



# ADMINISTRATIVE REGISTER OF KENTUCKY

The submission deadline for this edition of the *Administrative Register of Kentucky* was noon February 15, 2024.

## MEETING NOTICES

[Administrative Regulation Review Subcommittee](#) - tentatively scheduled to meet on March 11, 2024, at 1:00 p.m. in room 149 Capitol Annex.

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

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

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all of the administrative regulations that may be removed to complete the public comment process or deferred or withdrawn by promulgating agencies.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



**Administrative Regulation Review Subcommittee  
TENTATIVE Meeting Agenda  
MONDAY, March 11, 2024 at 1 p.m.  
Annex Room 149**



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

**EDUCATION AND LABOR CABINET**

**Education Professional Standards Board  
Certification Procedures**

016 KAR 004:020. Certification requirements for teachers of exceptional children.

**OFFICE OF THE GOVERNOR**

**Department of Veterans' Affairs  
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017 KAR 006:020. Kentucky Women Veterans Program and coordinating committee, administrative procedures. (Amended After Comments) (Deferred from February)

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

**KENTUCKY COMMISSION ON HUMAN RIGHTS**

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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  
General Rules**

105 KAR 001:390. Employment after retirement.

105 KAR 001:455. In line of duty Hazardous Retirement Disability Benefits.

105 KAR 001:470. Agency communications.

**GENERAL GOVERNMENT CABINET**

**Department of Military Affairs  
Military Burial Honors Program**

106 KAR 001:131. Kentucky Emergency Response Commission civil penalty assessment and hearings procedure.

**BOARDS AND COMMISSIONS**

**State Board of Accountancy**

201 KAR 001:200. Board of Accountancy Scholarship Funding.

**Board of Social Work**

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

**Board of Licensed Professional Counselors**

201 KAR 036:100E. Counseling compact. (Filed with Ordinary) ("E" expires 09-08-2024)

**TOURISM, ARTS AND HERITAGE CABINET**

**Department of Fish and Wildlife Resources  
Fish**

301 KAR 001:155. Commercial Fishing requirements.

**GENERAL GOVERNMENT CABINET**

**Department of Agriculture  
Ginseng**

302 KAR 045:020. Ginseng Growers Pilot Program.

**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)
- 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. (Amended After Comments)
- 401 KAR 103:010. Notification and transfer procedures for merchant electric generating facilities. (Amended After Comments)
- 401 KAR 103:020. Decommissioning standards. (Amended After Comments)
- 401 KAR 103:030. Financial requirements. (Amended After Comments)

**JUSTICE AND PUBLIC SAFETY CABINET**

**Internal Investigations Branch**

**Abuse Investigation**

- 500 KAR 013:020. Internal Investigations Branch. (Amended After Comments) (Deferred from February)

**TRANSPORTATION**

**Department of Vehicle Regulation**

**Driver's License**

- 601 KAR 012:080. Drivers license or personal ID renewal or replacement for persons without an established and fixed nighttime residence.

**EDUCATION AND LABOR CABINET**

**Department of Education**

**Office of Instruction**

- 704 KAR 003:095. The use of a multitiered system of supports.

**CABINET FOR HEALTH AND FAMILY SERVICES**

**Office of Inspector General**

**Health Services and Facilities**

- 902 KAR 020:036. Operation and services; personal care homes.

**Department of Medicaid Services**

**Medicaid Services**

- 907 KAR 001:044. Coverage provisions and requirements regarding community mental health center behavioral health services. (Amended After Comments)
- 907 KAR 001:061. Payments for ambulance transportation. (Deferred from February)

**Behavioral Health**

- 907 KAR 015:005. Definitions for 907 KAR Chapter 015. (Amended After Comments)
- 907 KAR 015:090. Crisis continuum services provided or mediated by an administrative service organization.

**Department for Aging and Independent Living**

**Aging Services**

- 910 KAR 001:170. Older Americans Act supportive services for the elderly

**Department for Community Based Services**

**K-TAP, Kentucky Works, Welfare to Work, State Supplementation**

- 921 KAR 002:015. Supplemental programs for persons who are aged, blind, or have a disability.

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- 922 KAR 001:145. Subsidized permanent custody.
- 922 KAR 001:495. Training requirements for foster parents, adoptive parents, and respite care providers for children in the custody of the cabinet.
- 922 KAR 001:565. Service array for a relative or fictive kin caregiver.

**Adult Services**

922 KAR 005:070. Adult protective services.

922 KAR 005:120. Vulnerable adult maltreatment registry and appeals.

**3. REGULATIONS REMOVED FROM MARCH'S AGENDA**

**CABINET FOR HEALTH AND FAMILY SERVICES**

**Office of Data Analytics**

**Data Reporting and Public Use Data Sets**

900 KAR 007:030. Data reporting by health care providers. (Comments Received; SOC ext. due 03-15-2024)

900 KAR 007:040. Release of public data sets for health facility and services data. (Comments Received; SOC ext. due 03-15-2024)

**Office of Inspector General**

**Health Services and Facilities**

902 KAR 020:048. Operation and services; nursing homes. (Comments Received; SOC ext. due 03-15-2024)

902 KAR 020:086. Operation and services; intermediate care facilities for individuals with intellectual disabilities. (Comments Received; SOC ext. due 03-15-2024)

**Payment and Services**

907 KAR 003:066. Nonemergency medical transportation waiver services and payments. (Comments Received; SOC ext. due 03-15-2024)

**Department for Behavioral Health, Developmental and Intellectual Disabilities**

**Substance Abuse**

908 KAR 001:410. Recovery housing. (Comments Received; SOC ext. due 03-15-2024)

*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.*

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Meeting materials may be accessed online at <https://apps.legislature.ky.gov/CommitteeDocuments/3/>

Kentucky Education Television (KET) provides coverage of legislative meetings (<https://www.ket.org/legislature>) and if a scheduling conflict arises, proceedings will livestream on the following site: <https://legislature.ky.gov/Public%20Services/PIO/Pages/Live-Streams.aspx>

**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.



**VOLUME 50, NUMBER 8— FEBRUARY 1, 2024**

**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.

**NONE**

**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.

**NONE**

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, February 12, 2024)

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 16.505~~[16.510]~~ to 16.652, 61.505, 61.510 to 61.705, and 78.510 to 78.852. [KRS 61.645(9)(e)] authorizes the Board of Trustees of Kentucky Retirement Systems to promulgate all administrative regulations necessary or proper in order to carry out the provisions of KRS 61.515 to 61.705, 16.510 to 16.652, and 78.520 to 78.852.] KRS 61.645(16) and 78.782(16) provide[provides] that an affected person aggrieved by a decision of the agency[system], which is not a determination relating to disability retirement benefits, or an employer that is required to pay additional actuarial costs pursuant to KRS 61.598 and 78.545, may have the right to request an administrative hearing prior to the filing of an appeal in court. KRS 61.615(3), 61.665(3), 78.545, and 78.5528(3) provide that an affected person whose disability retirement benefits have been denied, reduced, discontinued, or denied for reinstatement may have the right to request an administrative hearing prior to filing of an appeal in court. This administrative regulation establishes the administrative appeal procedures.

Section 1. Definitions.[Definition-]

(1) "Administrative hearing" or "hearing" is defined by KRS 13B.010(2).

(2) "Administrative record" means the official record of hearing as defined by KRS 13B.130.

(3) "Affected person" means a member, retired member, beneficiary, or recipient[as defined in KRS 16.505, 61.510 and 78.510].

(4) "Agency portal" means an online portal which stores and tracks relevant information related to an administrative hearing held in accordance with KRS Chapter 13B, including:

(a) The evidentiary record;

(b) Notices of scheduled pretrial conferences, status conferences, or hearings; and

(c) Reports, findings, briefs, position statements, reply position statements, exceptions, and orders.

(5) "Authorized agency staff" means employees of the agency who are approved parties to access the agency portal.

(6) "Briefing order" means an order issued by the hearing officer that provides deadlines for the parties to file any of the following:

(a) Position statements and reply position statements; or

(b) Briefs containing procedural, factual, or legal arguments.

(7) "Claimant" means an affected person who has filed an appeal due to a substantial impairment or an employer that is required to pay additional actuarial costs pursuant to KRS 61.598 and 78.545, and whose matter is still pending at the administrative or appellate court levels.

(8) "Entry of appearance" means a written statement filed at the retirement office attesting that a claimant is represented by an attorney in an administrative hearing process held in accordance with KRS Chapter 13B.

(9) "Evidentiary record" means all evidence, including video recordings of the administrative hearing, received and considered by the agency pertaining to a specific claimant's administrative hearing held in accordance with KRS Chapter 13B.

(10) "Final order" is defined by KRS 13B.010(6).

(11) "Hearing officer" is defined by KRS 13B.010(7).

(12) "Informal settlement" means a submission to the agency by either party that concludes~~[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~~ to explain a party's~~[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~~ to explain a party's~~[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 requires 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 (1) 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 ~~shall not be an~~~~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 if/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) ~~Each request~~~~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) An informal settlement[settlements] pursuant to KRS 13B.070(3) is an optional way to settle an appeal. Informal settlements shall[may] only be used if:**

**1. The issue or issues[issue(s)] that prompted the administrative hearing have[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) shall[may] only be filed and valid if it occurs;**

**[(a)/1.] After a request for administrative hearing has been filed in compliance with Section 5 of this administrative regulation; and**

**[(b)/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 as provided in subsection (5)(b) of this section is:

(a) 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; or/;

(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 not 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.] 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 conference[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 11/10(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 14/13 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 shall[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, or/ 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 ~~14~~~~[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 and 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 (1) 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](http://kyret.ky.gov).

FILED WITH LRC: February 12, 2024

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**BOARDS AND COMMISSIONS**  
**Board of Accountancy**  
**(As Amended at ARRS, February 12, 2024)**

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

RELATES TO: KRS 325.261, 325.270[~~325.261~~]

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

NECESSITY, FUNCTION, AND CONFORMITY: KRS 325.240(2) authorizes the board to promulgate administrative regulations to administer KRS Chapter 325. KRS 325.270(1) and (2) require the board to authorize examinations for individuals seeking to become certified public accountants and authorize the board to, by administrative regulation, promulgate standards and fees governing all examination policies and procedures. KRS 325.261(4) requires passage of an examination prior to a person becoming licensed as a certified public accountant and for the board to determine the subjects to be included on the examination. This administrative regulation establishes the subjects, also referred to as sections, to be included on the examination, and the procedures and fees associated with the administration of the examination.

**Section 1. Definitions.**

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

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

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

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

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

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

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

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

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

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

(b) Contains an authorizing signature or seal.

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

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

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

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

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

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

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

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

(4) If an exam candidate initially receives a passing score on a section of the Uniform CPA Examination, the candidate shall have a thirty (30)[an eighteen (18)] month period in which to obtain a passing score on the remaining sections of the examination. The thirty (30)[eighteen (18)] month period shall begin on the date that the first passing score is released by NASBA and concludes on the date the candidate sits for the final test section passed, regardless of when the score for that final test section is released.

(a) Failure to receive a passing score on the remaining sections of the examination within the thirty (30)[eighteen (18)] months shall result in the expiration of the initial passing score, but not other sections passed during that thirty (30)[eighteen (18)] month period.

(b) All sections of the examination shall be passed during a thirty (30)[an eighteen (18)] month time period for the candidate to be considered to have passed the examination.

(5) One (1) request to extend the time to retain passing scores beyond the time restrictions contained in this section shall be granted to a candidate. The extension shall expire the last day of the calendar quarter from the date the candidate sat for the exam section. Additional extensions may be granted by the board, for good cause, upon a showing of circumstances beyond the candidate's control.

**Section 4. Initial Examination Applicants.**

(1) Initial examination application process.

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

(b) The applicant shall:

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

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

b. A criminal record check report from the Kentucky Administrative Office of the Courts, CourtNet Disposition System that

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

c. A letter of explanation;

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

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

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

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

c. An explanation of the circumstances; and

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

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

1. A diagnosis of the disability; and

2. Recommendation for the specific accommodations.

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

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

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

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

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

(2) Educational requirements.

(a) Educational requirements shall be completed at:

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

a. Middle States Association of Colleges and Schools;

b. North Central Association of Colleges and Schools;

c. New England Association of Schools and Colleges;

d. Northwest Association of Schools, Colleges and Universities;

e. Southern Association of Colleges and Schools; or

f. Western Association of Schools and Colleges; or

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

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

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

1. That the foreign degree is equivalent to a baccalaureate or master's degree earned in an accredited United States college or university as established in KRS 325.261 and this administrative regulation;

2. That the applicant had a major or concentration in accounting;

3. The title of all courses completed by the applicant outside of the United States; and

4. The amount of credit awarded to the applicant for each course.

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

(3)

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

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

#### Section 5.

(1)

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

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

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

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

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

(4)

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

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

(c) A notice to schedule that is not expired may be extended if a candidate describes in writing that the extension is necessary due to an emergency or a serious illness that will prohibit the candidate from sitting for a section of the exam prior to the conclusion of the six (6) month time period.

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

(5)

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

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

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

#### Section 6. Examination Rules of Conduct.

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

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



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

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

(5) An examination candidate shall not:

(a) Use written materials or mechanical aids inside or outside the examination room during the course of the examination;

(b) Communicate with any person, other than the testing center staff, inside or outside the examination room, during the course of the examination;

(c) Copy answers or allows his or her answers to be copied;

(d) Substitute an individual in his or her place;

(e) Disclose in any manner any information concerning the examination questions or content;

(f) Falsify or misrepresent educational credentials or other information required for admission to the examination; or

(g) Fail to follow written or announced examination administration procedures.

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

(1) Further participation in that particular examination section;

(2) Receiving grades after sitting for any examination; or

(3) Sitting for subsequent examinations.

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

Section 9. Reexam Applicants.

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

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

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

(4)

(a) The applicant shall:

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

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

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

c. A letter of explanation; and

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

a. A diagnosis of the disability; and

b. Recommendation for the specific accommodations.

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

(5)

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

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

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

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

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

Section 10. Examination Grades. Kentucky exam candidates shall receive their scores via the NASBA Web site: [Nasba.org](http://Nasba.org).

Section 11. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Application for the Uniform CPA Examination", 2023;

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

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

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

FILED WITH LRC: February 12, 2024

CONTACT PERSON: Joseph P. Donohue, Executive Director, Kentucky State Board of Accountancy, 332 W. Broadway, Suite 310, Louisville, Kentucky 40202, phone (502) 595-3037, email [joep.donohue@ky.gov](mailto:joep.donohue@ky.gov).

## BOARDS AND COMMISSIONS

### Kentucky Board of Medical Licensure (As Amended at ARRS, February 12, 2024)

#### 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~~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 shall not~~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, and indications of cannabis use disorder.

(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, and indications of cannabis use disorder.

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 committed 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 recommend~~[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~~[practitioner's]~~ has reason to believe that the patient or a caregiver is abusing or diverting medicinal cannabis; or

4. The patient is deceased.

(g) If the medicinal cannabis practitioner is unable to conform to the 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's~~[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", 09/2023; and

(b) "Renewal 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 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>.

FILED WITH LRC: February 12, 2024

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**BOARDS AND COMMISSIONS**  
**Board of Nursing**  
**(As Amended at ARRS, February 12, 2024)**

**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), 314.039, 314.042, 314.091, 314.193(2), 314.195, 314.475

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 (APRN) 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 member" 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 shall[~~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 the discussions; and

3. Any recommendations made that 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[form]~~.

(c) An APRN shall use the Standardized CAPA-CS Agreement 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 as established in paragraph (e) of this subsection ~~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 as established in paragraph (e) of this subsection ~~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 as established in paragraph (e) of this subsection ~~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) Each notification, rescission[All notifications, rescissions], and exemption request~~requests~~ shall be submitted by the APRN to the board via the online KBN Nurse Portal at [www.kbn.ky.gov](http://www.kbn.ky.gov), and shall include the information and documentation required by subsection[subsections] (1) and (2) ~~of this section and this subsection~~.

(f) Upon request by the board, the APRN shall furnish to the board a copy of the executed CAPA-NS Agreement ~~Form~~ 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 on the board's Web site[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 ~~the~~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 Chapter 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:~~if~~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 Member 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 member 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 14.] 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) "~~AACN/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].

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**BOARDS AND COMMISSIONS**

**Board of Nursing**

(As Amended at ARRS, February 12, 2024)

**201 KAR 20:067. Professional standards for medicinal cannabis.**

RELATES TO: KRS 211.332, 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. KRS 218B.050(10) requires the board to promulgate administrative regulations to establish the procedures, process, and conditions for authorization to provide written certifications, continuing education requirements for medical cannabis practitioners, and minimal standards of care. This administrative regulation establishes the professional standards for an APRN[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" is defined by KRS 218B.010(2)[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) "Immediate family member" is defined by 201 KAR 20:057, Section 1(5).

~~(8)~~ "Medicinal cannabis" is defined by KRS 218B.010(15).

~~(9)[(8)]~~ "Medicinal cannabis practitioner" means an APRN who is holds an authorization under this administrative regulation.

~~(10)[(9)]~~ "Minor" is defined by KRS 218B.010(19)[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) "Qualified patient" is defined by KRS 218B.010(25)[ "Qualifying medical condition" is defined by KRS 218B.010(26)].

~~(13) "Qualifying medical condition" is defined by KRS 218B.010(26)[ "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. The procedures and standards established in this administrative regulation shall[does] not apply to an APRN who recommends treatment with cannabis or a drug derived from cannabis in accordance with KRS 218B.050(11) 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 to provide written certifications.

(1) An APRN applicant for an authorization pursuant to KRS 218B.050 shall [meet the following requirements]:

(a) Hold[Has] an active, unrestricted Kentucky license as an APRN that is in good standing;

(b) Have[Has] a valid DEA registration and a current registration certificate is on file with the board;

(c) Have[Has] an active account with the PDMP with[,] a current PDMP registration certificate [is] on file with the board;

(d) Have[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) Have[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) Have[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) Have[The applicant has] completed the continuing education requirements in Section 6 of this administrative regulation; and[.]

(h) Have[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 or renewal application for authorization to provide written certifications.

(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; Initial Application or Renewal Application;

(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; and[.]

(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 in writing 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 shall[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, either the Initial Application or Renewal Application, shall follow the periods for length and renewal in accordance with 201 KAR 20:085, Sections 1 and 2.

(6) An applicant shall not withdraw an Initial or Renewal Application for Authorization to Provide Written Certifications for the Use of Medicinal Cannabis without the approval of the board.

(7) All supporting documentation required under this section shall be submitted via the KBN Nurse Portal at https://kbn.ky.gov.

Section 5. Renewal and Lapse 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; ~~and~~
- (d) Indications of cannabis use disorder.

(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 ~~or~~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 qualified patient with a written certification after the APRN has complied with the requirements established by KRS 218B.050(4):

~~(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 pursuant to KRS 218B.050(5) ~~[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) An APRN shall comply with the written certification requirements established in KRS 218B.050(6) [(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 subsection~~[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 qualified patient's qualifying medical condition; and

l. If the patient has been previously diagnosed with a qualifying medical condition by another health care [healthcare] provider pursuant to KRS 218B.050[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 maintains~~[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) The APRN documents~~[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) The APRN obtains~~[Obtain]~~ and reviews~~[review]~~ a PDMP report for that patient for the twelve (12) month period immediately preceding the initial patient encounter and appropriately utilizes~~[utilize]~~ that information in the evaluation and treatment of the patient;

(vi) The APRN explains~~[Explain]~~ treatment alternatives, the risks, and the benefits of medicinal cannabis with the patient;

(vii) The APRN obtains~~[Obtain]~~ written informed consent from the patient for treatment;

(viii) The APRN discusses~~[Discuss]~~ and documents~~[document]~~ the patient's treatment with the patient's other providers; and

(ix) ~~[[#]]~~The patient is a female of childbearing potential and age, and meets~~[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 qualified patient.

(b) The qualified 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 qualified 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 qualified patient, including physical examinations relevant to the qualified 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 qualified 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. or ~~[-]~~

(d) The qualified 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) ~~(a) "[Application for]~~ Authorization to Provide Written Certifications for the Use of Medicinal Cannabis Initial Application", 01/2024; and

(b) "Authorization to Provide Written Certifications for the Use of Medicinal Cannabis-Renewal Application", 01/2024[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/document-library/Pages/default.aspx>[<https://kbn.ky.gov/General/Pages/Document-Library.aspx>].

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## BOARDS AND COMMISSIONS

### Board of Nursing

(As Amended at ARRS, February 12, 2024)

#### 201 KAR 20:215. Continuing competency requirements.

RELATES TO: KRS 194A.540, 218A.205(3)(i), 314.011(12), 314.042(11), 314.073, 314.991(1)-(3), 620.020(8)

STATUTORY AUTHORITY: KRS 218A.205(3)(i), 314.073, 314.131(1), (2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.131(1), (2), and 314.073 require the Board of Nursing to promulgate administrative regulations to establish continuing competency requirements for nurses. This administrative regulation establishes the fees, procedures, and requirements for continuing competency for nurses.

Section 1. Definitions.

(1) "Contact hour" means fifty (50) minutes of an approved, organized learning experience.

(2) "Earning period" means November 1 through October 31 of a current licensure period.

(3) "Preceptor" means a nurse with demonstrated competence in a specific clinical area who serves as a role model and mentor to assist in the development and validation of the competencies of a nursing student or new employee.

Section 2.

(1) A licensee shall choose a method from Section 3 of this administrative regulation to validate his or her continued competency in nursing for each earning period.

(2) A licensee shall maintain the documentation of the method chosen.

(3) A licensee shall provide the documentation if directed by the board.

Section 3. Methods for continued competency validation as established in subsection (1) through (4) of this section shall be:

(1) Fourteen (14) contact hours of continuing education, which shall:

(a) Be from a provider approved by the board pursuant to 201 KAR 20:220;

(b) Be completed during the earning period; and

(c) Include the continuing education required by Section 5 of this administrative regulation;

(2) Current national certification or recertification and the continuing education required by Section 5 of this administrative regulation. The certification shall be related to the nurse's practice role and shall:

- (a) Have been initially attained during the earning period;
- (b) If issued for a period of time as evidenced by an expiration date, have been in effect during the entire earning period; or
- (c) Have been recertified during the earning period;

(3) The continuing education required by Section 5 of this administrative regulation and at least one (1) of the following during the earning period:

- (a) Completion of a research project that is nursing-related:
  - 1. As principal investigator, coinvestigator, or project director;
  - 2. That is qualitative or quantitative in nature;
  - 3. That utilizes a research methodology;
  - 4. That increases knowledge, causes an improved outcome, or changes behavior; and
- 5. That is evidenced by an abstract of the project, which includes a summary of the findings;

(b) Publication of an article in a peer-reviewed health-related journal; or

(c) Participation as a preceptor for at least one (1) nursing student or new employee:

- 1. That has a preceptorship that shall be for at least 120 hours;
- 2. Requires a one (1) to one (1) relationship between the preceptor and the student or employee;
- 3. Authorizes the preceptor to train more than one (1) student or employee and to combine the hours to total 120 hours; and
- 4. Includes that the preceptorship shall be evidenced by submission of the Preceptor Continuing Education Verification Form completed by the educational institution or preceptor's supervisor; or

(4) Seven (7) hours of continuing education from a provider approved by the board pursuant to 201 KAR 20:220 and earned during the licensure period, which shall include the continuing education required by Section 5 of this administrative regulation if applicable; and

(b) A nursing employment evaluation that is satisfactory for continued employment.

1. The nurse shall submit the Nursing Continuing Education Employment Evaluation Form, completed and signed by the nurse's supervisor or employer, which shall cover a period of at least six (6) months during the earning period[.]; or

2. The board may accept from the employer a standard employee evaluation, which covers a period of at least six (6) months during the earning period.

(5) Contact hours of continuing education earned for the methods of continued competency validation as established in subsection (1) or (4) of this section may be earned by:

- (a)
  - 1. A nursing continuing education presentation that is:
    - a. Designed and developed by the presenter;
    - b. Presented to nurses or other health professionals;
    - c. Evidenced by a program brochure, course syllabi, or a letter from the offering provider identifying the licensee's participation as the presenter of the offering; and
    - d. Offered by a provider approved pursuant to 201 KAR 20:220.
  - 2. The number of contact hours that may be earned shall be twice the number of contact hours offered to an attendee of the presentation; or

(b) Successful completion of a postlicensure academic course at a college, university, or postsecondary vocational institution if relevant to nursing practice as determined by this subsection.

- 1. Contact hours shall be calculated as follows:
  - a. One (1) semester or trimester hour of academic credit shall equal fifteen (15) contact hours; or
  - b. One (1) quarter hour of academic credit shall equal twelve (12) contact hours.

2. The following courses shall be relevant to nursing practice:
 

- a. A nursing course, designated by a nursing course number, and beyond the prelicensure curriculum of the individual licensee; or
- b. An academic course that is applicable to the nurse's role and beyond the prelicensure curriculum of the individual licensee.

3. A licensee may request course review for approval of applicable nursing content pursuant to Section 7 of this administrative regulation.

4. If it is an academic course in which grades are given, the licensee shall achieve a grade of "C" or better, or a pass on a pass-fail grading system.

#### Section 4.

(1) A licensee shall provide documentation of the method used to validate continued competency if the licensee is the subject of a disciplinary complaint.

(2) A licensee shall provide documentation of the method used to validate continued competency if requested by the board pursuant to a random audit of licensees.

#### Section 5.

(1)

~~(a) An Advanced Practice Registered Nurse (APRN)[Advanced practice registered nurses who do not have a Collaborative Agreement for Advanced Practice Registered Nurse's Prescriptive Authority for Controlled Substances (CAPA-CS) pursuant to KRS 314.042(10) or a waiver and registration issued by the United States Drug Enforcement Administration (DEA) to prescribe buprenorphine for the treatment of opioid use disorder] shall earn a minimum of five (5) contact hours in pharmacology, as required by KRS 314.073(8).~~

~~(b) [Advanced practice registered nurses]An APRN who is registered with the DEA and has a PDMP account, as defined by [administrative regulation] 201 KAR 20:057, Section 1(7), [with a Collaborative Agreement for Advanced Practice Registered Nurse's Prescriptive Authority for Controlled Substances (CAPA-CS) pursuant to KRS 314.042(10) who do not have a waiver and registration issued by the DEA to prescribe buprenorphine for the treatment of opioid use disorder] shall earn a minimum of five (5) contact hours in pharmacology, including at least [one and one-half (1.5)]three (3) contact hours on [the dual subjects of pharmacology and] either pain management or addiction disorders.~~

~~(c) [Advanced practice registered nurses who have a waiver and registration issued by the DEA to prescribe buprenorphine for the treatment of opioid use disorder shall earn:]~~

~~[1.] A minimum of five (5) contact hours annually in pharmacology, of which one and one-half (1.5) pharmacology hours shall be on the dual subjects of addiction disorders and pharmacology; and]~~

~~[2.] An additional two and one-half (2.5) contact hours annually on addiction disorders.]~~

~~[(d)] To qualify as pharmacology pursuant to KRS 314.073, content shall include drug specific information, safe prescribing practices, safe medication administration, prescribing methodologies, new administrative regulations, or similar topics.~~

~~[(d)] [(e)] Objectives for the contact hours related to pharmacology shall be identified. Casual mention of medications or medical treatments shall not qualify.~~

~~(2) After June 27, 2023, and before the APRN's/advanced practitioner's] next scheduled DEA registration, an APRN who has a DEA registration shall earn a minimum of eight (8) hours on the subject of treating and managing patients with opioid or other substance use disorders, including the appropriate clinical use of all drugs approved by the Food and Drug Administration for the treatment of a substance use disorder.~~

~~(3) The following APRNs shall be deemed to have satisfied the earning requirement in subsection (2) of this section[administrative regulation]:~~

~~(a) 1. Those who graduated from an advanced practice nursing school within five (5) years prior to June 27, 2023, and have successfully completed a comprehensive curriculum that included at least eight (8) hours of training on the subject of treating and managing patients with opioid or other substance use disorders, including the appropriate clinical use of all drugs approved by the Food and Drug Administration for the treatment of a substance use disorder; or~~

~~2.a. [(b)] Those who have satisfied this training by earning a minimum of eight (8) hours of training on treatment and~~

management of patients with opioid or other substance use disorders.

**b.** Past trainings on the treatment and management of patients with opioid or other substance use disorders ~~may~~**[can]** count towards ~~an APRN[a practitioner]~~ meeting this requirement, including past DATA-Waiver trainings.

**(b)(c)** In addition to continuing education providers approved by the board pursuant to 201 KAR 20:220, groups approved by the DEA or the Substance Abuse and Mental Health Services Administration (SAMHSA) may provide trainings that satisfy the earning requirement of subsection (2) of this ~~section~~**[administrative regulation]**.

**(4)(2)** Sexual assault nurse examiners shall earn the continuing education required by 201 KAR 20:411, Section 8.

**(5)(3)** Registered nurses and licensed practical nurses shall earn, within three (3) years of licensure, a minimum of one and one-half (1.5) contact hours in pediatric abusive head trauma as required by KRS 314.073(6), and a minimum of three (3) contact hours on domestic violence, and elder abuse, neglect, and exploitation as required by KRS 194A.540.

**(6)(4)** Registered nurses, licensed practical nurses, and advanced practice registered nurses who hold an active nursing license on July 1, 2022, shall satisfy the continuing competency requirement in subsection ~~(8)(6)~~ of this section on or before July 1, 2023.

**(7)(5)** Registered nurses, licensed practical nurses, and advanced practice registered nurses who obtain licensure by examination, endorsement, or reinstatement after July 1, 2022, shall satisfy the continuing competency ~~requirement~~**[requirements]** in subsection ~~(8)(6)~~ of this section within three (3) years of licensure.

**(8)(6)**

**(a)** Nurses shall earn a minimum of two (2) contact hours on the subject of suicide prevention, which shall consist of one (1) contact hour on suicide prevention generally, and one (1) contact hour that addresses:

**(a)[1-]** Chronic toxic stress and secondary traumatic stress potentially increasing the incidence of suicide amongst nurses;

**(b)[2-]** A confidential and standardized pathway to care for nurses that addresses screening, assessing, safety planning, referrals, and follow-up for nurses at risk for suicide;

**(c)[3-]** Systems of care, evidence-informed approaches, and best practices to reduce suicide rates; and

**(d)[4-]** Ethical legal considerations of caring for patients and nurses who are suicidal.

**(b)** ~~Nurses shall earn a minimum of one and one-half (1.5) contact hours in implicit bias that addresses:~~

**[1-]** ~~The impact of historical racism and other forms of invidious discrimination on the provision of healthcare;~~

**[2-]** ~~Methods of evaluating the presence and extent of implicit bias; and~~

**[3-]** ~~Measures that may be taken to reduce implicit bias.]~~

#### Section 6.

(1)

(a) A licensee shall maintain records to substantiate methods used to validate competency.

(b) All records shall be retained for at least five (5) years following the current licensure period.

(2)

(a) A licensee shall, upon request, furnish to the board or its staff, legible copies of the records required to be maintained by subsection (1) of this section, in electronic format to CE Broker, the continuing education tracking system utilized by the board, via <https://cebroker.com>.

(b) Copies shall be furnished within twenty (20) days of the date a written request is sent to the last known email address of the licensee or applicant.

(c) Failure to furnish records as required by this administrative regulation shall be cause for the issuance of a complaint pursuant to 201 KAR 20:161 for failure to comply with KRS 314.073(2).

(3)

(a) Except as provided by paragraph (b) of this subsection, if a licensee has failed to comply with the continuing competency requirements, the licensee shall be allowed to rectify the noncompliance if he or she:

1. Meets the continuing competency requirements within ten (10) business days of notification of noncompliance; and

2. Enters a consent decree with the board pursuant to 201 KAR 20:161, Section 2(5), within ten (10) days of notification by the board.

(b) The board shall issue a complaint pursuant to 201 KAR 20:161 if:

1. A licensee fails to furnish records as requested pursuant to subsection (2) of this section; or

2. There is evidence of fraud or deceit in procuring or attempting to procure a license to practice nursing.

(4) A licensee who attends continuing education activities, whether as a presenter, participant, or student, shall attend the entire offering to be eligible to receive the number of contact hours for which the activity has been approved.

(5) It shall be the responsibility of each licensee to select and participate in those continuing education activities that will meet the criteria for acceptable continuing education.

(6) A licensee shall not repeat the same continuing education offering within a licensure period. The board shall determine whether a continued education offering is the same offering based upon the certificate of attendance from the offering that includes items such as the activity number, date, topic, and presenter.

#### Section 7.

(1) A licensee may request an individual review of a nonapproved continuing education activity completed during the earning period if, within thirty (30) days after the expiration of the immediate past licensure period, the licensee has:

(a) Requested the review by submitting an Application for Individual Review; and

(b) Paid a fee of ten (10) dollars.

(2) The review shall be based on generally accepted standards of adult education and shall be applicable to the nurse's role.

(3) Approval of a nonapproved continuing education activity shall:

(a) Qualify it as having been obtained from an approved provider for the licensee requesting the review; and

(b) Be limited to the particular offering upon which the request for individual review is based.

(4) The board may offer continuing education hours for programs sponsored by the board. These continuing education hours shall be found to have been obtained from an approved provider. The board shall comply with all applicable provider standards.

#### Section 8. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Application for Individual Review", 9/2023[9/2005];

(b) "Nursing Continuing Education Employment Evaluation Form", 9/2023[6/2024]; and

(c) "Preceptor Continuing Education Verification Form", 9/2023[6/2024].

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**BOARDS AND COMMISSIONS**  
**Board of Nursing**  
**(As Amended at ARRS, February 12, 2024)**

**201 KAR 20:225. Reinstatement of license.**

RELATES TO: KRS [164.772,]194A.540, 314.041(14)(14)], 314.042(6), 314.051(14)(14)], 314.071, 314.073, 314.075, 314.085(1), 314.091, 314.103, 314.109

STATUTORY AUTHORITY: KRS 314.103, 314.131(1)  
 NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.131(1) authorizes the Board of Nursing to promulgate administrative regulations to implement the provisions of KRS 314.011 to 314.991. KRS 314.103 authorizes the board to require a criminal background check investigation of an applicant or nurse. KRS 314.041(14)(14)], 314.042(6), and 314.051(14)(14)] allow a person whose license has lapsed due to failure to renew to be able to reinstate the license. KRS 314.091 authorizes the board to discipline a licensee for a violation of KRS Chapter 314 or 201 KAR Chapter 20. This administrative regulation establishes procedures for reinstatement of a license that has lapsed or has been subject to disciplinary action.

**Section 1. Reinstatement of Lapsed or Retired License.**

(1) A license shall be lapsed if it has expired because of the licensee's failure to:

- (a) Submit a completed and timely application for renewal;
- (b) Submit data required to enable the board to complete the processing of an application;
- (c) Submit the current application fee; or
- (d) Meet all requirements for renewal of a license, in accordance with KRS 314.071.

(2) A lapsed or retired license may be reinstated by:

- (a) Submitting a completed application form required by 201 KAR 20:370, Section 1(1)(a) or (c);
- (b) Paying the current application fee required by 201 KAR 20:240, Section 1(2)(g) or (l);
- (c) Submitting a criminal record check completed within six (6) months of the date of the application by the Department of Kentucky State Police (KSP) and the Federal Bureau of Investigation (FBI) using the FBI Applicant Fingerprint Card, and including payment of any required fee of the KSP and the FBI;
- (d) Submitting a certified or attested copy of the court record of any misdemeanor or felony conviction as required by 201 KAR 20:240, Section 1(3);
- (e) Submitting a letter of explanation that addresses each conviction, if applicable;
- (f) Submitting a certified copy of any disciplinary action taken on a nursing or other professional or business license in another jurisdiction with a letter of explanation or a report if there is any disciplinary action pending on a nursing or other professional or business license in another jurisdiction; and
- (g) Meeting all other requirements of this section.

(3)

(a) If an individual applies for reinstatement of a lapsed license to active status, the applicant shall complete fourteen (14) contact hours of continuing education for each year since the date of last active licensure, if the date of last active licensure is within five (5) years of the application for reinstatement, but more than one (1) year from the date of last active licensure.

1. Fourteen (14) hours of continuing education shall have been earned within twelve (12) months of the date of the application.

2. Continuing education earned more than five (5) years preceding the date of application shall not be counted toward meeting this requirement.

(b) If an applicant has not been engaged in nursing practice during the five (5) years preceding the date of the application, the applicant shall complete at least 120 contact hours of continuing education earned within one (1) year of the date of the application.

(c) An individual may use the continuing competency methods set out in 201 KAR 20:215, Section 3, for reinstatement if that individual allowed the license to lapse and applies for reinstatement of a lapsed license within one (1) year from the date of lapse.

(d) Continuing competency used for reinstatement pursuant to paragraph (c) of this subsection shall not be used for renewal of the license.

(4)

(a) If the applicant has been currently licensed and actively engaged in nursing practice in another jurisdiction for at least 500 hours during the preceding five (5) years, the requirements of subsection (3) of this section shall not apply.

(b) The applicant shall submit evidence to verify active practice.

(5) In addition to the requirements of this administrative regulation, an applicant whose license has lapsed for one (1) year or more shall submit evidence of completion of the jurisprudence examination required by KRS 314.041(14)(14)] for registered nurses and KRS 314.051(14)(14)] for licensed practical nurses as approved by the board.

**Section 2. Reinstatement of License Subject to Disciplinary Action.**

(1) If a license has been revoked, an individual may apply for reinstatement by:

- (a) Completing the appropriate application required by 201 KAR 20:370, Section 1(1)(a) or (c);
- (b) Paying the current application fee required by 201 KAR 20:240, Section 1(2)(g) or (l);
- (c) Meeting the terms of the disciplinary order; and
- (d) Retaking the licensure examination and achieving a passing score.

(2) A hearing shall be held to determine if the issuance of a license would no longer be a threat to public safety and health.

