the additional items listed above in paragraph (2). This administrative regulation establishes standards for the packaging and labeling of medicinal cannabis in compliance with KRS 218B.140(1)(c)(13).

CABINET FOR HEALTH AND FAMILY SERVICES

Office of the Secretary (New Administrative Regulation)

915 KAR 1:110. Medicinal cannabis testing.

RELATES TO: KRS Chapter 218B

STATUTORY AUTHORITY: KRS 218B.140

NECESSITY, FUNCTION, AND CONFORMITY: KRS 218B.140 requires the Cabinet for Health and Family Services to promulgate administrative regulations establishing requirements for random sample testing of medicinal cannabis to ensure quality control. This administrative regulation establishes those requirements and procedures.

Section 1. General Requirements.

(1) To ensure the suitability and safety for human consumption of medicinal cannabis and medicinal cannabis products, cultivators, processors, and producers shall test medicinal cannabis in accordance with Section 2 of this administrative regulation.

(2) No laboratory may test medicinal cannabis under this administrative regulation without being issued a license to operate as a safety compliance facility. A safety compliance facility shall only send medicinal cannabis samples for testing to another licensed safety compliance facility in the Commonwealth.

(3) Batch size.

(a) Cultivators and producers shall separate all harvested medicinal cannabis into harvest batches not to exceed fifteen (15) pounds with the exception of any raw plant material to be sold to a processor or producer for the purposes of turning the raw plant material into concentrate which may be separated into harvest batches of no more than fifty (50) pounds.

(b) Processors and producers shall separate all medicinal cannabis product into production batches not to exceed four (4) liters of liquid medicinal cannabis concentrate or nine (9) pounds for nonliquid medicinal cannabis products and, for final medicinal cannabis products, no greater than 1,000 grams of delta-9-tetrahydrocannabinol.

(4) An authorized cannabis business employee or agent collecting any samples for testing shall follow the standard operating procedures established by the contracted safety compliance facility conducting the testing for:

- (a) Sampling; and
 - (b) Documenting the chain of custody.
- (5) Testing frequency.

(a) Harvest batch samples shall be obtained and tested post-harvest and prior to sell, transfer, or delivery of the medicinal cannabis from the respective harvest batch.

(b) Production batch samples shall be obtained and tested in their final form prepackaging and prior to sale, transfer, or delivery of the medicinal cannabis from the respective production batch.

(6) Prohibitions.

(a) Cultivators and producers shall not sell, transfer, or deliver

any medicinal cannabis from a harvest batch to a dispensary, processor, cultivator, or producer until a sample of the harvest batch has passed all tests required by Section 2 of this administrative regulation.

(b) Processors and producers shall not sell, transfer, or deliver any medicinal cannabis from a production batch to a dispensary, processor, cultivator, or producer until a sample of the production batch has passed all tests required by Section 2 of this administrative regulation.

(c) Dispensaries shall not dispense or sell medicinal cannabis to cardholders until a sample of its harvest or production batch has passed all tests required by Section 2 of this administrative regulation.

(d) Following the collection of a sample from a harvest batch or production batch, medicinal cannabis shall not undergo any additional processing, transforming, or other changes that alter the substance of the medicinal cannabis or otherwise would result in different test results. Any medicinal cannabis that undergoes additional processing, transforming, or other changes that alters the substance of the medicinal cannabis following sample collection shall be tested as required by Section 2 of this administrative regulation prior to any sale, transfer, or delivery to a dispensary, processor, or producer.

(7) The cabinet may select and collect a sample or test sample from a cannabis business at any time. The cabinet may require a cultivator, processor, producer, or dispensary to submit a sample or test sample to a safety compliance facility upon request when the cabinet has reason to believe the medicinal cannabis is unsafe for cardholder consumption or inhalation or has not been tested in accordance with KRS Chapter 218B and Section 2 of this administrative regulation. A cultivator, processor, producer, or dispensary shall provide the samples for testing at their own expense.

(8) Except as authorized in Section 5 of this administrative regulation, cannabis businesses shall properly dispose of and shall not use, sell, or otherwise transfer medicinal cannabis that fails to meet any testing standard or requirement set forth in this administrative regulation. Cannabis businesses shall dispose of this medicinal cannabis waste in accordance with the 915 KAR 1:030, 915 KAR 1:040, 915 KAR 1:060, and 915 KAR 1:070, as applicable.

Section 2. Medicinal Cannabis Tests.

(1) Medicinal cannabis shall be tested for:

- (a) Tetrahydrocannabinol (THC) and cannabinoid concentration;
- (b) Terpenoid type and concentration;
- (c) Residual solvents and processing chemicals (for production batches);
- (d) Residual pesticides;
- (e) Heavy metals;
- (f) Microbial impurities;
- (g) Mycotoxins;
- (h) Water activity (for harvest batches);
- (i) Yeast and mold; and
- (j) Vitamin E acetate.

(2) The cabinet may conduct additional tests on samples or test samples at its discretion.

Section 3. Maximum Allowable Limits for Medicinal Cannabis Tests.

(1) Cannabinoid and terpenoid concentration. KRS Chapter 218B, specifically KRS 218B.095, KRS 218B.105, KRS 218B.115, and KRS 218B.120, establishes the maximum delta-9 tetrahydrocannabinol content for raw plant material and medicinal cannabis products in the Commonwealth. Cultivators, processors, and producers shall test harvest batch and production batch samples for levels of total THC and cannabinoid concentration and terpenoid type and concentration.

(a) For THC and cannabinoid concentration, the testing shall include:

- 1. Total THC;
- 2. Total cannabidiol (CBD);
- 3. Total cannabinoids;

4. Tetrahydrocannabinolic acid (THCa);
5. Delta-9-tetrahydrocannabinol (Delta-9-THC);
6. Delta-8-tetrahydrocannabinol (Delta-8-THC);
7. Cannabidiolic acid (CBDA);
8. Cannabidiol (CBD);
9. Cannabinol (CBN);
10. Cannabigerolic acid (CBGa);
11. Cannabigerol (CBG);
12. Tetrahydrocannabivarin (THCV);
13. Cannabichromene (CBC);

(b) For terpenoid type and concentrate concentration, the testing shall include:

1. Total terpenes;
2. Limonene;
3. Myrcene;
4. Pinene;
5. Linalool;
6. Eucalyptol;
7. Delta-terpinene (terpinolene);
8. Caryophyllene
9. Nerolidol;
10. Humulene;
11. Bisabolol;
12. Camphene;
13. Delta 3 Carene;
14. Borneol;
15. Geraniol; and
16. Terpineol;

(c) In accordance with KRS 218B.140(1)(c)(9), cultivators and producers shall track the terpene content of the twelve (12) major terpenoids within each strain of medicinal cannabis that they cultivate in the Commonwealth and provide a written summary of this information to the cabinet upon request.

(2) Residual solvents and processing chemicals. Production batch samples shall be tested for residual solvents and processing chemicals and shall not exceed the maximum allowable concentration for each solvent or chemical used as set forth in Appendix A, which is incorporated by reference.

(3) Residual Pesticides. Harvest batch samples and production batch samples shall be tested for residual pesticides and shall not exceed the maximum allowable concentration for each pesticide used as set forth in Appendix B, which is incorporated by reference.

(4) Heavy Metals. All harvest batch and production batch samples shall be tested for heavy metals, which shall include arsenic, cadmium, lead, and mercury, as follows:

(a) For inhaled medicinal cannabis products, including administration by metered dose nasal spray or pressurized metered dose inhaler, harvest and production batches shall be tested for the following heavy metal analytes and shall comply with the maximum allowable concentration:

1. Arsenic, maximum allowable concentration: zero and two-tenths (0.2) parts per million (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.

(b) For medicinal cannabis products not intended to be inhaled, harvest and production batches shall be tested for the following heavy metal analytes and shall comply with the maximum allowable concentration:

1. Arsenic, maximum allowable concentration: 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.

(5) Microbial impurities. Harvest batch samples and production batch samples shall be tested for the presence of microbial impurities. Harvest batch and production batch samples shall be deemed to have passed the microbial impurities testing if the

following conditions are met:

(a) Total *Escherichia coli* is not detected above one hundred (100) colony forming units/gram;

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

(c) *Salmonella* spp. is not detected in one (1) gram; and

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

(6) Mycotoxins. Harvest batch and production batch samples shall be tested for the following mycotoxins: aflatoxin B1, B2, G1, and G2 ochratoxin A. A production batch shall be deemed to have passed mycotoxin testing if the following conditions are met:

(a) Total of aflatoxin B1, B2, G1, and G2 does not exceed twenty (20) microgram per kilogram ($\mu\text{g/kg}$) of substance; and

(b) Ochratoxin A does not exceed twenty (20) $\mu\text{g/kg}$ of substance.

(7) Water activity. Harvest batch samples shall be tested to determine the level of water activity. Harvest batch samples shall have a water activity (aw) rate of less than 0.65.

(8) Yeast and mold. Harvest batch and production batch samples shall be tested to determine the level of yeast and mold. Harvest batch and production batch samples shall have a total combined yeast and mold not to exceed 100,000 colony forming units per gram.

(9) Vitamin E acetate. Harvest batches and production batches shall be tested for any detectable level of vitamin E acetate.

Section 4. Failed Testing.

(1) A harvest batch or production batch sample that fails any initial testing may be reanalyzed by the safety compliance facility using the reserve sample for that harvest or production batch.

(2) If the reserve sample passes the required testing, an authorized cannabis business employee or agent shall resample the harvest batch or production batch in question and send the new sample to a different safety compliance facility than the one that performed the initial testing. In order for the harvest batch or production batch in question to pass testing under this administrative regulation, the new safety compliance facility shall test the resample and confirm the resample passed all required tests.

(3) A harvest batch or production batch shall fail testing if the respective sample exceeds any maximum allowable limit established in Section 3 of this administrative regulation or the maximum allowable delta-9 tetrahydrocannabinol content for raw plant material and medicinal cannabis products established in KRS Chapter 218B:

(a) During an initial test where no reanalysis is requested; or

(b) Upon reanalysis as described in this section.

(4) If a harvest batch or production batch sample fails a test or a reanalysis, the harvest batch or production batch:

(a) May be remediated or sterilized if allowed by Section 5 of this administrative regulation; or

(b) If it cannot be remediated or sterilized in accordance with Section 5 of this administrative regulation, the harvest or production batch shall be deemed medicinal cannabis waste and destroyed by the cultivator, processor, or producer in accordance with 915 KAR 1:030 or 915 KAR 1:040 as applicable for their respective business.

(5) Medicinal cannabis from a harvest or production batch that failed testing shall not be combined with another harvest or production batch. Mixed products shall be considered adulterated and shall not be sold, transferred, or otherwise delivered to a cannabis business.

Section 5. Remediation.

(1) THC concentration.

(a) If a harvest batch sample exceeds the THC content limit imposed on raw plant material in KRS 218B.095, KRS 218B.105, 218B.115, or 218B.120, the harvest batch shall be deemed medicinal cannabis waste and destroyed by the cultivator or producer in accordance with 915 KAR 1:030.

(b) If a production batch sample exceeds the THC content limits imposed on edibles, oils, tincture, and other medicinal cannabis products by KRS 218B.095, 218B.115, or 218B.120, the production batch may be remediated using procedures that would reduce the

concentration of THC to allowable levels provided that the remediation method does not impart any toxic or deleterious substance to the medicinal cannabis in the production batch.

(c) A production batch that is remediated in accordance with this subsection shall be sampled and tested in accordance with Sections 2 and 3 of this administrative regulation.

(d) A processor or producer shall inform the safety compliance facility conducting the retesting prior to samples being taken that the production batch has previously failed testing and is being retested after undergoing remediation. Any remediation methods or remediation solvents used on the production batch being retested shall be disclosed to the safety compliance facility conducting the retesting.

(e) A production batch that exceeds the required THC content limits that is not remediated or that if remediated fails testing shall be deemed medicinal cannabis waste and destroyed by the processor or producer in accordance with 915 KAR 1:040.

(2) Residual solvents and processing chemicals.

(a) If a production batch sample fails residual solvent testing, the production batch may be remediated using procedures that would reduce the concentration of solvents to less than the action level provided that the remediation method does not impart any toxic or deleterious substance to the medicinal cannabis in the production batch.

(b) A production batch that is remediated in accordance with this subsection shall be sampled and tested in accordance with Sections 2 and 3 of this administrative regulation.

(c) A processor or producer shall inform the safety compliance facility conducting the retesting prior to samples being taken that the production batch has previously failed testing and is being retested after undergoing remediation or decontamination. Any remediation methods or remediation solvents used on the production batch being retested shall be disclosed to the safety compliance facility conducting the retesting.

(d) A production batch that fails solvent testing that is not remediated or that if remediated fails testing shall be deemed medicinal cannabis waste and destroyed by the processor or producer in accordance with the 915 KAR 1:040.

(3) Residual Pesticides. A harvest batch or production batch that fails residual pesticide testing shall be deemed medicinal cannabis waste and destroyed by the cultivator, processor, or producer in accordance with 915 KAR 1:030 or 915 KAR 1:040 as applicable for their respective business.

(4) Heavy metals. A harvest batch or production batch that fails heavy metals testing shall be deemed medicinal cannabis waste and destroyed by the cultivator, processor, or producer in accordance with the 915 KAR 1:030 or 915 KAR 1:040 as applicable for their respective business.

(5) Microbial impurities.

(a) If a harvest batch or production batch sample fails microbial impurities testing, the harvest batch or production batch may be further processed if the processing method effectively sterilizes the batch and does not impart any toxic or deleterious substance to the medicinal cannabis in the batch.

(b) A harvest batch or production batch that is sterilized in accordance with this subsection shall be sampled and tested in accordance with Sections 2 and 3 of this administrative regulation.

(c) A cultivator, processor, or producer shall inform the safety compliance facility conducting the retesting prior to samples being taken that the harvest or production batch has previously failed testing and is being retested after undergoing sterilization. Any sterilization methods or sterilization solvents used on the harvest or production batch being retested shall be disclosed to the safety compliance facility conducting the retesting.

(d) A harvest batch or production batch that fails microbiological contaminant testing after undergoing a sterilization process in accordance with this subsection shall be deemed medicinal cannabis waste and destroyed by the cultivator, processor, or producer in accordance with 915 KAR 1:030 or 915 KAR 1:040 as applicable for their respective business.

(6) Mycotoxins. A harvest batch or production batch that fails mycotoxins testing shall be deemed medicinal cannabis waste and destroyed by the cultivator, processor, or producer in accordance

with 915 KAR 1:030 or 915 KAR 1:040 as applicable for their respective business.

(7) Water activity. If a harvest batch sample fails water activity testing, the harvest batch may be further dried and cured by the cultivator or producer. A harvest batch that is further dried and cured shall be sampled and retested in accordance with Sections 2 and 3 of this administrative regulation.

(8) Yeast and mold. A harvest batch or production batch sample that fails yeast and mold testing shall be deemed medicinal cannabis waste and destroyed by the cultivator, processor, or producer in accordance with 915 KAR 1:030 or 915 KAR 1:040 as applicable for their respective business.

(9) Vitamin E acetate. A harvest batch or production batch that fails vitamin E acetate testing shall be deemed medicinal cannabis waste and destroyed by the cultivator, processor, or producer in accordance with 915 KAR 1:030 or 915 KAR 1:040 as applicable for their respective business.

(10) Where remediation is allowed, a harvest or production batch shall only be remediated twice. If the harvest or production batch fails testing after a second remediation attempt and the second retesting, the harvest or production batch shall be deemed medicinal cannabis waste and destroyed by the cultivator, processor, or producer in accordance with 915 KAR 1:030 or 915 KAR 1:040 as applicable for their respective business.

(11) Prior to taking any remediation efforts, cultivators, processors, and producers shall:

(a) Create and maintain detailed written procedures for all remediation processes used by the cannabis business and provide those procedures to the cabinet upon request within three (3) business days of receiving the request or during an inspection; and

(b) Document all remediation, sterilization, resampling, retesting, and disposal of medicinal cannabis that fails testing required by Section 2 of this administrative regulation.

Section 6. Certificate of Analysis.

(1) A safety compliance facility shall:

(a) Generate a certificate of analysis (COA) for each harvest batch and production batch sample that the safety compliance facility analyzes; and

(b) Ensure the COA contains the results of all required analyses performed for the harvest batch or production batch sample.

(2) The COA shall contain, at minimum:

(a) The safety compliance facility's name, address, and license number;

(b) The cultivator, processor, or producer's name, address, and license number;

(c) The harvest batch or production batch number from which the sample was obtained;

(d) Sample identifying information, including matrix type and unique sample identifiers;

(e) Sample history, including the date collected, the date received by the safety compliance facility, and the date of all sample analyses and corresponding testing results;

(f) The analytical methods, analytical instrumentation used, and corresponding limit of detection (LOD) and limits of quantitation (LOQ);

(g) An attestation from an authorized employee of the safety compliance facility that all testing required by Section 2 of this administrative regulation was performed; and

(h) Analytes detected during the analyses of the harvest batch or production batch sample that are unknown, unidentified, or injurious to human health if consumed, if any.

(3) The safety compliance facility shall report test results for each representative harvest batch or production batch sample on the COA as an overall "pass" or "fail" for the entire batch.

(a) When reporting qualitative results for each analyte, the safety compliance facility shall indicate "pass" or "fail";

(b) When reporting quantitative results for each analyte, the testing facility shall use the appropriate units of measurement for testing the analyte;

(c) When reporting results for each test method, the testing facility shall indicate "pass" or "fail";

(d) When reporting results for any analytes that were detected below the analytical method LOQ, indicate "<LOQ," notwithstanding cannabinoid and terpenoid results;

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

(f) Indicate "NT" for any test that the safety compliance facility did not perform.

(4) The safety compliance facility shall retain a reserve sample for each harvest or production batch consisting of any portion of a sample that was not used in the testing process. The reserve sample shall be kept for a minimum of forty-five (45) calendar days after the analyses, after which time it may be destroyed as medicinal cannabis waste by the safety compliance facility in accordance with 915 KAR 1:060.

(5) The safety compliance facility shall securely store the reserve sample in a manner that minimizes the risk of sample degradation, contamination, and tampering.

(6) The safety compliance facility shall provide any reserve samples to the cabinet upon request within three (3) business days of receiving the request.

(7) All certificates of analysis prepared by safety compliance facilities shall be documented in the Commonwealth's designated electronic monitoring system and seed to sale tracking system in accordance with instructions provided by the cabinet.

(8) On any informational website that they maintain in accordance with 915 KAR 1:090, Section 2, cultivators, processors, and producers shall publish or provide links to the COAs that they receive from safety compliance facilities for their respective harvest batches and production batches. The information required to be provided under this provision shall be presented in such a way that cardholders can easily access the specific COA for the harvest batch or production batch referenced on the medicinal cannabis product label.

Section 7. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Appendix A: List of residual solvents for medicinal cannabis testing", dated January 4, 2024; and

(b) "Appendix B: List of residual pesticides for medicinal cannabis testing", dated January 4, 2024.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Cabinet for Health and Family Services, Office of the Secretary, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8:30 a.m. to 4:30 p.m. This material may also be viewed on the Kentucky Medical Cannabis Program's website at <https://kymedcan.ky.gov>.

SAM FLYNN, Executive Director

ERIC FRIEDLANDER, Secretary

APPROVED BY AGENCY: January 3, 2024

FILED WITH LRC: January 4, 2024 at 11:50 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on March 25, 2024, 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 March 18, 2024, 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 March 31, 2024. 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 502-564-7476; 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 requirements for random sample testing of medicinal cannabis to ensure quality control.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to carry out the requirements of KRS Chapter 218B, specifically KRS 218B.140.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 218B.140 authorizes the Cabinet for Health and Family Services to promulgate administrative regulations establishing requirements for random sample testing of medicinal cannabis to ensure quality control. This administrative regulation sets out those requirements and procedures.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides the requirements for random sample testing of medicinal cannabis to ensure quality control.

(2) If 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 affects cannabis businesses that have applied for and subsequently received licenses to conduct medicinal cannabis activities in the commonwealth.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Cannabis businesses must review and comply with the testing requirements contained in this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Cultivators, processors, and producers will contract with safety compliance facilities to conduct the required testing of medicinal cannabis harvest and production lots.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Cultivators, processors, producers, and safety compliance facilities will be able to properly sample and test medicinal cannabis in the commonwealth.

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

(a) Initially: It is anticipated that an increase in funding will be necessary to implement this administrative regulation as additional staff and resources are necessary to administer and enforce testing requirements. The cabinet estimates that the total staffing costs for the program in the first year will be approximately \$1,800,000, and a portion of those staffing costs will go toward regulating testing requirements.

(b) On a continuing basis: It is anticipated that an increase in funding will be necessary to administer this administrative regulation as additional staff and resources are necessary to enforce testing

requirements. The cabinet estimates that the total staffing costs for the program on a continuing basis following the first year will be approximately \$2,400,000, and a portion of those staffing costs will go toward regulating testing requirements.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: State general funds provided by the commonwealth.

(7) Provide an assessment of whether an 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 is anticipated that an increase in funding will be necessary to implement this regulation as additional staff and resources are necessary to administer and enforce the testing requirements.

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

(9) TIERING: Is tiering applied? Tiering is not applied. All cannabis businesses 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? This administrative regulation impacts the Kentucky Medical Cannabis Program 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 218B.140.

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

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

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

(c) How much will it cost to administer this program for the first year? It is anticipated that an increase in funding will be necessary to implement this administrative regulation as additional staff and resources are necessary to administer and enforce testing requirements. The cabinet estimates that the total staffing costs for the program in the first year will be approximately \$1,800,000, and a portion of those staffing costs will go toward regulating testing requirements.

(d) How much will it cost to administer this program for subsequent years? It is anticipated that an increase in funding will be necessary to administer this administrative regulation as additional staff and resources are necessary to enforce the testing requirements. The cabinet estimates that the total staffing costs for the program on a continuing basis following the first year will be approximately \$2,400,000, and a portion of those staffing costs will go toward regulating packaging and labeling requirements.

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 cabinet does not anticipate any cost savings in the first year.

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

cabinet does not anticipate any cost savings in subsequent years.

(c) How much will it cost the regulated entities for the first year? Cultivators, processors, and producers will contract with safety compliance facilities to conduct the required testing of medicinal cannabis harvest and production lots.

(d) How much will it cost the regulated entities for subsequent years? Cultivators, processors, and producers will contract with safety compliance facilities to conduct the required testing of medicinal cannabis harvest and production lots.

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 annual cost estimate to administer all aspects of the Kentucky Medical Cannabis Program is \$9,135,398. A significant portion of those funds will go toward licensing and enforcement of cannabis businesses operating in the commonwealth as well implementation and continued operation of the electronic monitoring system and seed to sale tracking system required by KRS 218B.140. The Kentucky Medical Cannabis Program will have a major economic impact on the Cabinet for Health and Family Services, and it is anticipated that an increase in funding will be necessary to administer all of the administrative regulations contained in 915 KAR Chapter 1 related to cannabis businesses.

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
Minutes of January 8, 2024

Call to Order and Roll Call

The January meeting of the Administrative Regulation Review Subcommittee was held on Monday, January 8, 2024 at 1:00 p.m. in Room 149 of the Capitol Annex. Senator West, Co-Chair, called the meeting to order, and roll call was taken.

Present were:

Members: Senator Stephen West, Co-Chair; Representative Derek Lewis, Co-Chair; Senators Julie Raque Adams and Damon Thayer; Representatives Randy Bridges, Deanna Frazier Gordon, and Daniel Grossberg.