(3)

(a) If a license has been suspended or voluntarily surrendered, an individual may apply for reinstatement by:

- 1. Completing an application required by 201 KAR 20:370, Section 1(1)(a) or (c);
- 2. Paying the fee required by 201 KAR 20:240, Section 1(2)(g) or (l); and

3. Notifying the board, in writing, that the requirements of the decision or agreed order have been met.

(b) If the decision or agreed order requires that a hearing be held, the individual shall notify the board, in writing, to request that a hearing be scheduled.

(4) An individual whose license has been suspended or voluntarily surrendered shall be required to comply with the continuing education requirements of KRS 314.073 for the period during which the license was suspended or surrendered.

(5)

(a) If a license has been probated and the individual has allowed the license to expire prior to the end of the probationary period, and the individual later applies for reinstatement, the license shall be reinstated subject to the remaining probationary period.

(b) The individual shall comply with all requirements for reinstatement, in accordance with KRS 314.071.

(6)

(a) A person may seek reinstatement of a license pursuant to subsection (3) of this section, if an order of immediate temporary suspension has been issued pursuant to:

1. KRS 314.085(1) because of a person's failure to obtain an evaluation and the person subsequently obtains the evaluation; or

2. KRS 314.075 because of a person's submission of a bad check and the person subsequently makes the check good; or

[3.] ~~KRS 164.772 because of a notice from the Kentucky Higher Education Assistance Authority that a person is in default on a student loan and the Kentucky Higher Education Assistance Authority subsequently notifies the board that the person is no longer in default.]~~

(b) A request for reinstatement of a license following the issuance of an order of immediate temporary suspension as listed in paragraph (a) of this subsection shall be denied, if in the opinion of the board, continuance of the temporary suspension is necessary in order to protect the public.

Section 3. Miscellaneous Requirements.

(1)

(a) A copy of an official name change document shall be submitted by the applicant if making application, if applicable.

(b) Verification of the name change shall be made by submitting a copy of a:

1. Court order;
2. Marriage certificate;
3. Divorce decree; or
4. Social Security card.

(2) An individual whose license lapsed, was suspended, or voluntarily surrendered prior to July 15, 1996 shall earn three (3) hours of continuing education in domestic violence within three (3) years of reinstatement of the license as required by KRS 194A.540.

(3) An individual who holds a nursing license that was revoked by disciplinary order of the board prior to December 31, 1987 shall meet all requirements of Section 2 of this administrative regulation except Section 2(1)(d) of this administrative regulation.

(4) An individual whose license lapsed, was suspended, or voluntarily surrendered prior to July 15, 2010 shall earn one and one-half (1.5) hours of continuing education in pediatric abusive head trauma as required by KRS 314.073(6) within three (3) years of reinstatement of the license.

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**TOURISM, ARTS AND HERITAGE CABINET  
Department of Fish and Wildlife Resources  
(As Amended at ARRS, February 12, 2024)**

**301 KAR 5:001. Definitions for 301 KAR Chapter 5.**

RELATES TO: KRS 150.195

STATUTORY AUTHORITY: KRS 150.195

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.195 requires the department to promulgate administrative regulations. This administrative regulation establishes definitions for terms used in 301 KAR Chapter 5.

Section 1. Definitions.

(1) "Agent commission" means the fee an agent is permitted to charge in addition to the product price that represents the agent's profit for the transaction.["Agent fees" means all fees established in regulation that a license agent may charge in a transaction in addition to the product price for the licenses, permits, items, or services purchased.]

(2) "Agent fees" means all fees established in administrative regulation that a license agent may charge in a transaction in addition to the product price for the licenses, permits, items, or services purchased.["Agent commission" means the fee an agent is permitted to charge in addition to the product price that represents the agent's profit for the transaction.]

~~(3) [(1)]~~ "Commission" is defined by KRS 150.010(6).

~~(4) [(2)]~~ "Commissioner" is defined by KRS 150.010(7).

~~(5) [(3)]~~ "Department" is defined by KRS 150.010(11).

~~(6) [(4)]~~ "License agent" means a person, government entity including the department, business, or organization authorized to sell and issue licenses and conduct other transactions for the department.

~~[(a) "Governmental agent" means a license agent who is a county clerk or a federal, state, or local governmental entity.]~~

~~[(b) "Out-of-state agent" means a license agent who sells licenses at a location outside the boundaries of Kentucky.]~~

~~(7) [(5)]~~ "License stock" means the blank paper upon which licenses are printed.

~~(8) "Operational Cost" means the fees charged for the operation, storage, security, maintenance, and support of the applicable sales solutions.~~

~~(9) "Payment processing fee" means a fee charged for the processing of payments.~~

~~(10) [(9)]~~ "Product price" means the price of a license, permit, item, or service without any agent fees.

~~(11) [(10)] [(6)]~~ "Transaction" means the application for a hunt or the purchase or sale of a license, permit, item, product, or service.

~~(12) [(11)] [(7)]~~ "Vendor" means a person, organization, or business under contract with the department to provide the operation, storage, security, maintenance, and support of the solutions required to deliver department-defined goods and services.

~~[(12)] [(8)]~~ ["Operational Cost" means the fees charged for the operation, storage, security, maintenance, and support of the applicable sales solutions.]

~~[(9) "Issuance Fee" means the fee charged for the sale and delivery of a license, permit, product, or service.]~~

FILED WITH LRC: February 12, 2024

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.

**TOURISM, ARTS AND HERITAGE CABINET  
Department of Fish and Wildlife Resources  
(As Amended at ARRS, February 12, 2024)**

**301 KAR 5:010. License agent applications and agreements.**

RELATES TO: KRS 150.175

STATUTORY AUTHORITY: KRS 150.195

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.195 requires the department to provide for the control of the design, issuance, distribution, and other matters relating to licenses and permits issued by the department. This administrative regulation establishes the application procedures for becoming a department license agent.

Section 1. License Agent Applications and Agreements.

(1) Before receiving authorization to serve as license agents, persons, government entities other than the department, businesses, or organizations shall:

(a) Complete and submit a License Agent Application Form;

(b) Enter into a formal contract with the department by agreeing to the provisions of, and signing, the License Agent Contractual Agreement, October 2023 Edition; and

(c) Complete an Electronic Funds Transfer Request Form that authorizes the department or its vendor to make electronic fund transfers from an account into which the license agent shall deposit the proceeds from transactions, or establish and agree upon the process for license agent-initiated fund transfers to the department or vendor.

(2) State agencies, other than the department, serving as license agents shall remit payment through the state accounting system.

(3) The department shall not appoint as an agent a business that does not:

(a) Possess a valid federal identification number;

(b) Possess a Kentucky sales tax number, except if it is outside Kentucky; and

(c) Post a surety bond of \$5,000 if it is an out-of-state, private business.

Section 2. Incorporation by Reference.

(1) The following material is incorporated by reference:

- (a) "License Agent Application Form", 2023;
- (b) "Electronic Funds Transfer Request Form", 2023; and
- (c) "License Agent Contractual Agreement", October 2023 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. or online at:

(a) [https://fw.ky.gov/Licenses/Documents/LICENSE\\_AGENT\\_APPLICATION\\_FORM.pdf](https://fw.ky.gov/Licenses/Documents/LICENSE_AGENT_APPLICATION_FORM.pdf) for the "License Agent Application Form";

(b) [https://fw.ky.gov/Licenses/Documents/EFT\\_TRANSFER\\_FORM.pdf](https://fw.ky.gov/Licenses/Documents/EFT_TRANSFER_FORM.pdf) for the "Electronic Fund Transfer Authorization Form"; or and

(c) <https://fw.ky.gov/Licenses/Documents/licenseagentagreement.pdf> for the "License Agent Contractual Agreement".

FILED WITH LRC: February 12, 2024

CONTACT PERSON: Jenny Gilbert, Legislative Liaison, Kentucky Department of Fish and Wildlife Resources, 1 Sportsman's Lane, phone (502) 564-3400, fax (502) 564-0506, email [fwpubliccomments@ky.gov](mailto:fwpubliccomments@ky.gov).

**TOURISM, ARTS AND HERITAGE CABINET  
Department of Fish and Wildlife Resources  
(As Amended at ARRS, February 12, 2024)**

**301 KAR 5:020. License agent requirements and responsibilities.**

RELATES TO: KRS 45.345~~[45A.097]~~, 64.840, 150.175, 150.990

STATUTORY AUTHORITY: KRS 150.195

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.195 requires the department to promulgate administrative regulations governing the issuance of licenses and permits. This administrative regulation establishes the requirements for issuing licenses and permits, electronically reporting license and permit sale data and revenue, and suspending or revoking license agent status.

Section 1. Issuing Licenses and Permits.

(1) A license agent shall issue a license or permit to a person who completes the registration process with the agent and pays the appropriate license or permit fee as established in 301 KAR 5~~[3]~~:022 and applicable agent fees~~[issuance and operational fee]~~ as established in this administrative regulation.

(2) A license agent shall not knowingly enter false information while processing a license, permit, or other transaction.

Section 2. Agent Fees~~[Issuance Fee]~~ and Depositing of Funds.

(1) If applicable, a~~The~~ license agent shall be permitted to charge and retain~~the following agent fees, if applicable~~~~;~~~~retain as an issuance fee~~;

(a) An agent commission of three~~Three~~ (3) percent of the product price; and

(b) Payment processing fees consistently charged by license agents for non-cash payments for all products, both department products and non-department products, through the ordinary course of business, including those identified in KRS 45.345(2) for state agencies, KRS 64.840(3) for county agencies, and any~~[such]~~ fees incurred by license agents that are private entities.~~;~~~~[total sale; or]~~

~~[(b)] [Print or display, on the initial license or permit issued, a coupon or advertisement, pursuant to a department sponsorship as established in KRS 45A.097, in lieu of retaining the applicable issuance fee.]~~

(2) A license agent shall deposit the full amount of the product price~~[transaction fees, less the issuance fee established in subsection (1) of this section]~~ into the account established in 301 KAR 5:010.

~~[(3)] [A license agent shall not require or encourage a particular payment method.]~~

Section 3. Electronic Transfer of Funds to the Department.

(1) The department or its vendor shall provide each license agent with a schedule of dates when electronic fund transfers will be initiated.

(2) On the day of a scheduled electronic fund transfer, a license agent shall have sufficient funds in the account to cover the amount of the transfer.

(3) A license agent shall contact the department or its vendor prior to the day of a scheduled electronic fund transfer if there are any discrepancies or concerns that need to be resolved.

Section 4. Voiding Licenses and Permits.

(1) A license agent may, within four (4) hours of issuing a license or permit, void a license or permit if the purchaser:

- (a) Discovers that the issued license or permit is incorrect;
- (b) Will not pay for the license or permit; or
- (c) Refuses to accept the license or permit.

(2) An agent shall:

(a) Ensure that a license or permit established in subsection (1) of this section is voided in the system; and

(b) Destroy all paper copies of the voided license or permit.

(3) A license agent shall refund license or permit cost as established in 301 KAR 5:030, Section 3(2)(a).

Section 5. Suspensions and Revocation of Agent Status.

(1) In addition to any penalties provided by KRS 150.990, and except as established in subsection (2) of this section, the department shall suspend for one (1) to five (5) years a license agent who twice in a twelve (12) month period:

- (a) Causes an electronic fund transfer failure; or
- (b) Violates a provision of:

- 1. KRS 150.195; or
- 2. A requirement of KAR Title 301.

(2) The department shall permanently revoke the agent status of a license agent who:

(a) Commits an offense for which the license agent has been previously suspended;

(b) Does not deposit the required funds in the agent bank account within twenty-four (24) hours of notification by the department of insufficient funds;

(c) Fails to notify the department prior to closing the agent bank account;

(d) Closes the business seasonally without notifying the licensing section supervisor in writing by surface mail, fax, or e-mail and settling the account; or

(e) Knowingly issues a license or permit containing false information.

(3) Before issuing a final order suspending or revoking the status of an agent, the department shall:

(a) Notify the agent by registered mail that the agent's status is under review; and

(b) Afford the agent the opportunity for an informal meeting with the commissioner or the commissioner's designee to show cause why the agent status should not be suspended or revoked.

(4) A suspension or revocation shall become effective upon receipt of notification from the department.

(5) A suspended or revoked agent shall:

(a) Allow the department access to financial records dealing with license and permit sales; and

(b) Immediately pay all funds owed to the department.

Section 6. Appeal of Suspension or Revocation of Agent Status.

(1) A license agent who wishes to appeal a suspension or revocation shall request a hearing in writing, postmarked or delivered in person to the department no later than ten (10) days after notification of suspension or revocation.



(2) Upon receipt of the request for a hearing, the department shall conduct a suspension or revocation hearing pursuant to KRS Chapter 13B and KRS 150.195.

(3) The hearing officer's findings of fact, conclusions of law, and recommended order shall be considered by the department's commission at the commission meeting immediately following the deadline for the parties' exceptions pursuant to KRS Chapter 13B. If the suspension or revocation decision is upheld by the commission, the agent may then appeal the decision to the Franklin Circuit Court. An appeal shall be in accordance with KRS Chapter 13B and KRS 150.195.

(4) The department's commission shall issue a final order pursuant to KRS Chapter 13B.

FILED WITH LRC: February 12, 2024

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.

**TOURISM, ARTS AND HERITAGE CABINET  
Department of Fish and Wildlife Resources  
(As Amended at ARRS, February 12, 2024)**

**301 KAR 5:200. Special commission permits for incorporated nonprofit wildlife conservation organizations.**

RELATES TO: KRS 150.170, 150.175, 26 U.S.C. 501(c)(3)

STATUTORY AUTHORITY: KRS 150.025, 150.177, 150.195(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025 authorizes the Kentucky Department of Fish and Wildlife Resources~~[the department]~~ to promulgate administrative regulations to establish hunting seasons, bag limits, and the methods of taking wildlife. KRS 150.177 authorizes the department to issue a special permit to an incorporated nonprofit wildlife conservation organization for fundraising if proceeds of the sale are used in Kentucky. KRS 150.195(1) requires the department to promulgate administrative regulations pertaining to the issuance of licenses and permits. This administrative regulation establishes the requirements for the issuance and use of Special Commission Permits.

**Section 1. Definitions.**

(1) "Incorporated nonprofit wildlife conservation organization" means an entity that:

(a) Has a stated purpose, as expressed in its articles of incorporation or bylaws, to conserve and enhance fish and wildlife resources to provide opportunities for hunting, fishing, trapping, wildlife education, habitat enhancement, or related activities such as shooting sports, hunter and angler education and training, and boating~~[, etc.]~~;

(b)

[1.] Holds status as a nonprofit organization pursuant to 26 U.S.C. Section 501(c)(3)~~[,]~~ and

[2.] is incorporated under the laws of this state or any other state; or

(c) Is an affiliated regional, state, or local chapter of a parent organization that meets the requirements of subsection (1)(b) of this section.

(2) "Proceeds" means the amount of money received by an incorporated nonprofit wildlife conservation organization from the sale or transfer of a special commission permit minus all expenses directly attributable to the sale of the permit.

(3) "Project" means an enterprise designed to achieve stated purposes, which shall conserve and enhance fish and wildlife resources within Kentucky by enhancing habitat or providing opportunities for hunting, fishing, trapping, wildlife education, habitat enhancement, or related activities such as shooting sports, hunter and angler education and training, and boating~~[, etc.]~~.

(4) "Special commission permit" means a [species-specific] permit issued by the Kentucky Fish and Wildlife Commission to an incorporated nonprofit wildlife conservation organization for fundraising that allows the assigned permit holder~~[recipient]~~[,] to

perform the acts applicable to [the specific game designated by the permit as follows]~~[depending on the species listed on the permit, to harvest]:~~

(a) For deer permits, harvest one[One] (1) additional deer of either sex~~[per license year]~~;

(b) For wild turkey permits, harvest one[One] (1) additional turkey of either sex~~[per license year]~~;

(c) For elk permits, harvest one[One] (1) elk of either sex, except that an individual shall not harvest [no] more than one (1) elk [total]~~[per license year]~~;

(d) For black bear permits, harvest one (1) additional black bear of either sex; or

[e](4)] For waterfowl permits, receive priority hunt dates and location selection for public area waterfowl hunting[Up to a daily bag limit of waterfowl per day].

**Section 2. Issuance and Sale of Special Commission Permit.**

(1) There shall be no more than ten (10) special commission permits issued per species per license year.

(2) An incorporated nonprofit wildlife conservation organization may apply for one (1) special commission permit per species by submitting, through[via] the online Special Commission Permit Submission Portal at <https://app.fw.ky.gov/commission>, the following information:

(a) Organization Name;

(b) Mailing address;

(c) Contact person's name;

(d) Phone number;

(e) Email Address;

(f) Permit types requested;

(g) Proposed method of selling the permits;

(h) Estimated dollar amount to be raised through the sale of permits requested;

(i) Rationale for the estimate;

(j) Fund-raising history;

(k) Prior experience with conservation projects;

(l) Description of proposed conservation project for which the funds will be used;

(m) Analysis of who will primarily benefit from the proposed project;

(n) List of tangible goods intended for purchase which will not be expended during the project, if applicable;

(o) Who will maintain ownership of any tangible items remaining after the project is completed, and how they will be used for the reasonable life of those items;

(p) Explanation of how the proposed project is intended to enhance fish and wildlife, habitats, fish and wildlife education, or fish and wildlife related recreation in Kentucky;

(q) Internal Revenue Service Employer Identification Number (EIN) under which the organization is applying; and

(r) Parent Organization name, if the organization is applying as an affiliated regional, state, or local chapter thereunder.[The incorporated nonprofit wildlife conservation organization shall accurately complete a Special Commission Permits Application Form.]

(3) A national organization and its affiliated regional, state, and local chapters or branches shall all be eligible to apply for a special commission permit in the same year if each organization meets the definition in Section 1(1) of this administrative regulation.

(4) No more than one (1) of each special commission permit type~~[per species]~~ shall be awarded per distinct Internal Revenue Service Employer Identification Number (EIN) per year.

(5) [In addition to the completed application, the]~~The~~ organization shall also submit, through[via] the online Special Commission Permit Submission Portal at <https://app.fw.ky.gov/commission>, the following supporting documents:

(a) A copy of the organization's articles of incorporation;

(b) A copy of the Internal Revenue Service determination letter establishing the organization's current tax-exempt status, including the applicant's Employer Identification Number (EIN);

(c) A copy of the organization's bylaws that state the purposes of the organization, if the purposes of the organization are not stated

in the articles of incorporation; and

(d) A letter, dated within ninety (90) days of submission[the application], from the organization's parent organization, if applicable, stating that the chapter organization is in good-standing and is recognized by the parent organization.

(6) The deadline for submission of the application and all supporting documents is May 1 of each year.[The completed application and accompanying documents listed in subsection (5) of this section shall be postmarked or delivered to the department by May 1 of each year.]

(7) Organizations[Applications] shall be disqualified from eligibility[the awards process] for the criteria listed in paragraphs (a) through (d) of this subsection:

(a) Failure to submit the required information[application] and supporting[accompanying] documents to the department by the deadline established in subsection (6) of this section;

(b) [An incomplete or missing Special Commission Permits Application Form or accompanying documents required pursuant to subsection (5) of this section;

(e)] Failure to qualify as an incorporated nonprofit wildlife conservation organization; or

(c)[(d)] Failure[Beginning in 2022, the wildlife conservation organization applicant failed] to meet the following requirements]:

1. Sell a special commission permit awarded in the previous two (2) years;

2. Comply with the requirements of subsections (11)(b) and 11(c) of this section during the previous two (2) years; [or]

3. Timely submit[the following], during the previous two (2) years, for each permit received by the organization:

a. All[all of] the information required by subsection[subsections]

(11)(d) [and 11(f)] of this section; or

b. The name of the person who purchased the permit; and  
c. A statement that the organization attempted to obtain the hunter information required by subsection (11)(d) of this section but was not supplied all the information prior to the applicable submission deadline; [during the previous two (2) years.]

4. Timely submit the information required by subsection 11(g) of this section[(f)] for the calendar year for a given application; or

5. Submit by May 1 of the current calendar year, the information required for the previous calendar year by subsection 11(g) of this section[(f)] if the information was not provided timely.

(8) Prior to selecting organizations to receive special commission permits for the current year[recipients], the Fish and Wildlife Commission shall review and consider all information and[applications and] documents submitted by each wildlife conservation organization that has not been disqualified pursuant to subsection (7) of this section.

(9) The department shall provide the Fish and Wildlife Commission with information concerning each applicant's relative standing with regard to:

(a) Past compliance; and

(b) History of funds generated.

(10) The Fish and Wildlife Commission shall select organizations to receive permits[permit recipients] based on the information listed in subsection (9) of this section and the information contained within the organization's submission[application].

(11) An incorporated nonprofit wildlife conservation organization that is awarded a special commission permit shall:

(a) Generate proceeds through the sale of each permit awarded;

(b) Use the proceeds [from the sale of the permits] within Kentucky, only for the project listed in the application, and not for ordinary operational costs of the organization;

(c) Remit to the department any proceeds from the sale of the permits that are not expended by the May 1 reporting deadline three (3) years after the submission deadline [of the application] for which the special commission permits were awarded;

(d) Submit to the department, through/via the online Special Commission Permit Submission Portal at <https://app.fw.ky.gov/commission>, the information listed in subparagraphs 1. through 4.[5-] of this paragraph for the hunter to whom the permit shall be issued. [Failure to submit the required information by the applicable deadline will result in no permit

being issued.]

1. Name;

2. Address;

3. [Date of birth;

4-] A copy of the hunter's valid Kentucky Hunting license; and

4.[5-] For waterfowl, the requested location and date of the hunt.

(e) The information to be submitted, as established in paragraph (d) of this section, shall be submitted to the department no later than the following dates during the license year for which the permit is valid:

1. March 1 for turkey;

2. August 1 for elk;

3. August 1 for deer; [and]

4. September 1 for black bear; and

5. September 1 for waterfowl.

(f) Failure to submit the required information by the applicable deadline shall result in no permit being issued.

(g) Submit to the Department of Fish and Wildlife Resources, through/via the online Special Commission Permit Submission Portal at <https://app.fw.ky.gov/commission>, by May 1 of the following year, and each subsequent year until all funds generated by the sale of the permit are expended or remitted to the department, a report, subject to audit, that includes:

1. A financial statement containing:

a. Total funds raised from the sale of each permit;

b. A detailed list of expenditures directly attributable to the sale of each[the] permit;

c. Net proceeds after expenditures used in fundraising, if applicable[profit];

d. A detailed list of expenditures attributable to the conservation project with a receipt for each expenditure[receipts attached]; and

e. Balance of funds remaining;

f. A summary of the conservation project; and

3. A synopsis of the project's impact in regards to the goals stated [in the application].

(12) Once a special commission permit has been issued to a hunter, it shall not be transferred to another hunter.

Section 3. Special Permit Use.

(1) A special permit shall only be valid for the:

(a) Individual named on the permit;

(b) Game animals[Species of wildlife] listed on the permit; and

(c) [The] First season for designated game animals[that species] in the license year following the commission meeting that the special permit was awarded [except that during 2020 permits for deer and waterfowl shall also be awarded for the current license year].

(2) A special commission permit holder shall comply with all other department statutes and KAR Title 301.

(3) A holder of a special commission permit to hunt deer may hunt on any Wildlife Management Area during an open deer season or [nonmobility impaired] quota hunt pursuant to 301 KAR 2:178, for which they are otherwise eligible to participate, except:

(a) Hunting shall not be allowed on closed waterfowl refuges, pursuant to 301 KAR 2:222;

(b) A permit holder shall contact the wildlife area manager at least forty-eight (48) hours before hunting; and

(c) A permit holder shall notify the area manager upon leaving a Wildlife Management Area.

(4) A holder of a special commission permit to hunt wild turkey shall not hunt on a Wildlife Management Area that is closed to turkey hunting.

(5) Pursuant to 301 KAR 2:222, a holder of a special commission permit to hunt waterfowl may, subject to the timely submission of all applicable information by the wildlife conservation organization, hunt on Ballard, Boatwright, or Sloughs Wildlife Management Areas from one (1) of the areas' hunting units during one (1) of the available hunt periods established by the department, pursuant to 301 KAR 2:222.

(6) Each special commission permit to hunt elk shall be randomly assigned an elk[a] hunting unit at the time of the selection of the wildlife conservation organizations to be awarded special commission permits. Each elk hunting unit shall/will be assigned

once prior to assigning a second permit to the unit. ~~An[No]~~ elk hunting unit ~~shall not[will]~~ be assigned more than two (2) permits. The permit holder shall be ~~allowed[restricted]~~ to hunt in the assigned elk hunting unit on private land with permission from the landowner, or on Department owned or managed lands that are the subject of public access agreements between the landowners and the department[hunting in the assigned unit only]. The permit holder shall also be allowed to hunt in any other elk hunting unit with private landowner permission, ~~as established in Section 3(7) of this regulation and~~ consistent with any applicable requirements established in 301 KAR 2:132 and 301 KAR 2:030, on private land that is not open for public hunting through a hunter access area agreement, voucher-cooperator agreement, or wildlife management area agreement between the landowner and the department.

[(7) A holder of any special commission permit may hunt on private land with the permission of the landowner.

#### Section 4. Incorporation by Reference.

(1) "Special Commission Permits Application Form", 2019 edition, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Fish and Wildlife Resources, #1 Sportsman's Lane, Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m.]

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.

#### GENERAL GOVERNMENT Department of Agriculture Office of the Commissioner (As Amended at ARRS, February 12, 2024)

#### 302 KAR 2:010. Access to public records of the Kentucky Department of Agriculture.

RELATES TO: KRS 61.870 - 61.884

STATUTORY AUTHORITY: KRS 61.876(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 61.876(1) requires that each public agency shall ~~promulgate[adopt rules and]~~ administrative regulations to provide full access to public records, to protect public records from damage and disorganization, to prevent excess disruption of its essential functions, to provide assistance and information upon request, and to ensure efficient and timely action in response to application for inspection of public records. This administrative regulation establishes provisions for public access to department records[proposes to fulfill this statutory requirement].

Section 1. The principal office location for the Kentucky Department of Agriculture is 105 Corporate Drive, Frankfort, Kentucky 40601. Regular office hours are 8 a.m. to 4:30 p.m., Monday through Friday, prevailing time in Frankfort, Kentucky.

Section 2. The title of the official custodian of the records of the Kentucky Department of Agriculture ~~shall be[is]~~ the Commissioner of Agriculture, whose address is 105 Corporate Drive, Frankfort, Kentucky 40601 and phone number 502-573-0282. The email address for the official custodian of records is ag.web@ky.gov.

Section 3. The procedure to be followed in requesting copies of public records shall be as established in subsections (1) through (3) of this section.[follows:]

(1) Requests for copies of public records shall be made in writing, describing in reasonably sufficient detail the records to be inspected using Request to Inspect Public Records, form OAG-01.

(2) ~~[Fees to be charged for]~~ Copies of public records shall be ten (10) cents for each photocopy or page produced and sent electronically.

(3) Fees shall be paid prior to mailing or emailing the results of the request.

Section 4. The procedure to be followed in requesting inspection of public records shall be as established in subsections (1) through (4) of this section.[follows:]

(1) Requests for inspection of public records shall be made directly to the Commissioner of Agriculture or to the commissioner's department designee.~~[i]~~

(2) Requests to inspect public records shall be made in writing, describing in reasonably sufficient detail the records to be inspected using Request to Inspect Public Records, form OAG-01.~~[i]~~

(3) Records shall be inspected and copied in the presence of a member of the Kentucky Department of Agriculture to protect the records from damage or disorganization, to lessen disruption of office procedure, to provide timely assistance and information upon request to the person requesting inspection, and to provide full access to public records.~~[i]~~ and]

(4) Suitable facilities shall be made available for inspection of public records.

Section 5. A copy of KRS 61.870 ~~through[te]~~ 61.884 and this administrative regulation shall be displayed in the main reception room of the Kentucky Department of Agriculture at 105 Corporate Drive, Frankfort, Kentucky 40601.

#### Section 6. Incorporation by Reference.

(1) The following material is incorporated by reference: "Request to Inspect Public Records", OAG-01", June 2021.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Agriculture, Regulation and Inspection Division, 107 Corporate Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

(3) This material may also be obtained at www.kyagr.com.

FILED WITH LRC: February 12, 2024

CONTACT PERSON: Clint Quarles, Staff Attorney, Kentucky Department of Agriculture, 107 Corporate Drive, Frankfort Kentucky 40601, phone (502) 330-6360, email clint.quarles@ky.gov.

#### GENERAL GOVERNMENT Department of Agriculture Office of the Commissioner (As Amended at ARRS, February 12, 2024)

#### 302 KAR 16:150. Qualification and registration of persons designated to perform amusement safety inspections.

RELATES TO: KRS 247.234

STATUTORY AUTHORITY: KRS 247.234(3)(e)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 247.234 (3)(e) requires the Department of Agriculture to promulgate administrative regulations for designating persons qualified by education or experience, who are capable of determining amusement safety in accordance with administrative regulations promulgated under KRS 247.232 ~~through[te]~~ 247.236, as amusement safety inspectors. KRS 247.234(3)(e) also requires the Department of Agriculture ~~to[shall]~~ establish an annual registration fee for persons designated as amusement safety inspectors. This administrative regulation establishes requirements for amusement safety inspectors.

Section 1. Education or experience requirements for persons designated as amusement safety inspectors.

(1) Persons employed by the department shall possess the following education or experience to be designated as amusement safety inspectors:

(a) NAARSO Certificate Level I;

(b) AIMS International Level I Certification, Associate Ride Inspector; or

(c) No education or experience, if the department employee is in training or the inspection performed is supervised by a department employee holding a level of education or experience established~~[listed]~~ in paragraphs~~[parts]~~ (a) or (b) of this subsection.

(2) Persons working under a contract with the department to provide amusement inspection services to the department shall possess the following education or experience to be designated as amusement safety inspectors:

(a) NAARSO Certificate Level I; or

(b) AIMS International Level I Certification, Associate Ride Inspector.

(3) Regardless of their level of education or experience, persons other than those employed by the department or providing amusement inspection services to the department under contract shall not be designated by the department as amusement safety inspectors for any purpose established~~[contained]~~ in KRS 247.232 through~~[to]~~ 247.236 and any requirement of 302 KAR Chapter 16~~[administrative regulation pertaining to those sections]~~.

Section 2. Any person who is designated as an amusement safety inspector, not employed by the KDA, shall register with the department and pay an annual registration fee [in the following manner:] Persons designated as amusement safety inspectors shall:

(1) Provide proof of education and experience required to be designated as an amusement safety inspector;

(2) Provide proof of current insurance coverage during the designation period, including~~[as follows]~~:

(a) Current and general liability coverage in an amount of not less than \$1,000,000 per occurrence and \$2,000,000 general aggregate; and

(b) Current professional liability coverage, including errors and omissions, in an amount of not less than \$1,000,000; [and]

(3) Pay a registration fee of \$100; and

(4) Submit to the department, a completed Amusement Safety Inspector Registration Form.

Section 3. Incorporation by Reference.

(1) The following material is incorporated by reference: "Amusement Safety Inspector Registration Form", February, 2024~~[11/23]~~.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Agriculture, Division of Regulation and Inspection, 107 Corporate Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

(3) This material may also be obtained at [www.kyagr.com](http://www.kyagr.com).

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CONTACT PERSON: Clint Quarles, Staff Attorney, Kentucky Department of Agriculture, 107 Corporate Drive, Frankfort Kentucky 40601, phone (502) 330-6360, email [clint.quarles@ky.gov](mailto:clint.quarles@ky.gov).

**PUBLIC PROTECTION CABINET  
Kentucky Horse Racing Commission  
(As Amended at ARRS, February 12, 2024)**

**810 KAR 4:070. Jockeys and apprentices.**

RELATES TO: KRS 230.215, 230.260

STATUTORY AUTHORITY: KRS 230.215(2), 230.260(8), 230.260 (10), 230.260 (14)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) and KRS 230.260(8) authorize the Kentucky Horse Racing Commission to promulgate administrative regulations prescribing conditions under which all horse racing is conducted. KRS 230.260(10) requires~~[authorizes]~~ the commission to promulgate administrative regulations establishing minimum fees for jockeys in the absence of a contract between an employing owner or trainer and a jockey. KRS 230.260(14) authorizes the commission to promulgate administrative regulations to establish safety

standards~~[and minimum fees for jockeys]~~. This administrative regulation establishes the requirements for jockeys and apprentice jockeys.

Section 1. Probationary Mounts. Any person desiring to participate in this state as a jockey, who has not ridden in a race previously, may ride in three (3) races before applying for a license as a jockey or apprentice jockey if:

(1) The person is a licensed stable employee, assistant trainer, or trainer with at least one (1) year of service with a racing stable;

(2) A licensed trainer certifies in writing to the stewards that the person has demonstrated sufficient horsemanship, as evidenced by control of the animal while mounting, riding, and dismounting in race and nonrace conditions, to be permitted the probationary mounts;

(3) The starter has schooled the person in breaking from the starting gate with other horses and approves the person as capable of starting a horse properly from the starting gate in a race;

(4) The stewards determine that the person:

(a) Intends to become a licensed jockey;

(b) Possesses the physical ability to be a jockey; and

(c) Has demonstrated the ability to ride in a race without jeopardizing the safety of horses or other jockeys in the race; and

(5) The person has prior oral or written approval of the stewards.

Section 2. Qualifications for License. In addition to the requirements applicable to licensees under 810 KAR 3:020, a holder of a license as a jockey or apprentice jockey:

(1) Shall be sixteen (16) years of age or older and licensed under his or her legal name, which shall be listed in the daily race program;

(2) Shall have served at least one (1) year with a racing stable;

(3) Shall have ridden in at least three (3) races; and

(4) Shall, if required by the stewards, to protect the health and safety of the jockey, other jockeys, the horses, or the welfare of the betting public, provide a medical affidavit certifying the person is physically and mentally capable of performing the activities and duties of a licensed jockey.

Section 3. Amateur or Provisional Jockey.

(1) An amateur wishing to ride in races on even terms with professional riders, but without accepting fees or gratuities, shall:

(a) Be approved by the stewards as to competency of horsemanship, as demonstrated by meeting the requirements in Section 1(2), (3), and (4)(b) and (c) of this administrative regulation;

(b) Be granted an amateur jockey's license; and

(c) Have amateur status duly noted on the daily race program.

(2) A licensed owner or licensed trainer, upon approval by the stewards, may be issued a provisional jockey's license to ride his or her own horse or horse registered in his care as trainer.

Section 4. Apprentice Allowance in Thoroughbred Racing.

(1) The provisions of this section apply only to thoroughbred racing.

(2) Any person sixteen (16) years of age or older, who has not been licensed previously as a jockey in any jurisdiction, and who is qualified under Section 2 of this administrative regulation, may claim in all purse races except handicaps the following weight allowances:

(a) Ten (10) pounds until he or she has ridden five (5) winners;

(b) Seven (7) pounds until he or she has ridden an additional thirty-five (35) winners;

(c) If he or she has ridden a total of forty (40) winners prior to the end of one (1) year from the date of riding his fifth winner, he or she shall have an allowance of five (5) pounds until the end of that year; and

(d) If after one (1) year from the date of the fifth winner, the apprentice jockey has not ridden forty (40) winners, the applicable weight allowance shall continue for one (1) additional year, or until the 40th winning mount, whichever occurs first.

(3)

(a) After the completion of conditions in subsection (2)~~(1)~~ of this section, a contracted apprentice may claim three (3) pounds for one (1) year if riding horses owned or trained by his or her original contract employer if his or her contract has not been transferred or sold since his or her first winner.

(b) The original contract employer shall be the party to the contract who was the employer at the time of the apprentice jockey's first winner.

(c) Apprentice allowance shall not be claimed for a period in excess of two (2) years from the date of the rider's fifth winner unless an extension has been granted in accordance with subsection (4) of this section.

(4) An apprentice jockey may enter into a contract with a licensed owner or licensed trainer qualified under Section 5 of this administrative regulation for a period not to exceed five (5) years.

(a) These contracts shall be:

1. Approved by the stewards;
2. Filed with the commission; and
3. Binding in all respects on the parties to the contract.

(b) An apprentice who has not entered into a contract pursuant to this subsection shall be given an apprentice jockey certificate.

(5) If an apprentice jockey is unable to ride for a period of seven (7) consecutive days or more because of service in the armed forces of the United States, physical disablement, attendance in an institution of secondary or higher education, restrictions on racing, or other valid reason, the commission, upon recommendation of the stewards and after consultation with the racing entity that approved the original apprentice contract, may extend the time during which the apprentice weight allowance may be claimed for a period no longer than the period the apprentice rider was unable to ride.

(6) After completion of conditions in subsection ~~(2)~~~~(4)~~ of this section, the rider shall be issued a license as a jockey before accepting subsequent mounts. Under these circumstances, the commission may waive collection of an additional license fee.

#### Section 5. Rider Contracts.

(1) All riding contracts for terms longer than thirty (30) days, and any amendments, cancellation, or transfer of the contract, shall be in writing with the signatures of the parties notarized, and shall be approved by the stewards and filed with the commission.

(2) The stewards shall approve a riding contract and permit parties to participate in racing in this state if the stewards determine that:

(a) The contract employer is a licensed owner or licensed trainer who owns or trains at least three (3) horses eligible to race when the contract is executed;

(b) The contract employer possesses the character, ability, facilities, and financial responsibility conducive to developing a competent race rider; and

(c) If it is a contract for an apprentice jockey, the contract provides for fair remuneration, adequate medical care, and an option equally available to both employer and apprentice jockey to cancel the contract after two (2) years from the date of execution.

Section 6. Restrictions as to Contract Riders. A contract rider shall not:

(1) Ride any horse not owned or trained by his contract employer in a race against a horse owned or trained by his or her contract employer;

(2) Ride or agree to ride any horse in a race without consent of his or her contract employer;

(3) Share any money earned from riding with his or her contract employer; or

(4) Accept any present, money, or reward of any kind in connection with his or her riding of any race except through his or her contract employer.