LRC Staff: Stacy Auterson, Emily Caudill, Ange Darnell, Emily Harkenrider, Karen Howard, Anna Latek, and Carrie Nichols.

Guests: Carrie Bass, Jessica Beaubien, Kentucky Public Pension Authority; Eden Davis, Board of Pharmacy; Kelly Jenkins, Jeffrey Prather, Board of Nursing; Representative Steve Bratcher; Lisa Biddle-Puffer, Mary Hayes, Kentucky Association of Health Care Facilities; Joe Jurgensen, Management Systems of Kentucky; Hank Cecil, Marc Kelly, Board of Social Work; Michelle Sanborn, Children's Alliance; Steven Shannon, Community Mental Health Centers; Brenda Rosen, National Association of Social Workers, Kentucky Chapter; Sara Boswell Janes, Dr. Charles Pemberton, Board of Licensed Professional Counselors; Eddie Sloan, John Wood, Board of Emergency Medical Services; Steven Fields, Jenny Gilbert, Rich Storm, Department of Fish and Wildlife Resources; Jon Johnson, Ricky Sizemore, Transportation Cabinet; Todd Allen, Board of Education; Marni Gibson, Gary Stephens, Department of Financial Institutions; David Lovely, Valerie Moore, Office of the Inspector General; Jonathan Scott, Department for Medicaid Services; Kelli Blair, Department for Income Support; Laura Begin, Todd Trapp, and Andrea Day, Department for Community Based Services.

Administrative Regulations Reviewed by this Subcommittee:

FINANCE AND ADMINISTRATION CABINET: Kentucky Public Pensions Authority: General Rules

105 KAR 001:148E. Merged, split, new, separate, or separated employers or entities. Carrie Bass, staff attorney supervisor, and Jessica Beaubien, policy specialist, represented the authority.

A motion was made and seconded to approve the following amendments: to amend the STATUTORY AUTHORITY paragraph and Sections 1, 3, 5, and 6 through 9 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

105 KAR 001:148. Merged, split, new, separate, or separated employers or entities.

A motion was made and seconded to approve the following amendments: to amend the STATUTORY AUTHORITY paragraph and Sections 1, 3, 5, and 6 through 9 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

105 KAR 001:270. Federal tax withholding or direct rollover of eligible distributions.

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, 2, 4, 7, 9, and 10 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

BOARDS AND COMMISSIONS: Board of Pharmacy

201 KAR 002:165. Transfer of prescription information. Eden Davis, general counsel, represented the board.

In response to a question by Representative Frazier Gordon, Ms. Davis stated that, in compliance with federal requirements, prescriptions may be transferred among all pharmacies and were not limited to transfers within a particular chain or pharmacy ownership group.

Board of Social Work

201 KAR 023:160. Temporary permission to practice. Hank Cecil, chair, and Marc Kelly, executive director, represented the board.

A motion was made and seconded at the December 11, 2023 subcommittee meeting to approve the following amendments: (1) to amend Sections 1 through 4 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (2) to amend Section 5 to add incorporated material. Without objection, and with agreement of the agency, the amendments were approved.

A motion was made and seconded to approve the following amendments: to amend Sections 1, 2, 4, and 5 to clarify requirements and update incorporated material. Without objection, and with agreement of the agency, the amendments were approved.

Board of Licensed Professional Counselors

201 KAR 036:005. Definitions for 201 KAR Chapter 036. Sara Boswell Janes, board counsel, and Dr. Charles Pemberton, board member, represented the board.

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.

201 KAR 036:030. Continuing education requirements.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 6, 8, and 11 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 036:040. Code of ethics.

A motion was made and seconded to approve the following amendments: to amend Sections 1, 3, 6, 7, and 9 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 036:045. Distance counseling.

A motion was made and seconded to approve the following amendments: to amend Sections 1 and 4 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 036:050. Complaint management process.

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.

201 KAR 036:060. Qualifying experience under supervision.

A motion was made and seconded to approve the following amendments: to amend the 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.

201 KAR 036:065. Licensed professional clinical counselor supervisor.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 4 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 036:070. Application, education, and examination requirements.

A motion was made and seconded to approve the following amendments: to amend Sections 1, 2, 4 through 6, and 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 036:072. Reciprocity requirements for applicants licensed or certified in another state.

In response to a question by Representative Bridges, Ms. Boswell Janes stated that background checks would continue to be required for all applicants.

A motion was made and seconded to approve the following amendments: to amend Sections 1, 2, and 5 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 036:075. Renewal, late renewal, and reinstatement of license.

A motion was made and seconded to approve the following amendments: to amend Sections 2, 3, 5, and 6 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 036:090. Administrative hearings for denials and revocation of probated sanction.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 and 2 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

INDEPENDENT ADMINISTRATIVE BODIES: Board of Emergency Medical Services

202 KAR 007:030. Fees of the board. Eddie Sloan, executive director, and John Wood, counsel, represented the board.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 1, 2, and 5 to comply with the drafting requirements of KRS Chapter 13A; and (2) to amend Section 6 to decrease a fee amount. Without objection, and with agreement of the agency, the amendments were approved.

202 KAR 007:410. Advanced practice paramedics.

A motion was made and seconded to approve the following amendments: (1) to amend the EMS Advanced Practice Paramedic Scope of Practice document to delete, under the category of Medical/Cardiac Care, "care for working K9 and equine under veterinary oversight" (for a Wilderness Paramedic); and (2) 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.

TOURISM, ARTS AND HERITAGE CABINET: Department of Fish and Wildlife Resources: Game

301 KAR 002:030. Commercial guide license. Steven Fields, staff attorney; Jenny Gilbert, legislative liaison; and Rich Storm, commissioner, represented the department.

In response to questions by Representative Frazier Gordon, Mr. Storm stated that tax identification numbers would be utilized to verify legitimate guide companies operating within the state. There had been incidents of outdoor enthusiasts encountering fraudulent guides. The department would follow up with this subcommittee

regarding notices from the department on locations where oxygen saturation was being conducted.

In response to a question by Co-Chair Lewis, Mr. Storm stated that the agency was prepared to handle incidents of Chronic Wasting Disease (CWD) in cervid populations across the state, and educational outreach for hunters regarding testing would be a continued focus.

In response to a question by Co-Chair West, Mr. Storm stated that the department did not anticipate needing statutory changes during the remainder of the 2024 Regular Session of the General Assembly; however, if the need did arise, legislation would most likely relate to the transportation of cervids.

TRANSPORTATION CABINET: Department of Highways: Traffic

603 KAR 005:155. Vegetation management. Jon Johnson, assistant general counsel, and Ricky Sizemore, engineering specialist, represented the department.

A motion was made and seconded to approve the following amendments: to amend Sections 2 and 7 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

EDUCATION AND LABOR CABINET: Office of District Support Services: School Administration and Finance

702 KAR 003:330. Liability insurance. Todd Allen, deputy commissioner and general counsel, represented the office.

In response to a question by Co-Chair West, Mr. Allen stated that, in accordance with Senate Bill 3 from the 2023 Regular Session of the General Assembly, school districts were required to provide teachers with primary liability insurance to cover claims incurred during their time in the classroom. This administrative regulation required districts to report to the department pertaining to the required supplemental liability insurance.

A motion was made and seconded to approve the following amendments: to amend the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1 and 2 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Office of Special Instructional Services: Instructional Programs

705 KAR 004:231. General program standards for secondary career and technical education programs.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO, STATUTORY AUTHORITY, and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 2, 4 through 9, 12, and 15 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (2) to amend Section 14 to remove chief state school officer approval for program facilities. Without objection, and with agreement of the agency, the amendments were approved.

PUBLIC PROTECTION CABINET: Department of Financial Institutions: Securities

808 KAR 010:501. Required forms, fees, filing procedures, and recordkeeping requirements for persons operating pursuant to KRS 292.411 and KRS 292.412, the Kentucky Intrastate Crowdfunding Exemption; and notice filing requirements for federal crowdfunding offerings. Marni Gibson, acting commissioner, and Gary Stephens, assistant general counsel, represented the department.

In response to questions by Co-Chair West, Ms. Gibson stated that this administrative regulation would allow the agency to more closely monitor crowdfunding firms operating in Kentucky to protect consumers. The department did not have any concerns with regard to privacy.

A motion was made and seconded to approve the following amendments: (1) to amend Section 7 to: (a) reduce the filing and renewal fees from \$300 to \$250 pursuant to KRS 292.327(3); and (b) allow the filing of a cover letter or a completed Form U-CF to request renewal, rather than requiring both; and (2) to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 2, 4, and 7 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection,

and with agreement of the agency, the amendments were approved.

CABINET FOR HEALTH AND FAMILY SERVICES: Office of Inspector General

906 KAR 1:190. Kentucky National Background Check Program (NBCP). David Lovely, deputy and acting inspector general, and Valerie Moore, policy specialist, represented the office.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO paragraph and Sections 1, 5, and 15 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Department for Medicaid Services: Psychiatric Residential Treatment Facility Services and Reimbursement

907 KAR 009:010. Reimbursement for non-outpatient Level I and II psychiatric residential treatment facility services. Jonathan Scott, regulation coordinator, represented the department.

In response to a question by Co-Chair West, Mr. Scott stated that a new standard reimbursement rate of \$500 for PRTF level 1 services would be in place, and \$600 for all subsections of PRTF level 2 services would be implemented.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 and 11 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Department for Income Support: Child Support

921 KAR 001:410. Child support collection and enforcement. Laura Begin, regulation coordinator; Andrea Day, director, Division of Child Care; and Todd Trapp, director, Division of Family Support, represented the department.

Supplemental Nutrition Assistance Program (SNAP)

921 KAR 003:027. Technical requirements.

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 3 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

921 KAR 003:100. Transitional benefit alternative.

Daycare

922 KAR 2:280. Background checks for child care staff members, reporting requirements, and appeals.

The following administrative regulations were deferred or removed from the January 8, 2024, subcommittee agenda:

OFFICE OF THE GOVERNOR: Department of Veterans' Affairs: Veterans' Programs

017 KAR 006:020. Kentucky Women Veterans Program and coordinating committee, administrative procedures.

017 KAR 006:030. Kentucky Wounded or Disabled Veterans Program, administrative procedures.

KENTUCKY COMMISSION ON 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.

FINANCE AND ADMINISTRATION CABINET: Kentucky Public Pensions Authority: General Rules

105 KAR 001:215. Administrative hearing.

BOARDS AND COMMISSIONS: Board of Medical Licensure

201 KAR 009:067. Professional standards and procedures for medicinal cannabis practitioners.

Board of Nursing

201 KAR 020:057. Scope and standards of practice of advanced practice registered nurses.

201 KAR 02:065. Professional standards for prescribing Buprenorphine-MonoProduct or Buprenorphine-Combined-with-Naloxone by ARNPs for medication assisted treatment for opioid disorder.

201 KAR 020:067. Professional standards for medicinal cannabis.

201 KAR 020:215. Continuing competency requirements.

201 KAR 020:700. Medication aide training programs and credentialing of medication aides. Kelly Jenkins, executive director, and Jeffrey Prather, general counsel, represented the board. Representative Steve Bratcher appeared in support of 201 KAR 020:700. Lisa Biddle-Puffer, Kentucky Association of Health Care Facilities; Joe Jurgensen, Management Systems of Kentucky; and Mary Hayes, Kentucky Association of Health Care Facilities, appeared in opposition to 201 KAR 020:700.

In response to questions by Co-Chair West, Mr. Prather stated that this administrative regulation would ensure that the board could provide a cohesive training regimen for certified medication aides administering pre-measured injectable medications, especially insulin. This administrative regulation addressed the implementation of the training regimen, and other administrative regulations filed later would address training for specific kinds of facilities. This administrative regulation could potentially exclude state-funded personal care homes, but the board needed to do an in-depth review to ensure requirements would not be in conflict with federal provisions.

Representative Bratcher stated that the intent of the legislation passed in 2023 was to guarantee that only certified medical staff would be able to administer injectable medications in nursing homes, assisted living facilities, and personal care homes. Personal care homes could experience some financial constraints due to their status as state-funded facilities.

In response to questions by Co-Chair West, Ms. Hayes stated that her agency had asked for a review of the definitions regarding personal care homes for clarity. The intent of the related statute was to exclude state-funded personal care homes from training requirements.

In response to a question by Co-Chair West, Mr. Jurgensen stated that while a large percentage of personal care homes served those with mental disabilities, not all patients met the criteria under that category. The state-funded reimbursement rate for personal care homes was currently \$49.50 per patient per day.

In response to a question by Co-Chair West, Mr. Prather agreed to defer consideration of this administrative regulation to the February meeting of this subcommittee. Without objection, and with agreement of the agency, this administrative regulation was deferred.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO, STATUTORY AUTHORITY, and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1 through 8 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (2) to update material incorporated by reference to reference the program fees and to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the

amendments were approved.

Board of Social Work

201 KAR 023:170. Telehealth and social work practice. Hank Cecil, chair, and Marc Kelly, executive director, represented the board. Brenda Rosen, National Association of Social Workers, appeared in support of this administrative regulation. Michelle Sanborn, president, Children's Alliance, and Steve Shannon, executive director of regional programs, Community Mental Health Centers, appeared in opposition to this administrative regulation.

In response to questions by Senator Raque Adams, Mr. Cecil stated that, in consultation with outside agencies, the board added definitions to clarify public information regarding professional activities in online platforms. The board and stakeholders had come to an impasse. With an upcoming compact there was no other administrative regulation in place addressing telehealth for social workers.

In response to a question by Co-Chair West, Ms. Rosen stated that this administrative regulation would protect social workers, the profession, and the public and would help to meet the mental health needs of Kentuckians through access to telehealth services.

In response to a question by Co-Chair West, Ms. Sanborn stated that all communication between a clinician and client, as well as all information given, would be protected under the Health Insurance Portability and Accountability Act (HIPAA) requirements. Due to language and requirement organization within this administrative regulation, non-health communications would also require the same level of protection.

In response to a question by Co-Chair West, Mr. Shannon stated that his agency was concerned with the breadth of the regulatory language, which needed to be clarified, especially regarding 9-8-8 mental health emergency hotline operators.

In response to a question by Co-Chair West, Ms. Sanborn stated that all communication between a clinician and client, as well as all information provided to and steps taken by a clinician, would be protected under HIPAA requirements, including email addresses, physical addresses, and telephone numbers. Her agency's concern was with the difficulty to implement collection and maintenance of this information for each patient on a day-to-day basis.

Senator Raque Adams stated that there seemed to be further issues that needed to be worked through with stakeholders.

In response to a question by Co-Chair West, Mr. Cecil stated that there were some misunderstandings regarding secure versus non-secure communications and that 9-8-8 would always be exempt. Mr. Kelly stated that all consent would be completed upon intake of a patient, and informed consent would be dealt with at the start of a social worker's appointments with a patient.

In response to a question by Representative Grossberg, Mr. Shannon stated that this administrative regulation did not clearly define what constituted an emergency. A definition was needed to ensure protection for workers who staffed crisis hotlines. Ms. Sanborn stated that Section 2 of this administrative regulation applied to all electronic communications with a client, either official or potential, and was going to be overburdensome.

In response to a question by Senator Raque Adams, Ms. Sanborn stated that many of the social workers affiliated with her agency did not fully understand this administrative regulation. Section 2 of this administrative regulation needed to be clarified. Mr. Cecil stated that stakeholders had not proposed specific amendment language to the board.

Senator Raque Adams requested that the board defer this administrative regulation to the February meeting of this subcommittee.

Senator Thayer strongly encouraged the board to agree to defer consideration of this administrative regulation to the February meeting of this subcommittee.

In response to a question by Representative Grossberg, Mr. Cecil stated that Ms. Sanborn had not agreed to provide specific amendment language in writing to the board, and the board needed the specific language before making decisions.

Co-Chair Lewis stated that if a deferral was requested, both agencies could meet to clarify language.

Co-Chair West stated that if a resolution could not be reached, it was

possible that this administrative regulation would be found deficient and added to Senate Bill 65 for this legislative session. If Senate Bill 65 passed, this administrative regulation would be voided. The board would then be statutorily prohibited from filing the same or a similar administrative regulation.

In response to a question by Co-Chair West, Mr. Kelly agreed to defer consideration of this administrative regulation to the February meeting of this subcommittee. Without objection, and with agreement of the agency, this administrative regulation was deferred.

A motion was made and seconded at the December 11, 2023 subcommittee meeting to approve the following amendments: to amend the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1 through 5 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

ENERGY AND ENVIRONMENT CABINET: Department for Environmental Protection: Special Waste

401 KAR 045:010. Definitions for 401 KAR Chapter 045.

401 KAR 045:020. Types of special waste permits.

401 KAR 045:025. Permit review and determination timetables.

401 KAR 045:030. Obtaining a special waste site or facility permit.

401 KAR 045:040. Modification, transfer or revocation of special waste permits.

401 KAR 045:050. Public information procedures for special waste site or facility permits.

401 KAR 045:080. Financial requirements and bonds for special waste facilities.

401 KAR 045:100. Landfarming and composting of special waste.

401 KAR 045:105. Land application of biosolids.

401 KAR 045:140. Conditions applicable to all special waste permits.

401 KAR 045:160. Surface and groundwater monitoring and corrective action for special waste sites or facilities.

401 KAR 045:250. Special waste permit fees.

Merchant Electric Generating Facilities (MEGF)

401 KAR 103:005. Definitions related to 401 KAR Chapter 103.

401 KAR 103:010. Notification and transfer procedures for merchant electric generating facilities.

401 KAR 103:020. Decommissioning standards.

401 KAR 103:030. Financial requirements.

JUSTICE AND PUBLIC SAFETY CABINET: Internal Investigations Branch: Abuse Investigation

500 KAR 013:020. Internal Investigations Branch.

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.

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Department for Community Based Services: Child Welfare

922 KAR 1:520. Supplements to per diem rates.

The subcommittee adjourned at 2:43 p.m. The next meeting of this subcommittee was tentatively scheduled for February 12, 2024, at 1 p.m. in Room 149 of the Annex.

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.

HOUSE STANDING COMMITTEE ON EDUCATION
Meeting of January 9, 2024

The House Education Committee met on January 9, 2024 and a quorum was present. The following administrative regulations were available for consideration having been referred to the Committee on January 3, 2024, pursuant to KRS 13A.290(6):

11 KAR 8:030

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

SENATE STANDING COMMITTEE ON FAMILIES AND CHILDREN
Meeting of January 11, 2024

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the January 9, 2024 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

The following administrative regulations were available for consideration and placed on the agenda of the Senate Standing Committee on Families and Children for its meeting of January 9, 2024, having been referred to the Committee on November 1, 2023, December 6, 2023, and January 3, 2023, pursuant to KRS 13A.290(6):

Referred on November 1, 2023

922 KAR 001:360E Emergency
922 KAR 001:360 Proposed
922 KAR 001:580 Proposed
922 KAR 002:245 Proposed
922 KAR 002:255 Proposed

Referred on December 6, 2023

921 KAR 001:420 Proposed

Referred on January 3, 2024

201 KAR 023:055 Proposed
902 KAR 004:120 Proposed

Committee activity in regards to review of the above-referenced administrative regulations is reflected in the minutes of the January 9, 2024 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

SENATE STANDING COMMITTEE ON HEALTH SERVICES
Meeting of January 10, 2024

The following administrative regulations were available for consideration and placed on the agenda of the Senate Standing Committee on Health Services for its meeting of January 10, 2024, having been referred to the Committee on January 3, 2024, pursuant to KRS 13A.290(6):

January 3, 2024

201 KAR 005:005 Proposed
201 KAR 020:056 Proposed
201 KAR 020:220 Proposed
201 KAR 022:053 Proposed
902 KAR 045:065 Proposed
902 KAR 045:070 Proposed
907 KAR 003:310 Proposed
907 KAR 009:010 Emergency
908 KAR 002:300 Proposed

Committee activity in regards to review of the above-referenced administrative regulations is reflected in the minutes of the January 10, 2024 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

SENATE STANDING COMMITTEE ON EDUCATION
Meeting of January 11, 2024

The Senate Standing Committee on Education met on January 11, 2024, and a quorum was present. The following administrative regulations were available for consideration having been referred to the Committee on January 3, 2024, pursuant to KRS 13A.290(6):

11 KAR 8:030

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.

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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 1/11/2024 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

SENATE STANDING COMMITTEE ON VETERANS, MILITARY AFFAIRS, AND PUBLIC PROTECTION **Meeting of January 11, 2024**

The Senate Standing Committee on Veterans, Military Affairs, and Public Protection met on January 11, 2024 and a quorum was not present. The following administrative regulations were available for consideration having been referred to the Committee on November 1, 2023, pursuant to KRS 13A.290(6):

030 KAR 010:120
030 KAR 010:110
030 KAR 010:100
030 KAR 010:090
030 KAR 010:080
030 KAR 010:070
030 KAR 010:060
030 KAR 010:050
030 KAR 010:040
030 KAR 010:030
030 KAR 010:020
030 KAR 010:010
030 KAR 006:012

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 January 11, 2024 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

HOUSE STANDING COMMITTEE ON FAMILIES AND CHILDREN **Meeting of January 11, 2024**

The following administrative regulations were available for consideration and placed on the agenda of the House Standing Committee on Families and Children for its meeting on January 11, 2024, having been referred to the Committee on November 1,

2023, December 6, 2023, and January 3, 2024, pursuant to KRS 13A.290(6):

Referred on November 1, 2023

922 KAR 001:360E Emergency
922 KAR 001:360 Proposed
922 KAR 001:580 Proposed
922 KAR 002:245 Proposed
922 KAR 002:255 Proposed

Referred on December 6, 2023

921 KAR 001:240 Proposed

Referred on January 3, 2024

201 KAR 023:055 Proposed
902 KAR 004:120 Proposed

Committee activity in regards to review of the above-referenced administrative regulations is reflected in the minutes of the January 11, 2024 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

HOUSE STANDING COMMITTEE ON HEALTH SERVICES **Meeting of January 18, 2024**

The following administrative regulations were available for consideration and placed on the agenda of the House Standing Committee on Health Services for its meeting on January 18, 2024, having been referred to the Committee on January 3, 2024, pursuant to KRS 13A.290(6):

January 3, 2024

201 KAR 005:005 Proposed
201 KAR 020:056 Proposed
201 KAR 020:220 Proposed
201 KAR 022:053 Proposed
902 KAR 045:065 Proposed
902 KAR 045:070 Proposed
907 KAR 003:310 Proposed
907 KAR 009:010 Emergency
908 KAR 002:300 Proposed

Committee activity in regards to review of the above-referenced administrative regulations is reflected in the minutes of the January 18, 2024 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

HOUSE STANDING COMMITTEE ON VETERANS, MILITARY AFFAIRS, AND PUBLIC PROTECTION **Meeting of January 23, 2024**

The House Standing Committee on Veterans, Military Affairs, and Public Protection met on January 23, 2024 and a quorum was present. The following administrative regulations were available for consideration having been referred to the Committee on November 1, 2023, pursuant to KRS 13A.290(6):

030 KAR 010:120
030 KAR 010:110
030 KAR 010:100
030 KAR 010:090
030 KAR 010:080
030 KAR 010:070
030 KAR 010:060
030 KAR 010:050
030 KAR 010:040
030 KAR 010:030
030 KAR 010:020
030 KAR 010:010
030 KAR 006:012

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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 January 23, 2024 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

H - 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

H - 12

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

H - 22

A list of administrative regulations for which certification letters have been filed pursuant to KRS 13A.3104 during this *Register* year.