#### Section 7. Calls and Engagements.

(1) Any rider not prohibited by contract may agree to give first or second call on his or her race-riding services to any licensed owner or trainer.

(2) Any rider employed by a racing stable on a regular salaried basis shall not ride against the stable that employs him or her.

#### Section 8. Jockey Fees in Thoroughbred Racing.

(1) The fee to a jockey, in the absence of special agreement to the contrary, shall be as follows:

(a)

Purse	Winning Mount	Second Place Mount	Third Place Mount	Fourth Place Mount	Losing Mount
Up to \$99,999	10%	>5% or \$140, whichever is greater	>5% or \$135, whichever is greater	>5% or \$130, whichever is greater	\$125
\$100,000 - \$999,999	10%	5%	5%	5%	\$125
\$1,000,000 and up	10%	5%	5%	5%	\$500
[Up to \$9,999]	[10% of Win Purse]	[5% of Place Purse OR \$75, whichever is greater]	[\$70]	[\$65]	[\$60]
[\$10,000- \$14,999]	[10% of Win Purse]	[5% of Place Purse]	[\$75]	[\$70]	[\$65]
[\$15,000- \$24,999]	[10% of Win Purse]	[5% of Place Purse]	[5% of Show Purse OR \$80, whichever is greater]	[\$75]	[\$70]
[\$25,000- 49,999]	[10% of Win Purse]	[5% of Place Purse]	[5% of Show Purse]	[\$85]	[\$80]
[\$50,000- \$99,000]	[10% of Win Purse]	[5% of Place Purse]	[5% of Show Purse]	[\$90]	[\$85]
[\$100,000 and up]	[10% of Win Purse]	[5% of Place Purse]	[5% of Show Purse]	[5% of Fourth Place Purse]	[\$110]

(b) The flat fee amounts as established in paragraph (a) of this subsection are not percentage driven.

(2) A jockey fee shall be considered earned by a rider if he or she is weighed out by the clerk of scales, with the following exceptions:

(a) If a rider does not weigh out and ride in a race for which he or she has been engaged because an owner or trainer engaged more than one (1) rider for the same race, the owner or trainer shall pay an appropriate fee to each rider engaged for the race;

(b) If a rider capable of riding elects to take himself off the mount without, in the opinion of the stewards, reasonable cause; or

(c) If a rider is replaced by the stewards with a substitute rider for a reason other than a physical injury suffered by the rider during the time between weighing out and start of the race.

Section 9. Jockey Fees for Quarter Horse, Paint Horse, Appaloosa, and Arabian Racing.

(1) The fee to a jockey in all races shall be, in the absence of special agreement, as follows:

Purse	Winning Mount	Second Place Mount	Third Place Mount	Fourth Place Mount	Losing Mount
Up to \$99,999	10%	>5% or \$140, whichever is greater	>5% or \$135, whichever is greater	>5% or \$130, whichever is greater	\$125
\$100,000 - \$999,999	10%	5%	5%	5%	\$125
\$1,000,000 and up	10%	5%	5%	5%	\$500
[Up to \$9,999]	[10% of Win Purse]	[5% of Place Purse OR \$75, whichever is greater]	[\$70]	[\$65]	[\$60]
[\$10,000- \$14,999]	[10% of Win Purse]	[5% of Place Purse]	[\$75]	[\$70]	[\$65]
[\$15,000- \$24,999]	[10% of Win Purse]	[5% of Place Purse]	[5% of Show Purse OR \$80, whichever is greater]	[\$75]	[\$70]
[\$25,000- 49,999]	[10% of Win Purse]	[5% of Place Purse]	[5% of Show Purse]	[\$85]	[\$80]
[\$50,000- \$99,000]	[10% of Win Purse]	[5% of Place Purse]	[5% of Show Purse]	[\$90]	[\$85]
[\$100,000 and up]	[10% of Win Purse]	[5% of Place Purse]	[5% of Show Purse]	[5% of Fourth Place Purse]	[\$110]

(2) A jockey fee shall be considered earned by a rider when he or she is weighed out by the clerk of scales, with the following exceptions:

(a) If a rider does not weigh out and ride in a race for which he or she has been engaged because an owner or trainer engaged more than one (1) rider for the same race, the owner or trainer shall pay an appropriate fee to each rider engaged for such race;

(b) If a such rider capable of riding elects to take himself or herself off the mount without, in the opinion of the stewards, reasonable cause; or

(c) If a such rider is replaced by the stewards with a substitute rider for a reason other than a physical injury suffered by the rider during the time between weighing out and start of the race.

**Section 10. Revised Order of Finish After Race is Declared Official.** If a winning purse is forfeited through subsequent ruling of the stewards or the commission, after a race has been declared official, the winning fee shall be paid to the jockey whose mount is ultimately adjudged the winner, and the original winner shall be paid a losing mount fee.

**Section 11. Duty to Fulfill Engagements.** Every rider shall fulfill his or her duly scheduled riding engagements, unless excused by the stewards due to circumstances under which a jockey could not reasonably be expected to be physically present at the required time. A rider shall not be required to ride a horse he or she believes to be unsound, nor over a racing strip he or she believes to be unsafe. If the stewards find a rider's refusal to fulfill a riding engagement is based on a personal belief unwarranted by the facts and circumstances, the rider may be subject to disciplinary action.

**Section 12. Presence in Jockey Room.**

(1) Each rider who has been engaged to ride in a race shall be physically present in the jockey room no later than one (1) hour prior to post time for the first race he or she is scheduled to ride, unless excused by the stewards or the clerk of scales due to circumstances under which a jockey could not reasonably be expected to ride. Upon arrival each rider shall report his or her engagements to the clerk of scales. If a rider fails for any reason to arrive in the jockey room no later than one (1) hour before post time of a race in which he or she is scheduled to ride, the clerk of scales shall so advise the stewards who may name a substitute rider and shall cause a public announcement to be made of the rider substitution prior to opening of wagering on the race.

(2) Each rider reporting to the jockey room shall remain in the jockey room until he or she has fulfilled all riding engagements for the day, except to ride in a race, or to view the running of a race from a location approved by the stewards. While a rider is outside of the jockey room, a rider shall not have contact or communication with any person other than an owner or trainer for whom he or she is

riding, a racing official, or a media representative authorized by the stewards, until the rider has fulfilled all his riding engagements for the day.

(3) The association shall be responsible for security of the jockey room and for excluding all persons except riders scheduled to ride on the day's program, valets, authorized attendants, racing officials, media representatives authorized by the stewards, and persons having special permission of the stewards to enter the jockey room.

(4) Any rider intending to discontinue riding at a race meeting prior to its conclusion shall notify the stewards of his or her intent to depart after fulfilling his or her final riding engagement of the day.

**Section 13. Weighing Out.**

(1) Each rider engaged to ride in a race shall report to the clerk of scales for weighing out not more than one (1) hour and not less than fifteen (15) minutes before post time for each race in which he or she is engaged to ride, and when weighing out, the rider shall declare overweight, if any.

(2)

(a) A rider shall not pass the scale with more than one (1) pound overweight, without consent of the owner or trainer of the horse he or she is engaged to ride; and

(b) A rider shall not pass the scale with more than five (5) pounds overweight.

(3) A horse shall not be disqualified because of overweight carried.

(4) Riding crops, blinkers, number cloths, bridles, bits, reins, over-girth, breast collar, goggles, safety helmets, and safety vests shall not be included in a rider's weight.

**Section 14. Wagering.**

(1) A rider shall not:

(a) Place a wager;

(b) Cause a wager to be placed on his behalf; or

(c) Accept any ticket or winnings from a wager on any race except on his or her own mount, and except through the owner or trainer of the horse he or she is riding.

(2) The owner or trainer placing wagers for his or her rider shall maintain a precise and complete record of all of these wagers, and the record shall be available for examination by the stewards at all times.

**Section 15. Attire.**

(1) Upon leaving the jockey room to ride in any race, each rider shall be neat and clean in appearance and wear the traditional jockey attire with all jacket buttons and catches fastened.

(2) Each jockey shall wear:

(a) The cap and jacket racing colors registered in the name of the owner of the horse he or she is to ride;

(b) Stock tie;

- (c) White or light breeches;
  - (d) Top boots;
  - (e) A safety vest and safety helmet that meet the standards established in subsections (4) and (5) of this section; and
  - (f) A number on his or her right shoulder corresponding to his mount's number as shown on the saddle cloth and daily racing program.
- (3) The clerk of scales and attending valet shall be held jointly responsible with a rider for his neat and clean appearance and proper attire.
- (4) A jockey mounted on a horse or stable pony at a location under the jurisdiction of the commission shall wear a properly secured safety helmet at all times. If requested by a commission official, the jockey shall provide sufficient evidence that his or her helmet has a tag, stamp, or similar identifying marker indicating that it meets or exceeds one (1) of the following safety standards:
- (a) ASTM International Standard, ASTM F1163-04a;
  - (b) British Standards, BS EN 1384:1997 or PAS 015:1999; or
  - (c) Australian/New Zealand Standard, AS/NZS 3838:2006.
- (5) A jockey mounted on a horse or stable pony at any location under the jurisdiction of the commission shall wear a safety vest at all times. If requested by a commission official, the jockey shall provide sufficient evidence that his or her safety vest has a tag, stamp, or similar identifying marker indicating that it meets or exceeds one (1) of the following safety standards:
- (a) British Equestrian Trade Association (BETA):2000 Level 1;
  - (b) Euro Norm (EN) 13158:2000 Level 1;
  - (c) ASTM International Standard, ASTM F2681-08;
  - (d) Shoe and Allied Trade Research Association (SATRA) Jockey Vest Document M6 Issue 3; or
  - (e) Australian Racing Board (ARB) Standard 1.1998.

#### Section 16. Advertising.

- (1) A jockey shall not wear advertising or promotional material of any kind (whether for a nonprofit or for-profit entity) on clothing within one (1) hour before or after a race, unless:
- (a)
    - 1. The material advertises or promotes the Jockey's Guild in the form of the picture of a jockey's boot or the picture of a wheelchair, with no additional picture or logo;
    - 2. The material advertises or promotes the Permanently Disabled Jockey's Fund in the form of the pictures of its logo, with no additional picture or logo; or
    - 3. The picture or logo has previously been approved by the current owner, association, and the stewards under the process established in this administrative regulation, and this approval is reflected in the commission's official records;
  - (b) The material complies with the size restrictions of subsection (2)(b) of this section;
  - (c) The material meets the advertising standards established in subsection (2) of this section;
  - (d) Written approval by the following is submitted to the commission:
    - 1. The managing owner of the horse, or authorized agent of the managing owner;
    - 2. The jockey riding the horse or the authorized agent of the jockey;
    - 3. The licensed racing association, which shall grant approval if it reasonably determines the material meets the standards in subsection (2)(a) of this section; and
    - 4. The stewards, who shall grant approval if they reasonably determine the material meets the standards in subsections (2)(b) and (3) of this section; and

(e) Written approval required pursuant to subsection (1)(d) of this section is evidenced by completion and return to the commission of the Request to Wear Advertising and Promotional Materials, form KHRC-4-070-1. The form shall be completed and submitted to the stewards not later than 5 p.m. at least two (2) days prior to the day of the race in which the advertising and promotional materials will be worn. Other forms of approval shall not be accepted by the commission.

(2) Advertising or promotional material displayed on jockey clothing shall:

(a) Not compete with, conflict with, or infringe upon sponsorship agreements applicable to the racing association race or to the race meet in progress; and

(b) Comply with the following size restrictions:

1. A maximum of thirty-two (32) square inches on each thigh of the pants on the outer side between the hip and knee and ten (10) square inches on the rear of the pant at the waistline at the base of the spine;

2. A maximum of twenty-four (24) square inches on boots and leggings on the outside of each nearest the top of the boot; and

3. A maximum of six (6) square inches on the front center of the neck area (on a turtleneck or other undergarment).

(3) A sponsorship shall not be permitted by a person or entity whose message, business reputation, or ongoing business activity could be considered as obscene or indecent to a reasonable person.

(4) Any party who fails to comply with this or any other provision established in this administrative regulation shall be subject to penalties by the commission in accordance with KRS Chapter 230 and KAR Title 810.

(5) As a condition for approval of advertising or promotional material, either the owners, the stewards, or the licensed racing association may require a personal viewing of the proposed material as it is to be displayed, to determine compliance with this section.

(6) The sponsor of a licensed racing association race or race meeting may display advertising or promotional material on an association saddlecloth if it does not interfere with the clear visibility of the number of the horse.

(7) Advertising content other than that approved in accordance with this administrative regulation shall not be permitted.

(8) This administrative regulation shall not infringe upon or limit the common law rights of a racing association to eject or exclude persons, licensed or unlicensed, from association grounds, or to apply the association's internal rules regarding other forms of advertising not addressed in this or any other applicable statute or administrative regulation, if the internal rules have been previously filed with and approved by the commission or its authorized representative.

#### Section 17. Race Replay.

(1) Every rider shall check the race replay list posted by the stewards in the jockey room the day after riding in a race.

(2) The posting of the race replayfilm list shall be considered as notice to all riders whose names are listed to present themselves when designated by the stewards to view the race replay.

(3) Any rider may be accompanied by a representative of the jockey organization of which he or she is a member in viewing the race replay or, with the stewards' permission, be represented at the viewing by his or her designated representative.

#### Section 18. Material Incorporated by Reference.

(1) "Request to Wear Advertising and Promotional Material", KHRC 4-070-1, 11/2018.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m.

(3) This material may also be obtained from the Kentucky Horse Racing Commission Web site at <http://khrc.ky.gov>.

FILED WITH LRC: February 12, 2024

CONTACT PERSON: Jennifer Wolsing, General Counsel, 4047 Iron Works Parkway, Lexington, Kentucky 40511, phone +1 (859) 246-2040, fax +1 (859) 246-2039, email [jennifer.wolsing@ky.gov](mailto:jennifer.wolsing@ky.gov).

**CABINET FOR HEALTH AND FAMILY SERVICES**  
**Office of Inspector General**  
**Division of Certificate of Need**  
**(As Amended at ARRS, February 12, 2024)**

**900 KAR 5:020. State Health Plan for facilities and services.**

RELATES TO: KRS 216B.010-216B.130, **216B.178**

STATUTORY AUTHORITY: KRS 194A.030, 194A.050(1), 216B.010, 216B.015(28), 216B.040(2)(a)2.a

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.040(2)(a)2.a requires the cabinet to promulgate an administrative regulation, updated annually, to establish the State Health Plan. The State Health Plan is a critical element of the certificate of need process for which the cabinet is given responsibility in KRS Chapter 216B. This administrative regulation establishes the State Health Plan for facilities and services.

Section 1. The State Health Plan shall be used to:

(1) Review a certificate of need application pursuant to KRS 216B.040; and

(2) Determine whether a substantial change to a health service has occurred pursuant to KRS 216B.015(29)(a) and 216B.061(1)(d).

Section 2. Incorporation by Reference.

(1) The "2023[2022] Update to the State Health Plan", **February 2024[July][March] [2023]** [July 2022], is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Inspector General, Division of Certificate of Need, 275 East Main Street, 5E-A, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m. This material may also be viewed on the Office of Inspector General's Web site at: <https://chfs.ky.gov/agencies/os/oig/dcn/Pages/cn.aspx>.

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

**CABINET FOR HEALTH AND FAMILY SERVICES**  
**Office of Inspector General**  
**Division of Certificate of Need**  
**(As Amended at ARRS, February 12, 2024)**

**900 KAR 6:075. Certificate of need nonsubstantive review.**

RELATES TO: KRS 216B.010, 216B.015, 216B.040, 216B.062, 216B.090, 216B.095, 216B.115, 216B.455, 216B.990

STATUTORY AUTHORITY: KRS 216B.040(2)(a)1., 216B.095

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.040(2)(a)1. requires the Cabinet for Health and Family Services to administer Kentucky's Certificate of Need Program and to promulgate administrative regulations as necessary for the program. KRS 216B.095 authorizes the review of certificate of need applications that are granted nonsubstantive status. This administrative regulation establishes the requirements necessary for consideration for nonsubstantive review of applications for the

orderly administration of the Certificate of Need Program.

Section 1. Definitions. (1) "Ambulatory surgical center" is defined by KRS 216B.015(4).

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

(3) "Certificate of Need Newsletter" means the monthly newsletter that is published by the cabinet regarding certificate of need matters and is available on the Certificate of Need Web site at <https://chfs.ky.gov/agencies/os/oig/dcn/Pages/cn.aspx>.

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

(5) "Formal review" means the review of an application for certificate of need that is reviewed within ninety (90) days from the commencement of the review as provided by KRS 216B.062(1) and that is reviewed for compliance with the review criteria set forth at KRS 216B.040 and 900 KAR 6:070.

(6) "Nonsubstantive review" is defined by KRS 216B.015(18).

(7) "Public notice" means notice given through the cabinet's Certificate of Need Newsletter.

**(8) "Psychiatric residential treatment facility" or "PRTF" is defined in KRS 216B.450(5) as a Level I facility or a Level II facility.**

Section 2. Nonsubstantive Review.

(1) The cabinet shall grant nonsubstantive review status to an application to change the location of a proposed health facility or to relocate a licensed health facility only if:

(a) There is no substantial change in health services or bed capacity; and

(b)1. The change of location or relocation is within the same county; or

2. The change of location or relocation is for a psychiatric residential treatment facility.

(2) The cabinet shall grant nonsubstantive review status to an application that proposes to establish an ambulatory surgical center pursuant to the conditions specified in KRS 216B.095(7).

(3) In addition to the projects specified in KRS 216B.095(3)(a) through (e), pursuant to KRS 216B.095(3)(f), the Office of Inspector General shall grant nonsubstantive review status to an application for which a certificate of need is required if:

(a) The proposal involves the establishment or expansion of a health facility or health service for which there is not a component in the State Health Plan;

(b) The proposal involves an application to re-establish a licensed healthcare facility or service that was provided at a hospital and was voluntarily discontinued by the applicant under the following circumstances:

1. The termination or voluntary closure of the hospital:

a. Was not the result of an order or directive by the cabinet, governmental agency, judicial body, or other regulatory authority;

b. Did not occur during or after an investigation by the cabinet, governmental agency, or other regulatory authority;

c. Did occur while the facility was in substantial compliance with applicable administrative regulations and was otherwise eligible for re-licensure; and

d. Was not an express condition of any subsequent certificate of need approval;

2. The application to re-establish the healthcare facility or service that was voluntarily discontinued is filed no more than one (1) year from the date the hospital last provided the service that the applicant is seeking to re-establish;

3. A proposed healthcare facility shall be located within the same county as the former healthcare facility and at a single location; and

4. The application shall not seek to re-establish any type of bed utilized in the care and treatment of patients for more than twenty-three (23) consecutive hours;

(c)1. The proposal involves an application to establish an ambulatory surgical center that does not charge its patients and does not seek or accept commercial insurance, Medicare, Medicaid, or other financial support from the federal government; and

2. The proposed ambulatory surgical center shall utilize the surgical facilities of an existing licensed ambulatory surgical center during times the host ambulatory surgical center is not in operation;



(d) The proposal involves an application to establish an industrial ambulance service;

(e) Prior to July 1, 2026, the proposal involves an application by:

1. An ambulance service that is owned by a city or county government seeking to provide ambulance transport services pursuant to KRS 216B.020(9)(a)1. or 2.; or

2. A licensed hospital seeking to provide transport from a location that is not a health care facility pursuant to KRS 216B.020(9)(a)3. and (b);

(f) The proposal involves an application to transfer acute care beds from one (1) or more existing Kentucky-licensed hospitals to establish a new hospital under the following circumstances:

1. The existing hospital and new facility shall be under common ownership and located in the same county;

2. No more than fifty (50) percent of the existing hospital's acute care beds shall be transferred to the new facility; and

3.a. If the existing hospital is a state university teaching hospital, the existing hospital exceeded, by at least one (1), the minimum number of quality measures required to receive supplemental university directed payments from Kentucky Medicaid for the state fiscal year preceding the date the application was filed; or

b. If the existing hospital is not a state university teaching hospital, the existing hospital's overall rating by the Centers for Medicare and Medicaid Services Hospital Compare was three (3) stars or higher on the most recent annual update to the overall star ratings preceding the date the application was filed; [or]

(g)1. The proposal involves an application from a Program of All-Inclusive Care for the Elderly (PACE) program that:

a. Has met the requirements of the State Readiness Review (SRR) according to a report submitted by the Department for Medicaid Services (DMS) to the Centers for Medicare and Medicaid Services (CMS);

b. Seeks to provide, directly to its members, a health service that is not exempt from certificate of need (CON) under KRS 216B.020(1); and

c. Ensures that all services authorized under the PACE agreement are provided exclusively to its members who reside within the service area. The service area shall be:

(i) Located within the Commonwealth of Kentucky; and

(ii) Approved by both CMS and DMS.

2. Only an approved PACE program operating within the applicant's service area shall qualify as an affected person for the purpose of opposing a PACE program application.

3. A PACE program shall not be required to obtain certificate of need (CON) approval if the program:

a. Provides direct patient health services that are exempt from CON under KRS 216B.020(1) and provides other services subject to CON approval through contracts with licensed providers; or

b. Has already obtained CON approval within the approved PACE service area to provide a health service that is not exempt from CON;

(h) The proposal involves an application to establish an inpatient psychiatric unit in an existing licensed acute care hospital under the following conditions:

1. The hospital is located in a county that has no existing, freestanding psychiatric hospital;

2. The occupancy of acute care beds in the applicant's facility is less than seventy (70) percent according to the most recent edition of the Kentucky Annual Hospital Utilization and Services Report;

3.a. All of the proposed psychiatric beds are being converted from licensed acute care beds; and

b. No more than **twenty (20) percent of the facility's [twenty-five (25)] acute care beds up to a maximum of twenty-five (25) beds** will be converted to psychiatric beds;

4. All of the psychiatric beds will be implemented on-site at the applicant's existing licensed facility; and

5. All of the psychiatric beds shall be dedicated exclusively to the treatment of adult patients, aged eighteen (18) to sixty-four (64);

~~(i) The proposal involves an application to provide megavoltage radiation therapy by an applicant that is majority owned by a Kentucky-licensed acute care hospital accredited by the American College of Surgeons Commission on Cancer;~~

~~(j) The proposal involves an application to provide positron~~

~~emission tomography services;~~

~~(k) The proposal involves an application to provide magnetic resonance imaging services by an applicant that will be accredited by the American College of Radiology within twelve (12) months of licensure; or~~

~~(l) The proposal involves an application by a Kentucky-licensed acute care hospital, critical access hospital, or nursing facility proposing to ~~establish or~~ expand a home health service to provide services exclusively to patients discharged from its facility who require home health services at the time of discharge and no existing, licensed home health agency is available and willing to accept the referral. The hospital or nursing facility shall document its efforts to find a Home Health Agency. A license issued under this subsection shall contain the limitation set forth herein. ~~[serve exclusively patients who require home health services at the time of discharge]~~ ~~[discharged]~~ ~~[from its facility.]~~~~

~~(i) Level II PRTFs shall be subject to the nonsubstantive review process.~~

(4) A certificate of need approved for an application submitted under subsection (3)(c) of this section shall state the limitations specified under subsection (3)(c)1. and 2. of this section.

(5) If an application is denied nonsubstantive review status by the Office of Inspector General, the application shall automatically be placed in the formal review process.

(6) If an application is granted nonsubstantive review status by the Office of Inspector General, notice of the decision to grant nonsubstantive review status shall be given to the applicant and all known affected persons.

(7)(a) If an application is granted nonsubstantive review status by the Office of Inspector General, any affected person who believes that the application is not entitled to nonsubstantive review status or who believes that the application should not be approved may request a hearing by filing a request for a hearing within ten (10) days of the notice of the decision to conduct nonsubstantive review.

(b) The provisions of 900 KAR 6:090 shall govern the conduct of all nonsubstantive review hearings.

(c)1. Except as provided in subparagraph 2. of this paragraph, nonsubstantive review applications shall not be comparatively reviewed.

2. If the capital expenditure proposed involves the establishment or expansion of a health facility or health service for which there is a component in the State Health Plan, the nonsubstantive review applications shall be comparatively reviewed.

(d) Nonsubstantive review applications may be consolidated for hearing purposes.

(8) If an application for certificate of need is granted nonsubstantive review status by the Office of Inspector General, there shall be a presumption that the facility or service is needed and a presumption that the facility or service is consistent with the State Health Plan.

(9) If each applicable review criterion in the State Health Plan has been met, there shall be a presumption that the facility or service is needed unless the presumption of need has been rebutted by clear and convincing evidence by an affected party.

(10) Unless a hearing is requested pursuant to 900 KAR 6:090, the Office of Inspector General shall approve each application for a certificate of need that has been granted nonsubstantive review status if the exception established in subsection (11)(a) of this section does not apply.

(11) The cabinet shall disapprove an application for a certificate of need that has been granted nonsubstantive review if the cabinet finds that the:

(a) Application is not entitled to nonsubstantive review status; or

(b) Presumption of need or presumption that the facility or service is consistent with the State Health Plan provided for in subsection (8) of this section has been rebutted by clear and convincing evidence by an affected party.

(12) In determining whether an application is consistent with the State Health Plan, the cabinet, in making a final decision on an application, shall apply the latest criteria, inventories, and need analysis figures maintained by the cabinet and the version of the State Health Plan in effect at the time of the public notice of the

application.

(13) In determining whether an application is consistent with the State Health Plan following a reconsideration hearing pursuant to KRS 216B.090 or a reconsideration hearing that is held by virtue of a court ruling, the cabinet shall apply the latest criteria, inventories, and need analysis figures maintained by the cabinet and the version of the State Health Plan in effect at the time of the reconsideration decision or decision following a court ruling.

(14) A decision to approve or disapprove an application that has been granted nonsubstantive review status shall be rendered within thirty-five (35) days of the date that nonsubstantive review status has been granted, as required by KRS 216B.095(1). A hearing officer shall prioritize rendering decisions regarding applications granted nonsubstantive review status pursuant to Section 2(3)(g) of this administrative regulation.

(15) If a certificate of need is disapproved following nonsubstantive review, the applicant may:

(a) Request that the cabinet reconsider its decision pursuant to KRS 216B.090 and 900 KAR 6:065;

(b) Request that the application be placed in the next cycle of the formal review process; or

(c) Seek judicial review pursuant to KRS 216B.115.

### Section 3. Exemption from Certificate of Need.

(1) A city or county government-owned ambulance service that meets the criteria established by KRS 216B.020(8) shall not be required to obtain a certificate of need to provide emergency ambulance transport services.

(2) A hospital-owned ambulance service shall not be required to obtain a certificate of need to provide non-emergency or emergency transport that originates from its hospital pursuant to KRS 216B.020(7).

(3)(a) If a hospital-owned ambulance service has certificate of need approval prior to the most recent effective date of this administrative regulation to provide transport services from another health facility to its hospital, the service shall not be required to obtain authorization in accordance with paragraph (b) of this subsection.

(b) A hospital-owned ambulance service that is exempt from certificate of need under KRS 216B.020(7) may provide transport services from another health facility to its hospital if authorized as set out in KRS 311A.025(4).

(c)1. As used in paragraph (b) of this subsection, a hospital is authorized to provide inter-facility transport of a patient if:

a. The hospital contacts by phone at least one (1) ground ambulance provider with jurisdiction in the territory in which the other health facility is located, using contact information from the most recent edition of the agency directory maintained by the Kentucky Board of Emergency Medical Services at the following link (<https://kbems.kctcs.edu/legal/EMS%20Directory.aspx>); and

b. The ground ambulance provider:

(i) Declines the hospital's request for patient transport; or

(ii) Is not able to initiate the patient's transport within four (4) hours of receiving the hospital's request.

2. For purposes of this paragraph, a provider initiates transport when it arrives at the hospital to transport the patient.

3. The hospital shall document the ambulance service contacted and the reason for authorization to provide transport from another health facility to its hospital.

(4)(a) In accordance with KRS 216B.020(12)(a), the provisions of this section and Section 2(3)(e) of this administrative regulation shall expire on July 1, 2026.

(b) In accordance with KRS 216B.020(12)(b), a certificate of need exemption granted to an ambulance service under this section of this administrative regulation shall remain in effect on and after July 1, 2026.

FILED WITH LRC: February 12, 2024

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## CABINET FOR HEALTH AND FAMILY SERVICES

### Department for Community Based Services

#### Division of Child Care

(As Amended at ARRS, February 12, 2024)

### 922 KAR 2:100. Certification of family child-care homes.

RELATES TO: KRS Chapter 13B, 158.030, 186.018, 186.020, 189.125, 194A.050(1), 199.011(3), (4), 199.894(1), (5), 199.895, 199.8951, 199.896(18), 199.897, 199.898, 199.8982, 214.010, 214.036, 311.646, 314.011(5), 527.070(1), 600.020, 620.020(8), 620.030, 7 C.F.R. 226.20, 16 C.F.R. 1219, 1220, 1221, 45 C.F.R. 98.2, 49 C.F.R. 571.213, 20 U.S.C. 6081-6084, 42 U.S.C. 9831-9852, 9857-9858r

STATUTORY AUTHORITY: KRS 194A.050(1), 199.8982(1)(f).  
NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary[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. KRS 199.8982(1)(f) requires the cabinet to promulgate administrative regulations to establish standards for the issuance, monitoring, release of information, renewal, denial, revocation, and suspension of a certificate of operation, and to impose minimum staff-to-child ratios for a family child-care home. The statute authorizes the cabinet to establish minimum safety requirements for operation of a certified family child-care home. This administrative regulation establishes minimum requirements intended to protect the health, safety, and welfare of children cared for by certified family child-care home providers.

### Section 1. Definitions.

(1) "Assistant" means a person:

(a) Who meets the requirements listed in Section 2(6) and Section 10(6), (7), and (8) of this administrative regulation; and

(b) Whose work is either paid or unpaid.

(2) "Cabinet" is defined by the KRS 199.011(3) and 199.894(1).

(3) "Child" is defined by KRS 199.011(4).

(4) "Contract substitute staff member" means a person who temporarily assumes the duties of a regular staff person, meets the requirements established in Section 11 of this administrative regulation, and receives payment from a contract entity rather than the child care center.

(5) "Corporal physical discipline" is defined by KRS 199.896(18).

(6) "Developmentally appropriate" means suitable for the specific age range and abilities of a child.

(7) "Family child-care home" is defined by KRS 199.894(5).

(8) "Health professional" means a person actively licensed as a:

(a) Physician;

(b) Physician assistant;

(c) Advanced practice registered nurse; or

(d) Registered nurse as defined by KRS 314.011(5) under the supervision of a physician or advanced practice registered nurse.

(9) "Home" means the private primary residence of the certified family child-care home provider and contiguous property.

(10) "Infant" means a child who is less than twelve (12) months of age.

(11) "Parent" is defined by 45 C.F.R. 98.2.

(12) "Parental or family participation" means a family child-care home's provision of information or inclusion of a child's parent in the child-care home's activities, including:

(a) Distribution of a newsletter;

(b) Distribution of a program calendar;

(c) A conference between the provider and the parent; or

(d) Other activity designed to engage a parent in the program's activities.

(13) "Pediatric abusive head trauma" is defined by KRS 620.020(8).

(14) "Premises" means the building and contiguous property in which child care is certified.

(15) "Preschool-age" means a child who is older than a toddler and younger than school-age.

(16) "Provider" means an owner, operator, or person who:  
 (a) Cares for a child in the provider's own home;  
 (b) Is not required to be licensed under 922 KAR 2:090; and  
 (c) Meets the requirements of Section 2 of this administrative regulation.

(17) "Related" means having one (1) of the following relationships with the provider:

- (a) Child;
- (b) Grandchild;
- (c) Niece;
- (d) Nephew;
- (e) Sibling;
- (f) Step-child; or
- (g) Child in legal custody of the provider.

(18) "School-age child" means a child who meets the age requirements of KRS 158.030 or who attends kindergarten, elementary, or secondary education.

(19) "Toddler" means a child between the age of twelve (12) months and thirty-six (36) months.

#### Section 2. Certification Process.

(1) The cabinet or its designee shall be responsible for certifying a family child-care home.

(2) An applicant for certification shall:

- (a) Show proof by photo identification or birth certificate that the individual is at least eighteen (18) years of age;
- (b) Obtain commercial liability insurance of at least \$50,000 per occurrence; and
- (c) Submit within ninety (90) days of initiation of the application process:

1. A completed OIG-DRCC-03, Initial Certification Application for Family Child-Care Home;

2. A nonrefundable certification fee of ten (10) dollars pursuant to KRS 199.8982(1)(b);

3. Written documentation from the local authority showing the child-care home is in compliance with local zoning requirements;

4. Documentation of the requirements of KRS 199.8982(1)(a)1 through 3 and 5;

5. Background checks completed in accordance with 922 KAR 2:280; and

6. A physician's statement documenting that the family child-care home provider's health is satisfactory for operation of a family child-care home, including that the provider is free of active tuberculosis.

(3) An applicant for certification shall have a:

(a) High school diploma, general equivalency diploma (GED), or documentation from a comparable educational entity; or

(b) Commonwealth Child Care Credential in accordance with 922 KAR 2:250.

(4) An applicant shall be currently certified by an agency approved in accordance with 922 KAR 2:240 in infant, ~~and~~ child, ~~and~~ adult:

- (a) Cardiopulmonary resuscitation (CPR); and
- (b) First aid.

(5) An adult living in the home of the applicant, present during the hours of operation ~~and~~ or having unsupervised contact with a child in care, and the applicant's assistant shall:

(a) Complete background checks in accordance with 922 KAR 2:280; and

(b) Submit a copy of negative tuberculin results or a health professional's statement documenting that the adult is free of active tuberculosis.

(6) If an adult other than an adult listed on the initial application begins living in the provider's home, present during the hours of operation or having unsupervised contact with a child in care, the adult shall submit to background and health checks within thirty (30) calendar days of residence within the household.

(7) Upon receipt of a completed application for certification, and a nonrefundable certification fee pursuant to KRS 199.8982(1)(b), cabinet staff shall:

- (a) Review and process the application; and

(b) Conduct an unannounced inspection of the home pursuant to KRS 199.8982(1)(b), including review of the evacuation plan in accordance with Section 19(7) of this administrative regulation.

(8) If the requirements of 922 KAR 2:280, subsections (1) through (7) of this section, and Sections 10 through 20 of this administrative regulation have been met, an applicant shall be certified as described in KRS 199.8982.

(9) Within three (3) months of submission to the cabinet of a complete OIG-DRCC-03, an applicant shall:

(a) In accordance with KRS 199.8982(1)(a)(6), demonstrate~~Demonstrate~~ completion of six (6) hours of cabinet-approved pre-service orientation training in the following topics:

1. Federal minimum health and safety requirements established in 45 C.F.R. 98.41 related to:

a. Prevention and control of infectious diseases, including immunization;

b. Prevention of sudden infant death syndrome and use of safe sleeping practices;

c. Administration of medication, consistent with standards for parental consent;

d. Prevention of and response to emergencies due to food and allergic reactions;

e. Building and physical premises safety, including identification of and protection from hazards, bodies of water, and vehicular traffic;

f. Prevention of shaken baby syndrome, abusive head trauma, and child maltreatment;

g. Emergency preparedness and response planning for emergencies resulting from a natural disaster or a human-caused event;

h. Handling and storage of hazardous materials and the appropriate disposal of biological contaminants; and

i. Precautions in transporting children;

2. Recognizing and reporting child abuse; and

3. Developmentally appropriate practices~~in accordance with KRS 199.8982(1)(a)(6); and~~

(b) Develop and implement a written plan for obtaining:

1. Three (3) hours of cabinet-approved training within the first year of operation, including one and one-half (1 1/2) hours of cabinet-approved pediatric abusive head trauma training in accordance with KRS 199.8982(2); and

2. Nine[nine] (9) hours of [annual-]cabinet-approved training annually between July 1 and the following June 30 of each subsequent year of operation, including one and one-half (1 1/2) hours of cabinet-approved pediatric abusive head trauma training completed once every five (5) years as required in Section 10(1) of this administrative regulation.

(10)

(a) A family child-care home certificate shall:

1. Be displayed in a prominent place, as required by KRS 199.8982(1)(c);

2. Contain the:

- a. Name and address of the child care provider;
- b. Maximum number of unrelated children who may be served;
- c. Identification number; and
- d. Effective and expiration dates; and

3. Be valid for only the:

- a. Name of the individual authorized on the certificate to operate a family child-care home; and
- b. Residential address printed on the certificate.

(b) A certified family child-care home whose certificate is suspended or revoked shall:

1. Receive a new certificate indicating that the provider is under adverse action; and

2. Post the new certificate in accordance with paragraph (a) of this subsection.

(11) A change of location shall require:

(a) A ten (10) calendar day notice;

(b) A completed OIG-DRCC-03;

(c) An inspection of the new home; and

(d) Continued compliance with this administrative regulation.

#### Section 3. Renewal of Certification.

(1) A family child-care certification shall expire two (2) years from the date of issuance unless the certificate holder meets the requirements of subsection (2) of this section. A certificate that expires shall lapse and shall not be subject to appeal.

(2) A family child-care home provider shall submit one (1) month prior to expiration of the provider's certification:

(a) A completed OIG-DRCC-04, Certified Family Child-Care Home Renewal Form;

(b) A nonrefundable renewal fee of ten (10) dollars every two (2) years pursuant to KRS 199.8982(1)(b);

(c) A physician's statement documenting that the family child-care home provider's health is satisfactory for continued operation of a family child-care home; and

(d) Proof that the family child-care home provider continues to meet the minimum requirements specified in Sections 2, 3, and 10 through 20 of this administrative regulation.

(3) The cabinet shall:

(a) Review and process the OIG-DRCC-04 submitted in accordance with subsection (2) of this section;

(b) Conduct an unannounced inspection of the home pursuant to KRS 199.8982(1)(b); and

(c) Approve the family child-care home within fifteen (15) calendar days of receipt of the OIG-DRCC-04 submitted in accordance with subsection (2) of this section if the requirements in Sections 2, 3, and 10 through 20 of this administrative regulation are met.