Technical Amendment Index

H - 23

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

H - 24

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:			Replaced	50 Ky.R. 40	9-21-2023
* Statement of Consideration not filed by deadline			505 KAR 001:200E	49 Ky.R. 2208	5-15-2023
** Withdrawn, deferred more than twelve months (KRS 13A.300(2)(e) and 13A.315(1)(d))			Am Comments	50 Ky.R. 385	7-12-2023
*** Withdrawn before being printed in Register			Replaced	660	12-5-2023
IJC Interim Joint Committee			505 KAR 001:210E	49 Ky.R. 2211	5-15-2023
(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.			505 KAR 001:220E	49 Ky.R. 2213	5-15-2023
			701 KAR 008:010E	49 Ky.R. 984	10-13-2022
			Replaced	1924	7-5-2023
			701 KAR 008:020E	49 Ky.R. 989	10-13-2022
			Replaced	1928	7-5-2023
			701 KAR 008:030E	49 Ky.R. 998	10-13-2022
			Replaced	1167	7-5-2023
			701 KAR 008:040E	49 Ky.R. 1001	10-13-2022
			Replaced	1935	7-5-2023
			701 KAR 008:050E	49 Ky.R. 1005	10-13-2022
			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. 601	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
			Reprint	1246	12-1-2023
			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
			Expired		6-11-2023
			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
			Expired		1-8-2024
			900 KAR 006:075E	49 Ky.R. 1882	3-15-2023
			Am Comments	2257	5-11-2023
			Expired		1-8-2024
			900 KAR 006:080E	50 Ky.R. 11	5-19-2023
			Replaced	177	12-13-2023
			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	10-13-2023
			As Amended	1459	12-13-2023
			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
016 KAR 002:240E	50 Ky.R. 302	6-29-2023			
As Amended IJC	595	8-1-2023			
Replaced	1038	12-11-2023			
016 KAR 009:080E	49 Ky.R. 2200	4-26-2023			
As Amended	50 Ky.R. 596	8-8-2023			
Replaced	618	12-5-2023			
016 KAR 009:100E	49 Ky.R. 2205	4-26-2023			
As Amended	50 Ky.R. 599	8-8-2023			
Replaced	621	12-5-2023			
030 KAR 010:010E	50 Ky.R. 303	6-29-2023			
030 KAR 010:020E	50 Ky.R. 305	6-29-2023			
030 KAR 010:030E	50 Ky.R. 307	6-29-2023			
030 KAR 010:040E	50 Ky.R. 309	6-29-2023			
030 KAR 010:050E	50 Ky.R. 311	6-29-2023			
030 KAR 010:060E	50 Ky.R. 312	6-29-2023			
030 KAR 010:070E	50 Ky.R. 314	6-29-2023			
030 KAR 010:080E	50 Ky.R. 315	6-29-2023			
030 KAR 010:090E	50 Ky.R. 317	6-29-2023			
030 KAR 010:100E	50 Ky.R. 318	6-29-2023			
030 KAR 010:110E	50 Ky.R. 320	6-29-2023			
030 KAR 010:120E	50 Ky.R. 321	6-29-2023			
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			
As Amended	1651	1-8-2024			
201 KAR 023:016E	49 Ky.R. 976	10-3-2022			
Withdrawn		6-28-2023			
201 KAR 023:160E	50 Ky.R. 326	6-28-2023			
201 KAR 023:051E	49 Ky.R. 1239	11-15-2022			
Replaced	1803	7-5-2023			
202 KAR 002:020E	50 Ky.R. 329	7-5-2023			
201 KAR 036:100E	50 Ky.R. 1649	9-14-2024			
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			
Replaced	50 Ky.R. 40	10-3-2023			
505 KAR 001:140E	49 Ky.R. 1569	1-13-2023			
Am Comments	1888	3-6-2023			
As Amended	2075	4-11-2023			

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Am Comments	50 Ky.R. 14	6-13-2023	030 KAR 010:070	50 Ky.R. 502	
907 KAR 009:010E	50 Ky.R. 1017	10-4-2023	As Amended	1042	
907 KAR 020:010E	49 Ky.R. 2234	5-15-2023	030 KAR 010:080	50 Ky.R. 504	
Replaced	50 Ky.R. 695	9-27-2023	As Amended	1042	
907 KAR 020:045E	49 Ky.R. 2237	5-15-2023	030 KAR 010:090	50 Ky.R. 505	
Replaced	50 Ky.R. 697	9-27-2023	As Amended	1042	
907 KAR 020:075E	49 Ky.R. 2240	5-15-2023	030 KAR 010:100	50 Ky.R. 506	
Replaced	50 Ky.R. 698	9-27-2023	As Amended	1043	
907 KAR 020:100E	49 Ky.R. 2243	5-15-2023	030 KAR 010:110	50 Ky.R. 508	
Replaced	50 Ky.R. 700	9-27-2023	As Amended	1043	
908 KAR 002:300E	592	7-31-2023	030 KAR 010:120	50 Ky.R. 509	
Am Comments	50 Ky.R. 1030	10-12-2023	As Amended	1043	
As Amended	1546	12-13-2023	031 KAR 004:196		
Replaced	1549	1-18-2024	Amended	50 Ky.R. 717	
922 KAR 001:360E	49 Ky.R. 2248	5-15-2023	As Amended	1251	
Am Comments	50 Ky.R. 387	7-13-2023	032 KAR 001:020		
Replaced	844	1-11-2024	Amended	50 Ky.R. 73	
			As Amended	798	1-2-2024
			032 KAR 001:030		
			Amended	50 Ky.R. 74	
			As Amended	798	1-2-2024
			032 KAR 001:045		
			Repealed	50 Ky.R. 231	1-2-2024
			032 KAR 001:046	50 Ky.R. 231	
			As Amended	799	1-2-2024
			032 KAR 001:050		
			Amended	50 Ky.R. 76	
			As Amended	799	1-2-2024
			032 KAR 001:070		
			Repealed	50 Ky.R. 231	1-2-2024
			032 KAR 004:020	50 Ky.R. 232	
			032 KAR 002:020		
			Amended	50 Ky.R. 401	
			As Amended	1044	
			032 KAR 002:030		
			Amended	50 Ky.R. 403	
			As Amended	1045	
			032 KAR 002:040		
			Amended	50 Ky.R. 405	
			As Amended	1046	
			032 KAR 002:050		
			Amended	50 Ky.R. 407	
			032 KAR 002:060		
			Amended	50 Ky.R. 409	
			As Amended	1048	
			032 KAR 002:221(r)	50 Ky.R. 511	
			032 KAR 002:230	50 Ky.R. 512	
			As Amended	1049	
			040 KAR 009:010	49 Ky.R. 1707	
			As Amended	2272	7-24-2023
			040 KAR 009:020	49 Ky.R. 1709	
			As Amended	2273	7-24-2023
			045 KAR 001:030		
			Amended	49 Ky.R. 1473	7-5-2023
			045 KAR 001:040		
			Amended	49 Ky.R. 1958	
			As Amended	50 Ky.R. 19	10-3-2023
			101 KAR 001:325		
			Amended	50 Ky.R. 1736	
			101 KAR 001:365		
			Amended	50 Ky.R. 411	
			As Amended	1049	
			101 KAR 002:034		
			Amended	49 Ky.R. 1960	
			As Amended	50 Ky.R. 622	12-5-2023
			101 KAR 002:095		
			Amended	49 Ky.R. 1966	
			As Amended	50 Ky.R. 628	12-5-2023
			101 KAR 002:180		
			Repealed	49 Ky.R. 2030	12-5-2023

ORDINARY ADMINISTRATIVE REGULATIONS

011 KAR 005:001		
Amended	50 Ky.R. 66	
As Amended	1034	12-11-2023
011 KAR 008:030		
Amended	50 Ky.R. 853	
As Amended	1469	1-11-2024
011 KAR 015:040		
Amended	50 Ky.R. 69	12-11-2023
011 KAR 015:110		
Amended	50 Ky.R. 71	
As Amended	1035	12-11-2023
013 KAR 005:010	50 Ky.R. 486	
As Amended	1036	12-11-2023
013 KAR 005:020	50 Ky.R. 488	
As Amended	1037	12-11-2023
016 KAR 002:240	50 Ky.R. 490	
As Amended	1038	12-11-2023
016 KAR 004:020		
Amendment	50 Ky.R. 1560	
016 KAR 004:060		
Amended	49 Ky.R. 1810	9-5-2023
016 KAR 005:060		
Amended	50 Ky.R. 715	
016 KAR 009:080		
Amended	49 Ky.R. 2334	
As Amended	50 Ky.R. 618	12-5-2023
016 KAR 009:100		
Amended	49 Ky.R. 2339	
As Amended	50 Ky.R. 621	12-5-2023
017 KAR 003:020		
Amended	49 Ky.R. 1469	
As Amended	1898	6-21-2023
017 KAR 006:020	50 Ky.R. 984	
Am Comments	1700	
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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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	301 KAR 001:155	177.106	603 KAR 005:155
	301 KAR 001:201	177.830	603 KAR 005:155
	301 KAR 001:410	177.990	603 KAR 005:155
	301 KAR 002:020	186.018	922 KAR 002:100
	301 KAR 002:172	186.020	922 KAR 002:100
	301 KAR 002:178	186.412	601 KAR 012:080
150.730 – 150.735	302 KAR 022:150	186.4122	601 KAR 012:080
156.029	705 KAR 004:231	189.125	922 KAR 002:100
156.070	701 KAR 005:110	191.881-888	922 KAR 002:165
	702 KAR 003:340	199.8943	922 KAR 002:165
	702 KAR 007:065	194A	921 KAR 002:015
	704 KAR 003:095	194A.005	908 KAR 002:300
156.160	704 KAR 003:095	194A.705	201 KAR 020:700
156.488	704 KAR 003:095	194.540	201 KAR 020:620
156.496	922 KAR 001:565	194.705	902 KAR 020:300
156.802	705 KAR 004:231	194A.005	902 KAR 100:040
157.200	016 KAR 004:020		902 KAR 100:050
157.250	016 KAR 004:020		902 KAR 100:058
157.320	702 KAR 007:125		902 KAR 100:065
157.350	702 KAR 007:125		902 KAR 100:185
157.650	701 KAR 005:110		902 KAR 100:195
157.655	701 KAR 005:110		902 KAR 100:200
157.660	701 KAR 005:110		908 KAR 002:300
157.665	701 KAR 005:110	194A.005	922 KAR 001:140
158.030	702 KAR 007:125		922 KAR 001:495
158.070	702 KAR 007:125		922 KAR 001:565
158.070	704 KAR 003:095	194A.025	907 KAR 015:005
158.100	702 KAR 007:125	194A.050	922 KAR 002:100
158.135	922 KAR 001:495	194A.060	907 KAR 001:044
158.240	702 KAR 007:125		922 KAR 005:120
158.305	704 KAR 003:095	194A.540	201 KAR 020:215
158.441	105 KAR 001:390		201 KAR 020:225
158.645	704 KAR 003:095		201 KAR 036:030
158.6451	704 KAR 003:095	194A.700	902 KAR 020:048
158.6453	704 KAR 003:095	194A.700	902 KAR 020:036
158.6459	704 KAR 003:095	194A.705	902 KAR 020:036
158.791	704 KAR 003:095		902 KAR 020:048
159.010	702 KAR 007:125		902 KAR 020:086
159.030	702 KAR 007:125	196.030	501 KAR 016:310
	922 KAR 002:100	196.035	501 KAR 016:310
159.035	702 KAR 007:125	196.280	505 KAR 001:420
159.140	702 KAR 007:125	196.070	501 KAR 016:310
159.170	702 KAR 007:125	196.180	501 KAR 045:310
160.160	701 KAR 005:110	197.045	505 KAR 001:420
	702 KAR 003:340	198A.740 – 198A.750	202 KAR 002:020
160.380	702 KAR 007:065	199.011	922 KAR 001:145
160.445	702 KAR 007:065		922 KAR 001:360
161.020	016 KAR 004:020		922 KAR 001:495
161.020	016 KAR 002:240		922 KAR 001:565
161.028	016 KAR 004:020		922 KAR 002:100
	016 KAR 005:060	199.011	922 KAR 001:140
161.030	016 KAR 004:020	199.462	922 KAR 001:140
	016 KAR 005:060		922 KAR 001:565

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199.464	922 KAR 001:495		902 KAR 020:048
199.470 – 199.590	922 KAR 001:565		902 KAR 020:086
199.555	922 KAR 001:140		902 KAR 020:300
199.557	922 KAR 001:140	209.032	902 KAR 020:036
199.640 – 199.680	922 KAR 001:360		902 KAR 020:048
199.801	922 KAR 001:140		902 KAR 020:086
	922 KAR 001:360		902 KAR 020:300
199.894	922 KAR 002:100	210	908 KAR 002:300
199.895	922 KAR 002:100	210.366	201 KAR 036:030
199.8951	922 KAR 002:100	210.410	908 KAR 002:300
199.896	922 KAR 002:100	211.180	902 KAR 100:185
199.897	922 KAR 002:100		902 KAR 100:195
199.898	922 KAR 002:100		902 KAR 100:200
199.8982	922 KAR 002:100		902 KAR 004:120
200.080 – 200.120	505 KAR 001:100	211.185	908 KAR 002:300
	505 KAR 001:110	211.332	201 KAR 036:045
	505 KAR 001:185	211.334	201 KAR 036:045
	505 KAR 001:200	211.336	201 KAR 036:045
	505 KAR 001:240	211.338	201 KAR 036:045
	505 KAR 001:250	211.689	902 KAR 004:120
	505 KAR 001:260	211.842 – 11.852	902 KAR 100:019
	505 KAR 001:270		902 KAR 100:040
	505 KAR 001:280		902 KAR 100:050
	505 KAR 001:290		902 KAR 100:058
	505 KAR 001:300		902 KAR 100:065
	505 KAR 001:310		902 KAR 100:165
	505 KAR 001:320		902 KAR 100:185
	505 KAR 001:330		902 KAR 100:195
	505 KAR 001:340		902 KAR 100:200
	505 KAR 001:350	211.990	902 KAR 100:019
	505 KAR 001:360		902 KAR 100:040
	505 KAR 001:370		902 KAR 100:050
	505 KAR 001:380		902 KAR 100:058
	505 KAR 001:390		902 KAR 100:065
	505 KAR 001:400		902 KAR 100:165
	505 KAR 001:410		902 KAR 100:185
	505 KAR 001:420		902 KAR 100:195
202A.011	907 KAR 001:044		902 KAR 100:200
202A.011	902 KAR 020:036	212.132	105 KAR 001:148
	921 KAR 002:015	214.010	922 KAR 002:100
202A.051	922 KAR 005:070	214.036	922 KAR 002:100
202B.010	907 KAR 001:025	216.380	907 KAR 001:065
202B.100	922 KAR 005:070	216.510	201 KAR 020:700
205.140	922 KAR 005:120	216.2920	900 KAR 007:030
205.200	921 KAR 003:020		900 KAR 007:040
205.201	910 KAR 001:170	216.2925	900 KAR 007:030
205.203	910 KAR 001:170	216.2927	900 KAR 007:030
205.211	922 KAR 001:565		900 KAR 007:040
205.245	921 KAR 002:015	216.2929	900 KAR 007:040
205.455 – 205.460	910 KAR 001:170	216.510 – 216.525	902 KAR 020:036
205.510	907 KAR 015:005		902 KAR 020:048
205.520	907 KAR 001:061		902 KAR 020:086
	907 KAR 001:479		902 KAR 020:300
	907 KAR 003:066	216.530	902 KAR 020:036
	907 KAR 009:010	216.532	902 KAR 020:036
	907 KAR 013:010		902 KAR 020:048
	907 KAR 013:015		902 KAR 020:086
	907 KAR 015:090		902 KAR 020:300
205.560	907 KAR 001:479	216.535	902 KAR 020:300
205.622	907 KAR 001:044	216.537	902 KAR 020:048
205.6333	907 KAR 001:479	216.540	902 KAR 020:048
205.712 – 205.795	921 KAR 001:410		902 KAR 020:300
205.720	921 KAR 001:420	216.543	902 KAR 020:300
205.750	921 KAR 001:420	216.545	902 KAR 020:300
205.755	921 KAR 001:420	216.547	902 KAR 020:300
205.795	921 KAR 001:420	216.555 – 216.567	902 KAR 020:036
205.2005	921 KAR 003:027	216.570 – 216.597	902 KAR 020:036
205.8451	907 KAR 001:044	216.765	902 KAR 020:036
	907 KAR 001:061	216.765	921 KAR 002:015
	907 KAR 015:005	216.785 – 216.793	902 KAR 020:036
209	922 KAR 005:070	216.789	902 KAR 020:048
	922 KAR 005:120		902 KAR 020:086
209.020	921 KAR 002:015	216.793	902 KAR 020:048
209.030	902 KAR 020:036		902 KAR 020:086

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216.597	902 KAR 020:036		401 KAR 045:030
216A.080	902 KAR 020:036		401 KAR 045:040
	902 KAR 020:048		401 KAR 045:050
	902 KAR 020:086		401 KAR 045:080
216B	921 KAR 002:015		401 KAR 045:100
216B.010	902 KAR 020:036		401 KAR 045:105
216B.040	902 KAR 020:036		401 KAR 045:140
216B.042	902 KAR 020:036		401 KAR 045:160
216B.045 – 216B.130	902 KAR 020:036	224.1-010	401 KAR 045:010
216B.450	705 KAR 004:231	224.1-405	401 KAR 042:250
216B.455	705 KAR 004:231	224.10	401 KAR 042:020
216B.990	902 KAR 020:036		401 KAR 045:025
216B.010	900 KAR 006:075		401 KAR 045:030
216B.010 – 216B.130	900 KAR 006:020		401 KAR 045:040
216B.015	900 KAR 006:075		401 KAR 045:050
	900 KAR 006:080		401 KAR 045:080
	902 KAR 100:185		401 KAR 045:100
216B.020	900 KAR 006:080		401 KAR 045:105
216B.040	900 KAR 006:075		401 KAR 045:140
216B.061	900 KAR 006:080		401 KAR 045:160
216B.062	900 KAR 006:075	224.10-100	401 KAR 103:005
216B.090	900 KAR 006:075		401 KAR 103:010
216B.095	900 KAR 006:075		401 KAR 103:020
216B.115	900 KAR 006:075		401 KAR 103:030
216B.178	900 KAR 006:020	224.10-285	401 KAR 103:005
216B.455	900 KAR 006:075		401 KAR 103:010
216B.990	900 KAR 006:075		401 KAR 103:020
	900 KAR 006:080		401 KAR 103:030
217.015	201 KAR 002:225	224.10-410	401 KAR 042:250
	902 KAR 045:190E	224.10-420	401 KAR 042:250
217.015	301 KAR 001:155	224.10-430	401 KAR 042:250
217.025	902 KAR 045:190E	224.10-440	401 KAR 042:250
217.035	902 KAR 045:190E	224.10-470	401 KAR 042:250
217.037	902 KAR 045:190E	224.20-100	401 KAR 051:010
217.0	902 KAR 045:190E	224.20-110	401 KAR 051:010
217.055	201 KAR 002:076	224.20-120	401 KAR 051:010
217.065	201 KAR 002:076	224.40	401 KAR 045:020
217.177	201 KAR 016:550		401 KAR 045:025
217.215	201 KAR 002:165		401 KAR 045:030
218	915 KAR 001:100		401 KAR 045:040
218A.205	201 KAR 002:020		401 KAR 045:050
	201 KAR 002:050		401 KAR 045:080
	201 KAR 020:056		401 KAR 045:100
	201 KAR 005:005		401 KAR 045:105
218A.010	201 KAR 020:065		401 KAR 045:140
218A.170	201 KAR 020:065		401 KAR 045:160
218A.171 – 218A.172	201 KAR 020:057		401 KAR 045:250
218A.202	201 KAR 020:057	224.43-345	401 KAR 103:005
218A.205	201 KAR 008:533		401 KAR 103:010
	902 KAR 020:300		401 KAR 103:020
	201 KAR 020:057		401 KAR 103:030
	201 KAR 020:215	224.46	401 KAR 045:020
	201 KAR 002:050		401 KAR 045:040
218B	915 KAR 001:001		401 KAR 045:050
	915 KAR 001:030		401 KAR 045:080
	915 KAR 001:040		401 KAR 045:140
	915 KAR 001:050		401 KAR 045:160
	915 KAR 001:060	224.50	401 KAR 045:020
	915 KAR 001:070		401 KAR 045:025
	915 KAR 001:080		401 KAR 045:030
	915 KAR 001:090		401 KAR 045:040
	915 KAR 001:110		401 KAR 045:050
218B.010	201 KAR 020:067		401 KAR 045:080
218B.015	201 KAR 009:067		401 KAR 045:100
	201 KAR 020:067		401 KAR 045:140
218B.050	201 KAR 009:067		401 KAR 045:160
	201 KAR 020:067	224.50-760	401 KAR 045:010
218B.080	201 KAR 020:067	224.50-765	401 KAR 045:010
218B.202	201 KAR 009:067	224.60-110	401 KAR 042:250
218B.050	201 KAR 009:067	224.60-120	401 KAR 042:250
22.1-400	401 KAR 042:250	224.60-130	401 KAR 042:250
224.01	401 KAR 045:025	224.60-135	401 KAR 042:250
224.01-110	401 KAR 045:030	224.60-140	401 KAR 042:250
224.10	401 KAR 045:020	224.60-150	401 KAR 042:250