(4) The cabinet shall conduct an annual unannounced inspection of the home pursuant to KRS 199.8982(1)(b) and 42 U.S.C. 9858c(2)(K).

#### Section 4. Statement of Deficiency and Corrective Action Plans.

(1) If the cabinet finds a provider noncompliant with Sections 2, 3, or 10 through 20 of this administrative regulation, the cabinet or its designee shall complete a written statement of deficiency.

(2) Except for a violation posing an immediate threat, a family child-care home shall submit a written corrective action plan to the cabinet or its designee within fifteen (15)~~ten (10)~~ calendar days from receipt of the statement of deficiency to eliminate or correct the regulatory violation.

(3) A corrective action plan shall include:

(a) Specific action undertaken to correct a violation;

(b) The date action was or shall be completed;

(c) Action utilized to assure ongoing compliance;

(d) Supplemental documentation requested as a part of the plan; and

(e) The signature of the provider and the date of signature.

(4) The cabinet or its designee shall review the plan and notify a family child-care home within thirty (30) calendar days from receipt of a plan, in writing, of the decision to:

(a) Accept the plan;

(b) Not accept the plan; or

(c) Deny, suspend, or revoke the family child-care home's certification in accordance with Section 5, 6, 7, or 8 of this administrative regulation.

(5) A notice of unacceptability shall state the specific reasons a plan was not accepted.

(6) A family child-care home notified of an unaccepted plan shall:

(a) Submit an amended plan within fifteen (15) calendar days of notification; or

(b) Have its certification revoked or denied for failure to:

1. Submit an acceptable amended plan; or

2. Implement corrective measures identified in the corrective action plan.

(7) If a family child-care home fails to submit an acceptable corrective action plan or does not implement corrective measures in accordance with the corrective action plan, the cabinet shall deny or revoke a provider's certification.

(8) The cabinet shall not review or accept more than three (3) corrective action plans from a family child-care home in response to the same written statement of deficiency.

(9) An administrative regulatory violation reported on a statement of deficiency that poses an immediate threat to the health, safety, or welfare of a child shall be corrected by the family child-care home provider within five (5) working days of notification.

(10) The voluntary relinquishment of a family child-care home's certification shall not preclude the cabinet's pursuit of adverse action.

#### Section 5. Denial of Application for Certification.

(1) An application for initial certification as a family child-care home shall be denied if the applicant, an assistant, or an adult residing in the household has a history of behavior that may impact the safety or security of a child in care including:

(a) A disqualifying criterion or background check result in accordance with 922 KAR 2:280; or

(b) Other behavior or condition indicating inability to provide reliable care to a child.

(2) An application for certification as a family child-care home provider shall be denied if the applicant or certificate holder:

(a) Fails to comply with the minimum certification standards specified in Sections 10 through 20 of this administrative regulation and KRS 199.8982;

(b) Knowingly misrepresents or submits false information on the application or other form required by the cabinet or its designee;

(c) Refuses, during the hours of operation, access by:

1. A parent of a child in care, the cabinet, the cabinet's designee, or another agency with regulatory authority to:

a. A child in care; or

b. The provider's premises; or

2. The cabinet, the cabinet's designee, or another agency with regulatory authority to the provider's records;

(d) Is placed on a directed plan of correction more than two (2) times in a three (3) year period; or

(e) Has been discontinued or disqualified from participation in:

1. The Child Care Assistance Program established by 922 KAR 2:160, including an intentional program violation in accordance with 922 KAR 2:020; or

2. Another governmental assistance program due to fraud, abuse, or criminal conviction related to that program.

(3) Effect of previous denial or revocation.

(a) If an applicant has had a previous child care registration, certification, or license subject to denial, revocation, or voluntary relinquishment pending an investigation or adverse action, the cabinet shall grant the applicant a certificate to operate a family child-care home if:

1. A seven (7) year period has expired from the:

a. Date of the prior notice of denial or revocation; or

b. Date the certification, license, or registration was voluntarily relinquished as a result of an investigation or a pending adverse action; and

2. The applicant has:

a. The proven ability to comply with the provisions of this administrative regulation and KRS 199.8982;

b. Completed, since the time of the prior denial or revocation, sixty (60) hours of cabinet-approved training in developmentally appropriate child care practice; and

c. Not had an application, registration, certificate, or license to operate as a child care provider denied or revoked for:

(i) A disqualifying criterion or background check result in accordance with 922 KAR 2:280; or

(ii) Discontinuation or disqualification from participation in the Child Care Assistance Program established by 922 KAR 2:160, including an intentional program violation in accordance with 922 KAR 2:020, or another governmental assistance program due to fraud, abuse, or criminal conviction related to that program.

(b) If a certificate is granted after the seven (7) year period specified in paragraph (a) of this subsection, the provider shall serve a two (2) year probationary period during which the home shall be inspected on at least a quarterly basis.

Section 6. Directed Plan of Correction (DPOC).

(1) If the cabinet determines that a certified family child-care home provider is in violation of this administrative regulation or 922 KAR 2:280, based on the severity of the violation, the cabinet:

(a) Shall enter into an agreement with the provider directing the requirements for remedying a violation and achieving compliance;

(b) Shall notify or require the provider to notify a parent of a child who may be affected by the situation for which a DPOC has been imposed;

(c) Shall increase the frequency of monitoring by cabinet staff to verify the implementation of the DPOC;

(d) May require the certified family child-care home to participate in additional training; and

(e) May amend the agreement with the certified family child-care home if the cabinet identifies an additional violation during the DPOC period.

(2) A DPOC shall result in a suspension or revocation of certification or shall be modified to impose additional requirements if a certified family child-care home provider:

(a) Fails to meet a condition of the DPOC; or

(b) Violates a requirement of the DPOC.

Section 7. Suspension. The cabinet shall take emergency action in accordance with KRS 13B.125.

(1) An emergency order issued pursuant to this section shall:

(a) Be served to a certified family child-care home provider in accordance with KRS 13B.050(2); and

(b) Specify the regulatory violation that caused the emergency condition.

(2) Upon receipt of an emergency order, a provider shall surrender the certificate of operation to the cabinet.

(3) The cabinet or its designee and the provider shall make reasonable efforts to:

(a) Notify a parent of each child in care of the suspended provider; and

(b) Refer a parent for assistance in locating alternate child care arrangements.

(4) A certified family child-care home required to comply with an emergency order issued in accordance with this section may submit a written request for an emergency hearing within twenty (20) calendar days of receipt of the order to determine the propriety of the certification's suspension.

(5) The cabinet shall conduct an emergency hearing within ten (10) working days of the request for hearing in accordance with KRS 13B.125(3).

(6)

(a) Within five (5) working days of completion of the hearing, the cabinet's hearing officer shall render a written decision affirming or reversing the emergency order to suspend certification.

(b) The emergency order shall be affirmed if there is substantial evidence of an immediate threat to public health, safety, or welfare.

(7) A provider's certification shall be revoked if the condition that resulted in the emergency order is not corrected within thirty (30) calendar days of service of the emergency order.

Section 8. Revocation.

(1) A family child-care home provider's certification shall be revoked if a provider:

(a) Knowingly misrepresents or submits false information on the application or other form required by the cabinet or its designee;

(b) Interferes with a cabinet representative's ability to perform an official duty;

(c) Refuses, during the hours of operation, access by:

1. A parent of a child in care, the cabinet, the cabinet's designee, or another agency with regulatory authority to:

a. A child in care; or

b. The provider's premises; or

2. The cabinet, the cabinet's designee, or another agency with regulatory authority to the provider's records;

(d) Is convicted of, or enters an Alford or guilty plea to, a criminal charge that threatens the health, safety, or welfare of a child in care;

(e) Is unable to operate a family child-care home due to a medical condition;

(f) Does not meet the requirements of KRS 199.8982(1) or Sections 2, 3, and Sections 10 through 20 of this administrative regulation;

(g) Is placed on a directed plan of correction more than two (2) times in a three (3) year period; or

(h) Has been discontinued or disqualified from participation in:

1. The Child Care Assistance Program established by 922 KAR 2:160, including an intentional program violation in accordance with 922 KAR 2:020; or

2. Another governmental assistance program due to fraud, abuse, or criminal conviction related to that program.

(2)

(a) If the cabinet determines that a condition of subsection (1) of this section exists, the cabinet or its designee shall send a written notice of its intention to revoke the certificate to the family child-care home by personal service delivery or through certified mail.

(b) Subsequent to the notice provided in accordance with paragraph (a) of this subsection, a family child-care home's failure to request an appeal pursuant to Section 9 of this administrative regulation shall result in the final determination revoking the home's certification.

(3) The notice of revocation shall:

(a) Explain the reason for the revocation;

(b) Specify that the child care provider shall cease operation as a certified family child-care home upon revocation;

(c) Advise the family child-care home provider of the right to request an appeal on an OIG-DRCC-05, Certified Family Child-Care Home Request for Appeal, prior to the effective date of the revocation;

(d) Specify that revocation shall be stayed if an appeal is requested; and

(e) Require the family child-care home provider to surrender the certificate of operation to cabinet staff when the revocation becomes effective.

(4) If a provider's certification has been revoked, the cabinet or its designee and the provider shall make reasonable efforts to:

(a) Notify a parent of each child in care; and

(b) Refer the parent for assistance in locating alternate child care arrangements.

Section 9. Appeal of Denials, Suspension, and Revocation.

(1) If the cabinet denies certification, suspends certification, or revokes certification, the family child-care home provider may request an appeal by completing an OIG-DRCC-05 within twenty (20) calendar days of receipt of the notice of adverse action.

(2) Upon request of the appeal, the provider shall be afforded a hearing in accordance with KRS Chapter 13B.

(3) If a final order from an administrative hearing does not uphold a suspension, the provider may resume providing child care.

Section 10. Standards for the Provider.

(1)

(a) Between July 1 and June 30 of each subsequent year of operation[the following calendar year], a provider shall complete at least nine (9) hours of cabinet-approved early care and education training[beginning the second year of operation], including one and one-half (1 1/2) hours of cabinet-approved pediatric abusive head trauma training completed once every five (5) years in accordance with KRS 199.8982(2)[to be completed];

[1.] ~~Within the second year of employment or operation in child care; and~~

[2.] ~~Every subsequent five (5) years of employment or operation in child care.~~

(b) A provider or assistant's compliance with the training in accordance with paragraph (a) of this subsection or subsection (8) of this section shall be verified through the cabinet-designed database maintained pursuant to 922 KAR 2:240.

(2) A provider shall not provide care for more unrelated children than the number authorized on the certificate of operation.

(3) A provider shall have an assistant present if the provider cares for more than:

(a) Four (4) infants, including the provider's own or related infants; or

(b) Six (6) children under the age of six (6) years old, including the provider's own or related children.

(4) The maximum number of unrelated children in the care of a certified family child-care home provider shall not exceed six (6) at any one (1) time. A provider may care for four (4) related children in addition to six (6) unrelated children for a maximum child care capacity of ten (10) at any one (1) time.

(5) If a provider operates the in-home child care business for twenty-four (24) consecutive hours, the provider shall:

(a) Receive an eight (8) hour period of respite after working sixteen (16) consecutive hours during a twenty-four (24) hour period; and

(b) Employ an assistant during the period of respite.

(6) Prior to being left alone with a child, an assistant shall be certified by a cabinet-approved agency in infant, ~~and~~ child, and adult:

(a) Cardiopulmonary resuscitation (CPR)[CPR]; and

(b) First aid.

(7) An assistant shall be:

(a) Eighteen (18) years of age or older;

(b) Under supervision of a provider;

(c) Used for providing care in a certified family child-care home; and

(d) Used in the absence of the certified provider.

(8) An assistant ~~used in excess of fourteen (14) calendar days during a one (1) year period~~ shall demonstrate completion of the training required by Section 2(9) of this administrative regulation within the timeframes established therein~~at least nine (9) hours of cabinet-approved training between July 1 and June 30 of the following calendar year beginning the second year of employment, including:~~

~~[(a)] [Six (6) hours of cabinet-approved training in accordance with KRS 199.8982(2); and]~~

~~[(b)] [Pediatric abusive head trauma training pursuant to KRS 199.8982(2), in accordance with subsection (1) of this section].~~

(9) If a provider, an assistant, or a member in a provider's household is named as the alleged perpetrator in a child abuse or neglect report accepted by the cabinet in accordance with 922 KAR 1:330, the individual shall be removed from direct contact with a child in care:

(a) For the duration of the investigation; and

(b) Pending completion of an administrative appeal process for a cabinet substantiation of child abuse or neglect in accordance with 922 KAR 1:320 or 922 KAR 1:480.

(10) During hours of operation, a provider and another person in the home shall:

(a) Be free of the influence of alcohol or a controlled substance except for use of a controlled substance as prescribed by a physician; and

(b) Prohibit smoking or vaping in the presence of children in care.

(11) During a provider's absence, an assistant shall be physically present with a child in care during hours of operation.

(12) A provider shall:

(a) Not be employed outside of the home during regular hours of operation; and

(b) Maintain daily attendance records documenting the arrival and departure time of each child, including records that are required in accordance with 922 KAR 2:160, Section 14, if a child receives services from the provider through the Child Care Assistance Program.

(13) A provider and an assistant shall not: Repeat online training courses, including pre-service orientation, unless:

(a) Five (5) years have passed since the online training was completed; or

(b) They are required to as part of a disciplinary directive by a state agency.

Section 11. Contract Substitute Staff Member Requirements.

(1) A contract substitute staff member shall:

(a) Comply with the training requirements established in Section 10 of this administrative regulation;

(b) Be employed by an outside agency and provide the required documentation to verify the contractual agreement between the certified child-care home and the outside agency;

(c) Provide a hard copy file containing all required staff records to be kept on-site at the certified child-care home and maintained at the home for five (5) years;

(d) Be entered into the cabinet-designated database as a staff member of the outside organization in accordance with 922 KAR 2:240;

(e) Be the responsibility of the certified child-care home while working on-site; and

(f) Have supervisory authority over a child only if the requirements of 922 KAR 2:280 and this administrative regulation are met.

(2) Except for an employee of a child-care center program authorized by 42 U.S.C. 9831-9852, an owner or employee of a contract agency possessing a Kentucky Early Care and Education Trainer's Credential shall not train an employee of the same contract agency in order to meet the training requirements established in:

(a) KRS 199.8982(1)(a)[-]6, and (2), 922 KAR 2:180, 922 KAR 2:240, 922 KAR 2:250, 922 KAR 2:270, or this administrative regulation; or

(b) A child development associate credential.

Section 12. The General Requirements of the Family Child-Care Home Environment.

(1) A provider's home and each play area used for child care shall:

(a) Be free from risk of harm in accordance with the requirements of this administrative regulation; and

(b) Have adequate:

1. Heating and cooling;

2. Light; and

3. Ventilation.

(2) Each floor level used for child care shall have at least one (1):

(a) Unblocked exit to the outside;

(b) Smoke detector, including in the kitchen area and in the children's sleeping areas;

(c) Properly maintained fire[Fire] extinguisher, including in the kitchen area; and

(d) Carbon monoxide detector if the home:

1. Uses fuel burning appliances; or

2. Has an attached garage.

(3) The areas of the home that are accessible to children in care shall be free from items harmful to children including ~~the following items~~:

(a) Cleaning supplies, poisons, paints, and insecticides;

(b) Knives, scissors, and sharp objects;

(c) Power tools, lawn mowers, hand tools, nails, and other equipment;

(d) Matches, cigarettes, lighters, combustibles, ~~and~~ flammable liquids, and all fire hazards;

(e) Plastic bags; and

(f) Litter and rubbish.

(4) Alcohol shall:

(a) Not be consumed by any person on the certified family child-care home's premises during hours of operation; and

(b) Be kept out of reach and sight of a child in care.

(5) In accordance with KRS 527.070(1), firearms and ammunition shall be stored away from the presence of children, in separate locked containers, which, in order to be opened, require a:

(a) Key; or

(b) Combination.

(6) Electrical outlets not in use shall be covered.

(7) An electric fan, floor furnace, ~~or~~ freestanding heater or fireplace, or other source of heat shall:

(a) Be out of the reach of a child; or

- (b) Have a safety guard to protect a child from injury.
- (8) A certified family child-care home shall have:
  - (a) At least one (1) accessible and working telephone on each level used for child care while a child in care is present on that level; and
  - (b) A list of emergency numbers posted on each level used for child care or maintained in the contacts of each telephone, including numbers for the:
    - 1. Police;
    - 2. Fire station;
    - 3. Emergency medical care and rescue squad; and
    - 4. Poison control center.
- (9) Equipment and toys shall be:
  - (a) Designated by the manufacturer as developmentally appropriate to the age of children in care;
  - (b) In sufficient quantity for the number of children in care; and
  - (c) Safe, sound, clean, and in good repair.
- (10) Stairs and steps used for children in care shall be:
  - (a) Solid;
  - (b) Safe; and
  - (c) Railed.
- (11) If an infant or toddler is in the care of a provider, indoor stairs with more than two (2) steps shall be blocked.
- (12) Exclusive of the bathroom and storage area, an indoor area, including furnishings, used for child care shall contain at least thirty-five (35) square feet per child for:
  - (a) Play; and
  - (b) Activities that meet the developmental needs of the children in care.
- (13) An outdoor play area shall be free of unavoidable danger or risk.
- (14) Each child in an outdoor play area shall be under the direct supervision of the provider or assistant.
- (15) Outdoor stationary play equipment shall be:
  - (a) Securely anchored;
  - (b) Developmentally appropriate; and
  - (c) Safe.
- (16) A trampoline shall not be accessible to a child in the care of a provider.
- (17) Children in an outside play area shall have constant and active supervision and shall be protected by physical or natural barriers that prohibit access to:
  - (a) Traffic;
  - (b) Gullies; and
  - (c) Other hazards.
- (18) Constant and active supervision shall be maintained around any body of water and shall be inaccessible to children by secured physical or natural barriers of adequate height and appropriately secured except in accordance with subsections (19) and (20) of this section.
- (19) A swimming pool on the premises shall:
  - (a) Be maintained and free of debris and body waste;
  - (b) Have a water filtering system or be emptied daily;
  - (c) Be supervised when in use, with a ratio of one (1) adult to one (1) infant or toddler; and
  - (d) Be inaccessible to a child when not in use.
- (20) ~~(18)~~ An above-ground pool shall ~~have~~:
  - (a) ~~Have a~~ [A] stationary wall no less than four (4) feet tall; ~~and~~
  - (b) ~~Have hand~~ [Hand] holds or foot holds that are inaccessible when the pool is not in use; ~~and~~
  - (c) Be supervised when in use, with a ratio of one (1) adult to one (1) infant or toddler.
- (21) ~~(19)~~ A fire drill shall be:
  - (a) Conducted during hours of operation at least monthly; and
  - (b) Documented.
- (22) ~~(20)~~ An earthquake drill, ~~and a~~ tornado drill, shelter-in-place drill, and lockdown drill shall be:
  - (a) Conducted during hours of operation at least quarterly; and
  - (b) Documented. ~~[A]~~
- (23) In the event of a natural disaster, fire, shelter-in-place, lockdown, or other emergency, a written plan shall be in place to communicate reunification with families and accommodations for:
  - (a) Infants and toddlers;

- (b) Children with disabilities; and
- (c) Children with chronic medical conditions.
- (24) ~~(21)~~ A family child-care home shall:
  - (a) Be clean;
  - (b) Be uncluttered;
  - (c) Be free of insects and rodents;
  - (d) Have a water supply that is:
    - 1. Potable;
    - 2. Adequate; and
    - 3. From an approved public water supply; and
  - (e) Have bathrooms, including toilets, sinks, and potty chairs that are:
    - 1. Sanitary; and
    - 2. In good working condition.
- (25) ~~(22)~~ Windows, doors, and outer openings shall be screened to prevent the entrance of vermin.
- (26) ~~(23)~~ Indoor and outdoor garbage shall be stored in a waterproof container with a tight-fitting cover.
- (27) ~~(24)~~ Playpens and play yards shall:
  - (a) Meet the federal standards as issued by the Consumer Product Safety Commission, including 16 C.F.R. 1221;
  - (b) Be manufactured for commercial use; and
  - (c) Not be used for sleeping or napping.

#### Section 13. Care Requirements for a Provider.

- (1) A provider shall ensure the health, safety, and comfort of each child.
- (2)
  - (a) Care for a child with a special need shall be consistent with the nature of the need as documented by the child's health professional.
  - (b) A child may include a person eighteen (18) years of age if the person has a special need for which child care is required.
  - (3) Television or video viewing by a child shall be limited to:
    - (a) Two (2) hours daily;
    - (b) The planned program activities; and
    - (c) Developmentally appropriate child-related content, as designated by standardized content guidelines.
  - (4) A child shall:
    - (a) Wash hands with liquid soap and warm running water:
      - 1. Before and after eating or handling food;
      - 2. After toileting or diaper change;
      - 3. After handling animals;
      - 4. After touching an item or an area of the body soiled with body fluids or waste; and
      - 5. After outdoor and indoor play time; or
    - (b) Use hand sanitizer or hand-sanitizing wipes if liquid soap and warm running water are not available in accordance with paragraph (a) of this subsection. The child shall wash the child's hands as soon as practicable once liquid soap and warm running water are available.
  - (5) A provider and an assistant shall:
    - (a) Wash hands with liquid soap and warm running water:
      - 1. Before and after diapering a child;
      - 2. Before and after feeding a child;
      - 3. After toileting or assisting a child with toileting;
      - 4. After handling animals;
      - 5. Before dispensing medication;
      - 6. After caring for a sick child;
      - 7. After wiping or blowing a child's or own nose; and
      - 8. After smoking or vaping; or
    - (b) Use hand sanitizer or hand-sanitizing wipes if liquid soap and warm running water are not available in accordance with paragraph (a) of this subsection. The provider or assistant shall wash his or her ~~the provider or assistant's~~ hands as soon as practicable once liquid soap and warm running water are available.
  - (6) A provider shall ensure that a child does not share:
    - (a) Cups;
    - (b) Eating utensils;
    - (c) Wash cloths;
    - (d) Towels; and
    - (e) Toiletry items.

(7) An infant shall sleep and nap on the infant's back unless the infant's health professional signs a waiver that states the infant requires an alternate sleeping position.

(8) Rest time shall be provided for each child who is not school-age and who is in care for more than four (4) hours.

(9) Rest time shall include adequate space specified by the child's age as follows:

(a) For an infant:

1. An individual non-tiered crib that meets Consumer Product Safety Commission standards established in 16 C.F.R. 1219-1220;

2. A firm crib mattress in good repair with a clean tight-fitted sheet that is changed:

- a. Weekly; or
- b. Immediately if it is soiled or wet;
3. No loose bedding, such as a bumper or a blanket; and
4. No toys or other items except for the infant's pacifier; and

(b) For a toddler or preschool-age child:

1. An individual bed, a two (2) inch thick waterproof mat, or cot in good repair; and

2. Bedding that is in good repair and is changed:

- a. Weekly; or
- b. Immediately if it is soiled or wet.

(10) Rest time shall not exceed two (2) hours for a preschool-age child unless the child is attending nontraditional hours or is sick.

(11) A child who does not sleep shall be permitted to play quietly and be visually supervised.

(12) If overnight care is provided, a provider or an assistant shall:

(a) Remain awake until every child in care is asleep; and

(b) Sleep on the same floor level of the home as an infant or toddler.

(13) A certified family child care home shall provide a daily planned program:

(a) That is available to a parent of a child in care or the cabinet upon request;

(b) Of activities that are developmentally appropriate for each child served;

(c) That provides experience to promote the individual child's physical, emotional, social, and intellectual growth and well-being; and

(d) That offers a variety of creative activities, such as:

1. Art or music;
2. Math or numbers;
3. Dramatic play;
4. Stories and books;
5. Science or nature;
6. Block building or stacking;
7. Tactile or sensory activity;
8. Multi-cultural exposure;
9. Indoor or outdoor play in which a child makes use of both small and large muscles;

10. A balance of active and quiet play, including group and individual activity; and

11. An opportunity for a child to:

- a. Have some free choice of activities;
- b. If desired, play apart from the group at times; and
- c. Practice developmentally appropriate self-help procedures in respect to:

- (i) Clothing;
- (ii) Toileting;
- (iii) Hand-washing; and
- (iv) Eating.

(14) Except for a school-aged child whose parent has given written permission and whose whereabouts are known, a child shall not be permitted off the premises of a family child-care home without a caregiver.

(15) Use of corporal physical discipline shall be prohibited pursuant to KRS 199.896(18).

(16) A provider shall ensure precautions are taken to prevent shaken baby syndrome, abusive head trauma, and child maltreatment.

(17) [(16)] A child shall be released from a family child-care home to:

(a) The child's custodial parent;

(b) The person designated in writing by the parent to receive the child; or

(c) In an emergency, a person designated over the telephone by the parent.

(18) Waste and biological contaminants, such as bodily fluids, blood, or excretions, shall be:

(a) Disposed of in a manner that prevents exposure to children;

(b) Inaccessible to children; and

(c) In a covered plastic-lined receptacle with a close-fitting lid.

#### Section 14. Toilet and Diapering Requirements.

(1) A toilet room shall:

- (a) Have an adequate supply of toilet paper; and
- (b) Be cleaned and disinfected daily.

(2) A sink shall be:

- (a) Located near or in close proximity to toilets;
- (b) Equipped with hot and cold running water that allows for hand washing;

(c) Equipped with hot water at a minimum temperature of ninety (90) degrees Fahrenheit and a maximum of 120 degrees Fahrenheit;

(d) Equipped with liquid soap and single use, disposable hand drying material;

(e) Equipped with an easily cleanable, covered waste receptacle; and

(f) Near or in close proximity to a changing area used for infants and toddlers.

(3) Each toilet shall:

- (a) Be kept in clean condition;
- (b) Be kept in good repair;
- (c) Be in a lighted room; and
- (d) Have ventilation.

(4) Toilet training shall be coordinated with the child's parent.

(5) An adequate quantity of freshly laundered or disposable diapers and clean clothing shall be available.

(6) If a toilet training chair is used, the chair shall be:

- (a) Emptied promptly; and
- (b) Disinfected after each use.

(7) Diapers or clothing shall be:

- (a) Changed when soiled or wet;
- (b) Stored in a covered leak proof container temporarily; and
- (c) Washed or disposed of at least once a day.

(8) The proper methods of diapering and hand-washing shall be available at each diaper changing area.

(9) If a child is being diapered, the child shall:

- (a) Not be left unattended; and
- (b) Be placed on a surface that is:

1. Clean;
2. Padded;
3. Free of holes, rips, tears, or other damage;
4. Nonabsorbent;
5. Easily cleaned; and
6. Free of items not used for diaper changing.

(10) Unless another cleaning method is authorized by the child's parent or prescribed by a physician, individual disposable washcloths shall be used to thoroughly clean the affected area of a child.

(11) A provider or an assistant shall disinfect the diapering surface after each child is diapered.

(12) If a provider or an assistant wear disposable gloves, the gloves shall be changed and disposed of after each child is diapered.

#### Section 15. Food Requirements.

(1) A provider and an assistant shall:

- (a) Use sanitary procedures when preparing and serving food;
- (b) Refrigerate perishable food and beverages; and
- (c) Serve:

1. Breast milk or iron-fortified formula to a child:

- a. Age birth to twelve (12) months; or
- b. Beyond twelve (12) months of age as documented by the parent or the child's physician;

2. Pasteurized whole milk to a child age twelve (12) months to twenty-four (24) months; or



3. Pasteurized skim or low fat one (1) percent milk to a child age twenty-four (24) months to school-age.

(2) Water shall be:

(a) Available to a child in care; and

(b) Served in addition to meal requirements if a child requests throughout the day.

(3) A certified family child-care home shall offer each child the same food items unless the child's parent or health professional documents a dietary restriction that necessitates an alternative food item for the child.

(4) Second servings shall be available to a child.

(5) Food shall not be:

(a) Used for:

1. Reward; or

2. Discipline; or

(b) Withheld until all other food items are consumed.

(6) Meals shall:

(a) Be served in an amount appropriate to the age of the child;

(b) Include appropriate types of food according to the age of the child;

(c) Not be served during television or video viewing;

(d) Be served every two (2) to three (3) hours; and

(e) Be served to a child:

1. Seated with sufficient room to manage food and tableware; and

2. Supplied with individual eating utensils designed for use by a child.

(7) Breakfast shall include:

(a) Milk;

(b) A whole grain or an enriched grain bread; and

(c) Fruit, vegetable, or 100 percent juice.

(8) A snack shall include two (2) of the following:

(a) Milk;

(b) Protein source;

(c) Fruit, vegetable, or 100 percent juice; or

(d) A whole grain or an enriched grain bread.

(9) Lunch and dinner shall include:

(a) Milk;

(b) Protein source;

(c)

1. Two (2) vegetables;

2. Two (2) fruits; or

3. One (1) fruit and one (1) vegetable; and

(d) A whole grain or an enriched grain bread.

(10) A weekly menu shall be:

(a) Prepared;

(b) Dated;

(c) Available to a parent of a child in care or the cabinet upon request; and

(d) Kept on file for thirty (30) calendar days.

(11) Substitutions to a weekly menu shall be noted on the day the meal is served.

(12) Unless provided as part of the fee for child care or the provider is a participant in the food program, an infant's formula shall be prepared, labeled, and provided by the parent.

(13) Each child's bottle shall be:

(a) Labeled;

(b) Covered; and

(c) Refrigerated.

(14) The refrigerator shall:

(a) Be in working order; and

(b) Maintain a product temperature at or below forty-five (45) degrees Fahrenheit.

(15) Except if thawed for preparation or use, frozen food shall be kept at a temperature of zero degrees Fahrenheit as verified by a thermometer in the freezer.

(16) While bottle-feeding an infant, the:

(a) Child shall be held; and

(b) Bottle shall not be:

1. Propped;

2. Left in the mouth of a sleeping infant; or

3. Heated in a microwave.

(17) A certified family child-care home shall meet requirements of subsections (1)(c) and (7) through (9) of this section if the provider participates in the Child and Adult Food Care Program and meets meal requirements specified in 7 C.F.R. 226.20.

#### Section 16. Medication and First Aid.

(1) Medication, including medicine that requires refrigeration, shall be stored in a locked container or area with a lock unless the medication is:

(a) A first aid supply. A first aid supply shall be maintained in accordance with subsection (4) of this section;

(b) Diaper cream, sunscreen, or toothpaste. Diaper cream, sunscreen, or toothpaste shall be inaccessible to a child in care;

(c) An epinephrine auto-injector. A family child-care home shall comply with KRS 199.8951, including:

1. An epinephrine auto-injector shall be inaccessible to a child in care;

2. A certified family child-care home provider shall have training on the administration of an epinephrine auto-injector if the provider maintains an epinephrine auto-injector for a child;

3. A certified family child-care home shall seek emergency medical care for a child if an auto-injector is administered to a child; and

4. A certified family child-care home shall report to the child's parent and the cabinet in accordance with subsection (6) of this section and Section 20(10) of this administrative regulation if an epinephrine auto-injector is administered to a child; or

(d) An emergency or rescue medication for a child in care, such as medication to respond to diabetic or asthmatic condition, as prescribed by the child's physician. Emergency or rescue medication shall be inaccessible to a child in care.

(2) Prescription and nonprescription medication shall be administered to a child in care:

(a) With a written request of the child's parent or the child's prescribing health professional; or

(b) In accordance with KRS 311.646.

(3) Prescription and nonprescription medications shall be:

(a) Labeled; and

(b) Administered according to directions or instructions on the label.

(4) A provider shall:

(a) Maintain first aid supplies that are easily accessible for use in an emergency, and these supplies shall be inaccessible to the children in care; ~~and~~

(b) Wash superficial wounds with soap and water before bandaging;

(c) Use disposable gloves for the clean-up of biological contaminants, such as blood, bodily fluids, or excretions;

(d) Place contaminated clothing or other absorbent materials in a sealed plastic container or bag labeled with the child's name, and returned to the parent; and

(e) Clean and disinfect the soiled surfaces.

(5) First aid supplies shall include a fully-equipped first aid kit containing the following non-expired items:

(a) Adhesive bandages;

(b) Sterile gauze;

(c) Medical tape;

(d) Scissors;

(e) Thermometer;

(f) Disposable gloves; and

(g) CPR mouthpiece.

(6) A provider shall provide immediate notification of a medical emergency to a child's:

(a) Parent; or

(b) Emergency contact, if the parent is unavailable.

(7) A quiet, separate area that is easily supervised shall be provided for a child too sick to remain with other children.

(8) A provider and an assistant shall:

(a) Be able to recognize symptoms of childhood illnesses;

(b) Be able to provide basic first aid; and

(c) Maintain a child care program that assures affirmative steps are taken to protect children from abuse or neglect pursuant to KRS 600.020(1).

Section 17. Animals.

(1) An animal shall not be allowed in the presence of a child in care:

(a) Unless:

1. The animal is under the supervision and control of an adult;
2. Written parental consent has been obtained; and
3. The animal is certified as vaccinated against rabies; or
- (b) Except in accordance with subsection (3) of this section.

(2) A parent shall be notified in writing if a child has been bitten or scratched by an animal.

(3) An animal that is considered undomesticated, wild, or exotic shall not be allowed at a certified family child-care home unless the animal is:

- (a) A part of a planned program activity led by an animal specialist affiliated with a zoo or nature conservatory; and
- (b) In accordance with 301 KAR 2:081 and 301 KAR 2:082.

Section 18. Transportation.

(1) If transportation is provided or arranged by the certified family child-care home provider, the provider shall:

(a) Have written permission from a parent to transport his or her child;

(b) Have a car or van equipped with seat belts;

(c) Require that a child:

1. Be restrained in an appropriate safety seat meeting state and federal motor vehicle safety standards in accordance with KRS 189.125 and 49 C.F.R. 571.213;
2. Remain seated while the vehicle is in motion; and
3. If under thirteen (13) years of age, be transported in the back seat;

(d) Have emergency and identification information about each child in the vehicle if children are being transported; and

(e) Conform to state laws pertaining to vehicles, driver's license, and insurance pursuant to KRS 186.020.

(2) A child shall not be left unattended:

(a) At the site of aftercare delivery; or

(b) In a vehicle.

(3) A child shall not be left in a vehicle while it is being repaired.

(4) The back of a pickup truck shall not be used to transport a child.

(5) Firearms, ammunition, alcohol, or illegal substances shall not be transported in a vehicle transporting children.

(6) A vehicle shall not transport children and hazardous materials at the same time.

(7) A vehicle transporting a child shall have the headlamps on.

(8) If the driver is not in the driver's seat, the:

- (a) Engine shall be turned off;
- (b) Keys shall be removed; and
- (c) Emergency brake shall be set.

(9) A driver of a vehicle transporting a child for a certified provider shall:

(a) Be at least twenty-one (21) years old;

(b) Complete:

1. The background checks described in Section 2(2)(c)5 or 2(5) of this administrative regulation; and

2. An annual check of the:

a. Kentucky driver history records in accordance with KRS 186.018; or

b. Driver history records through the state transportation agency that issued the driver's license;

(c) Hold a current driver's license that has not been suspended or revoked during the last five (5) years; and

(d) Not **have** caused an accident which resulted in the death of a person.

(10) Based on the harm, threat, or danger to a child's health, safety, and welfare, the cabinet shall pursue an adverse action in accordance with Section 5, 6, 7, or 8 of this administrative regulation:

(a) For a violation of this section; or

(b) If the provider:

1. Fails to report an accident in accordance with Section 20(10)(a) of this administrative regulation; or

2. Transports more passengers than the vehicle's seating capacity and safety restraints can accommodate.

Section 19. Records.

(1) A provider shall maintain:

(a) A current immunization certificate for each child in care within thirty (30) days of the child's enrollment, unless an attending physician or the child's parent objects to the immunization of the child pursuant to KRS 214.034[214.036];

(b) A written record for each child:

1. Completed and signed by the child's parent;

2. Retained on file on the first day the child attends the family child-care home; and

3. To contain:

a. Identifying information about the child, which includes, at a minimum, the child's name, address, and date of birth;

b. Contact information to enable the provider to contact the child's:

(i) Parent at the parent's home or place of employment;

(ii) Family physician; and

(iii) Preferred hospital;

c. The name of each person who is designated in writing to pick-up the child;

d. Food or other allergies in a documented care plan that includes:

(i) Instructions regarding the allergy, including any identifying symptoms;

(ii) Steps taken to avoid and prevent the allergen; and

(iii) A plan of treatment in the event of an allergic reaction, including medication, doses, and the administration of an epinephrine auto-injector in accordance with Section 16(1)(c) of this administrative regulation.

e. The child's general health status and medical history including, if applicable:

(i) [Allergies;]

(ii) Restriction on the child's participation in activities with specific instructions from the child's parent or health professional; and

(iii) Permission from the parent for third-party professional services in the family child-care home;

f. [e.] The name and phone number of each person to be contacted in an emergency situation involving or impacting the child;

g. [f.] Authorization by the parent for the provider to seek emergency medical care for the child in the parent's absence; and

h. [g.] A permission form and allergy care plan if applicable for each trip away from the family child-care home signed by the child's parent in accordance with Section 18(1) of this administrative regulation; and

(c) Daily attendance records documenting the arrival and departure time of each child, including records that are required in accordance with 922 KAR 2:160, Section 14, if a child receives services from the provider through the Child Care Assistance Program.

(2) A certified family child-care home provider shall maintain the confidentiality of a child's records.

(3) The cabinet shall provide, upon request, public information pursuant to KRS 199.8982(1)(d) and (e).

(4) A certified family child-care home provider shall:

(a) Report an incident of suspected child abuse or neglect pursuant to KRS 620.030; and

(b) Provide the cabinet access and information in the completion of the investigation pursuant to KRS 620.030.