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224.70	401 KAR 045:020	230.300	810 KAR 003:010
	401 KAR 045:030	230.310	810 KAR 004:030
	401 KAR 045:105	230.320	810 KAR 004:030
224.90	401 KAR 045:090	230.811	810 KAR 003:010
224.99	401 KAR 045:020	230.817	810 KAR 003:010
	401 KAR 045:030	237.110	301 KAR 002:172
	401 KAR 045:040		921 KAR 001:410
	401 KAR 045:080	246.030	302 KAR 022:150
	401 KAR 045:105		302 KAR 045:020
	401 KAR 045:140	246.650	302 KAR 045:020
	401 KAR 045:160	246.660	302 KAR 045:020
229.011	201 KAR 027:005	246.990	302 KAR 045:020
229.021	201 KAR 027:012	247.232	302 KAR 016:020
229.025	201 KAR 027:008		302 KAR 016:030
	201 KAR 027:011	247.233	302 KAR 016:072
	201 KAR 027:016		302 KAR 016:111
229.031	201 KAR 027:005	247.234	301 KAR 001:410
	201 KAR 027:011		302 KAR 016:020
	201 KAR 027:012		302 KAR 016:030
	201 KAR 027:016		302 KAR 016:050
229.035	201 KAR 027:008	247.236	302 KAR 016:020
229.055	201 KAR 027:011		302 KAR 016:030
	201 KAR 027:016	251.355	302 KAR 033:010
229.065	201 KAR 027:008	251.375	302 KAR 033:010
229.071	201 KAR 027:012	251.380	302 KAR 033:010
229.081	201 KAR 027:012	251.470	302 KAR 033:010
229.091	201 KAR 027:012	251.990	302 KAR 033:010
229.111	201 KAR 027:005	257.020	302 KAR 022:150
	201 KAR 027:011	257.030	302 KAR 022:150
	201 KAR 027:016	257.080	201 KAR 016:701
229.131	201 KAR 027:005		302 KAR 022:150
	201 KAR 027:011	257.160	201 KAR 016:560
	201 KAR 027:016	257.990	302 KAR 022:150
229.155	201 KAR 027:005	258	201 KAR 016:550
	201 KAR 027:011	258.043	201 KAR 016:701
	201 KAR 027:016	258.065	201 KAR 016:701
229.171	201 KAR 027:005	260.020	302 KAR 045:020
	201 KAR 027:008	260.030	302 KAR 045:020
	201 KAR 027:011	260.850	902 KAR 045:190E
	201 KAR 027:012	273	922 KAR 001:580
	201 KAR 027:016	273.2	921 KAR 003:095
230	809 KAR 001:002	273.10	921 KAR 003:095
	809 KAR 010:001	278.700-716	401 KAR 103:005
	809 KAR 010:002		401 KAR 103:010
	809 KAR 010:002		401 KAR 103:020
	809 KAR 010:003		401 KAR 103:030
	809 KAR 010:003	281.010	907 KAR 003:066
	809 KAR 010:004	281.605	907 KAR 003:066
	809 KAR 010:004	281.635	907 KAR 003:066
	809 KAR 010:005	281.872	907 KAR 003:066
	809 KAR 010:006	281.875	907 KAR 003:066
	809 KAR 010:006	292.330	808 KAR 010:501
	809 KAR 010:007	292.410	808 KAR 010:501
	809 KAR 010:008	292.411	808 KAR 010:501
230.210	810 KAR 004:001	292.412	808 KAR 010:501
230.215	810 KAR 002:020	301	201 KAR 016:550
	810 KAR 002:070	302.32	921 KAR 001:420
	810 KAR 003:010	302.38	921 KAR 001:420
	810 KAR 004:010	302.51 – 302.54	921 KAR 001:420
	810 KAR 004:030	303.72	921 KAR 001:420
	810 KAR 004:040	304.1-050	806 KAR 017:290
	810 KAR 004:070		806 KAR 017:590
230.240	810 KAR 002:020	304.2-100	806 KAR 017:290
	810 KAR 004:030	304.2-230	806 KAR 017:290
230.260	810 KAR 002:020	304.2-310	806 KAR 017:290
	810 KAR 002:070	304.39-110	915 KAR 001:080
	810 KAR 002:100	304.9-020	806 KAR 009:400
	810 KAR 003:010		806 KAR 017:590
	810 KAR 004:030	304.9-055	806 KAR 017:590
	810 KAR 004:040	304.9-430	806 KAR 009:400
	810 KAR 004:070	304.9-433	806 KAR 009:400
230.280	810 KAR 003:010	304.9-435	806 KAR 009:400
230.290	810 KAR 003:010	304.9-440	806 KAR 009:400
	810 KAR 004:030	304.14-135	900 KAR 007:030

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304.17A-005	806 KAR 017:290		201 KAR 020:225
304.17A-1631	806 KAR 017:290	314.075	201 KAR 020:225
304.17A-168	806 KAR 017:290	314.085	201 KAR 020:067
304.17A-505	806 KAR 017:290		201 KAR 020:225
304.17A-535	806 KAR 017:290	314.089	201 KAR 020:067
304.17A-600	806 KAR 017:290	314.091	201 KAR 020:056
304.17A-607	806 KAR 017:290		201 KAR 020:057
304.17A-617	806 KAR 017:290		201 KAR 020:091
304.17A-621 – 304.17A-631	806 KAR 017:290		201 KAR 020:225
304.17A-732	806 KAR 017:590		201 KAR 020:370
	907 KAR 015:005	314.103	201 KAR 020:056
304.40-075	201 KAR 008:533		201 KAR 020:225
309.080	908 KAR 002:300		201 KAR 020:370
309.130	907 KAR 015:005	314.109	201 KAR 020:056
	908 KAR 002:300		201 KAR 020:225
309.460	907 KAR 003:310	314.131	201 KAR 020:220
309.462	907 KAR 003:310	314.161	201 KAR 020:056
309.464	907 KAR 003:310	314.175	201 KAR 020:056
310.021	902 KAR 020:036	314.193	201 KAR 020:057
	902 KAR 020:048	314.195	201 KAR 020:057
310.031	902 KAR 020:036	314.400 – 314.414	201 KAR 020:620
	902 KAR 020:048	314.475	201 KAR 020:370
	902 KAR 020:086		201 KAR 020:506
311	201 KAR 027:008	314.991	201 KAR 020:215
311.571	908 KAR 002:300	315.010	201 KAR 002:040
311.592	201 KAR 009:067		201 KAR 002:105
311.646	922 KAR 002:100		201 KAR 002:225
311.840	907 KAR 015:005		201 KAR 002:320
311.840 – 311.862	908 KAR 002:300		201 KAR 002:340
311A.025	202 KAR 007:410	315.020	201 KAR 002:040
311A.030	202 KAR 007:550		201 KAR 002:076
	202 KAR 007:555		201 KAR 002:205
311A.050 – 311A.100	202 KAR 007:410		201 KAR 002:225
311A.120 – 311A.135	202 KAR 007:410		201 KAR 002:320
311A.142	202 KAR 007:410		201 KAR 002:340
311A.145	202 KAR 007:030	315.035	201 KAR 002:050
311A.170	202 KAR 007:410		201 KAR 002:076
311A.180	202 KAR 007:550		201 KAR 002:225
311A.185	202 KAR 007:410		201 KAR 002:240
311A.190	202 KAR 007:410		201 KAR 002:340
	202 KAR 007:550		201 KAR 002:050
	202 KAR 007:555		902 KAR 020:048
311.595	201 KAR 009:067		902 KAR 020:086
311.599	201 KAR 009:067	315.036	201 KAR 002:320
311.720	922 KAR 001:495	315.0351	201 KAR 002:050
311.840	922 KAR 001:495		201 KAR 002:076
313.010(9)	201 KAR 008:533		201 KAR 002:205
313.030	201 KAR 008:533	315.036	201 KAR 002:050
313.254	201 KAR 005:533	315.050	201 KAR 002:020
314.011	201 KAR 020:056		201 KAR 002:040
	201 KAR 020:057		201 KAR 002:050
	201 KAR 020:065	315.060	201 KAR 002:050
	201 KAR 020:067	315.110	201 KAR 002:050
	201 KAR 020:215	315.120	201 KAR 002:050
	201 KAR 020:220	315.121	201 KAR 002:105
	902 KAR 020:036	315.191	105 KAR 001:457
	907 KAR 015:005		201 KAR 002:040
	922 KAR 002:100		201 KAR 002:050
314.011	922 KAR 001:495		201 KAR 002:076
314.041	201 KAR 020:225		201 KAR 002:205
	201 KAR 020:370		201 KAR 002:225
314.042	908 KAR 002:300		201 KAR 002:320
	201 KAR 020:057		201 KAR 002:340
	201 KAR 020:065		201 KAR 002:390
	201 KAR 020:067	315.300	201 KAR 002:205
	201 KAR 020:215	315.335	201 KAR 002:205
	201 KAR 020:225	315.350	201 KAR 002:105
	201 KAR 020:370	315.400	201 KAR 002:105
314.051	201 KAR 020:225		201 KAR 002:320
	201 KAR 020:370		201 KAR 002:390
314.071	201 KAR 020:225	315.402	201 KAR 002:050
	201 KAR 020:370		201 KAR 002:105
314.073	201 KAR 020:215	315.404	201 KAR 002:105
	201 KAR 020:220		201 KAR 002:320

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315.406	201 KAR 002:105	323A.210	201 KAR 010:080
315.408	201 KAR 002:105	325.240	201 KAR 001:200
315.410	201 KAR 002:105	325.261	201 KAR 001:190
315.4102	201 KAR 002:390	325.270	201 KAR 001:190
315.4104	201 KAR 002:390	327.040	201 KAR 022:053
315.4106	201 KAR 002:390	327.070	201 KAR 022:053
315.4108	201 KAR 002:390	327.300	201 KAR 022:170
315.4110	201 KAR 002:390	333.030	902 KAR 020:048
315.412	201 KAR 002:105	335B	201 KAR 016:560
319.050	908 KAR 002:300		201 KAR 036:070
319.053	907 KAR 015:005		201 KAR 036:072
319.056	907 KAR 015:005	335.070	201 KAR 023:055
	908 KAR 002:300	335.080	201 KAR 023:160
319.064	907 KAR 015:005		907 KAR 015:005
	908 KAR 002:300		908 KAR 002:300
319C.010	907 KAR 015:005	335.090	201 KAR 023:160
	908 KAR 002:300	335.100	201 KAR 023:160
320	809 KAR 010:001		907 KAR 015:005
320.220	201 KAR 005:005		908 KAR 002:300
320.250	201 KAR 005:005	335.158	201 KAR 023:170
320.270	201 KAR 005:005	335.300	907 KAR 015:005
321	302 KAR 022:150		908 KAR 002:300
321.175	201 KAR 016:701	335.500	907 KAR 015:005
	201 KAR 016:702		908 KAR 002:300
	201 KAR 016:750		201 KAR 036:005
321.181	201 KAR 016:701		201 KAR 036:060
	201 KAR 016:552		201 KAR 036:065
321.185	201 KAR 016:701		201 KAR 036:070
321.187	201 KAR 016:701	335.500 – 335.599	201 KAR 036:030
321.188	201 KAR 016:701	335.505	201 KAR 036:045
321.190	201 KAR 016:510		201 KAR 036:060
	201 KAR 016:512		201 KAR 036:065
	201 KAR 016:501	335.515	201 KAR 036:072
	201 KAR 016:051		201 KAR 036:090
	201 KAR 016:702	335.525	201 KAR 036:060
	201 KAR 016:750		201 KAR 036:065
321.193	201 KAR 016:702		201 KAR 036:070
	201 KAR 016:510	335.527	201 KAR 036:070
321.200	201 KAR 016:701	335.535	201 KAR 036:005
	201 KAR 016:514		201 KAR 036:072
321.201	201 KAR 016:510		201 KAR 036:075
321.211	201 KAR 016:510		201 KAR 036:535
	201 KAR 016:510	335.540	201 KAR 036:040
321.207	201 KAR 016:514		201 KAR 036:050
	201 KAR 016:550	335.545	201 KAR 036:050
	201 KAR 016:552		201 KAR 036:090
	201 KAR 016:560		201 KAR 036:090
321.208	201 KAR 016:514	335.560	201 KAR 036:100E
321.235	201 KAR 016:512		201 KAR 036:100
	201 KAR 016:516	342.640	902 KAR 020:500
	201 KAR 016:552	344.010	104 KAR 001:080
	201 KAR 016:510	344.010 – 344.500	104 KAR 001:050
	201 KAR 016:514	344.030	101 KAR 001:365
321.351	201 KAR 016:550	344.040	104 KAR 001:040
	201 KAR 016:552	344.050	104 KAR 001:040
	201 KAR 016:560		104 KAR 001:100
321.441	201 KAR 016:702	344.060	104 KAR 001:040
	201 KAR 016:750		104 KAR 001:100
	201 KAR 016:512	344.070	104 KAR 001:040
321.442	201 KAR 016:512	344.120	104 KAR 001:100
321.443	201 KAR 016:702	344.130	104 KAR 001:100
	201 KAR 016:750	344.190	104 KAR 001:010
323A.040	201 KAR 010:040	344.360 – 344.385	104 KAR 001:080
	201 KAR 010:050	344.500	104 KAR 001:100
323A.050	201 KAR 010:040	344.600 – 344.680	104 KAR 001:080
	201 KAR 010:050	344.990	104 KAR 001:050
323A.060	201 KAR 010:040	363.610	302 KAR 045:020
	201 KAR 010:050	363.900 – 363.908	302 KAR 016:071
323A.070	201 KAR 010:040	369.101 – 369.120	907 KAR 001:044
	201 KAR 010:050	387	922 KAR 001:565
323A.080	201 KAR 010:070	387.010	902 KAR 045:065
323A.100	201 KAR 010:050		905 KAR 045:070
	201 KAR 010:080	387.025	922 KAR 001:140
323A.110	201 KAR 010:030	387.540	922 KAR 005:070