(5) A certified family child-care home provider shall maintain a written record of:

(a) Quarterly practiced earthquake drills, ~~and~~ tornado drills, shelter-in-place drills, and lockdown drills ~~drills~~ detailing the date, time, and participants in accordance with Section 12(22)(20) of this administrative regulation;

(b) Monthly practiced fire drills detailing the date, time, and participants in accordance with Section 12(21)(19) of this administrative regulation; and

(c) Reports to the cabinet that are required in accordance with Section 20(11)(40) of this administrative regulation.

(6) A certified family child-care home provider shall keep all records for five (5) years.

(7)

(a) A certified family child-care home provider shall have a written evacuation plan in the event of fire, natural disaster, or other threatening situation that may pose a health or safety hazard to a child in care in accordance with KRS 199.895.

(b) The cabinet shall post an online template of an evacuation plan that:

1. Fulfills requirements of KRS 199.895;
2. Is optional for an applicant or a family child-care home's use; and
3. Is available to an applicant or a family child-care home without charge.

Section 20. Certified Family Child-Care Home Program. The certified family child-care home provider shall:

(1) Develop written information that specifies the:

- (a) Rate for child care;
- (b) Expected frequency of payment for the program;
- (c) Hours of operation; and
- (d) Policy regarding:
  1. Late fees;
  2. Holidays;
  3. Vacation;
  4. Illness; and
  5. Emergency pick up;

(2) Make available a copy of the certification standards to each parent;

(3) Provide each parent with the name, address, and telephone number of the cabinet for the purpose of registering a complaint if the parent believes the family child-care home provider is not meeting the standards;

(4) Post and provide to each parent a copy of children and parent rights, as required by KRS 199.898;

(5) Post each child's food allergies or other allergy care plan prominently where food is served with permission of the parent or guardian;

(6) Allow a parent, the cabinet, the cabinet's designee, or another agency with regulatory authority access to the family child-care home at any time a child is in care;

(7) Communicate with each child's parent about the child's:

- (a) Development;
- (b) Activities;
- (c) Likes; and
- (d) Dislikes;

(8) Make available to a parent upon request:

(a) The staff to child ratios described in Section 10 of this administrative regulation;

(b) The planned program of activities;

(c) Each statement of deficiency issued by the cabinet during the current certification period;

(d) Each plan of correction submitted by the certified family child-care home to the cabinet during the current certification period; and

(e) Daily schedule including any trips outside the family child-care home;

(9) Coordinate at least one (1) annual activity involving parental or family participation;

(10) Maintain a written child care agreement with each child's parent, including the name of each person designated by the parent to pick up the child; and

(11) Report:

(a) The following to the cabinet within twenty-four (24) hours from the time of discovery:

1. A communicable disease pursuant to 902 KAR 2:020, which shall also be reported to the local health department [pursuant to KRS 214.010];

2. An accident or injury to a child that requires medical care;

3. An incident that results in legal action by or against the family child-care home that:

- a. Affects:
  - (i) A child in care;
  - (ii) The provider;

(iii) An assistant; or

(iv) A member of the provider's household; or

b. Includes the provider's discontinuation or disqualification from a governmental assistance program due to fraud, abuse, or criminal conviction related to that program;

4. An incident involving fire or other emergency, including a vehicular accident when the provider is transporting a child receiving child care services; or

5. A report of child abuse or neglect that:

a. Has been accepted by the cabinet in accordance with 922 KAR 1:330; and

b. Names the alleged perpetrator as the:

- (i) Provider;
- (ii) Provider's assistant; or
- (iii) Member of the provider's household;

(b) The death of a child to the cabinet within one (1) hour;

(c) Temporary or permanent closure as soon as practicable to the cabinet and the parent of a child in the family child-care home; or

(d) A child care staff member meeting a disqualifying criterion or background check result in accordance with 922 KAR 2:280.

Section 21. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "OIG-DRCC-03, Initial Certification Application for Family Child-Care Home", 11/2023[8/2018];

(b) "OIG-DRCC-04, Certified Family Child-Care Home Renewal Form", 11/2023[8/2018]; and

(c) "OIG-DRCC-05, Certified Family Child-Care Home Request for Appeal", 2018.

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

FILED WITH LRC: February 12, 2024

CONTACT PERSON: Krista Quarles, Policy Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-7476; fax 502-564-7091; email CHFSregs@ky.gov.

**CABINET FOR HEALTH AND FAMILY SERVICES**  
**Department for Community Based Services**  
**Division of Child Care**  
**(As Amended at ARRS, February 12, 2024)**

**922 KAR 2:165. Employee Child Care Assistance Partnership.**

RELATES TO: KRS 199.881-888, 199.8943, 42 U.S.C. 2000d  
STATUTORY AUTHORITY: KRS 194A.050(1), 199.884, 199.8994

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. KRS 199.884 requires the cabinet to promulgate administrative regulations to effectuate the provisions of KRS 199.881 to 199.888. KRS 199.8994 requires the cabinet to administer all child care funds in a manner that is in the best interest of the clients to be served. This administrative regulation establishes eligibility requirements and procedures for the implementation of the Employee Child Care Assistance Partnership to the extent that funding is available.

Section 1. Definitions.

(1) "Applicant" means an employer applying for the Employee Child Care Assistance Partnership (ECCAP) program with the intention of entering into a contract with an employee and a child

care provider to support an employee by contributing to his or her child care costs.

(2) "Cabinet" is defined by KRS 199.882(1).

(3) "Child care" means the provision of care for a child for a portion of a day on a regular basis, designed to supplement, but not substitute for, the parent or guardian's responsibility for the child's protection, development, and supervision.

(4) "Child care desert" means a census tract with more than fifty (50) children under the age of five (5) that contains either no child care providers or so few that there are more than three (3) times as many children as licensed child care slots.

(5) "Contribution" is defined by KRS 199.882(3).

(6) "Eligible child care costs" is defined by KRS 199.882(4).

(7) "Employee" is defined by KRS 199.882(5).

(8) "Employer" is defined by KRS 199.882(6).

(9) "Family" means a parent, child, or other responsible adult residing in the same home as a child.

(10) "Fund" is defined by KRS 199.882(7).

(11) "Program" ***[means the Employee Child Care Assistance Partnership and is defined by KRS 199.882(8).***

(12) "Responsible adult" means an individual who is:

(a) The natural parent, adoptive parent, or stepparent;

(b) The legal guardian of a child; or

(c) The spouse of an individual caring for a child in loco parentis.

(13) "Small business" is defined by KRS 199.882(9).

(14) "State match" is defined by KRS 199.882(10).

(15) "State median household income" is defined by KRS 199.882(11).

## Section 2. Application and Contract Requirements and Timeframes.

(1) An employer may apply for the Employee Child Care Assistance Partnership (ECCAP).

(2) An application shall have been made on the date a signed and completed form "DCC-600, Employee Child Care Assistance Partnership Application and Contract", is received by the cabinet.

(3) An application shall not be received by the cabinet prior to April 2, 2023, in accordance with KRS 199.883(9)(b).

(4) The cabinet shall review and consider an application received on or after April 2, 2023, pursuant to KRS 199.883(3) through (5).

(5) The cabinet shall not disburse a state match pursuant to this program prior to July 1, 2023, in accordance with KRS 199.883(9)(c).

(6) If necessary, the cabinet shall maintain a waitlist pursuant to KRS 199.883(6).

(7) Pursuant to KRS 199.883(10), if funding is available, beginning in 2024, the cabinet shall accept an application for the next fiscal year on:

(a) April 2 of each year for an employer already participating in the program; ***and;***

(b) May 17 of each year for an employer not already participating in the program.

(8)

(a) In accordance with the procedures established in 920 KAR 1:070, interpreter or speech impaired services shall be provided for persons who are:

1. Deaf; or

2. Hard of hearing.

(b) Interpreter services shall be provided for a non-English speaking individual in accordance with Section 601 of Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d.

(9) The cabinet or its designee shall not discriminate against an applicant based on age, race, color, sex or gender, sexual orientation, disability, religion, national origin or ancestry, political beliefs, or reprisal or retaliation for prior civil rights activity.

(10)

(a) The employer shall be the primary source of information and shall:

1. Provide verification of:

a. Employment;

b. The employee's income; and

c. Technical eligibility required pursuant to Section 3 of this

administrative regulation; and

2. Give written consent to the cabinet or its designee necessary to verify information pertinent to the eligibility determination.

(b) Upon receiving written notice of a request for information, failure of an employer to respond within ten (10) business days shall be considered a failure to present adequate proof of eligibility.

(11) The cabinet shall verify that the employer, employee, and child care provider are eligible to participate in the program pursuant to the requirements established in this administrative regulation.

(12) The cabinet shall:

(a) Render a decision on each application; and

(b) Within thirty (30) calendar days of receipt of the application submitted in accordance with KRS 199.884(4), send notice of approval or denial to all parties on the "DCC-605, Employee Child Care Assistance Partnership Notice of Action".

## Section 3. Technical Eligibility.

(1) An employee shall not be eligible to participate in the program if child care is provided by:

(a) A parent or stepparent;

(b) A legal guardian;

(c) A person living in the same residence as the child in need of care; or

(d) A provider not:

1.

a. Licensed pursuant to 922 KAR 2:090; or

b. Certified pursuant to 922 KAR 2:100; and

2. Rated pursuant to the quality-based graduated early care and education program established in KRS 199.8943 and 922 KAR 2:270.

(2) An employee whose family meets the eligibility requirements for the Child Care Assistance Program pursuant to 922 KAR 2:160 shall be referred to that program by the cabinet.

(3) An employee shall not be eligible to participate in the Employee Child Care Assistance Partnership program if a member of his or her family is eligible for the Child Care Assistance Program pursuant to 922 KAR 2:160.

(4) An employee shall be a member of the family of the child for whom child care is being provided and paid for.

(5) A licensed or certified child care provider shall be eligible to apply for this program as an employer.

(6) The owner of a child care facility shall not be eligible to participate as an employee.

(7) An individual shall not be eligible to apply as more than one (1) party to a contract.

## Section 4. Priority Determinations.

(1) The cabinet shall review and consider applications in the order in which they are received.

(2) In each fiscal year, twenty-five (25) percent of the total fund shall be set aside to fund applications in which the employer is a small business.

(3) The cabinet shall prioritize approving applications in which:

(a) The employer is located in a child care desert; ~~or~~

(b) The employer shall contribute at least thirty-three (33) percent of the eligible child care costs; or

(c) The employee resides in Kentucky.

## Section 5. Continuing Participation.

(1) Each approved contract shall remain in place for the approved fiscal year unless the contract is terminated pursuant to Section 7 of this administrative regulation.

(2) An employer with an approved contract in place shall reapply to continue participation each year pursuant to KRS 199.883(10)(a).

## Section 6. Payment~~Payments~~ Rates.

(1) To the extent funds are available, the cabinet shall make payments to the child care provider based on the start and end date of enrollment of each child identified in the DCC-600.

(2) Except as provided in subsection (3) of this section, the state match to the contribution provided by the employer shall be in accordance with the following tiered table of an employee's household income pursuant to KRS 199.885(7):

**VOLUME 50, NUMBER 8– FEBRUARY 1, 2024**

Employee Household Income Compared to State Median Household Income	State Match Percentage
Equal to or less than 100%	100%
Above 100% through 120%	90%
Above 120% through 140%	80%
Above 140% through 160%	70%
Above 160% through 180%	60%
Above 180%	50%

FILED WITH LRC: February 12, 2024  
CONTACT PERSON: Krista Quarles, Policy Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-7476; fax 502-564-7091; email CHFSregs@ky.gov.

(3) The state match provided shall not exceed the balance necessary to pay for child care in full.

(4) The state match provided shall remain unchanged for the approved fiscal year unless the contract is terminated pursuant to Section 7 of this administrative regulation.

(5) A child care provider shall not charge a rate for a program participant that is different from that charged to the general public.

**Section 7. Termination of Contract.**

(1) The contract shall be terminated if:

(a) Employment is terminated pursuant KRS 199.887(1)(a);

(b) An employer fails to make the agreed upon contribution towards child care pursuant KRS 199.887(1)(b);

(c) An employee fails to pay remaining child care costs and the child care provider requests the cabinet terminate the contract;

(d) A child care provider ceases participating in the program;

(e) A child care provider no longer participates in the quality rating system established in KRS 199.8943 and 922 KAR 2:270; or

(f) An employer, ~~or~~ employee, or child care provider requests the contract be terminated by the cabinet at any time for any reason pursuant KRS 199.887(2)(c).

(2) If employment is terminated, the employer shall notify the child care provider and cabinet within three (3) business days.

(3) If an employer fails to make the agreed upon contribution, the child care provider shall notify the cabinet within five (5) business days.

(4) If a child care provider ceases participation in the program or no longer participates in the quality rating system, the provider shall notify all parties to the agreement immediately.

(5) If an employer, ~~or~~ employee, or child care provider requests a contract be terminated by the cabinet, he or she shall notify all parties to the contract and specify the desired termination date that shall occur no less than two (2) weeks from the date of notice.

(6) If a party to the contract fails to meet the notice requirements of this section, reimbursement shall be made in accordance with KRS 199.887.

(7) All parties to a contract shall be financially obligated up to the date of termination of the contract.

(8) The cabinet shall notify all parties of a termination of contract on the DCC-605.

**Section 8. Appeals.** An employer, employee, or child care provider may request an administrative hearing regarding an eligibility or payment determination within thirty (30) days of adverse action from the Office of the Ombudsman and Administrative Review, Quality Advancement Branch, 275 East Main Street, 2 E-O, Frankfort, Kentucky 40621.

**Section 9. Incorporation by Reference.**

(1) The following material is incorporated by reference:

(a) "DCC-600, Employee Child Care Assistance Partnership Application and Contract", 02/24/11/23[09/22]; and

(b) "DCC-605, Employee Child Care Assistance Partnership Notice of Action", 02/24/11/23[01/23].

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

ADMINISTRATIVE REGULATIONS AMENDED AFTER PUBLIC HEARING  
OR RECEIPT OF WRITTEN COMMENTS

ENERGY AND ENVIRONMENT CABINET  
Department for Environmental Protection  
Division of Waste Management  
(Amended After Comments)

401 KAR 103:005. Definitions related to 401 KAR Chapter 103.

RELATES TO: KRS 224.10-100, 224.10-285, 224.43-345, 278.700 - 278.716

STATUTORY AUTHORITY: KRS 224.10-100(28), 224.10-100(30), (31), 224.10-285, 224.43-345, 278.710(3), (4), (5), (7) - (10)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-285 requires the Energy and Environment Cabinet to establish monitoring and enforcement requirements for the obligation set for in KRS 278.710(3), (4), (5), (7) through (10) and 224.10-100(30) and (31). This administrative regulation defines essential terms that are used in this chapter.

Section 1. Definitions. Unless otherwise specifically defined in KRS Chapter 224 and Chapter 278, terms in 401 KAR Chapter 103 shall have the meanings given in this section.

(1) "Abandon" or "Abandonment" means the relinquishment of all rights, title, or claim to the merchant electric generating facility.

(2) "Above-ground facilities" means any portion of a system or structure located on the surface of the site.

(3) "Annual report" means a yearly document that describes all operational activities in the previous year.

(4) "Applicant" means any person ~~[who received a construction certificate pursuant to KRS 278.710, or]~~ who is seeking the transfer of a construction certificate for ownership or control, or rights and obligations under a construction certificate, ~~[controlling rights, or ownership]~~ of a constructed and generating merchant electric generating facility.

(5) "Cabinet" is defined by KRS 224.1-010.

(6) "Commence to construct" is defined by KRS 278.700.

(7) "Components" means either the solar panel or ancillary equipment of a solar array or solar panel system, or a constituent part.

(8) "Construction certificate" means a formal certification approved and issued by the Kentucky State Board on Electric Generation and Transmission Siting ("Siting Board") ~~[to an owner-operator, or persons who have controlling rights, of a merchant electric generating facility]~~ that authorizes a person~~[persons]~~ to construct and operate a merchant generating facility.

(9) "Construction certificate holder" means any person who received board approval to construct a merchant electric generating facility pursuant to KRS 178.710(1) or any person who received approval to acquire rights and obligations under the construction certificate pursuant to KRS 278.710(3)(b).

(10) "Control" is defined by KRS 278.010.

~~(11)[(40)]~~ "Current net salvage value" means the value of an asset expressed in current US dollars after it has become useless to the owner or the amount expected to be obtained when a fixed asset is disposed of at the end of its useful life and pursuant to KRS 278.706.

~~(12)[(44)]~~ "Decommission" means the process of ~~removing components[removal] or facilities[closing of solar panel system]~~ at the end of the useful life.

~~(12) "Decommission bond" or "Decommissioning bond" means an approved financial assurance mechanism used to guarantee the land used for a merchant electric generating facility will be returned to a substantially similar state upon decommissioning or abandonment of the project, unless otherwise requested by the landowner.]~~

(13) "Decommission costs" or "decommissioning costs" means the amount of all costs and expenses incurred in connection with the decommissioning~~[dismantlement, removal, and disposal of~~

~~structures, systems, and components]~~ of a merchant electric generating facility ~~[at the time of decommissioning]~~ pursuant to KRS 278.706.

(14) "Decommission plan" or "decommissioning plan" means a plan to retire physical facilities of a merchant electric generating facility, pursuant to KRS 278.706.

(15) "Disposal" is defined by KRS 224.1-010.

(16) "Facility" is defined by KRS 278.010.

(17) "Hazardous substance" is defined by KRS 224.1-400.

(18) "Land disposal" is defined by KRS 224.1-010.

(19) "Landowner" means a person who has legal ownership of land where a merchant electric generating facility is located.

(20) "Megawatt" means a unit of power equal to one million watts, measure of output of electrical power.

(21) "Merchant electric generating facility" is defined by KRS 278.700.

(22) "Mitigation measures" means an act or requirement established by the siting board pursuant to KRS 278.708.

(23) "Modification" means a change in existing order or certificate, necessary to cure an error.

(24) "Monitoring" is defined as the act of systematically inspecting and collecting data on operational parameters or on the quality of a merchant electric generating facility.

(25) "Municipal government" means a city, town, or other local authority with an elected governing body.

(26) "Net present value" means the difference between the present value inflow and outflow over a period of time and pursuant to KRS 278.706.

(27) "Ordinance" means an official written act of a local government, the effect of which is general and permanent in nature, which is enforceable by the enacting local government as a local law within its jurisdiction.

~~(28) ["Owner-operator" is defined as any person who owns a merchant electric generating facility or is responsible for overall operation of a merchant electric generating facility, including any contractor conducting operational activities.~~

~~(29)]~~ "Person" is defined by KRS 278.700.

~~(29)[(30)]~~ "Professional Engineer" is defined by KRS 322.010; an independent, professional engineer shall be registered in Kentucky pursuant to KRS 322.040 and shall be experienced to engage in the decommissioning of solar electric generating facilities.

~~(30)[(34)]~~ "Recycling" is defined by KRS 224.1-010.

~~(31)[(32)]~~ "Secretary" is defined by KRS 224.1-010.

~~(32)[(33)]~~ "Service" is defined by KRS 278.700.

~~(33)[(34)]~~ "Solar panel" means a panel or device containing photovoltaic cells designed to absorb and convert sunlight into a source of generating electricity.

~~(34)[(35)]~~ "Successor" means one who succeeds to the rights to own or control a merchant electric generating facility.

~~(35)[(36)]~~ "Useful life" means the estimated length of time that depreciable property will generate income.

~~(36)[(37)]~~ "Waste" is defined by KRS 224.1-010.

Section 2. Acronyms and Abbreviations. Unless otherwise specifically indicated by context, acronyms and abbreviations used in 401 KAR Chapter 103 shall have the meaning as identified in Table 1 of this administrative regulation.

Table 1. Acronyms and Abbreviations

KAR	Kentucky Administrative Regulations
KRS	Kentucky Revised Statutes
MEGF	Merchant Electric Generating Facility
MW	Megawatt

JOHN LYONS, Deputy Secretary

For REBECCA GOODMAN, Secretary

APPROVED BY AGENCY: February 15, 2024

FILED WITH LRC: February 15, 2024 at noon

CONTACT PERSON: Tyler Shields, Environmental Control Supervisor, Department for Environmental Protection, Division of Waste Management, 300 Sower Boulevard, Frankfort, Kentucky

40601, phone (502) 782-5325, fax (502) 564-4245, email Tyler.Shields@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT  
Contact Person: Tyler Shields

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes definitions for Title 401 KAR Chapter 103, for which have not been established in KRS Chapter 224 or KRS Chapter 278.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish definitions for the chapter.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10-100(28) authorizes the cabinet to promulgate administrative regulations not inconsistent with the provisions of law administered by the cabinet. KRS 224.10-285 authorizes the cabinet to promulgate administrative regulations to establish the monitoring and enforcement requirements for the obligations set forth in KRS 278.710(3), (4), (5), (7) through (10), and KRS 224.10-100(30) and (31).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes definitions for Title 401 KAR Chapter 103 to assist in the comprehension of proposed administrative regulations.

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

(a) How the amendment will change this existing administrative regulation: The proposed amendments address concerns received during the public comment period providing clarification for the intended meaning of terms.

(b) The necessity of the amendment to this administrative regulation: The proposed amendments address concerns received during the public comment period providing clarification for the intended meaning of terms.

(c) How the amendment conforms to the content of the authorizing statutes: The proposed amendments provide clarification of terms used in 401 KAR Chapter 103. The amendments are in conformance with statutory language and KRS 224.10-285(2).

(d) How the amendment will assist in the effective administration of the statutes: The proposed amendments provide clarification of the intended meaning of terms used throughout 401 KAR Chapter 103.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect owners-operators, persons who control or own rights to control a MEGF, organizations who represent landowners of which a MEGF is located, landowners where a MEGF is located, and state and local governing bodies who operate under the proposed chapter (401 KAR Chapter 103) of administrative regulations.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The entities identified will not have actions to comply with in relation to this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This administrative regulation will not have a cost for the entities identified.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The entities identified will not accrue benefits from this administrative regulation.

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

(a) Initially: The agency will not incur any additional costs for the implementation of this administrative regulation.

(b) On a continuing basis: The agency will not incur any continuing costs for the implementation of this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The merchant electric generating facility monitoring and enforcement fund.

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

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

(9) TIERING: Is tiering applied? No. This administrative regulation establishes definitions for the chapter.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. Not applicable.

(2) State compliance standards. KRS 224.10-100(28), 224.10-100(30) and (31), 224.10-285, 224.43-345, KRS 278.710(3), (4), (5), (7) through (10)

(3) Minimum or uniform standards contained in the federal mandate. Not applicable.

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation imposes stricter requirements as there is no federal mandate for the decommissioning of merchant electric generating facilities.

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. HB-4 mandated the Cabinet to promulgate administrative regulations for the monitoring and enforcement requirements for the obligations set forth in KRS 278.710(3), (4), (5), (7), (8), (9), and (10) and KRS 224.10-100(30) and (31).

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will impact state or local governments that have, own, or operate a merchant electric generating facility in their jurisdiction, as well as the Energy and Environment Cabinet and Public Service Commission.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 224.10-100(28), KRS 224.10-100(30), and KRS 224.10-285

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

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

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

(c) How much will it cost to administer this program for the first year? The cost to administer the program the current thirty-eight (38) construction certificate cases filed is estimated to total \$163,300 annually. The cabinet's estimation was determined by the resources required to implement and administer the program, pursuant to KRS 278.710 and KRS 224.10-285. At the time of drafting this regulation, only three (3) of the thirty-eight (38) projects were under

construction. Pursuant to KRS 278.710, the cabinet does not obtain authority over these facilities until the facility is constructed and generating electricity. Therefore, the cabinet cannot receive the annual fee until the facility is generating electricity. With no timetable of when these facilities will be constructed and begin generating electricity it is challenging to estimate the total costs in the first year of the program.

(d) How much will it cost to administer this program for subsequent years? The cost to administer the program for the thirty-eight (38) construction certificate cases filed is estimated to total \$163,300 annually. The cabinet's estimation was determined by the resources required to implement and administer the program, pursuant to KRS 278.710 and KRS 224.10-285. Pursuant to KRS 278.710, the cabinet does not obtain authority over these facilities until the facility is constructed and generating electricity. Therefore, the cabinet cannot receive the annual fee until the facility is generating electricity. With no timetable of when these facilities will be constructed and begin generating electricity it is challenging to estimate the total costs for subsequent years of the program.

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

Revenues (+/-): There is no known cost savings.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: This administrative regulation only establishes definitions for the chapter.

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

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

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

(c) How much will it cost the regulated entities for the first year? There is no known cost to the regulated entities in the first year.

(d) How much will it cost the regulated entities for subsequent years? There is no known cost to the regulated entities in subsequent years.

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

Cost Savings (+/-): There is no known cost savings.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: This administrative regulation only establishes definitions for the chapter.

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

**ENERGY AND ENVIRONMENT CABINET**  
**Department for Environmental Protection**  
**Division of Waste Management**  
**(Amended After Comments)**

**401 KAR 103:010. Notification and transfer procedures for merchant electric generating facilities.**

RELATES TO: KRS 224.10-100, 224.10-285, 224.43-345, 278.700 - 278.716

STATUTORY AUTHORITY: KRS 224.10-100(28), 224.10-100(30), (31), 224.10-285, 224.43-345, 278.710(3), (4), (5), (7) - (10)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(28) authorizes the cabinet to promulgate administrative regulations not inconsistent with the provisions of law administered by the cabinet. KRS 224.10-285 requires the Energy and Environment Cabinet to establish monitoring and enforcement requirements for the obligation set for in KRS 278.710(3), (4), (5), (7) through (10) and 224.10-100(30) and (31). KRS 224.10-100(30) requires the Energy and Environment Cabinet to monitor and enforce compliance of a merchant electric generating entity to which a construction certificate has been issued and has generated pursuant to obligations set forth in KRS 278.710(3), (4), (5), (7) through (10). This administrative regulation establishes procedures for requirements concerning notifications, transfers of ownership, annual fees, and reporting.

Section 1. Notification Procedures. ~~[An applicant or person who has received]~~ A construction certificate holder of a merchant electric generating facility shall:

(1) File with the cabinet MEGF Construction-Operating Notification Form, DWM 4658, on or prior to the date upon which:

- (a) Construction commences;
- (b) Generation of electricity for sale begins;
- (c) Permanent cessation of electric generation;
- (d) Start of decommissioning plan implementation; and
- (e) Facility ceases construction or generation for thirty (30) consecutive days after the MEGF commencement of construction.

(2) A MEGF that received a construction certificate prior to June 29, 2023, shall be subject to requirements of subsection one (1) of this section. The notice shall be submitted no later than ten (10) days after these administrative regulations take effect.

(3) Provide all filings pursuant to Section 3 of KRS 278.710.

Section 2. Ownership Transfer Procedures.

(1) The applicant and construction certificate holder or person who controls or owns the right to control the MEGF~~[existing owner-operator]~~ shall file the MEGF Notice of Ownership Transfer Form, DW4652, including all required attachments, to provide notice to the cabinet of any pending or final transaction pursuant to KRS 278.710(3)(d) no later than ten (10) days prior to completing the transaction.

(2) Pursuant to KRS 278.710, upon transfer or sale of ownership, control, or the right to control the MEGF, a successor shall submit an updated or revised copy of the decommissioning plan, if applicable, pursuant to KRS 278.710(8).

(3) Transfer pursuant to KRS 278.710 shall not cause a lapse in financial assurance for the approved decommissioning plan.

(a) If the existing financial assurance previously filed with the cabinet pursuant to KRS 278.710 will continue to secure the approved decommissioning plan after transfer occurs, the



~~[applicant and ]~~successor and construction certificate holder or person who controls or owns the right to control the MEGF shall jointly execute a certification of financial assurance denoted on the form in subsection (1) of this section; or

(b) Tender a proposed replacement financial assurance pursuant to 401 KAR 103:030, the existing financial assurance.

(4) A check, money order, or electronic funds transfer for annual fees in accordance with Section 4 of this administrative regulation, made payable to the Kentucky State Treasurer.

(5)

(a) The construction certificate holder[owner-operator] shall remain responsible for obligations pursuant to the construction certificate and decommissioning plan until the cabinet deems that ~~[both—the [owner-operators and successors—]MEGF Notice of Ownership Transfer Form, DW4652, including all required attachments, submitted pursuant to subsections (1) and (2) of this section are complete and any replacement financial assurance is deemed adequate to cover decommissioning cost.~~

(b) The cabinet shall have sixty (60) days to review and accept all submissions required of this section.

(c)

1. If the cabinet determines that any submissions required of this section are deficient, pursuant to KRS 278.710(3), (4), and (7), it shall send the applicant and construction certificate holder[owner-operator and successor] a written notice describing the deficiencies and stating the transfer is not accepted as complete, pursuant to KRS 278.710(5); and

2. The applicant and construction certificate holder[owner-operator and successor] shall have thirty (30) calendar days from the date the cabinet issues a written deficiency to respond with information that will cure the deficiency. Failure to respond to the notice of deficiency shall be grounds for the cabinet to withhold the existing[original] financial assurance until the deficiency is addressed and accepted by the cabinet.

3. The timetable specified in paragraph (b) of this subsection shall toll from the date the cabinet issues a written notice of deficiency pursuant to subparagraph 1. of this paragraph until the applicant and construction certificate holder[owner-operator and successor] submit a response required by subparagraph 2. of this paragraph.

### Section 3. Decommissioning Notification.

(1) Upon permanent cessation of the generation of electricity, the construction certificate holder, or[owner-operator,] person who controls or owns the right to control the MEGF shall file MEGF Construction-Operating Notification Form, DWM 4658, notifying the cabinet within thirty (30) days of cessation. This notification shall serve as the start date for decommissioning to begin.

(2) Pursuant to KRS 224.10-285(1)[401 KAR 30:020(2)], unless a written request is submitted to the cabinet, failure to fully implement the decommissioning plan within eighteen (18) months will be considered abandonment.

### Section 4. Annual Fee.

(1) Fees collected pursuant to this section shall be used for administrative, compliance, and enforcement purposes specified in this Chapter and in KRS 224.10-285.

(2) The cabinet will provide the construction certificate holder or person who controls or owns the right to control the MEGF[applicant] with the MEGF Annual Fee Form, DWM 4656.

(a) The construction certificate holder or person who controls or owns the right to control the MEGF shall submit a fee amount of \$6,000 no later than May 31 of each year for each MEGF in operation or decommissioning status.[Based on the manufacturer's nameplate-rated capacity in the approved construction certificate, the annual fee is established pursuant to the table in paragraph (b) of this subsection.]

(b)

<u>[MEGF Generating Capacity</u>	<u>Annual Fee</u>
<u>≥10 MW up to and including 75 MW</u>	<u>\$4,000</u>
<u>&gt;75 MW up to and including 150 MW</u>	<u>\$8,000</u>
<u>&gt;150 MW</u>	<u>\$12,000</u>

(c) If the construction certificate holder[owner-operator,] or person who controls or owns the right to control fails to submit the annual fee required, may be subject to civil penalties pursuant to KRS 224.99-010(16).

(3) ~~[The owner-operator, or person who controls or owns the right to control the MEGF shall submit the annual fee no later than May 31 of each year for each MEGF in operation or decommissioning status.~~

(4)]

(a) The construction certificate holder[applicant, owner-operator,] or person who controls or owns the right to control the MEGF may request an extension to the annual fee deadline.

(b) The extension request shall be in writing stating the reasons therefore, and shall be received by the Solid Waste Branch of the Division of Waste Management ten (10) days prior to the deadline.

(c) If granted, the extension shall not exceed thirty (30) days.

Section 5. Reports. The construction certificate holder[owner-operator,] or person who controls or owns the right to control the MEGF shall submit an annual report for a recordkeeping and reporting system. The annual report shall meet the following requirements:

(1) The MEGF shall submit to the cabinet, no later than the first anniversary of commencement of construction and every year thereafter no later than May 31. The report shall be submitted with the Merchant Electric Generating Facility Annual Report or Decommissioning Plan Update Form, DWM 4657, including all required attachments, and shall contain the following:

- (a) Description of construction activities during the year;
- (b) Description of compliance with mitigation measures;
- (c) Description of operation maintenance activities;
- (d) The date and quantity of system components taken out of service;
- (e) The date of when and where system components disposed or recycled; and
- (f) The quantity of system components disposed or recycled.

(2) The annual report shall be certified by the construction certificate holder[owner-operator], ensuring the MEGF is in compliance with all mitigation measures and requirements outlined in the construction certificate and decommissioning plan.

(3) The construction certificate holder[owner-operator,] or person who controls or owns the right to control the MEGF shall retain records of all required monitoring information, mitigation measures, copies of site assessment reports and annual reports, and records of all data used to complete the application for the construction certificate and decommissioning plan updates, for a period of at least three (3) years from the date of the sample, measurement, report, certification, or application. This period may be extended by request of the cabinet at any time.

(4) The construction certificate holder[owner-operator,] or person who controls or owns the right to control the MEGF shall keep records of the source, approved disposal location, and quantity of any release of a hazardous substance, pollutant or contaminant, or a waste that is listed or characterized as hazardous pursuant to KRS 224.1-400 and 401 KAR Chapter 39. These records shall be available for cabinet inspection.

(5) Failure by a construction certificate holder[Owners-operators,] or person who controls[persons who control] or own the right to control a merchant electric generating facility, [who fail ]to meet the requirements established in this administrative regulation may be subject to penalties established in KRS 224.99-010(16).

### Section 6. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "MEGF Construction-Operating Notification" Form, DWM 4658, January 2024;[September 2023.]

(b) "MEGF Notice of Ownership Transfer" Form, DW4652, January 2024;[September 2023.]

(c) "MEGF Annual Report or Decommissioning Plan Update" Form, DWM 4657, January 2024;[September 2023.] and

(d) "MEGF Annual Fee" Form, DWM 4656, January 2024;[September 2023.]

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(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Division of Waste Management, 300 Sower Boulevard, 2nd floor, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 5:00 p.m., from the Web site at [eec.ky.gov/environmental-protection/waste](http://eec.ky.gov/environmental-protection/waste).

JOHN LYONS, Deputy Secretary

For REBECCA GOODMAN, Secretary

APPROVED BY AGENCY: February 15, 2024

FILED WITH LRC: February 15, 2024 at noon

CONTACT PERSON: Tyler Shields, Environmental Control Supervisor, Department for Environmental Protection, Division of Waste Management, 300 Sower Boulevard, Frankfort, Kentucky 40601, phone (502) 782-5325, fax (502) 564-4245, email [Tyler.Shields@ky.gov](mailto:Tyler.Shields@ky.gov).

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Tyler Shields

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes procedures to monitor and enforce the decommissioning of Merchant Electric Generating Facilities (MEGF) including notifications for construction, generation of electricity, permanent cessation of generation of electricity, decommissioning implementation, and cessation of construction or generation beyond thirty (30) days, transfers of ownership, annual fee requirements, and reporting requirements.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the procedures to monitor and enforce responsibilities over a qualified MEGF pursuant to KRS 224.10-285.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10-100(28) authorizes the cabinet to promulgate administrative regulations not inconsistent with the provisions of law administered by the cabinet. KRS 224.10-285 requires the establishment of the procedures to monitor and enforce requirements obligations set forth in 278.710(3), (4), (5), (7) through (10) and KRS 224.10-100(30) and (31).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes notification procedures, procedures to monitor and enforce mitigation measures approved in a construction certificate, as well as the decommissioning of a MEGF pursuant to KRS 278.710. This regulation establishes an annual fee, pursuant to KRS 224.10-285.

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

(a) How the amendment will change this existing administrative regulation: The proposed amendments address concerns received during the public comment period, relating to annual fees, clarification of responsible parties and ownership transfer procedures, and typographical errors within forms incorporated by reference.

(b) The necessity of the amendment to this administrative regulation: The proposed amendments are necessary to address concerns received during the public comment period.

(c) How the amendment conforms to the content of the authorizing statutes: The proposed amendments provide clarification for transfers and obligations of merchant electric generating facilities, who are under the authority of the cabinet, pursuant to KRS 278.710. The proposed amendments relating to the structure of an annual fee are in conformance with KRS 224.10-285.

(d) How the amendment will assist in the effective administration of statutes: The proposed amendments will assist the cabinet in performing obligations pursuant to KRS 278.710.

(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 applicants, construction certificate holders, and successors of merchant electric generating facilities. There are thirty-eight (38) filed cases for MEGF construction certificates issued by the Kentucky state Board on Electric Generation and Transmission Siting (board) at the time of drafting, three (3) of which are currently under construction. Each MEGF that is or has been approved will be required to adhere to the requirements established in this regulation. As of February 1, 2024, nineteen (19) counties or local municipal governments have established ordinances for decommissioning and financial assurance requirements. Pursuant to KRS 278.718, these local ordinances shall have primacy over KRS 278.704 through 278.708.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Entities will have to submit the forms incorporated for notification, transfer, and reporting procedures. Entities are required to submit an annual fee to defray cabinet costs of administering the program, pursuant to KRS 224.10-285.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This regulation establishes an annual fee that each MEGF will be charged in order to defray cabinet costs of monitoring and enforcement responsibilities, pursuant to KRS 224.10-285. The annual fee for each facility will be \$6,000.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Entities will not accrue benefits as a result of compliance with this administrative regulation. Compliance with this regulation ensures the facility can continue to operate under statute.

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

(a) Initially: The agency will not incur any additional costs for the implementation of this administrative regulation initially. As these facilities are constructed and begin to generate electricity for sale, the cabinet will incur costs of administering the program. The cabinet estimates the annual program cost to be \$163,300 given that all thirty-eight (38) MEGF construction certificate cases filed at the time of drafting, are constructed, and begin generating electricity for sale.

(b) On a continuing basis: The agency will incur additional program administration costs as more merchant electric generating facilities are constructed and begin to generate electricity for sale.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Implementation and enforcement of this administrative regulation would be achieved by the merchant electric generating facility monitoring and enforcement fund established in KRS 224.10-285. It should be noted that this fund consists of fees collected from the annual fee requirement within this administrative regulation, as well as monies collected pursuant to enforcement actions taken by the cabinet in the course of performing its monitoring and enforcement responsibilities.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The proposed amendment lowers the annual fee from a tiered structure to a flat \$6,000 annual fee. The annual fee established in this administrative regulation is necessary to defray the costs of the cabinet's monitoring and enforcement responsibilities for merchant electric generating facilities, pursuant to KRS 224.10-285.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation establishes a \$6,000 annual fee that each MEGF will be charged upon generation of electricity pursuant to KRS 224.10-285. Each facility must pay the annual fee no later than May 31 of each year.

(9) TIERING: Is tiering applied? No, this administrative regulation was amended to establish an annual fee that each MEGF will be charged in order to defray cabinet costs of monitoring and enforcement responsibilities, pursuant to KRS 278.710. The annual fee for each facility will be \$6,000.

#### FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate.: Not applicable.

(2) State compliance standards.: KRS 224.10-100, KRS 224.10-285, KRS 224.43-345, and KRS 278.700 through 278.716

(3) Minimum or uniform standards contained in the federal mandate.: Not applicable.

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate: This administrative regulation imposes stricter requirements as there is no federal mandate for the decommissioning of merchant electric generating facilities.

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements.: HB-4 mandated the cabinet to promulgate administrative regulations for the monitoring and enforcement requirements for the obligations set forth in KRS 278.710(3), (4), (5), (7), (8), (9), and (10) and KRS 224.10-100(30) and (31).

#### FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation: This administrative regulation will impact state or local governments that have, own, or operate a merchant electric generating facility in their jurisdiction, as well as the Energy and Environment Cabinet and Public Service Commission.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.: KRS 224.10-100(28), 224.10-100(30), 224.10-285, 224.43-345, 278.710(3), (4), (5), (7) through (10).

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year: The cabinet will implement an annual fee of \$6,000 pursuant to KRS 224.10-285 to defray cabinet costs for monitoring and enforcement responsibilities. If all thirty-eight (38) of the MEGF construction certificate cases filed at the time of drafting are constructed and generating electricity within the first year of this administrative regulation taking effect, revenues generated from annual fees are estimated to total \$228,000. Pursuant to KRS 278.710, the cabinet does not obtain authority over these facilities until the facility is constructed and generating electricity. Therefore, the cabinet cannot receive the annual fee until the facility is generating electricity. With no timetable of if or when all facilities will be constructed and generating electricity it is challenging to estimate the total amount of revenue generated by the program 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: The cabinet will implement an annual fee of \$6,000 pursuant to KRS 224.10-285 to defray cabinet costs for monitoring and enforcement responsibilities. If all thirty-eight (38) of the MEGF construction certificate cases filed at the time of drafting are constructed and

generating electricity, revenues generated from annual fees are estimated to total \$228,000. Pursuant to KRS 278.710, the cabinet does not obtain authority over these facilities until the facility is constructed and generating electricity. Therefore, the cabinet cannot receive the annual fee until the facility is generating electricity. With no timetable of if all facilities will be constructed and generating electricity it is challenging to estimate the total amount of revenue generated by the program.

(c) How much will it cost to administer this program for the first year: The cost to administer the program for the thirty-eight (38) MEGF construction certificate cases filed at the time of drafting, is estimated to total \$163,300 annually. The cabinet's estimation was determined by the resources required to implement and administer the program, pursuant to KRS 278.710. At the time of drafting this regulation, only three (3) of the thirty-eight (38) projects were under construction. Pursuant to KRS 278.710, the cabinet does not obtain authority over these facilities until the facility is constructed and generating electricity. Therefore, the cabinet cannot receive the annual fee until the facility is generating electricity. With no timetable of when these facilities will be constructed and begin generating electricity it is challenging to estimate the total costs in the first year of the program.

(d) How much will it cost to administer this program for subsequent years: The cost to administer the program for the thirty-eight (38) MEGF construction certificate cases filed at the time of drafting, is estimated to total \$163,300 annually. The cabinet's estimation was determined by the resources required to implement and administer the program, pursuant to KRS 278.710. Pursuant to KRS 278.710, the cabinet does not obtain authority over these facilities until the facility is constructed and generating electricity. Therefore, the cabinet cannot receive the annual fee until the facility is generating electricity. With no timetable of when these facilities will be constructed and begin generating electricity it is challenging to estimate the total costs for subsequent years of the program.

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

Revenues (+/-): If all thirty-eight (38) of the MEGF construction certificate cases filed at the time of drafting, are constructed, and begin generating electricity, revenues generated from annual fees are estimated to total \$228,000. Pursuant to KRS 278.710, the cabinet does not obtain authority over these facilities until the facility is constructed and generating electricity. Therefore, the cabinet cannot receive the annual fee until the facility is generating electricity. With no timetable of if or when all facilities will be constructed and generating electricity it is challenging to estimate the total amount of revenue generated by the program on a yearly basis.

Expenditures (+/-): Assuming all thirty-eight (38) MEGF construction certificate cases filed at the time of drafting, are constructed, and begin generating electric for sale, pursuant to cabinet obligations within KRS 278.710, the cabinet estimates the cost of administering the program to be \$163,300.

Other Explanation:

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year: The proposed administrative regulation will not generate cost savings for any regulated entities in the first year.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years: The proposed administrative regulation will not generate cost savings for any regulated entities in subsequent years.

(c) How much will it cost the regulated entities for the first year: Any MEGF that is generating electricity in the first year that this administrative regulation becomes effective will be subject to the annual fee of \$6,000, pursuant to KRS 224.10-285.

(d) How much will it cost the regulated entities for subsequent years: Any MEGF that is generating electricity in subsequent years will be subject to the annual fee of \$6,000, pursuant to KRS 224.10-285.

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

Cost Savings (+/-): There are no known cost savings.

Expenditures (+/-): Entities expenditures associated with this regulation are estimated to be \$6,000 annually.

Other Explanation: This administrative regulation establishes an annual fee to defray the costs of the cabinet's monitoring and enforcement responsibilities to each MEGF, pursuant to KRS 224.10-285.

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

**ENERGY AND ENVIRONMENT CABINET  
Department for Environmental Protection  
Division of Waste Management  
(Amended After Comments)**

**401 KAR 103:020. Decommissioning standards.**

RELATES TO: KRS 224.10-100, 224.10-285, 224.43-345, 278.700 - 278.716

STATUTORY AUTHORITY: KRS 224.10-100(28), 224.10-100(30), (31), 224.10-285, 224.43-345, 278.710(3), (4), (5), (7) - (10)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(28) authorizes the cabinet to promulgate administrative regulations not inconsistent with the provisions of law administered by the cabinet. KRS 224.10-285 requires the Energy and Environment Cabinet to establish monitoring and enforcement requirements for the obligation set for in KRS 278.710(3), (4), (5), (7) through (10) and 224.10-100(30) and (31). KRS 224.10-100(30) requires the Energy and Environment Cabinet to monitor and enforce compliance of a merchant electric generating entity to which a construction certificate has been issued and has generated pursuant to obligations set forth in KRS 278.710(3), (4), (5), (7) through (10). This administrative regulation establishes procedures for decommissioning plan technical requirements, decommissioning plan updates, decommissioning cost estimate updates, and cases of abandonment.

Section 1. Technical Requirements of Decommissioning Plan. The **construction certificate holder**~~[owner-operator,]~~ or person who controls or owns right to control any MEGF are subject to decommissioning requirements and mitigation measures outlined in KRS **278.706 and**~~[278.704 through]~~ 278.710.

(1) This plan shall be certified by an independent professional engineer prior to submission to the cabinet.

(2) Unless otherwise stated in an accommodation contained within a lease agreement with the affected landowner, the decommissioning plan shall be designed to return the land to a substantially similar state as it was prior to the commencement of construction.

(3) Decommissioning plans filed with the cabinet shall **minimally** meet the following technical requirements:

(a) Provide an estimated lifespan of the MEGF, including an estimated period of useful life for system components;

(b) Identify the party responsible for decommissioning;

(c) Define conditions upon which decommissioning will be **implemented**~~[initiated]~~, including a statement defining how notification will be made **to the cabinet, affected landowners, and local county or municipality in regard to implementation of** ~~[intent to start]~~ the decommissioning process, **pursuant to 401 KAR 103:010(1)**;

(d) The **estimated** timeframe for commencement and completion of decommissioning activities;

(e) Include a revegetation plan, with native seed mixes,

excluding any invasive species;

(f) Cost itemization of all estimated costs that factor into decommissioning the MEGF;

(g) Include the financial assurance mechanisms, in accordance with KRS 278.706 and 401 KAR 103:030;

(h) Describe any agreement with landowners regarding decommissioning, including any special accommodations made to any affected landowner, **pursuant to KRS 278.706(2)(m)6.**

~~1. Incorporate the accommodations as requirements into the lease agreement with landowners and the decommissioning plan; or~~

~~2. Deny the request to accommodate and submit a detailed correspondence to the landowner, county or municipal government, and cabinet.~~

~~3. The owner-operator or person who controls or owns the right to control shall provide the landowner, county or municipal government, and cabinet with a timeline of any agreed upon accommodated request from the landowner or county or municipal government in accordance with paragraph (h) of this subsection.]~~

(i) Removal of any MEGF owned equipment and facilities, including:

1. Structures;
2. Fencing;
3. Roads;
4. Foundations or pads;
5. Erosion, sediment, and water control measures;
6. Modules or solar panels;
7. Racks;
8. Cables or wires;
9. Conduit;
10. Inverters; and
11. Transformers.

(j) Remove any underground components and foundations of above-ground facilities. Underground components and facilities under this paragraph shall be removed to a depth of three (3) feet below the surface grade of the land in or on which the component was installed, **unless otherwise requested by the landowner; and**

**(k) Incorporate the requirements of paragraphs (a) through (j) of this subsection into the applicant's or construction certificate holder's leases with landowners.**

Section 2. Decommissioning Plan Updates.

(1) Pursuant to KRS 278.710 all MEGFs shall submit an updated decommissioning plan at least once every five (5) years. Decommissioning plan updates shall be submitted no later than 180 days prior to the fifth anniversary of the commencement of generation of electricity unless permission for a later date has been granted in writing by the cabinet. The cabinet may, at any time, request updated information necessary for reevaluating the decommissioning plan updates. Requests for updates shall include:

- (a) Additional construction of equipment or facilities;
- (b) Removal of equipment or facilities; or
- (c) Changes in the facilities estimated decommissioning costs.

(2) Decommissioning plan updates shall:

(a) Be submitted in conjunction with a notarized MEGF Annual Report or Decommissioning Plan Update Form, DWM 4657, including all required attachments;

(b) Include an updated estimation of decommissioning costs in accordance with Section 3 of this administrative regulation and 401 KAR 103:030; and

(c) Include any proposed measures to mitigate adverse impacts pursuant to KRS 278.710.

(3) Any engineering evaluation procured by the cabinet or at the cabinet's request and referred to the secretary to inform a final decision shall be considered preliminary, confidential, and not open for public inspection until after final action by the secretary.

(4) Decommissioning plan updates that require new construction will be subject to standards in KRS 278.704 through 278.714.

(5) Upon review and approval of the updated decommissioning plan by the cabinet, the **construction certificate holder**~~[owner-operator,]~~ or person who controls or owns the right to control the

MEGF shall file with the cabinet an updated copy of the decommissioning bond or other similar security, in accordance with 401 KAR 103.030, to reflect changes to the estimated cost of effectuating the decommissioning plan or to the net present value or the net salvage value of the facility or its components.

Section 3. Decommissioning Cost Estimates. (1) The **construction certificate holder**~~[applicants, owner-operator]~~, or person who controls or owns the right to control a merchant electric generating facility shall have a detailed, written estimate, in current US dollar, of the cost to decommission the MEGF in accordance with KRS 278.706 and 278.710.

(2) The estimated cost shall equal the cost of completing the decommissioning plan of the MEGF at the end of the useful life pursuant to the approved decommissioning plan. The cost estimate shall include:

- (a) Itemized costs for implementing, dismantling, removing, or disposing of all structures, systems, components, and requirements described in section 1 of this administrative regulation;
- (b) Incorporate an estimated decommissioning cost per megawatt valuation;
- (c) Be recalculated at least once every five (5) years to accommodate for inflation or depreciation;
- (d) Include a defined useful life period of the MEGF; and
- (e) Be certified by an independent, licensed engineer pursuant to KRS 278.706.

Section 4. Abandonment. In the event of abandonment or failure to complete decommissioning obligations by the responsible party, pursuant to KRS 224.10-100, the cabinet ~~may~~**will** draw upon the **financial assurance**~~[decommissioning bond]~~ and implement the decommissioning plan. Pursuant to KRS 278.706, if any party makes a successful claim on the approved financial assurance, that party shall be responsible for the requirements set forth in the decommissioning plan.

Section 5. Incorporation by Reference.

(1) "MEGF Annual Report or Decommissioning Plan Update" Form, DWM 4657, **January 2024**~~[September 2023]~~, is **incorporated by reference**.

(2) This material may be inspected, copies, or obtained, subject to applicable copyright law, at Division of Waste Management, 300 Sower Boulevard, 2nd floor, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 5:00 p.m., from the Web site at [eec.ky.gov/environmental-protection/waste](http://eec.ky.gov/environmental-protection/waste).

JOHN LYONS, Deputy Secretary

For REBECCA GOODMAN, Secretary

APPROVED BY AGENCY: February 15, 2024

FILED WITH LRC: February 15, 2024 at noon

CONTACT PERSON: Tyler Shields, Environmental Control Supervisor, Department for Environmental Protection, Division of Waste Management, 300 Sower Boulevard, Frankfort, Kentucky 40601, phone (502) 782-5325, fax (502) 564-4245, email [Tyler.Shields@ky.gov](mailto:Tyler.Shields@ky.gov).

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Tyler Shields

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes procedures to monitor and enforce the cabinet's responsibilities for merchant electric generating facilities including technical requirements of a decommissioning plan, decommissioning plan updates, decommissioning cost estimates, and abandonment of a MEGF.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish procedures of decommissioning a MEGF site, as well as decommissioning update requirements pursuant to KRS 278.710.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10-100(28) authorizes the cabinet to promulgate administrative regulations not inconsistent with the

provisions of law administered by the cabinet. KRS 224.10-285 requires the establishment of the procedures to monitor and enforce requirements obligations set forth in 278.710(3), (4), (5), (7) through (10) and KRS 224.10-100(30) and (31).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes procedures to monitor and enforce decommissioning plans, updates, and abandonment of a MEGF pursuant to KRS 224.10-285.

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

(a) How the amendment will change this existing administrative regulation: The proposed amendments address concerns regarding liability of facility ownership and decommissioning obligations, term clarification, ambiguous or superfluous language, typographical errors, decommissioning plan requirements, and statutory conformity pursuant to KRS 278.706 and 278.710.

(b) The necessity of the amendment to this administrative regulation: The proposed amendments are necessary to address concerns received during the public comment period.

(c) How the amendment conforms to the content of the authorizing statutes: The proposed amendments address request to clarify intent of terminology used, lack of clarity for decommissioning plan requirements, obligations, and liability pursuant to KRS 278.706 and 278.710.

(d) How the amendment will assist in the effective administration of statutes: The proposed amendments provide clarity for cabinet requirements pursuant to cabinet obligations within KRS 278.710. Additionally, the proposed amendments clarify terminology in accordance with statute, and address decommissioning liability to ensure responsible parties are held to obligations within the construction certificate and KRS 278.710.

(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 applicants, construction certificate holders, and successors of merchant electric generating facilities. At the time of drafting there are thirty-eight (38) MEGF construction certificates cases filed, which are issued by the Kentucky State Board on Electric Generation and Transmission Siting (board). Each MEGF that is or has been approved will be required to adhere to the requirements established in this regulation pursuant to KRS and 278.710 and 224.10-285. As of February 1, 2024, nineteen (19) counties or local municipal governments have established ordinances for decommissioning and financial assurance requirements. Pursuant to KRS 278.718, these local ordinances shall have primacy over KRS 278.704 through 278.708.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Entities that control or own right to control MEGFs within cities/counties that have not established decommissioning requirements will be held to requirements within this administrative regulation. Entities will have to submit the forms incorporated for updates to a decommissioning plan.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This administrative regulation will not have a cost for the entities identified.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The entities identified will not accrue benefits as a result of compliance to these administrative regulations.

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

(a) Initially: The agency will incur additional costs for the implementation of this administrative regulation as MEGFs are constructed and begin generating electricity for sale, at which point the cabinet obtains authority pursuant to KRS 278.710.

(b) On a continuing basis: The agency will incur additional costs

for the implementation of this administrative regulation as MEGFs are constructed and begin generating electricity for sale, at which point the cabinet obtains authority pursuant to KRS 278.710.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Funding is provided by the merchant electric generating facility monitoring and enforcement fund, pursuant to KRS 224.10-285. Implementation and enforcement of this administrative regulation would be achieved by the annual fee payment provided by MEGFs, in addition to potential penalties collected under KRS 224.99-010.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees but does establish procedures for updating the costs of decommissioning the facility.

(9) TIERING: Is tiering applied? (Explain why or why not) No tiering is not applied to this administrative regulation. There is no driving force to tier the decommissioning plan requirements, updates, or cost estimates within this administrative regulation.

#### FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate: Not applicable.

(2) State compliance standards: KRS 224.10-100, KRS 224.10-285, KRS 224.43-345, and KRS 278.700 through 278.716, KRS 224.99-010.

(3) Minimum or uniform standards contained in the federal mandate: Not applicable.

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate: This administrative regulation imposes stricter requirements as there is no federal mandate for the decommissioning of merchant electric generating facilities.

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: HB-4 mandated the Cabinet to promulgate administrative regulations for the monitoring and enforcement requirements for the obligations set forth in KRS 278.710(3), (4), (5), (7), (8), (9), and (10) and KRS 224.10-100(30) and (31).

#### FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation: This administrative regulation will impact state or local governments that control a merchant electric generating facility as well as the Division of Waste Management. Local governments who have not established decommissioning requirements for MEGFs within their jurisdiction will be held to standards and requirements within this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.: KRS 224.10-100(28), 224.-10-100(30), 224.10-285, 224.43-345, 278.710(3), (4), (5), (7) through (10).

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

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

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties,

fire departments, or school districts) for subsequent years: This administrative regulation will not generate revenue for state or local government for subsequent years.

(c) How much will it cost to administer this program for the first year: The cost to administer the program the thirty-eight (38) MEGF construction certificate cases filed at the time of drafting is estimated to total \$163,300 annually. The cabinet's estimation was determined by the resources required to implement and administer the program, pursuant to KRS 278.710 and 224.10-285. At the time of drafting this regulation, only three (3) of the thirty-eight (38) projects were under construction. Pursuant to KRS 278.710, the cabinet does not obtain authority over these facilities until the facility is constructed and generating electricity. Therefore, the cabinet cannot receive the annual fee until the facility is generating electricity. With no timetable of when these facilities will be constructed and begin generating electricity it is challenging to estimate the total costs in the first year of the program.

(d) How much will it cost to administer this program for subsequent years: The cost to administer the program for the thirty-eight (38) MEGF construction certificate cases filed at the time of drafting is estimated to total \$163,300 annually. The cabinet's estimation was determined by the resources required to implement and administer the program, pursuant to KRS 278.710 and KRS 224.10-285. As more facilities are constructed and begin generating power, additional programmatic costs will be incurred by the cabinet. Pursuant to KRS 278.710, the cabinet does not obtain authority over these facilities until the facility is constructed and generating electricity. Therefore, the cabinet cannot receive the annual fee until the facility is generating electricity. With no timetable of when these facilities will be constructed and begin generating electricity it is challenging to estimate the total costs for subsequent years of the program.

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

Revenues (+/-): If all thirty-eight (38) of the MEGF construction certificate cases filed are constructed and generating electricity, revenues generated from annual fees are estimated to total \$228,000. Pursuant to KRS 278.710, the cabinet does not obtain authority over these facilities until the facility is constructed and generating electricity. Therefore, the cabinet cannot receive the annual fee until the facility is generating electricity. With no timetable of if or when all facilities will be constructed and generating electricity it is challenging to estimate the total amount of revenue generated by the program on a yearly basis.

Expenditures (+/-): Assuming all thirty-eight (38) MEGF construction certificate cases filed are constructed and generate electric for sale, pursuant to responsibilities and requirements within KRS 278.710, the cabinet estimates the cost of administering the program to be \$163,300.

Other Explanation: There is no other explanation.

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year: The proposed administrative regulation will not generate cost savings for any regulated entities in the first year.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years: The proposed administrative regulation will not generate cost savings for any regulated entities in subsequent years.

(c) How much will it cost the regulated entities for the first year: There is no known cost to the regulated entities in the first year.

(d) How much will it cost the regulated entities for subsequent years: There is no known cost to the regulated entities in subsequent years.

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

Cost Savings (+/-): There is no known cost savings.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: This administrative regulation establishes procedures for technical requirements of a decommissioning plan, updates to the decommissioning plan, and estimating decommissioning costs. Potential costs for the entity include the cabinet's hiring of an independent engineer for the review of decommissioning plan updates, pursuant to KRS 224.10-285(4).

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

**ENERGY AND ENVIRONMENT CABINET**  
**Department for Environmental Protection**  
**Division of Waste Management**  
**(Amended After Comments)**

**401 KAR 103:030. Financial requirements.**

RELATES TO: KRS 224.10-100, 224.10-285, 224.43-345, 278.700 - 278.716

STATUTORY AUTHORITY: KRS 224.10-100(28), 224.10-100(30), (31), 224.10-285, 224.43-345, 278.710(3), (4), (5), (7) - (10) NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(28) authorizes the cabinet to promulgate administrative regulations not inconsistent with the provisions of law administered by the cabinet. KRS 224.10-285 requires the Energy and Environment Cabinet to establish monitoring and enforcement requirements for the obligation set for in KRS 278.710(3), (4), (5), (7) through (10) and 224.10-100(30) and (31). KRS 224.10-100(30) requires the Energy and Environment Cabinet to monitor and enforce compliance of a merchant electric generating entity to which a construction certificate has been issued and has generated pursuant to obligations set forth in KRS 278.710(3), (4), (5), (7) through (10). KRS 224.10-100(31) authorizes the cabinet to draw upon the financial assurance for which it is named as a beneficiary and decommission a merchant generating facility in accordance with its approved decommissioning plan. This administrative regulation establishes procedures to administer the financial assurance mechanisms for the decommissioning responsibilities of merchant electric generating facilities.

Section 1. Applicability. The financial assurance criteria and requirements apply to all applicants, construction certificate holders[owner-operators], or person who controls or owns the right to control a merchant electric generating facility, except as stated in KRS 278.706 and 278.710.

Section 2. Financial Assurance Criteria.

(1) Applicants, construction certificate holders[owners-operators], or person who controls or owns the right to control a merchant electric generating facility shall:

(a) Ensure the financial assurance mechanisms is sufficient to cover the costs of decommissioning pursuant to KRS 278.706;

(b) ~~[Ensure the financial assurance mechanisms be available no later than thirty (30) days after the issuance of a cabinet demand letter.~~

(c) ~~Complete and notarize a revised financial assurance mechanism form, in accordance with Section 3 of this administrative regulation, for the revised financial assurance mechanism; and~~

(d) Ensure the coverage of the financial assurance mechanism does not lapse, in accordance with KRS 278.710(4); ~~and[.]~~

(c)[(e)] Meet the requirements pursuant to KRS 278.706 and 278.710.

(2) The applicant, construction certificate holder[owner-operator], or person who controls or owns the right to control a merchant generating facility shall execute and submit a performance agreement for decommissioning, as established in Section 3 of this

administrative regulation, with one (1) or more of the financial mechanisms established in Section 3 of this administrative regulation that satisfy the following criteria:

~~[(a)] The amount of the financial assurance provided by a single surety provider shall not exceed the limits of the most current United States Department of the Treasury's Circular 570.~~

~~[(b) Upon receiving notice from the surety of the impending cancellation or lapse of the financial assurance mechanism, the cabinet shall seek agreement of any landowners who have not previously agreed pursuant to paragraph (c) below to make a demand on the financial assurance mechanism.~~

~~(c) The cabinet may seek agreement of the landowners to allow it to make a demand on the bond prior to receiving notice of impending cancellation or lapse.~~

~~(d) A landowner's agreement to allow the cabinet to make a demand on a bond pursuant to clause a. of this subparagraph may only be revoked in writing bearing a notarized signature of the landowner.]~~

(3) [Pursuant to Section 3 of this administrative regulation, financial assurance mechanism shall be:

(a) Submitted;

(b) Reviewed; and

1. ~~Approved by the cabinet if the applicant, owner-operator, or person who controls or owns the right to control a merchant electric generating facility is in compliance with the requirements of this administrative regulation; or~~

2. ~~Denied by the cabinet if the updated or replacing financial assurance mechanism does not meet the requirements stated KRS 278.706, 278.710, and this administrative regulation.~~

(4) Any applicant, construction certificate holder[Applicants, owners-operators], or person who controls or owns the right to control a merchant electric generating facility who fail to meet the requirements established in this section, KRS 278.706, and [KRS]278.710 may be subject to penalties established in KRS 224.99-010.

Section 3. Financial Assurance Mechanisms. The mechanisms used to demonstrate financial assurance in accordance with this administrative regulation shall ensure that the funds necessary to meet the costs of decommissioning the merchant generating facility upon the expiration of its useful life.

(1) A financial assurance mechanism shall be:

(a) Submitted;

(b) Reviewed; and

1. Approved by the cabinet if the applicant, construction certificate holder, or person who controls or owns the right to control a merchant electric generating facility is in compliance with the requirements of KRS 278.706 and 278.710 and this administrative regulation; or

2. Denied by the cabinet if the financial assurance mechanism does not meet the requirements established in KRS 278.706 and 278.710 and this administrative regulation.

(2) Before the cabinet approves a[an updated or replacement] financial assurance mechanism, the applicant or construction certificate holder[successor] shall:

(a) Complete and submit a notarized MEGF[notarize a] Performance Agreement, form DWM 4651[of decommissioning pursuant to paragraph (c) of this section]; and

(b) Post at least one (1) of the following financial assurance mechanisms pursuant to KRS 278.706(2)(m)5:

1. A surety bond as established in subsection (3)[(2)] of this section;

2. An escrow agreement as established in subsection (4)[(3)] of this section; or

3. Other similar security pursuant to KRS 278.706.

~~[(c) A performance agreement, guaranteeing performance of decommissioning to allowable limits, shall be completed, and notarized on MEGF Performance Agreement Form, DWM 4651.]~~

(3)[(2)] A surety bond shall[.] be completed and notarized on MEGF Surety Bond Form, DWM 4653. The requirements contained in the surety bond are incorporated in this administrative regulation by reference.

**(4) [(3)]** An escrow agreement shall:

(a) Be completed on MEGF Escrow Agreement Form, DWM 4654. The requirements contained in the escrow agreement are incorporated in this administrative regulation by reference.

(b) If a certificate of deposit is used in conjunction with the escrow agreement, it shall be made payable to the financial institution as the escrow agent.

**(5) [(4)]** Other financial assurance as specified in KRS 278.706 and 278.710.

**(6) [(5)]** The applicant, construction certificate holder [owner-operator], or person who controls or owns the right to control a merchant electric generating facility by establishing more than one (1) financial mechanism shall be limited to the following:

(a) Surety bonds;

(b) Escrow agreements;

(c) Other financial assurance, pursuant to subsection **(5) [(4)]** of this section.

(d) A combination of mechanisms established in this administrative regulation, rather than each single mechanism, that shall provide financial assurance for an amount at least equal to the financial assurance requirements established in KRS 278.706.

**(7) If the cabinet receives notice from the financial guarantor of the impending cancellation or lapse of the financial assurance mechanism, the cabinet may seek agreement of any landowners who have not previously agreed pursuant to subsection (8) of this section, to make a demand on the financial assurance mechanism. A landowner's agreement to allow the cabinet to make a demand on a financial assurance mechanism shall only be revoked with a notarized signature of the landowner.**

**(8) Pursuant to KRS 224.10-100(31), the cabinet may seek an agreement with the landowner to allow the cabinet to make a demand on the financial assurance mechanism prior to receiving notice of impending cancellation. If the cabinet makes a demand on the financial assurance mechanism, the construction certificate holder or person who controls or owns the right to control the facility shall ensure the financial assurance mechanism be available no later than thirty (30) days after issuance of the demand letter.**

#### Section 4. Release of Financial Assurance.

(1) Financial assurance mechanisms posted to assure the proper decommissioning of the MEGF shall be released by the cabinet if [when] the construction certificate holder [owner-operator], or person who controls or owns the right to control the MEGF demonstrates to the satisfaction of the cabinet that all decommissioning requirements pursuant to the decommissioning plan are complete in conformance with KRS 278.706, 278.710, and 401 KAR 103:020.

(2) To demonstrate that all decommissioning requirements have been satisfied, the construction certificate holder [owner-operator], or person who controls or owns the right to control the MEGF shall submit an assessment report certifying the facility is fully decommissioned pursuant to subsection (1) of this section.

#### Section 5. Incorporated by Reference.

(1) The following material is incorporated by reference:

(a) "MEGF Performance Agreement" Form, DWM 4651, **January 2024 [September 2023]**;

(b) "MEGF Surety Bond" Form, DWM 4653, **January 2024 [September 2023]**; and

(c) "MEGF Escrow Agreement" Form, DWM 4654, **January 2024 [September 2023]**.

(2) This material may be inspected, copies, or obtained, subject to applicable copyright law, at Division of Waste Management, 300 Sower Boulevard, 2nd floor, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 5:00 p.m., from the Web site at [eec.ky.gov/environmental-protection/waste](http://eec.ky.gov/environmental-protection/waste).

JOHN LYONS, Deputy Secretary

For REBECCA GOODMAN, Secretary

APPROVED BY AGENCY: February 15, 2024

FILED WITH LRC: February 15, 2024 at noon

CONTACT PERSON: Tyler Shields, Environmental Control Supervisor, Department for Environmental Protection, Division of Waste Management, 300 Sower Boulevard, Frankfort, Kentucky 40601, phone (502) 782-5325, fax (502) 564-4245, email [Tyler.Shields@ky.gov](mailto:Tyler.Shields@ky.gov).

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Tyler Shields

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes procedures for the financial assurance of MEGFs, including applicability, criteria, mechanisms of financial assurance, and conditions on which financial assurance will be released.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the procedures for assuring entities provide adequate financial assurance to decommission the MEGF upon the end of its useful life.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10-100(28) authorizes the cabinet to promulgate administrative regulations not inconsistent with the provisions of law administered by the cabinet. KRS 224.10-285 requires the establishment of the procedures to monitor and enforce requirements obligations set forth in 278.710(3), (4), (5), (7) through (10) and KRS 224.10-100(30) and (31).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes procedures to ensure MEGFs have adequate financial assurance for decommissioning responsibilities, pursuant to requirements set for in KRS 278.710.

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

(a) How the amendment will change this existing administrative regulation: The proposed amendments provide clarity for financial assurance criteria and mechanisms, terms used referencing financial assurance, and obligations and requirements for financial assurance liability.

(b) The necessity of the amendment to this administrative regulation: The proposed amendments are necessary to address concerns received during the public comment period.

(c) How the amendment conforms to the content of the authorizing statutes: The proposed amendments clarify financial assurance criteria and mechanisms, and address liability for financial assurance obligations pursuant to KRS 278.706, 278.710, and 224.10-100(30) and (31).

(d) How the amendment will assist in the effective administration of statutes: The proposed amendments will assist the cabinet with review of financial assurance (bonding) requirements, pursuant to KRS 278.710.

(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 applicants, construction certificate holders, and successors of merchant electric generating facilities. There are thirty-eight (38) filed cases for MEGF construction certificates issued by the Kentucky State Board on Electric Generation and Transmission Siting (board). Each MEGF that is or has been approved will be required to adhere to the requirements established in this regulation. As of February 1, 2024, nineteen (19) counties or local municipal governments have established ordinances for decommissioning and financial assurance requirements. Pursuant to KRS 278.718, these local ordinances shall have primacy over KRS 278.704 through 278.708.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Entities will have to comply with procedures within this administrative regulation for a MEGF that is constructed and operating within a city or county that has not



established financial assurance requirements. Entities will have to submit the new forms incorporated in this administrative regulation, as well as provide copies of financial assurance, pursuant to KRS 278.710.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This administrative regulation has financial assurance costs pursuant to KRS 278.706 and 278.710, equaling, at a minimum, the cost of decommissioning the facility.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Benefits to compliance with this administrative regulation include the release of the financial assurance upon completion of the decommissioning plan.

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

(a) Initially: The agency will incur programmatic costs pursuant to cabinet obligations within KRS 278.710.

(b) On a continuing basis: The agency will incur programmatic costs pursuant to cabinet obligations within KRS 278.710.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The merchant electric generating facility monitoring and enforcement fund. Implementation and enforcement of this administrative regulation would be achieved by the annual fee payment provided by MEGFs, in addition to potential penalties collected under KRS 224.99-010.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees but does establish procedures for financial assurance mechanisms for the costs of decommissioning the facility.

(9) TIERING: Is tiering applied? No tiering is applied to this administrative regulation. There is no driving need to tier the applicability, criteria, or the potential financial mechanisms described in this administrative regulation.

#### FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. Not applicable.

(2) State compliance standards. KRS 224.10-100, KRS 224.10-285, KRS 224.43-345, and KRS 278.700 through 278.716.

(3) Minimum or uniform standards contained in the federal mandate. Not applicable.

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate: This administrative regulation imposes stricter requirements as there is no federal mandate for the decommissioning of merchant electric generating facilities.

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: HB-4 mandated the Cabinet to promulgate administrative regulations for the monitoring and enforcement requirements for the obligations set forth in KRS 278.710(3), (4), (5), (7), (8), (9), and (10) and KRS 224.10-100(30) and (31).

#### FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation: This administrative regulation will impact state or local governments that own or operate a merchant electric generating facility as well as the Division of Waste Management. Local governments who have not established financial assurance requirements for MEGFs within their ordinance(s) will be held to standards and requirements within this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 224.10-100, KRS 224.10-285, KRS 278.706 and KRS 278.710

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

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

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

(c) How much will it cost to administer this program for the first year: The cost to administer the program the thirty-eight (38) filed MEGF construction certificate cases is estimated to total \$163,300 annually. The cabinet's estimation was determined by the resources required to implement and administer the program, pursuant to KRS 278.710. At the time of drafting this regulation, only three (3) of the thirty-eight (38) projects were under construction. Pursuant to KRS 278.710, the cabinet does not obtain authority over these facilities until the facility is constructed and generating electricity. Therefore, the cabinet cannot receive the annual fee until the facility is generating electricity. With no timetable of when these facilities will be constructed and begin generating electricity it is challenging to estimate the total costs in the first year of the program.

(d) How much will it cost to administer this program for subsequent years: The cost to administer the program for the thirty-eight (38) filed MEGF construction certificate cases is estimated to total \$163,300 annually. The cabinet's estimation was determined by the resources required to implement and administer the program, pursuant to KRS 278.710. Pursuant to KRS 278.710, the cabinet does not obtain authority over these facilities until the facility is constructed and generating electricity. Therefore, the cabinet cannot receive the annual fee until the facility is generating electricity. With no timetable of when these facilities will be constructed and begin generating electricity it is challenging to estimate the total costs for subsequent years of the program.

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

Revenues (+/-): If all thirty-eight (38) of the MEGF construction certificate cases filed are constructed and generating electricity, revenues generated from annual fees are estimated to total \$228,000. Pursuant to KRS 278.710, the cabinet does not obtain authority over these facilities until the facility is constructed and generating electricity. Therefore, the cabinet cannot receive the annual fee until the facility is generating electricity. With no timetable of if or when all facilities will be constructed and generating electricity it is challenging to estimate the total amount of revenue generated by the program on a yearly basis.

Expenditures (+/-): Assuming all thirty-eight (38) MEGF construction certificate cases filed are constructed and generate electric for sale, pursuant to responsibilities and requirements within KRS 278.710, the cabinet estimates the cost of administering the program to be \$163,300.

Other Explanation: n/a

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year: The proposed administrative regulation will not generate cost savings for any regulated entities in the first year.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years: The proposed administrative regulation will not generate cost savings for any regulated entities in subsequent years.

(c) How much will it cost the regulated entities for the first year: This administrative regulation will present a financial assurance cost to the regulated entity, at a minimum, equal to the cost of decommissioning the facility.

(d) How much will it cost the regulated entities for subsequent years: There is potential for the cost of financial assurance to rise or decline in subsequent years, depending on modifications to the facility, equipment, or decommissioning plans. As technology within the industry advances, advancements could potentially raise, or lower costs required for financial assurance. Inflation could also cause financial assurance costs to rise or decline in subsequent years.

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

Cost Savings (+/-): There is no known cost savings.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: This administrative regulation establishes financial assurance procedures for the decommissioning of MEGFs. The cost of the financial assurance shall, at a minimum, equal the cost of decommissioning the facility. The financial assurance can change over the life of the facility, depending on modifications to the facility, equipment, or decommissioning plans. KRS 278.706 establishes how decommissioning costs are calculated.

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

**CABINET FOR HEALTH AND FAMILY SERVICES**  
**Department for Medicaid Services**  
**Division of Policy and Operations**  
**(Amended After Comments)**

**907 KAR 1:044. Coverage provisions and requirements regarding community mental health center behavioral health services.**

RELATES TO: KRS 194A.060, 202A.011, [205.520(3)-] 205.8451(7), (9), 205.622, 369.101 - 369.120, 422.317, 434.840-434.860, 42 C.F.R. Part 2, 400.203, 415.208, 431.17, 431.52, 431 Subpart F, 45 C.F.R. Parts 160 and 164, 42 U.S.C. 290ee-3, 1320d-2 to 1320d-8

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 210.450[; 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 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 community mental health center (CMHC) behavioral health services provided to Medicaid recipients.