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400.203	907 KAR 001:044	620.020	922 KAR 001:565
403.270 – 403.355	922 KAR 001:145	620.020	922 KAR 002:100
	922 KAR 001:565		922 KAR 001:580
405.024	922 KAR 001:565	620.030	902 KAR 020:086
405.060	921 KAR 001:410		922 KAR 002:100
405.520	921 KAR 001:420	620.045	922 KAR 001:580
407.5101	921 KAR 001:420	620.050	922 KAR 001:580
415.208	907 KAR 001:044	620.060	922 KAR 001:140
422.317	907 KAR 001:044	620.090	922 KAR 001:140
424.57	907 KAR 001:479		922 KAR 001:145
424.260	702 KAR 003:340		922 KAR 001:565
431	907 KAR 001:044	620.140	922 KAR 001:140
431.17	907 KAR 001:044		922 KAR 001:145
431.52	907 KAR 001:044		922 KAR 001:565
431.213 – 431.270	501 KAR 045:310	620.142	922 KAR 001:565
434.840 – 434.860	907 KAR 001:044	620.170	922 KAR 001:145
438.305	902 KAR 045:190E		922 KAR 001:565
439.265	505 KAR 001:420	625.040	922 KAR 001:140
439.267	505 KAR 001:420	625.090	922 KAR 001:140
439.600	505 KAR 001:310	7 C.F.R.	921 KAR 003:020
440.70	907 KAR 001:479		921 KAR 003:095
440.230	907 KAR 001:479		921 KAR 003:027
446.440	202 KAR 007:410		921 KAR 003:100
514	921 KAR 002:015		922 KAR 002:100
508.125	902 KAR 045:070	9 C.F.R.	302 KAR 022:150
527.070	922 KAR 002:100	10 C.F.R.	902 KAR 100:040
527.100	922 KAR 001:140		902 KAR 100:050
	922 KAR 001:565		902 KAR 100:058
527.110	922 KAR 001:140		902 KAR 100:065
	922 KAR 001:565		902 KAR 100:165
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	505 KAR 001:110		902 KAR 100:195
	505 KAR 001:185		902 KAR 100:200
	505 KAR 001:200	16 C.F.R.	302 KAR 016:071
	505 KAR 001:240		922 KAR 002:100
	505 KAR 001:250	20 C.F.R.	921 KAR 002:015
	505 KAR 001:260	21 C.F.R.	105 KAR 001:457
	505 KAR 001:270		902 KAR 020:036
	505 KAR 001:280		902 KAR 020:048
	505 KAR 001:290		902 KAR 020:086
	505 KAR 001:300	26 C.F.R.	105 KAR 001:390
	505 KAR 001:310	28 C.F.R.	104 KAR 001:100
	505 KAR 001:320		902 KAR 045:065
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	505 KAR 001:340	29 C.F.R.	104 KAR 001:040
	505 KAR 001:350		104 KAR 001:050
	505 KAR 001:360		202 KAR 007:550
	505 KAR 001:370		202 KAR 007:555
	505 KAR 001:380		902 KAR 020:048
	505 KAR 001:390		902 KAR 020:086
	505 KAR 001:400		902 KAR 045:065
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	505 KAR 001:420		902 KAR 020:086
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	922 KAR 001:145	31 C.F.R.	921 KAR 001:410
	922 KAR 001:360	34 C.F.R.	016 KAR 004:020
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	922 KAR 001:565		401 KAR 042:250
	922 KAR 001:580		401 KAR 051:010
605.100	922 KAR 001:145	42 C.F.R.	902 KAR 020:086
605.110	505 KAR 001:260		902 KAR 020:300
605.120	922 KAR 001:565		907 KAR 001:025
605.130	922 KAR 001:145		907 KAR 001:044
610.110	922 KAR 001:140		907 KAR 001:065
	922 KAR 001:565		907 KAR 001:479
610.110	922 KAR 001:145		907 KAR 003:066
610.125	922 KAR 001:140		907 KAR 015:005
	922 KAR 001:145	45 C.F.R.	902 KAR 020:048
610.127	922 KAR 001:140		902 KAR 020:086
620.020	201 KAR 020:215		907 KAR 001:044
	201 KAR 020:620		907 KAR 001:061
	922 KAR 001:360		907 KAR 001:479
	922 KAR 002:100		921 KAR 001:410
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	921 KAR 003:027		922 KAR 001:565
	922 KAR 001:140	Ky Acts ch. 78 (2023)	902 KAR 045:190E
	922 KAR 001:145	Ky Acts ch. 172	030 KAR 010:010
49 C.F.R.	922 KAR 002:100		030 KAR 010:020
50 C.F.R.	922 KAR 002:100		030 KAR 010:030
	302 KAR 045:020		030 KAR 010:040
7 U.S.C.	401 KAR 045:030		030 KAR 010:050
	921 KAR 003:020		030 KAR 010:060
	401 KAR 045:100		030 KAR 010:070
10 U.S.C.	921 KAR 003:027		030 KAR 010:080
15 U.S.C.	106 KAR 004:020		030 KAR 010:090
	201 KAR 027:008		030 KAR 010:100
	201 KAR 027:011		030 KAR 010:110
16 U.S.C.	921 KAR 001:410		030 KAR 010:120
20 U.S.C.	401 KAR 045:030	Ky Acts ch 173 (2005)	907 KAR 001:061
	016 KAR 004:020	Ky Acts ch 335	401 KAR 045:080
	705 KAR 004:231		
	702 KAR 007:065		
	921 KAR 003:027		
21 U.S.C.	922 KAR 002:100		
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	201 KAR 002:076		
25 U.S.C.	921 KAR 003:027		
26 U.S.C.	922 KAR 001:140		
	105 KAR 001:390		
	105 KAR 001:457		
	301 KAR 005:200		
29 U.S.C.	908 KAR 001:410		
	907 KAR 015:005		
	921 KAR 003:020		
38 U.S.C.	921 KAR 003:020		
42 U.S.C.	104 KAR 001:040		
	401 KAR 051:010		
	705 KAR 004:231		
	902 KAR 020:048		
	902 KAR 020:086		
	902 KAR 100:040		
	902 KAR 100:050		
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	902 KAR 100:195		
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	907 KAR 001:061		
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	907 KAR 003:066		
	908 KAR 001:410		
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42 U.S.C.	922 KAR 001:140		
42 U.S.C.	601 KAR 012:080		
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42 U.S.C.	201 KAR 020:065		
42 U.S.C.	907 KAR 015:090		
42 U.S.C.	907 KAR 015:090		
42 U.S.C.	922 KAR 005:120		
42 U.S.C.	922 KAR 005:120		
42 U.S.C.	922 KAR 001:140		
42 U.S.C.	922 KAR 001:140		
42 U.S.C.	910 KAR 001:170		
42 U.S.C.	921 KAR 002:215		
42 U.S.C.	922 KAR 001:565		
42 U.S.C.	922 KAR 001:565		
42 U.S.C.	922 KAR 001:495		
42 U.S.C.	922 KAR 001:145		
	922 KAR 001:565		
42 U.S.C.	922 KAR 001:495		

CERTIFICATION LETTER SUMMARIES

The certification process is established in KRS 13A.3104. If the certification letter states the regulation shall be amended, the administrative body shall file an amendment to the regulation within 18 months of the date the certification letter was filed. If the certification letter states that the regulation shall Remain in Effect, As Is, the last effective date of the regulation is changed to the date the regulations compiler received the letter.

* KRS 13A.010(6) - "Effective" or "eff." means that an administrative regulation has completed the legislative review process established by KRS 13A.290, 13A.330, and 13A.331.

Regulation Number	Letter Filed Date	Action
002 KAR 002:010	06-27-2023	Remain in Effect, As Is
002 KAR 002:020	06-27-2023	Remain in Effect, As Is
002 KAR 002:040	06-27-2023	Remain in Effect, As Is
002 KAR 002:050	06-27-2023	Remain in Effect, As Is
002 KAR 002:060	06-27-2023	Remain in Effect, As Is
002 KAR 002:070	06-27-2023	Remain in Effect, As Is
013 KAR 002:060	11-20-2023	Remain in Effect, As Is
103 KAR 008:160	11-13-2023	Remain in Effect, As Is
106 KAR 001:131	12-01-2023	To be Am; Filing deadline 06-01-2025
200 KAR 005:355	12-18-2023	Remain in Effect, As Is
201 KAR 002:045	11-6-2023	To be Am; filing deadline 05-06-2025
201 KAR 020:520	07-17-2023	Remain in Effect, As Is
201 KAR 023:055	09-06-2023	To be Am, going through now 9-6-2023
201 KAR 036:020	12-20-2023	Remain in Effect, As Is
201 KAR 036:055	12-21-2023	Remain in Effect, As Is
201 KAR 043:110	10-07-2023	Remain in Effect, As Is
201 KAR 046:090	11-08-2023	Remain in Effect, As Is
201 KAR 047:020	12-20-2023	Remain in Effect, As Is
301 KAR 002:122	07-14-2023	To be Am, filing deadline 01-04-2025
301 KAR 005:040	08-03-2023	To be Am, filing deadline 02-03-2025
302 KAR 017:010	01-22-2024	Remain in Effect, As Is
302 KAR 039:020	01-22-2024	Remain in Effect, As Is
705 KAR 004:231	10-11-2023	To be Am, going through now 10-11-2023
780 KAR 007:060	08-07-2023	Remain in Effect, As Is
803 KAR 002:307	08-31-2023	Remain in Effect, As Is
803 KAR 002:318	08-31-2023	Remain in Effect, As Is
803 KAR 002:412	01-05-2024	Remain in Effect, As Is
803 KAR 002:421	08-31-2023	Remain in Effect, As Is
806 KAR 018:020	06-13-2023	Remain in Effect, As Is
902 KAR 002:060	08-10-2023	Remain in Effect, As Is
902 KAR 010:085	08-10-2023	Remain in Effect, As Is
902 KAR 021:030	08-10-2023	Remain in Effect, As Is
902 KAR 100:080	06-12-2023	Remain in Effect, As Is
902 KAR 100:085	06-12-2023	Remain in Effect, As Is
921 KAR 002:040	01-16-2024	Remain in Effect, As Is
921 KAR 001:001	01-16-2024	Remain in Effect, As Is
921 KAR 001:410	10-11-2023	To be Am; in process, filed 10-9-2023
921 KAR 001:420	10-11-2023	To be Am, in process, filed 8-14-2023
922 KAR 002:020	06-19-2023	To be Am, filing deadline 12-19-2024

TECHNICAL AMENDMENT INDEX

The Technical Amendment Index is a list of administrative regulations that have had technical, nonsubstantive amendments made during the 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).

Regulation Number	Date Corrected	Regulation Number	Date Corrected
201 KAR 020:360	11-21-2023		
201 KAR 020:390	11-21-2023		
201 KAR 020:411	11-21-2023		
201 KAR 020:472	11-21-2023		
201 KAR 020:476	11-21-2023		
201 KAR 020:490	11-21-2023		
201 KAR 020:506	11-21-2023		
201 KAR 020:600	11-21-2023		
201 KAR 020:620	11-21-2023		
201 KAR 020:660	11-21-2023		
201 KAR 020:670	11-21-2023		
703 KAR 005:240	07-20-2023		
705 KAR 004:041	08-23-2023		
806 KAR 009:025	08-11-2023		
806 KAR 012:140	06-20-2023		
900 KAR 006:125	08-29-2023		

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Applied Behavior Analysis; 201 KAR Chapter 043
Architects; 201 KAR Chapter 019
Barbering; 201 KAR Chapter 014
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Dentistry; 201 KAR Chapter 008
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