**Section 1. Definitions.**

(1) "Approved behavioral health practitioner" means an independently licensed practitioner who is:

- (a) A physician;
- (b) A psychiatrist;
- (c) An advanced practice registered nurse;
- (d) A physician assistant;
- (e) A licensed psychologist;
- (f) A licensed psychological practitioner;
- (g) A certified psychologist with autonomous functioning;
- (h) A licensed clinical social worker;

- (i) A licensed professional clinical counselor;
- (j) A licensed marriage and family therapist;
- (k) A licensed professional art therapist;
- (l) A licensed clinical alcohol and drug counselor;
- (m) A licensed behavior analyst; or
- (n) A behavioral health associate.

(2) "Approved behavioral health practitioner under supervision" means an individual who is under the billing supervision of an approved behavioral health practitioner and who is:

- (a)
  - 1. A licensed psychological associate working under the supervision of a board-approved licensed psychologist;
  - 2. A certified psychologist working under the supervision of a board-approved licensed psychologist;
  - 3. A marriage and family therapy associate;
  - 4. A certified social worker;
  - 5. A licensed professional counselor associate;
  - 6. A licensed professional art therapist associate;
  - 7. A licensed clinical alcohol and drug counselor associate;
  - 8. A certified alcohol and drug counselor;
  - 9. A licensed assistant behavior analyst;
  - 10. A behavioral health associate; or
  - 11. A licensed alcohol and drug counselor; and
- (b) Employed by the same CMHC or under contract with the same CMHC as the billing supervisor.

(3) "ASAM Criteria" means the most recent edition of "The ASAM Criteria, Treatment Criteria for Addictive, Substance-Related, and Co-Occurring Conditions" published by the American Society of Addiction Medicine.

(4) "Behavioral health associate" means an individual:  
 (a) With a minimum of a Bachelor of Arts or Sciences degree in a human service field;

- (b) Who only provides outpatient services;
- (c)
  - 1.a. Who is currently enrolled in a graduate program for a master's degree or doctoral degree [in:
    - a. Psychology;
    - b. Social work; or
    - c. in a behavioral science field that leads to a credential or license; and

b. Who is currently participating in an internship or practicum program as part of an accredited educational institution; or

2. Who is currently working toward a specialized credential [or licensure] in the field of [mental health or] substance use disorder, and is employed by a narcotic treatment program;

(d) Who has a collaborative educational agreement with the graduate program and the employing provider;

(e) Who complies with the supervision requirements of the collaborative educational agreement and complies with billing supervision requirements for rendering Medicaid services[That receives, at a minimum, weekly supervision by an approved behavioral health practitioner employed by the provider of services];

(f) Who is designated as a behavioral health associate by the department during the application process;

(g) Who does not render a diagnosis for a client;

(h) Who is designated as a behavioral health associate for no longer than five (5) years; and

(i) That is currently employed by one of the following outpatient treatment providers:

- 1. A behavioral health services organization;
- 2. A behavioral health multi-specialty group;
- 3. A certified community behavioral health clinic;
- 4. A community mental health center;
- 5. A federally qualified health center or a federally qualified health center look-alike;
- 6. A rural health clinic;
- 7. A provider of crisis continuum services, such as:
  - a. A mobile crisis intervention service provider;
  - b. A crisis observation stabilization unit; or
  - c. A behavioral health crisis transportation provider; or
- 8. An outpatient behavioral health provider approved by the

department.

(5) "Community mental health center" or "CMHC" means a facility ~~that~~which meets the community mental health center requirements established in 902 KAR 20:091.

(6)(2) "Department" means the Department for Medicaid Services or its designee.

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

(8)(4) "Face-to-face" means occurring[;]

(a) in person[; or]

(b) [If authorized by 907 KAR 3:170, via a real-time, electronic communication that involves two (2) way interactive video and audio communication].

(9)(5) "Federal financial participation" is defined by~~in~~ 42 C.F.R. 400.203.

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

(7) ~~"Mental health associate" means an individual who meets the mental health associate requirements established in the Community Mental Health Center Behavioral Health Services Manual.~~

(11) "Paraprofessional practitioner under supervision" means an individual who performs services under the billing supervision of an approved behavioral health practitioner who is employed by the same CMHC or under contract with the same CMHC as the billing supervisor. Paraprofessional practitioners include:

(a) Peer support specialists;

(b) Community support associates;

(c) Registered behavior technicians; or

(d) A targeted case manager, as established pursuant to 907 KAR Chapter 15.

(12)(8) "Professional equivalent" means an individual who:

(a) Met~~meets~~ the professional equivalent requirements established in the ~~[Community Mental Health Center]Behavioral Health Services Manual for Community Mental Health Centers prior to January 1, 2018; and~~

(b) Performs services under the billing supervision of an approved behavioral health practitioner, who is employed by the same CMHC or under contract with the same CMHC as the billing supervisor.

(13)(9) "Provider" is defined by KRS 205.8451(7).

(14)(40) "Qualified mental health professional" means an individual who meets the requirements established in KRS ~~202A.011~~202A.0014(12).

(15)(11) "Recipient" is defined by KRS 205.8451(9).

(16) "Telehealth" is defined by KRS 205.510(16).

Section 2. Requirements for a Psychiatric Nurse. A registered nurse employed by a participating community mental health center shall be considered a psychiatric or mental health nurse if the individual:

(1) Possesses a Master of Science in nursing with a specialty in psychiatric or mental health nursing;

(2)

(a) Is a graduate of a four (4) year nursing educational program with a Bachelor of Science in nursing; and

(b) Possesses at least one (1) year of experience in a mental health setting;

(3)

(a) Is a graduate of a three (3) year nursing educational program; and

(b) Possesses at least two (2) years of experience in a mental health setting; or

(4)

(a) Is a graduate of a two (2) year nursing educational program with an associate degree in nursing; and

(b) Possesses at least three (3) years of experience in a mental health setting.

Section 3. ~~[Community Mental Health Center]Behavioral Health Services Manual for Community Mental Health Centers.~~ The conditions for participation, services covered, and limitations for the community mental health center behavioral health services

component of the Medicaid program shall be as specified in:

(1) This administrative regulation; and

(2) The ~~[Community Mental Health Center]Behavioral Health Services Manual for Community Mental Health Centers.~~

Section 4. Covered Services.

(1) Behavioral health services covered pursuant to this administrative regulation and pursuant to the ~~[Community Mental Health Center]Behavioral Health Services Manual for Community Mental Health Centers~~ shall be rehabilitative mental health and substance use disorder services including:

(a) Individual ~~[outpatient]~~therapy;

(b) Group ~~[outpatient]~~therapy;

(c) Family ~~[outpatient]~~therapy;

(d) Collateral ~~[outpatient]~~therapy;

(e) Therapeutic rehabilitation services;

(f) Psychological testing;

(g) Screening;

(h) An assessment;

(i) Crisis intervention;

(j) Service planning;

(k) A screening, brief intervention, and referral to treatment;

(l) Mobile crisis services;

(m) Assertive community treatment;

(n) Intensive outpatient program services;

(o) Residential crisis stabilization services;

(p) Partial hospitalization;

(q) Residential services for substance use disorders;

(r) Day treatment;

(s) Comprehensive community support services;

(t) Peer support services;~~[or]~~

(u) Withdrawal management;

(v) Medication assisted treatment (MAT);

(w) Applied behavior analysis;

(x) Chemical dependency treatment center services;

(y) Prevention education with substance use risk factors and case management services for pregnant or postpartum individuals with a substance use disorder; or

(z) A narcotic treatment program (NTP), if separately licensed pursuant to 908 KAR 1:374~~[Parent or family peer support services].~~

(2)

(a) To be covered under this administrative regulation, a service listed in subsection (1) of this section shall be:

1. Provided by a community mental health center that is:

a. Currently enrolled in the Medicaid program in accordance with 907 KAR 1:672; and

b. Except as established in paragraph (b) of this subsection, currently participating in the Medicaid program in accordance with 907 KAR 1:671;

2. Provided in accordance with:

a. This administrative regulation; and

b. The ~~[Community Mental Health Center]Behavioral Health Services Manual for Community Mental Health Centers;~~ and

3. Medically necessary.

(b) In accordance with 907 KAR 17:015, Section 3(3), a provider of a service to an enrollee shall not be required to be currently participating in the fee-for-service Medicaid program.

Section 5. Electronic Documents and Signatures.

(1) The creation, transmission, storage, or other use of electronic signatures and documents shall comply with requirements established in KRS 369.101 to 369.120 and all applicable state and federal laws and regulations.

(2) A CMHC choosing to utilize electronic signatures shall:

(a) Develop and implement a written security policy that~~which~~ shall:

1. Be complied with by each of the center's employees, officers, agents, and contractors; and

2. Stipulate which individuals have access to which electronic signatures and password authorization;

(b) Ensure that electronic signatures are created, transmitted, and stored securely;

(c) Develop a consent form that shall:

1. Be completed and executed by each individual utilizing 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

(d) 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 6. No Duplication of Service.

(1) The department shall not reimburse for a service provided to a recipient by more than one (1) provider, of any program in which the service is covered, on the same day of service.

(2) For example, if a recipient is receiving a behavioral health service from an independently enrolled approved behavioral health practitioner~~[behavioral health service provider]~~, the department shall not reimburse for the same service provided to the same recipient by a community mental health center on the same day of service.

#### Section 7. Records Maintenance, Protection, and Security.

(1) A provider shall maintain a current health record for each recipient.

(2) A health record shall:

(a) Include:

1. An identification and intake record including:

- a. Name;
- b. Social Security number;
- c. Date of intake;
- d. Home (legal) address;
- e. Health insurance information;
- f. Referral source and address of referral source;
- g. Primary care physician and address;
- h. The reason the individual is seeking help including the presenting problem and diagnosis;

i. Any physical health diagnosis, if a physical health diagnosis exists for the individual, and information, if available, regarding:

(i) Where the individual is receiving treatment for the physical health diagnosis; and

(ii) The name of the physical health provider; and

j. The name of the informant and any other information deemed necessary by the independent provider to comply with the requirements of:

- (i) This administrative regulation;
- (ii) The provider's licensure board;
- (iii) State law; or
- (iv) Federal law;

2. Documentation of the:

a. Screening if the community mental health center performed the screening;

b. Assessment; and

c. Disposition;

3. A complete history including mental status and previous treatment;

4. An identification sheet;

5. A consent for treatment sheet that is accurately signed and dated; and

6. The individual's stated purpose for seeking services;

(b) Be:

1. Maintained in an organized central file;

2. Furnished to the:

a. Cabinet for Health and Family Services upon request; or

b. Managed care organization in which the recipient is enrolled if the recipient is enrolled with a managed care organization;

3. Made available for inspection and copying by:

a. Cabinet for Health and Family Services' personnel; or

b. Personnel of the managed care organization in which the recipient is enrolled if applicable;

4. Readily accessible; and

5. Adequate for the purpose of establishing the current treatment modality and progress of the recipient; and

(c) Document each service provided to the recipient including

the date of the service and the signature of the individual who provided the service.

(3) The individual who provided the service shall date and sign the health record within forty-eight (48) hours of the date that the individual provided the service.

(4)(a) Except as established in paragraph (b) or (c) of this subsection, a provider shall maintain a health record regarding a recipient for at least six (6) years from the date of the service or until any audit dispute or issue is resolved beyond six (6) years.

(b) After a recipient's death or discharge from services, a provider shall maintain the recipient's health record for the longest of the following periods:

1. Six (6) years unless the recipient is a minor; or

2. If the recipient is a minor, three (3) years after the recipient reaches the age of majority under state law.

(c) If the Secretary of the United States Department of Health and Human Services requires a longer document retention period than the period referenced in paragraph (a) or (b) of this subsection, pursuant to 42 C.F.R. 431.17, the period established by the secretary shall be the required period.

(5) A provider shall comply with 45 C.F.R. Part 164.

(6) Documentation of a screening shall include:

(a) Information relative to the individual's stated request for services; and

(b) Other stated personal or health concerns if other concerns are stated.

(7)

(a) A provider's notes regarding a recipient shall:

1. Be made within forty-eight (48) hours of each service visit; and

2. Describe the:

a. Recipient's symptoms or behavior, reaction to treatment, and attitude;

b. Therapist's intervention;

c. Changes in the plan of care if changes are made; and

d. Need for continued treatment if continued treatment is needed.

(b) Include the following:

1. The specific service rendered;

2. The date and actual time the service or services were rendered;

3. The name and practitioner level of the individual who rendered the service;

4. The setting of the service rendered and the amount of time to deliver the service;

5. The relationship of the service or services to the treatment goals and objectives in the plan of care; and

6. The individual's progress toward the treatment goals and objectives in the plan of care.

(c) 1. Any edit to notes shall:

a. Clearly display the changes; and

b. Be initialed and dated.

2. Notes shall not be erased or illegibly marked out.

(d)[(e)] If services are provided by a practitioner working under supervision or a paraprofessional practitioner working under supervision, there shall be:

1. A billing supervisor co-signature on the service note within thirty (30) days; and

2. A monthly supervisory note recorded by the supervising professional reflecting consultations with the practitioner working under supervision or the paraprofessional practitioner working under supervision concerning the:

a.[4.] Case; and

b.[2.] Supervising professional's evaluation of the services being provided to the recipient.

(8) Immediately following a screening of a recipient, the provider shall perform a disposition related to:

(a) A provisional diagnosis;

(b) A referral for further consultation and disposition, if applicable; or

(c) 1. If applicable, termination of services and referral to an outside source for further services; or

2. If applicable, termination of services without a referral to

further services.

(9) Any change to a recipient's plan of care shall be documented, signed, and dated by the:

- (a) Rendering practitioner; and
- (b) Recipient or recipient's representative.

(10)

(a) Notes regarding services to a recipient shall:

1. Be organized in chronological order;
2. Be dated;
3. Be titled to indicate the service rendered;
4. State a starting and ending time for the service; and
5. Be recorded and signed by the rendering provider and include

the professional title (for example, licensed clinical social worker) of the provider.

(b) Initials, typed signatures, or stamped signatures shall not be accepted.

(c) Telephone contacts, family collateral contacts not covered under this administrative regulation, or other nonreimbursable contacts shall:

1. Be recorded in the notes; and
2. Not be reimbursable.

(11)

(a) A termination summary shall:

1. Be required, upon termination of services, for each recipient who received at least three (3) service visits; and

2. Contain a summary of the significant findings and events during the course of treatment including the:

a. Final assessment regarding the progress of the individual toward reaching goals and objectives established in the individual's plan of care;

b. Final diagnosis of clinical impression; and

3. Individual's condition upon termination and disposition.

(b) A health record relating to an individual who was terminated from receiving services shall be fully completed within ten (10) days following termination.

(12) If an individual's case is reopened within ninety (90) days of terminating services for the same or related issue, a reference to the prior case history with a note regarding the interval period shall be acceptable.

(13)

(a) Except as established in paragraph (b) of this subsection, if a recipient is transferred or referred to a health care facility or other provider for care or treatment, the transferring CMHC shall, if the recipient gives the CMHC written consent to do so, within ten (10) business days of the transfer or referral, transfer the recipient's health records in a manner that complies with the health records' use and disclosure requirements as established in or required by:

- 1.a. The Health Insurance Portability and Accountability Act;
- b. 42 U.S.C. 1320d-2 to 1320d-8; and
- c. 45 C.F.R. Parts 160 and 164; or
- 2.a. 42 U.S.C. 290ee-3; and
- b. 42 C.F.R. Part 2.

(b) If a recipient is transferred or referred to a residential crisis stabilization unit, a psychiatric hospital, a psychiatric distinct part unit in an acute care hospital, or an acute care hospital for care or treatment, the transferring CMHC shall, within forty-eight (48) hours of the transfer or referral, transfer the recipient's health records in a manner that complies with the health records' use and disclosure requirements as established in or required by:

- 1.a. The Health Insurance Portability and Accountability Act;
- b. 42 U.S.C. 1320d-2 to 1320d-8; and
- c. 45 C.F.R. Parts 160 and 164; or
- 2.a. 42 U.S.C. 290ee-3; and
- b. 42 C.F.R. Part 2.

(14)

(a) If a CMHC's Medicaid program participation status changes as a result of voluntarily terminating from the Medicaid program, involuntarily terminating from the Medicaid program, a licensure suspension, or death of a provider, the health records regarding recipients to whom the CMHC has provided services shall:

1. Remain the property of the CMHC; and
2. Be subject to the retention requirements established in subsection (4) of this section.

(b) A CMHC shall have a written plan addressing how to maintain health records ~~if there is~~<sup>in the event of</sup> a provider's death.

#### Section 8. Medicaid Program Participation Compliance.

(1) A CMHC 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 CMHC receives any duplicate payment or overpayment from the department or managed care organization, regardless of reason, the CMHC shall return the payment to the department or managed care organization that issued the duplicate payment or overpayment.

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

Section 10. Auditing Authority. The department or the managed care organization in which an enrollee is enrolled shall have the authority to audit any:

- (1) Claim;
- (2) Health record; or
- (3) Documentation associated with the claim or health record.

#### Section 11. Federal Approval and Federal Financial Participation.

[(1)] The department's coverage of services pursuant to this administrative regulation shall be contingent upon:

~~[(1)]~~ [(a)] Receipt of federal financial participation for the coverage; and

~~[(2)]~~ [(b)] Centers for Medicare and Medicaid Services' approval for the coverage.

~~[(2)]~~ [The coverage of services provided by a licensed clinical alcohol and drug counselor or licensed clinical alcohol and drug counselor associate shall be contingent and effective upon approval by the Centers for Medicare and Medicaid Services.]

#### Section 12. Appeal Rights.

(1) An appeal of an adverse action by the department regarding 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.

#### Section 13. Incorporation by Reference.

(1) The "Behavioral Health Services Manual for Community Mental Health Centers", November 2023["Community Mental Health Center Behavioral Health Services Manual", May 2015], 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, 6th Floor West, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m. or online at the department's Web site at <https://chfs.ky.gov/agencies/dms/dpo/bpb/Pages/cmhc.aspx> [<http://www.chfs.ky.gov/dms/incorporated.htm>].

LISA D. LEE, Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: February 13, 2024

FILED WITH LRC: February 14, 2024 at 2:50 p.m.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the behavioral health coverage provisions and requirements regarding Medicaid program services provided within a community mental health center (CMHC).

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with federal mandates. Section 1302(b)(1)(E) of the Affordable Care Act (42 U.S.C. Sec. 18022), mandates that "essential health benefits" for Medicaid programs include "mental health and substance use disorder services, including behavioral health treatment" for all recipients.

(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 complying with federal mandates and enhancing and ensuring Medicaid recipients' access to behavioral health services.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the authorizing statutes by complying with federal mandates and enhancing and ensuring Medicaid recipients' access to behavioral health services.

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

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation incorporates a new manual that is titled the Behavioral Health Services Manual for Community Mental Health Centers. This amendment also contains a definition for "approved behavioral health practitioner" and "approved behavioral health practitioner under supervision" instead of a listing of each provider and each service. This provides for more transparency and compactness in the administrative regulation and manual. The administrative regulation also contains a definition for the "ASAM Criteria", "paraprofessional practitioner under supervision", and "telehealth." New covered services include withdrawal management, medication assisted treatment, applied behavior analysis, chemical dependency treatment center services, and narcotic treatment programs if separately licensed. The amendment also updates language relating to prevention education with substance use risk factors and case management services for pregnant or postpartum individuals with a substance use disorder. The administrative regulation also requires a billing supervisor's signature within thirty (30) days when a service is delivered by an approved behavioral health practitioner under supervision. The Amended After Comments version modifies the definition of BHA to include compliance with both supervision requirements of the collaborative educational agreement and compliance with the billing supervision requirements for rendering Medicaid services. The definition now includes that the BHA- with the exception of a narcotic treatment program - must be in a graduate level program and be participating in an internship or practicum at an accredited educational institution. The regulation has been further amended to specify that a BHA cannot render a diagnosis for a client.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation is necessary to align with existing Office of Inspector General (OIG) administrative regulations, to implement an SUD 1115 waiver, to require compliance with the ASAM Criteria, and to provide additional formatting improvements.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by implementing an SUD 1115 waiver and making conforming amendments following amendments to 907 KAR Chapter 15.

(d) How the amendment will assist in the effective administration of the statutes: The amendments will assist in the effective administration of the statutes by providing additional clarity and requirements relating to all behavioral health services performed in

CMHCs.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: CMHCs that wish to expand their behavioral health practice to include the newly covered services. There are currently 14 CMHCs.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: All CMHCs utilizing approved practitioner under supervision will need to begin having a billing supervisor sign appropriate documents within 30 days. CMHCs that provide chemical dependency treatment center services or narcotic treatment program services will also need to acquire appropriate certification or licensure.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The entities referenced in paragraph (a) could experience administrative costs associated with enrolling with the Medicaid program.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The entities referenced in paragraph (a) will benefit by receiving Medicaid program reimbursement for providing behavioral health services to Medicaid recipients. Medicaid recipients in need of behavioral health services will benefit from an expanded base of providers from which to receive certain services.

(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 as a result of this administrative regulation.

(b) On a continuing basis: DMS does not anticipate additional costs as a result of this administrative regulation.

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

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Neither an increase in fees nor funding is necessary to implement this administrative regulation.

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

(9) TIERING: Is tiering applied? Tiering is not applied as the policies apply equally to the regulated entities.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Medicaid Services will be affected by the amendment to this administrative regulation.

(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? The amendment is not expected to generate revenue for state or local government.

(b) How much revenue will this administrative regulation

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

(c) How much will it cost to administer this program for the first year? The amendment is not expected to cause additional costs in administering this program in the first year.

(d) How much will it cost to administer this program for subsequent years? The amendment is not expected to cause additional costs in administering this program in subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? DMS does not anticipate that cost savings will be generated for regulated entities as a result of the amendments to this administrative regulation in the first year. This administrative regulation could result in higher reimbursement for regulated entities by opening up additional practice opportunities for some provider types.

(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 could result in higher reimbursement for regulated entities by opening up additional practice opportunities for some provider types.

(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. Section 1302(b)(1)(E) of the Affordable Care Act (42 U.S.C. Sec. 18022).

(2) State compliance standards. KRS 205.520(3) states: "Further, it is the policy of the Commonwealth to take advantage of all federal funds that may be available for medical assistance. To qualify for federal funds the secretary for health and family services may by regulation comply with any requirement that may be imposed or opportunity that may be presented by federal law. Nothing in KRS 205.510 to 205.630 is intended to limit the secretary's power in this respect."

(3) Minimum or uniform standards contained in the federal mandate. Substance use disorder services are federally mandated for Medicaid programs. Section 1302(b)(1)(E) of the Affordable Care Act (42 U.S.C. Sec. 18022) mandates that "essential health benefits" for Medicaid programs include "mental health and substance use

disorder services, including behavioral health treatment."

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

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

#### CABINET FOR HEALTH AND FAMILY SERVICES

##### Department for Medicaid Services

##### Division of Health Care Policy

##### (Amended After Comments)

#### 907 KAR 15:005. Definitions for 907 KAR Chapter 15.

RELATES TO: KRS 194A.025(3), 205.510(11), 205.8451, 309.080, 309.130(2), (3), 311.840(3), 314.011(5), (7), 319.053, 319.056, 319.064, 319C.010(6), (7), 335.080, 335.100, 335.300(2), (3), 335.500(3), (4), 42 C.F.R. 400.203, 438.2, 441.540, 29 U.S.C. 794

STATUTORY AUTHORITY: KRS 194A.010(1), 194A.030(2), 194A.050(1), 205.520(3), 205.6311, 42 U.S.C. 1396a

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 a requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds. This administrative regulation establishes the definitions for 907 KAR Chapter 15.

#### Section 1. Definitions.

(1) "Administrative Services Organization" means a business entity that:

(a) Is contracted with the department;

(b) Administers:

1. Mobile crisis services;

2. Crisis observation stabilization services;

3. Behavioral health crisis transportation; and

4. Associated crisis residential stabilization services.

(c) Is responsible for:

1. Oversight of crisis continuum services;

2. Required reporting related to crisis continuum services;

3. Billing for crisis continuum services; and

4. Developing a continuum of crisis services providers that is sufficient to ensure access to mobile crisis services, crisis observation stabilization services, behavioral health crisis transportation, and crisis residential services for all residents of the commonwealth on a twenty-four (24) hour, seven (7) day per week, 365 day per year basis.

(2) "Adult peer support specialist" means an individual who meets the certification requirements for an adult peer support specialist established in 908 KAR 2:220.

(3)[(2)] "Advanced practice registered nurse" or "APRN" is defined by KRS 314.011(7).

(4)[(3)] "Approved behavioral health practitioner" means an independently licensed practitioner who is:

(a) A physician;

(b) A psychiatrist;

(c) An advanced practice registered nurse;

(d) A physician assistant;

(e) A licensed psychologist;

(f) A licensed psychological practitioner;

(g) A certified psychologist with autonomous functioning;

(h) A licensed clinical social worker;

(i) A licensed professional clinical counselor;

(j) A licensed marriage and family therapist;

(k) A licensed professional art therapist;

(l) A licensed clinical alcohol and drug counselor; or

(m) A licensed behavior analyst.

(5)[(4)] "Approved behavioral health practitioner under supervision" means an individual under billing supervision of an approved behavioral health practitioner who is:

(a)

1. A licensed psychological associate working under the supervision of a board-approved licensed psychologist;
2. A certified psychologist working under the supervision of a board-approved licensed psychologist;
3. A marriage and family therapy associate;
4. A certified social worker;
5. A licensed professional counselor associate;
6. A licensed professional art therapist associate;
7. A licensed clinical alcohol and drug counselor associate;
8. A certified alcohol and drug counselor;[~~or~~]
9. A licensed assistant behavior analyst;[~~and~~]
10. A behavioral health associate; or
11. A licensed alcohol and drug counselor; and

(b) Employed by or under contract with the same billing provider as the billing supervisor.

(6)[(5)] "ASAM Criteria" means the most recent edition of "The ASAM Criteria, Treatment Criteria for Addictive, Substance-Related, and Co-Occurring Conditions" published by the American Society of Addiction Medicine.

(7) "Behavioral health associate" means an individual:

(a) With a minimum of a Bachelor of Arts or Sciences degree in a human service field;

(b) Who only provides outpatient services;

(c)

1.a. Who is currently enrolled in a graduate program for a master's degree or doctoral degree in[~~;~~

a. Psychology;

b. Social work; or

c.] a behavioral science field that leads to a credential or license; and

b. Who is currently participating in an internship or practicum program as part of an accredited educational institution; or

2. Who is currently working toward a specialized credential[ ~~or licensure~~] in the field of [mental health or] substance use disorder, and is employed by a narcotic treatment program;

(d) Who has a collaborative educational agreement with the graduate program and the employing provider;

(e) Who complies with the supervision requirements of the collaborative educational agreement and complies with billing supervision requirements for rendering Medicaid services[That receives, at a minimum, weekly supervision by an approved behavioral health practitioner employed by the provider of services];

(f) Who is designated as a behavioral health associate by the department during the application process;

(g) Who does not render a diagnosis for a client;

(h) Who is designated as a behavioral health associate for no longer than five (5) years; and

(i)[(h)] That is currently employed by one of the following outpatient treatment providers:

1. A behavioral health services organization;

2. A behavioral health multi-specialty group;

3. A certified community behavioral health clinic;

4. A community mental health center;

5. A federally qualified Health Center or a federally qualified health center look-alike;

6. A rural health clinic;

7. A provider of crisis continuum services, such as:

a. A mobile crisis intervention service provider;

b. A crisis observation stabilization unit; or

c. A behavioral health crisis transportation provider; or

8. An outpatient behavioral health provider approved by the department.

(8) "Behavioral health crisis" means any behavioral, substance use disorder, or psychiatric situation perceived to be a crisis by the individual experiencing or witnessing it.

(9)[(6)] "Behavioral health multi-specialty group" means a group of more than one (1) individually licensed behavioral health

practitioners of varying practitioner types who form a business entity to:

(a) Render behavioral health services; and

(b) Bill the Medicaid Program for services rendered to Medicaid recipients.

(10)[(7)] "Behavioral health provider group" means a group of more than one (1) individually licensed behavioral health practitioners of the same practitioner type who form a business entity to:

(a) Render behavioral health services; and

(b) Bill the Medicaid Program for services rendered to Medicaid recipients.

(11)[(8)] "Behavioral health crisis transportation" means the use of a behavioral health support vehicle, to transport a Medicaid recipient alleged to be in a behavioral health crisis to a higher level of care.

(12) "Behavioral health services organization" means an entity that is licensed as a behavioral health services organization pursuant to:

(a) 902 KAR 20:430 for a behavioral health services organization tier I (BHSO I);

(b) 908 KAR 1:370 and 908 KAR 1:374 for a behavioral health services organization tier II (BHSO II); or

(c) 908 KAR 1:370 and 908 KAR 1:372 for a behavioral health services organization tier III (BHSO III).

(13)[(9)] "Behavioral health crisis transport vehicle" means an automobile that:

(a) Includes a driver's compartment that is separated from the passenger compartment in a way that allows the driver and passenger to communicate and visualize one another but that prohibits the passenger from easily accessing the driver or any control for operating the vehicle; and

(b) Has a passenger compartment with:

1. Two (2) or more traditional vehicle seats with appropriate seat belts;

2. No exposed sharp edges;

3. Doors that automatically lock and that are not capable of opening while the vehicle is in motion, such as a child lock feature.

(14) "Billing provider" means the individual, group of individual providers, or organization that:

(a) Is authorized to bill the department or a managed care organization for a service; and

(b) Is eligible to be reimbursed by the department or a managed care organization for a service.

(15)[(40)] "Billing supervisor" means an individual who[~~is~~]:

(a) Is:

1. A physician;

2. A psychiatrist;

3. An advanced practice registered nurse;

4. A physician assistant;

5. A licensed clinical alcohol and drug counselor;

6. A licensed psychologist;

7. A licensed clinical social worker;

8. A licensed professional clinical counselor;

9. A licensed psychological practitioner;

10. A certified psychologist with autonomous functioning;

11. A licensed marriage and family therapist;

12. A licensed professional art therapist; or

13. A licensed behavior analyst;[~~and~~]

(b) Is employed by or under contract with the same billing provider as the behavioral health practitioner under supervision who renders services under the supervision of the billing supervisor;

(c) Conducts the following supervisory duties and requirements on behalf of the practitioner under supervision:

1. Records a co-signature on a service note within thirty (30) days; and

2. Prepares a monthly supervisory note that reflects consultations with the practitioner or paraprofessional working under supervision that includes the supervising professional's evaluation of the services being provided to each recipient;

(d) Is not required to be the same provider type as the practitioner under supervision.

(16)[(41)] "Certified alcohol and drug counselor" is defined by



KRS 309.083[309.080(2)].

(17)[(12)] "Certified psychologist" means an individual who is a certified psychologist pursuant to KRS 319.056.

(18)[(13)] "Certified psychologist with autonomous functioning" means an individual who is a certified psychologist with autonomous functioning pursuant to KRS 319.056.

(19)[(14)] "Certified social worker" means an individual who meets the requirements established in KRS 335.080.

(20)[(15)] "Chemical dependency treatment center" means an entity that is licensed as a chemical dependency treatment center pursuant to 902 KAR 20:160.

(21) "Community-based mobile crisis intervention services" or "(MCIS)" means a dispatch of a mobile crisis team to the location of an individual who is experiencing a behavioral health crisis.

(22)[(16)] "Community support associate" means a paraprofessional who meets the application, training, and supervision requirements of 908 KAR 2:250.

(23)[(17)] "Co-occurring disorder" means a mental health and substance use disorder.

(24)[(18)] "Department" means the Department for Medicaid Services or its designee.

(25)[(19)] "Electronic signature" is defined by KRS 369.102(8).

(26)[(20)] "Enrollee" means a recipient who is enrolled with a managed care organization.

(27)[(21)] "Face-to-face" means occurring in person.

(28)[(22)] "Family peer support specialist" means an individual who meets the certification requirements for a Kentucky family peer support specialist established in 908 KAR 2:230.

(29)[(23)] "Federal financial participation" is defined by 42 C.F.R. 400.203.

(30)[(24)] "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.

(31)[(25)] "Kentucky-specific Medicare Physician Fee Schedule" means the list or process by which current reimbursement rates for physician services are established or published by the department.

(32)[(26)] "Level I psychiatric residential treatment facility" means an entity that is licensed as a Level I psychiatric residential treatment facility pursuant to 902 KAR 20:320.

(33)[(27)] "Level II psychiatric residential treatment facility" means an entity that is licensed as a Level II psychiatric residential treatment facility pursuant to 902 KAR 20:320.

(34)[(28)] "Licensed assistant behavior analyst" is defined by KRS 319C.010(7).

(35)[(29)] "Licensed behavior analyst" is defined by KRS 319C.010(6).

(36)[(30)] "Licensed clinical alcohol and drug counselor" is defined by KRS 309.080(8)[(4)].

(37)[(31)] "Licensed clinical alcohol and drug counselor associate" is defined by KRS 309.080(9)[(5)].

(38)[(32)] "Licensed clinical social worker" means an individual who meets the licensed clinical social worker requirements established in KRS 335.100.

(39)[(33)] "Licensed marriage and family therapist" is defined by KRS 335.300(2).

(40)[(34)] "Licensed professional art therapist" is defined by KRS 309.130(2).

(41)[(35)] "Licensed professional art therapist associate" is defined by KRS 309.130(3).

(42)[(36)] "Licensed professional clinical counselor" is defined by KRS 335.500(3).

(43)[(37)] "Licensed professional counselor associate" is defined by KRS 335.500(4).

(44)[(38)] "Licensed psychological associate" means an individual who meets the requirements established in KRS 319.064.

(45)[(39)] "Licensed psychological practitioner" means an individual who meets the requirements established in KRS 319.053.

(46)[(40)] "Licensed psychologist" means an individual who currently possesses a licensed psychologist license in accordance with KRS 319.010(6) and (9).

(47)[(41)] "Managed care organization" means an entity for which the Department for Medicaid Services has contracted to serve

as a managed care organization as defined by 42 C.F.R. 438.2.

(48)[(42)] "Marriage and family therapy associate" is defined by KRS 335.300(3).

(49)[(43)] "Medicaid-covered service" means a service covered by the department as established in Title 907 of the Kentucky Administrative Regulations.

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

(51)[(45)] "Medication assisted treatment" means the treatment of a substance use disorder with approved medications in combination with counseling, behavioral therapies, and other supports.

(52) "Mobile crisis team" means a professional working group that performs a mobile crisis intervention service prior to provision of a behavioral health secure transportation service and that consists of at least:

(a) One (1) approved behavioral health practitioner who is licensed to perform an assessment; and

(b) One (1) approved behavioral health practitioner or approved behavioral health practitioner under supervision.

(53)[(46)] "Physician" is defined by KRS 205.510(12)[(11)].

(54)[(47)] "Physician assistant" is defined by KRS 311.840(3).

(55)[(48)] "Practitioner working under supervision" means:

(a) An approved behavioral health practitioner under supervision;

(b) A registered behavior technician;

(c) A community support associate; [or]

(d) A peer support specialist; or

(e) A targeted case manager, as established pursuant to this chapter.

(56)[(49)] "Provider" is defined by KRS 205.8451(7).

(57)[(50)] "Provider abuse" is defined by KRS 205.8451(8).

(58)[(51)] "Psychiatric hospital" means an entity licensed as a psychiatric hospital pursuant to 902 KAR 20:180.

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

(60)[(53)] "Recipient abuse" is defined by KRS 205.8451(10).

(61)[(54)] "Recipient's representative" means:

(a) For a recipient who is authorized by Kentucky law to provide written consent, an individual acting on behalf of, and with written consent from, the recipient; or

(b) A legal guardian.

(62)[(55)] "Registered alcohol and drug peer support specialist" is defined by KRS 309.080(8).

(63)[(56)] "Registered behavior technician" means an individual who meets the following requirements provided by the Behavior Analyst Certification Board:

(a) Be at least eighteen (18) years of age;

(b) Have a high school diploma or its equivalent; and

(c) Within six (6) months of hire for a new employee or within six (6) months of the effective date of this administrative regulation for an existing employee:

1. Complete a training program that is:

a. Approved by the Behavior Analyst Certification Board;

b. Based on the current edition of the RBT Task List endorsed by the Behavior Analyst Certification Board; and

c. Conducted by Behavior Analyst Certification Board certificants;

2. Pass the Registered Behavior Technician Competency Assessment administered by a Behavior Analyst Certification Board certificant or by an assistant assessor overseen by a Behavior Analyst Certification Board certificant; and

3. Pass the Registered Behavior Technician exam provided by the Behavior Analyst Certification Board.

(64)[(57)] "Registered nurse" is defined by KRS 314.011(5).

(65)[(58)] "Residential crisis stabilization unit" means an entity that is licensed as a residential crisis stabilization unit pursuant to 902 KAR 20:440.

(66)[(59)] "Section 504 plan" means a plan developed:

(a) Under the auspices of Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794 (Section 504); and

(b) To ensure that a child who has a disability identified under the law and is attending an elementary or secondary educational

institution receives accommodations to ensure the child's academic success and access to the learning environment.

(67) [(60)] "Telehealth" is defined by KRS 205.510(16) [(45)].

(68) [(64)] "Withdrawal management" means a set of interventions aimed at managing acute intoxication and withdrawal based on the severity of the illness and co-occurring conditions identified through a comprehensive biopsychosocial assessment with linkage to addiction management services, and incorporated into a recipient's care as needed throughout the appropriate levels of care.

(69) [(62)] "Youth peer support specialist" means an individual who meets the requirements established for a Kentucky youth peer support specialist established in 908 KAR 2:240.

LISA D. LEE, Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: February 14, 2024

FILED WITH LRC: February 14, 2024 at 2:50 p.m.

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

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the definitions for administrative regulations located in 907 KAR Chapter 15. Chapter 15 contains Medicaid administrative regulations regarding behavioral health services.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the definitions for administrative regulations located in 907 KAR Chapter 15.

(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 definitions for administrative regulations located in 907 KAR Chapter 15.

(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 definitions for administrative regulations located in 907 KAR Chapter 15.

(2) If 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 new definitions for "accountable services organization", "behavioral health associate", "behavioral health crisis", "behavioral health secure crisis transportation", "behavioral health support vehicle", "mobile crisis intervention services", and "mobile crisis team". In addition, "approved behavioral health practitioner under supervision" is amended to include a "behavioral health associate", and the term "billing supervisor" is further clarified. The Amended After Comments version modifies the definition of BHA to include compliance with both supervision requirements of the collaborative educational agreement and compliance with the billing supervision requirements for rendering Medicaid services. The definition now includes that the BHA- with the exception of a narcotic treatment program- must be in a graduate level program and be participating in an internship or practicum at an accredited educational institution. The regulation has been further amended to specify that a BHA cannot render a diagnosis for a client.

(b) The necessity of the amendment to this administrative regulation: These amendments are necessary to clarify and expand terms used throughout 907 KAR Chapter 15.

(c) How the amendment conforms to the content of the authorizing statutes: The amendments conform to the content of the authorizing statutes by clarifying and expanding terms used throughout 907 KAR Chapter 15.

(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 clarifying and expanding terms used throughout 907 KAR Chapter 15.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The following Medicaid-enrolled providers will be affected by this administrative regulation: individual Medicaid behavioral health providers, behavioral health provider groups and multi-specialty groups, behavioral health services organizations, chemical dependency treatment centers, residential crisis stabilization units, accountable service organizations, and any entity providing crisis continuum services. There are currently over 2,200 such individuals or entities 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: As appropriate, providers may need to refer to this administrative regulation to clarify terms used in other administrative regulations.

(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 and new definitions 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 appropriation.

(7) Provide an assessment of whether an 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.010(1), 194A.030(2), 194A.050(1), 205.520(3), 205.6311, 42 U.S.C. 1396a.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 define terms 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." KRS 205.6311 requires the Department for Medicaid Services to "promulgate administrative regulations. .. to expand the behavioral health network to allow providers to provide services within their licensure category."

(3) Minimum or uniform standards contained in the federal mandate. There is no federal mandate to define terms 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.

## PROPOSED AMENDMENTS

Public comment periods for ordinary, non-emergency regulations are at least two months long. For other regulations with open comment periods, please also see last month's [Administrative Register of Kentucky](#).

**EDUCATION AND LABOR CABINET**  
**Education Professional Standards Board**  
**(Amendment)**

**16 KAR 2:120. Emergency certification and out-of-field teaching.**

RELATES TO: KRS 157.390, 161.020, 161.028, 161.030, 161.100, 161.102, 161.1211, 161.1221, 334A.030, 334A.033, 334A.035, 334A.050, 334A.060, 34 C.F.R. 300.156

STATUTORY AUTHORITY: KRS 161.028(1)(a), 161.030(1), 161.100, 161.1221(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.100 authorizes the Education Professional Standards Board (EPSB) to establish qualifications for granting emergency certificates if qualified teachers are not available for specific positions. KRS 161.1221(1) requires the EPSB[Education Professional Standards Board] to establish a definition for out-of-field teaching. This administrative regulation establishes the qualifications and procedures for emergency certifications and establishes the definition for out-of-field teaching.

Section 1. Definition. "Qualified teacher" means a teacher who holds the appropriate certification for the position unless the superintendent of the employing school district has documented evidence that the teacher is unsuitable for appointment.

Section 2. (1)

[a] Until December 31, 2014, a superintendent of a local school district shall apply to the Education Professional Standards Board for an emergency teaching certificate on behalf of an applicant by completing the Form TC-4F.

[b] Beginning January 1, 2015, a superintendent of a local school district shall apply to the Education Professional Standards Board for an emergency teaching certificate on behalf of an applicant by completing the Form CA-4F.

(2) In accordance with KRS 161.100, prior to applying on behalf of an applicant for an emergency teaching certificate, the superintendent and board of education of a local school district shall document the following:

(a) Qualified teachers have not applied for the vacant position and qualified teachers are not available for the position;

(b) Diligent efforts have been made to recruit a qualified teacher for the vacant position, and furthermore, this vacancy has been made known locally by appropriate means;

(c) The local school district has been unsuccessful in recruiting qualified teachers for the vacant position from the listings of teachers supplied by the placement services of the teacher education institutions;

(d) The position shall be filled by the most suitable applicant available, giving preference to the factors of academic preparation, prior teaching experience or related educational work, and personal attributes compatible with the demands of the teaching profession; and

(e) The local school district has conducted a criminal records check as required by KRS 160.380 for each applicant prior to applying for the emergency certificate.

(2) The emergency certificate shall be valid for one (1) school year.

(3) The emergency teaching certificate shall be limited to two (2) issuances. A candidate may qualify for an additional issuance if an emergency certificate was issued under the following conditions:

(a) The emergency certificate was issued after February 15 of a school year; or

(b) The emergency certificate was issued for less than fifty (50) percent of the person's class schedule.

(4) The EPSB shall not issue an emergency certificate for

teaching exceptional children or interdisciplinary early childhood education.

~~[(3)(a) The Education Professional Standards Board, depending upon the assessment of need for the position and the availability or anticipated availability of qualified teachers, shall approve or disapprove a request for the employment of emergency teachers.~~

~~1. The term of validity of an emergency certificate may be limited to a period less than the full school year.~~

~~2. The beginning date shall be no earlier than the date the request form is received by the Education Professional Standards Board.~~

~~3. In accordance with the licensure requirements of KRS 334A.030, 334A.033, 334A.035, 334A.050, and 334A.060, the Education Professional Standards Board shall not issue an emergency certificate for teaching exceptional children with communication disorders.~~

~~(b) An emergency certificate shall not be issued to the same person in any subsequent year unless the original emergency certificate was issued under the following conditions:~~

~~1. The emergency certificate was issued after February 15 of a school year; or~~

~~2. The emergency certificate was issued for less than fifty (50) percent of the person's class schedule.~~

~~(c) If an emergency certificate is issued to a person pursuant to paragraph (b) of this subsection, there shall be no more than one (1) subsequent issuance of an emergency certificate to the same person.~~

~~(4)~~

~~(a) Emergency certification for an assignment as teacher of exceptional children shall be issued with the condition that the applicant shall receive intensive training on special education topics, including IEP, assessment, evaluation, individualized instruction, methods, and management. This training shall be accomplished as follows:~~

~~1. The applicant shall complete twelve (12) clock hours of training as required by the Office of Special Instructional Services of the Kentucky Department of Education;~~

~~2.~~

~~a. The applicant shall complete an additional six (6) clock hours of training during the fall conference conducted by the Division of Exceptional Children Services of the Kentucky Department of Education. Teachers employed after the fall conference shall complete these six (6) clock hours of training during the spring conference of the Council for Exceptional Children; or~~

~~b. If the applicant is unable to attend either the fall conference or the spring conference, the applicant shall complete an additional six (6) clock hours of training offered through one (1) of the state's eleven (11) special education cooperatives. The training shall be similar to the topics covered at the conferences; and~~

~~3. The applicant shall participate in at least one (1) day of flexible in-service training, relevant specifically to special education. The training shall be limited to visitation in a classroom of an exemplary special education teacher, special education training relevant to the identified needs of the teacher, or other training provided by the Office of Special Instructional Services.~~

~~(b) The Kentucky Department of Education shall report to the Education Professional Standards Board those emergency-certified teachers of exceptional children who have not completed the training requirements established in this subsection by June 30 of each year for the preceding school year.]~~

~~(5) The superintendent of the local school district and the board of education may establish the need for emergency substitute teachers on the basis of anticipated shortages of regularly certified teachers and in accordance with district policies and procedures established for the selection and employment of substitute teachers.~~

~~(6) The EPSB[Education Professional Standards Board] shall periodically review the numbers of emergency certificates issued for~~

full-time, part-time, and substitute teaching by school district, by position, and by academic preparation.

Section 3. Emergency Teaching Certificate. (1) Issuance of an emergency teaching certificate shall require a minimum of a bachelor's degree from a regionally or nationally accredited college or university with one of the following:

(a) a cumulative minimum grade point average of 2.5 on a 4.0 scale; or

(b) a grade point average of 2.75 on a 4.0 scale on the last thirty hours of credit completed, including undergraduate and graduate coursework.

(2) A candidate meeting the requirements of Subsection (1) of this section shall be eligible for issuance of the emergency teaching certificate upon application to the EPSB, compliance with 16 KAR 2:010, Section 3(1), and submission of the following documentation:

(a) Official transcripts showing all college or university credits necessary for the requested certificate;

(b) An offer of employment in a Kentucky school district in the area in which emergency certification is being sought; and

(c) Compliance with Section 2(1) of this administrative regulation.

(3) An emergency teaching certificate shall not be issued to individuals who have been judged to be unsatisfactory in the beginning teacher internship established in 16 KAR 7:010

Section 4. Emergency Substitute Certificate. (1) Issuance of an emergency substitute certificate shall require a minimum of sixty-four (64) semester hours of credit from a regionally or nationally accredited college or university with one of the following:

(a) a cumulative minimum grade point average of 2.5 on a 4.0 scale; or

(b) a grade point average of 2.75 on a 4.0 scale on the last thirty hours of credit completed, including undergraduate and graduate coursework.

(2) A candidate with a bachelor's degree from a regionally or nationally accredited college or university is exempt from the grade point average requirements in Subsection (1) of this section.

(3) A local school district shall review the qualifications and transcripts for each applicant for an emergency substitute certificate pursuant to the requirements of this administrative regulation.

(4) A candidate meeting the requirements of Subsection (1) of this section shall be eligible for issuance of the emergency substitute certificate upon application to the EPSB, compliance with 16 KAR 2:010, Section 3(1), and submission of the following documentation:

(a) An offer of employment in a Kentucky school district; and

(b) Compliance with Section 2(5) of this administrative regulation.

Section 5. Emergency Occupation-Based Career and Technical Education Substitute Certificate.

(1) Issuance of an emergency occupation-based career and technical education substitute certificate shall require a minimum of four (4) years of occupational experience in the area to be taught and a high school diploma or its equivalent as determined by evidence of a passing score on the General Education Development Test.

(2) A local school district shall review the qualifications and transcripts for each applicant for an emergency substitute certificate pursuant to the requirements of this administrative regulation.

(3) A candidate meeting the requirements of Subsection (1) of this section shall be eligible for issuance of the certificate upon application to the EPSB, compliance with 16 KAR 2:010, Section 3(1), and submission of the following documentation:

(a) An offer of employment in a Kentucky school district; and

(b) Certification of all educational attainment and work experience earned by the prospective emergency teacher.

[(7)

(a)

1. An emergency certificate for full-time or part-time employment shall be issued only to individuals who:

a. Have completed a minimum of a bachelor's degree from a regionally accredited college; and

b.

(i) Have a cumulative minimum grade point average of 2.5 on a 4.0 scale; or

(ii) Have a minimum grade point average of 3.0 on a 4.0 scale on the last sixty (60) hours of credit completed, including undergraduate and graduate coursework.

2. An emergency certificate for full-time or part-time employment shall not be issued to individuals who have been judged to be unsatisfactory in the beginning teacher internship established in 16 KAR 7:010.

(b) An emergency certificate for substitute teaching shall be issued to individuals who:

1. Have completed a minimum of sixty-four (64) semester hours of credit from a regionally accredited institution; and

2.

a. Have a cumulative minimum grade point average of 2.5 on a 4.0 scale; or

b. Have a minimum grade point average of 3.0 on a 4.0 scale on the last thirty[sixty (60)] hours of credit completed, including undergraduate and graduate coursework.

(c) An emergency certificate for substitute teaching in any career and technical education or occupation-based position may be issued to persons who have a minimum of four (4) years of occupational experience in the area to be taught and a high school diploma or its equivalent as determined by evidence of a passing score on the General Education Development Test.

(8)

(a)

1. Until December 31, 2014, a Form TC-4F signed by the local school superintendent and approved by the local board of education shall be submitted for each anticipated emergency position for full-time or part-time employment. The application shall be accompanied by official transcripts of all college credits earned by the prospective emergency teacher.

2. Beginning January 1, 2015, a Form CA-4F signed by the local school superintendent and approved by the local board of education shall be submitted for each anticipated emergency position for full-time or part-time employment. The application shall be accompanied by official transcripts of all college credits earned by the prospective emergency teacher.

(b)

1. Until December 31, 2014, a TC-4VE signed by the local school superintendent and approved by the local board of education shall be submitted for each anticipated career and technical or occupation-based emergency position for full-time or part-time employment. The application shall be accompanied by official transcripts and certification of all educational attainment and work experience earned by the prospective emergency teacher.

2. Beginning January 1, 2015, a CA-4VE signed by the local school superintendent and approved by the local board of education shall be submitted for each anticipated career and technical or occupation-based emergency position for full-time or part-time employment. The application shall be accompanied by official transcripts and certification of all educational attainment and work experience earned by the prospective emergency teacher.

(c) A local school district shall review the qualifications and transcripts for each applicant for an emergency certificate for substitute teaching pursuant to the requirements of this administrative regulation and other pertinent Kentucky statutes and administrative regulations regarding school personnel.

4.

a.

(i) Until December 31, 2014, a local school district shall initiate the online application process for candidates for an emergency certificate for substitute teaching using the EPSB On-line TC-4 Application System in accordance with the On-line TC-4 Implementation Guide for Kentucky School Districts.

(ii) Until December 31, 2014, a candidate for an emergency certificate for substitute teaching shall complete the Form TC-4 by using the EPSB On-line TC-4 Application System in accordance with the On-line TC-4 Implementation Guide for Kentucky School Districts.

b.

(i) Beginning January 1, 2015, a local school district shall initiate the online application process for candidates for an emergency certificate for substitute teaching using the EPSB On-line Emergency Substitute Application System in accordance with the On-line Emergency Substitute Application System Implementation Guide for Kentucky School Districts.

(ii) Beginning January 1, 2015, a candidate for an emergency certificate for substitute teaching shall complete the Form CA-4 by using the EPSB On-line Emergency Substitute Application System in accordance with the On-line Emergency Substitute Application System Implementation Guide for Kentucky School Districts.

2. A local school district shall require candidates for an emergency certificate for substitute teaching for career and technical education or occupation-based emergency positions to complete a Form TC-4VE or Form CA-4VE.

3. A local school district shall submit any TC-4VE or Form CA-4VE application on which the candidate has provided an affirmative answer to any question in the application's Section IV, Character and Fitness, to the Education Professional Standards Board for approval prior to employing the candidate in a substitute teaching position.]

Section 6.[Section 3.] Rank and Salary Provisions. (1) The EPSB[Education Professional Standards Board] shall issue the emergency teaching certificate [for full-time or part-time employment] established in Section 2 of this administrative regulation with a rank designation based upon the criteria established in this subsection.

(a) A teacher holding a valid Kentucky teaching certificate shall be issued an emergency certificate for full-time or part-time employment at the rank designated on the teacher's regular certificate.

(b)

1. A new teacher holding a valid one (1) year provisional certificate issued upon enrollment in the Kentucky Teacher Internship Program established in 16 KAR 7:010 shall be issued an emergency certificate for part-time employment at the rank designated on the teacher's one (1) year provisional certificate.

2. The teacher shall maintain a half-time enrollment in the internship as defined in 16 KAR 7:010 to remain eligible for the higher rank established in this paragraph.

3. If the teacher terminates or otherwise fails to continue enrollment in the internship prior to its successful completion, the teacher shall be reclassified at Rank IV until the teacher is properly reenrolled in the internship program.

(c) A new teacher holding a valid Kentucky Statement of Eligibility shall be issued an emergency certificate for full-time or part-time employment at Rank IV until the teacher:

1. Is properly enrolled in the Kentucky Teacher Internship Program on at least a half-time basis as established in 16 KAR 7:010; and

2. Possesses the one (1) year provisional certificate referenced in paragraph (b)1 of this subsection.

(d) An applicant for the emergency certificate for full-time or part-time employment who does not hold a valid Kentucky teaching certificate shall be issued the emergency certificate at Rank IV.

(2) Local school districts requesting[issuing] the emergency certificate for substitute teaching established in Section 2 of this administrative regulation shall adhere to the rank classifications established in KRS 161.1211.

#### Section 7.[Section 4.] Out-of-field Teaching.

(1) Pursuant to KRS 161.1221(1), out-of-field teaching shall be classified in the following four (4) categories:

(a) The number of emergency certificates issued by grade range, subject field, and district;

(b) The number of probationary certificates issued by grade range, subject field, and district;

(c) The number of temporary provisional certificates issued by grade range, subject field, and district; and

(d) The number of teachers who do not possess a certificate of legal qualifications for the professional position they hold in the public schools, including a breakout of:

1. The number of teachers who hold no certificate;
2. The number of teachers who hold an expired certificate;
3. The number of certified teachers who are teaching outside of the subject field or fields indicated on their certificate who do not hold a credential listed in paragraph (a), (b), or (c) of this subsection; and
4. The number of certified teachers who are teaching outside the grade range indicated on their certificate who do not hold a credential listed in paragraph (a), (b), or (c) of this subsection.

(2) If data is available, reports on out-of-field teaching in the four categories established in subsection (1) of this section shall differentiate between teachers who possess the equivalent of a college major, minor, or area of concentration in the subject area they are teaching.

[Section 5. Beginning January 1, 2015, an applicant for any certificate described in this administrative regulation who is not currently certified as an educator in Kentucky shall submit a national and state criminal background check performed in accordance with KRS 160.380(5)(c) within twelve (12) months prior to the date of application.

#### [Section 6. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Form CA-4", 08/2014;

(b) "Form CA-4F", 08/2014;

(c) "Form CA-4VE", 08/2014;

(d) "Form TC-4", 10/2009;

(e) "Form TC-4F", revised 10/2009;

(f) Form TC-4VE", 10/2009;

(g) "On-line Emergency Substitute Application Implementation Guide for Kentucky School Districts", August 2014; and

(h) "On-line TC-4 Implementation Guide for Kentucky School Districts", May 2012.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Education Professional Standards Board, 100 Airport Road, 3rd Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.].

JUSTIN MITCHELL, Board Chair

APPROVED BY AGENCY: February 12, 2024

FILED WITH LRC: February 15, 2024 at 11:40 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on April 29, 2024, at 10:00 a.m. in the State Board Room, Fifth Floor, 300 Sower Boulevard, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through April 30, 2024. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

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

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Todd Allen

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the qualifications and procedures for emergency certifications and establishes the definition for out-of-field teaching.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to set the certification requirements for emergency certificates and the definition for out-of-

field teaching.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 161.020 requires a certificate of legal qualifications for any public-school position for which a certificate is issued. KRS 161.028 requires the EPSB to establish standards and requirements for obtaining and maintaining a teaching certificate. KRS 161.100 authorizes the EPSB to establish qualifications for granting emergency certificates if qualified teachers are not available for specific positions.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation delineates the requirements for emergency certificates.

(2) If 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 prohibits the issuance of emergency certificates for special education teachers to comply with federal regulation on the Individuals with Disabilities Education Act. The proposed amendment also removes outdated application forms and updates the grade point average requirement for emergency teaching and emergency substitute certificates. Additionally, the amendment allows for an additional issuance of an emergency teaching certificate.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to comply with federal regulation on the Individuals with Disabilities Education Act, remove outdated application forms, update the grade point average requirement, and allow for an additional issuance of an emergency teaching certificate.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment sets the requirements for emergency certificates.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will set the standards for issuance of emergency certificates when qualified applicants are not available for a position and will ensure compliance with federal regulation on the individuals with disabilities education act.

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

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The amendment will not allow issuance of emergency certificates for special education. For all other areas of certification, the amendments will not require additional action by the entities but will allow for an additional issuance of an emergency certificate.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no fee established by the Education Professional Standards Board in this regulation. With the prohibition on issuance of emergency certificates for special education, districts will have to pursue other options to have applicants certified; however, the Education Professional Standards Board issues other one-year certificates that meet the requirements of the federal regulation and do not have a certification fee.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Compliance will ensure compliance with federal regulation on the Individuals with Disabilities Education Act. For all other certification areas, compliance will ensure issuance of an emergency certificate when a qualified candidate is not available.

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

(a) Initially: There are no costs expected to implement this amendment.

(b) On a continuing basis: There are no expected continuing costs with this amendment.

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

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

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

(9) TIERING: Is tiering applied? Tiering is not applicable to the requirements of this regulation because the standards apply to all districts and individuals seeking emergency certificates.

## FISCAL NOTE

(1) What 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 EPSB and public-school districts.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 161.020, KRS 161.028, KRS 161.100, 34 C.F.R. 300.156

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

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

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

(c) How much will it cost to administer this program for the first year? There are no additional costs expected with this amendment.

(d) How much will it cost to administer this program for subsequent years? There are no additional costs expected with this amendment.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: The EPSB is not imposing or collecting any fees under this administrative regulation. There are no fees for emergency certificates.

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

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

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

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

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

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

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

from this regulation as it does not create additional costs for the EPSB or the regulated entities.

#### FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 34 C.F.R. § 300.156 (c) sets personnel qualifications for special education teachers and requires that each person employed as a special education teacher in the state has obtained full state certification as a special education teacher. 34 C.F.R. § 300.156 (c)(1)(ii) prohibits emergency certificates for special education teachers.

(2) State compliance standards. To comply with the requirements contained in 34 C.F.R. § 300.156 (c) this administrative regulation prohibits the issuance of emergency certificates to teachers of exceptional children and interdisciplinary early childhood education.

(3) Minimum or uniform standards contained in the federal mandate. 34 C.F.R. § 300.156 (c) requires that each person employed as a public-school special education teacher in the state obtain full certification. Participation in an altera route program that requires teachers to receive high-quality professional development, participate in a program of intensive supervision that consists of structured guidance and regular ongoing support, assume functions as a teacher only for a specified period not to exceed three years, and demonstrate satisfactory progress toward full certification will meet the qualifications of the federal regulation under 34 C.F.R. § 300.156 (c)(2). 34 C.F.R. § 300.156 (c) prohibits emergency certification for special education teachers.

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This regulation will not impose stricter requirements, or additional or different responsibilities or requirements. The administrative prohibition will only prohibit issuance of emergency certificates to teachers of exceptional children and interdisciplinary early childhood education as required by the federal law. Emergency certificates may be issued for all other certification areas.

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable.

#### EDUCATION AND LABOR CABINET Education Professional Standards Board (Amendment)

#### 16 KAR 2:160. Probationary certificate for teachers of exceptional children.

RELATES TO: KRS 161.020, 161.028, 161.030, 34 C.F.R. 300.156 (c)(2)

STATUTORY AUTHORITY: KRS 161.028, 161.030

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.020, 161.028 and 161.030 require that teachers and other professional school personnel hold certificates of legal qualifications for their respective positions to be issued upon completion of programs of preparation prescribed by the Education Professional Standards Board (EPSB). This administrative regulation establishes a plan for recruiting certified classroom teachers into positions for teachers of exceptional children.

Section 1. Definition. "Qualified teacher" means a teacher who holds the appropriate certification as a teacher of exceptional children unless the superintendent of the employing school district has documented evidence that the teacher is unsuitable for appointment.

#### Section 2.

(1) If a qualified teacher is not available for the position of teacher of exceptional children as attested by the local school superintendent, the superintendent, on behalf of the local board of education, may request a one (1) year probationary certificate be issued to a candidate who:

(a) Holds a Kentucky teaching certificate; and  
(b) Is enrolled in an EPSB approved educator preparation program for the certification area for which application is being made [as provided in this administrative regulation.

(1)(a)1. A valid classroom certificate or an internship statement of eligibility for grades K-4, 1-8, P-5, 5-9, or 5-8 shall be a prerequisite for a one (1) year probationary certificate for learning and behavior disorders, grades P-12; for hearing impaired, grades P-12; and for visually impaired, grades P-12.

2. The applicant shall have enrolled in an educator preparation program, in accordance with 16 KAR Chapter 5, in the certification area for which application is being made, and shall have completed a minimum preparation of nine (9) semester hours of credit from the special education component of the approved curriculum.

(b)1. A valid classroom teaching certificate or an internship statement of eligibility for grades 7-12, 8-12, all grades, or 9-12 shall be a prerequisite for a one (1) year probationary certificate for learning and behavior disorders, grades P-12; for the endorsement for learning and behavior disorders, grades 8-12; for hearing impaired, grades P-12; and for visually impaired, grades P-12.

2. The applicant shall have enrolled in an educator preparation program in the certification area for which application is being made, and shall have completed three (3) semester hours in the teaching of reading and a minimum preparation of nine (9) semester hours of credit from the special education component of the approved curriculum.

(c)1. A valid classroom teaching certificate or an internship statement of eligibility for grades K-4, 1-8, 5-8, 7-12, P-5, 5-9, 8-12, all grades, or 9-12 shall be a prerequisite for a one (1) year probationary certificate for teaching the moderately and severely disabled, grades P-12.

2. The applicant shall have enrolled in an educator preparation program for teaching the moderately and severely disabled and shall have completed nine (9) semester hours of credit from the special education component of the approved curriculum for teaching the moderately and severely disabled.

(d)1. A certificate for teaching exceptional children, including interdisciplinary early childhood education, shall be a prerequisite for a one (1) year probationary certificate for teaching learning and behavior disorders, grades P-12; the endorsement for learning and behavior disorders, grades 8-12; hearing impaired, grades P-12; visually impaired, grades P-12; or moderately and severely disabled, grades P-12.

2. The applicant shall have enrolled in an educator preparation program in the certification area for which application is being made and shall have completed a minimum preparation of nine (9) semester hours of credit from the special education component of the approved curriculum.

(2) The applicant shall complete twelve (12) clock hours of training as required by the Office of Next-generation Learners, Division of Learning Services.

(3)(a) The applicant shall complete an additional six (6) clock hours of training during the fall conference conducted by the Kentucky Department of Education, Division of Learning Services. A teacher employed after the fall conference shall complete these six (6) hours of training during the spring conference of the Council for Exceptional Children; or

(b) If the applicant is unable to attend either the fall conference or the spring conference, the applicant shall complete an additional six (6) clock hours of training conducted or approved by the Kentucky Department of Education, Division of Learning Services.

1. The applicant shall contact the Division of Learning Services to schedule the training.

2. The training shall be similar to the topics covered at the conferences.

(4) The Kentucky Department of Education shall report to the Education Professional Standards Board those probationary certified teachers of exceptional children who have not completed the training requirements established in subsections (2) and (3) of this section by June 30 of each year for the preceding school year.

(2) [(5)] Application for a probationary certificate for a teacher of exceptional children shall be submitted to the EPSB and shall



contain the following:[made on Form CA-19.]

(a) Verification from the employing superintendent that a qualified teacher was not available for the position;

(b) Evidence of employment in a Kentucky school district or regionally- or nationally-accredited nonpublic school in the content area or areas;

(c) Recommendation from the educator preparation for the grade level and specialization of the probationary certificate for a teacher of exceptional children; and

(d) Compliance with 16KAR 2:010, Section 3(1).

(3) The probationary certificate for a teacher of exceptional children shall be issued in accordance with the grade level and specialization as recommended by the educator preparation provider and valid for employment consistent with the area of certification being sought through the preparation program.

Section 3. (1) A candidate shall be eligible for renewal of the probationary certificate for a teacher of exceptional children upon application to the EPSB, compliance with 16 KAR 2:010, Section 3(1), and successful completion of the following requirements:

(a) Evidence of employment in a Kentucky school district or regionally- or nationally accredited nonpublic school in the content area or areas indicated on the initial certificate; and

(b) Recommendation from the educator preparation provider based on continued enrollment and progress towards the completion of the preparation program.

(2) The probationary certificate for teachers of exceptional children may be renewed a maximum of two (2) times.

~~Section 4. [Requirements for Renewal of a Probationary Certificate for Teachers of Exceptional Children.~~

~~(1) The first renewal of the probationary certificate for teachers of exceptional children shall be for one (1) year based upon:~~

~~(a) Evidence of employment in a Kentucky school district or nonpublic school as a teacher of exceptional children in the area indicated on the initial probationary certificate;~~

~~(b) Completion of at least six (6) semester hours or its equivalent toward the completion of the approved exceptional children educator preparation program; and~~

~~(c) Successful completion of the Kentucky Teacher Internship Program established in 16 KAR 7:010. A teacher who has successfully completed the Kentucky Teacher Internship Program prior to issuance of the initial probationary certificate or who is not required to complete the internship program under the requirements for out-of-state teachers established in KRS 161.030(5) shall not be required to complete the internship program again while serving on the probationary certificate.~~

~~(2) Subsequent one (1) year renewal of the probationary certificate for teachers of exceptional children shall require at least six (6) semester hours or its equivalent of additional credit toward completion of the approved exceptional children educator preparation program.~~

Section 5.] Upon application to the EPSB, compliance with 16 KAR 2:010, Section 3(1), and successful completion of all program requirements for the approved exceptional children educator preparation program, including successful completion of all required assessments established in 16 KAR 6:010, a professional certificate for teaching exceptional children established in 16 KAR 2:010 and valid for five (5) years shall be issued.

Section 5.[Section 6.] Program requirements for completion of the exceptional children educator preparation program while serving on the probationary certificate for teachers of exceptional children shall not include student teaching.

[Section 7. Incorporation by Reference.

(1) "Form CA-19", 08/15, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Education Professional Standards Board, 100 Airport Road, 3rd Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.]

JUSTIN MITCHELL, Board Chair

APPROVED BY AGENCY: February 12, 2024

FILED WITH LRC: February 15, 2024 at 11:40 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on April 29, 2024, at 10:00 a.m. in the State Board Room, Fifth Floor, 300 Sower Boulevard, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through April 30, 2024. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

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

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Todd Allen

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the qualifications and procedures for probationary certificates for teachers of exceptional children.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to set the certification requirements for probationary certificates for teachers of exceptional children.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 161.020, 161.028 and 161.030 require that teachers and other professional school personnel hold certificates of legal qualifications for their respective positions to be issued upon completion of programs of preparation prescribed by the Education Professional Standards Board.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation delineates the certification requirements for the probationary certificate for teachers of exceptional children when no qualified candidates are available.

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

(a) How the amendment will change this existing administrative regulation: The proposed amendment streamlines the language in Section 2 of the regulation to make clear that any Kentucky certified teacher is eligible for a probationary certificate upon enrollment in an approved educator preparation program for teachers of exceptional children and removes the requirement that the candidate complete coursework prior to issuance of the certificate. The amendment also removes the reference to an outdated application form.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to allow candidates to be issued probationary certificates upon enrollment in an approved educator preparation program for teachers of exceptional children.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment removes inaccurate terminology and reflects the correct name of the program teacher assignment.

(d) How the amendment will assist in the effective administration of the statutes: This amendment streamlines the language in section 2 of the regulation to make clear that any Kentucky certified teacher is eligible for a probationary certificate upon enrollment in an approved educator preparation program for teacher of exceptional children.

(3) List the type and number of individuals, businesses,

organizations, or state and local governments affected by this administrative regulation: 171 Kentucky school districts, 31 institutions of higher education with an approved educator preparation program, and those pursuing probationary certification.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This amendment will not require any additional actions from the regulated entities. It removes the reference to an outdated application form and removes the requirements that an applicant complete coursework prior to issuance of the probationary certificate. Applicants for the probationary certificate will have to maintain employment in the role in a Kentucky district and enroll in an approved educator preparation program. Districts will have to provide the EPSB with verification of employment and that no qualified candidates were available. Institutions of higher education will have to verify enrollment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no fee established by the Education Professional Standards Board in this regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Compliance will result in issuance of a probationary certificate to eligible candidates sooner.

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

(a) Initially: There are no costs expected to implement this amendment.

(b) On a continuing basis: There are no expected continuing costs with this amendment.

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

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

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

(9) TIERING: Is tiering applied? Tiering is not applicable to the requirements of this regulation because the standards apply to all districts and teachers seeking probationary certification.

#### FISCAL NOTE

(1) What 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 EPSB and public-school districts.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 161.020, KRS 161.028.

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

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

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

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

year? There are no additional costs expected with this amendment.

(d) How much will it cost to administer this program for subsequent years? There are no additional costs expected with this amendment.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: The EPSB is not imposing or collecting any fees under this administrative regulation. There are no fees for probationary certificates.

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

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

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

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

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

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

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

#### FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 34 C.F.R. § 300.156 (c)(2) establishes standards for a teacher participating in an alternate route to special education certification program to meet personnel qualifications under the Individuals with Disabilities Education Act.

(2) State compliance standards. The standards for the probationary certificate for teachers of exceptional children contained in this administrative regulation comply with the requirement in 34 C.F.R. § 300.156 (c)(2) because candidates using this pathway to obtain special education certification will assume functions as a teacher only for a specified period not to exceed three years, and demonstrate satisfactory progress toward full certification. As probationary certificates are only available for candidates who hold a Kentucky teaching certificate, they are receiving professional development in accordance with KRS 156.095 and supervision and guidance in accordance with KRS 156.557.

(3) Minimum or uniform standards contained in the federal mandate. 34 C.F.R. § 300.156 (c)(2) requires teachers participating in an alternate route to special education certification program to receive high-quality professional development, participate in a program of intensive supervision that consists of structured guidance and regular ongoing support, assume functions as a teacher only for a specified period not to exceed three years, and demonstrate satisfactory progress toward full certification as prescribed by the State.

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

different responsibilities or requirements. All candidates for probationary certification for teachers of exceptional children will receive high-quality professional development, participate in a program of intensive supervision that consists of structured guidance and regular ongoing support, and demonstrate satisfactory progress toward full certification. The regulation will limit probationary certificates for teachers of exceptional children to three years as required by the federal regulation.

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable.

**EDUCATION AND LABOR CABINET  
Education Professional Standards Board  
(Amendment)**

**16 KAR 4:030. Out-of-state educator preparation.**

RELATES TO: KRS 161.020, 161.028, 161.030, 161.124, 161.126, 161.135

STATUTORY AUTHORITY: KRS 161.020, 161.028, 161.030

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.020 and 161.030 require that a teacher and other professional school personnel hold a certificate of legal qualifications for the respective position to be issued upon completion of a program of preparation prescribed by the Education Professional Standards Board (EPSB). KRS 161.028 requires the EPSB [Education Professional Standards Board] to establish the standards for obtaining and maintaining a teaching certificate. This administrative regulation establishes the certification provisions for applicants with out-of-state educator preparation who do not qualify for the Interstate Teacher Mobility Compact.

Section 1. Definition. "Out-of-state educator preparation provider" means an educator preparation provider located outside of the Commonwealth of Kentucky or an online educator preparation provider not subject to the licensing requirements of 13 KAR 1:020 that is not accredited by the EPSB [Education Professional Standards Board].

Section 2. (1) An applicant for Kentucky teacher or administrative certification whose professional preparation was completed at an out-of-state educator preparation provider, excluding providers that are solely online, shall have completed a program of preparation and the curriculum requirements approved by the responsible state education agency for teacher or administrative certification.

(2) An applicant for Kentucky teacher or administrative certification who completes an out-of-state educator preparation program through a solely online out-of-state educator preparation provider shall have:

(a) Completed a program of preparation that is:

1. Accredited or approved, as applicable, by the provider's state of origin;

2. Regionally or nationally accredited; and

3. Accredited by an educator preparation accreditor approved by the EPSB [the Council for Accreditation of Educator Preparation (CAEP)]; and

(b) The curriculum requirements approved by the responsible state education agency for teacher or administrative certification.

Section 3. Teacher Certification. (1) An applicant for Kentucky teacher certification whose professional preparation was completed at an out-of-state educator preparation provider shall:

(a) Meet the degree, academic preparation, and grade point average requirements for issuance of the [Possess-a] teacher license or certificate equivalent to the Kentucky statement of eligibility from the state, territory, or province where the applicant completed his or her preparation program;

(b) Satisfy the degree, academic preparation, and grade point average requirements established in 16 KAR 2:010;

(c) Provide evidence that the out-of-state license or certificate

required [was obtained by] completion of an approved educator preparation program and not based on the completion of a written or verbal assessment; and

(d) Follow the procedures for certificate application established in 16 KAR 2:010.

(2) An applicant for Kentucky teacher certification whose professional preparation was completed at an out-of-state educator preparation provider and who meets the requirements of Section 2 of this administrative regulation and subsection (1) of this section shall be issued a Kentucky teaching certificate or statement of eligibility established in 16 KAR 2:010 at the grade range and content area corresponding to the out-of-state preparation.

[3]

(a) ~~Beginning July 1, 2016, in addition to any other certification renewal requirements, an applicant for Kentucky teacher middle school, high school, Grades 5-12, and Grades P-12 teacher certification whose professional preparation was completed at an out-of-state educator preparation provider shall, within five (5) years of receiving certification, complete the following:~~

1. ~~A three (3) hour content literacy course aligned to the six (6) International Reading Association Standards 2010: Middle and High School Content Classroom Teacher and taught by faculty qualified to deliver literacy instruction; or~~

2. ~~Two (2) or more courses aligned to the six (6) International Reading Association Standards 2010: Middle and High School Content Classroom Teacher and taught by faculty qualified to deliver literacy instruction.~~

(b) ~~The course or courses submitted by an applicant for Kentucky teacher middle school, high school, Grades 5-12, and Grades P-12 teacher certification whose professional preparation was completed at an out-of-state educator preparation provider shall meet the following requirements:~~

1. ~~The course or courses, identified in paragraph (a) of this subsection, shall be developed to ensure that each candidate demonstrates the six (6) International Reading Association Standards 2010: Middle and High School Content Classroom Teacher;~~

2. ~~The syllabus for each course shall be aligned to the six (6) International Reading Association Standards 2010: Middle and High School Content Classroom Teacher;~~

3. ~~The assessments, including any scoring instruments, developed for each course shall be aligned to the six (6) International Reading Association Standards 2010: Middle and High School Content Classroom Teacher to demonstrate the candidate's competency to provide classroom instruction aligned to each standard; and~~

4. ~~The faculty assigned to teach each course aligned to demonstrate the six (6) International Reading Association Standards 2010: Middle and High School Content Classroom Teacher shall be qualified to teach a course aligned to the six (6) International Reading Association Standards 2010: Middle and High School Content Classroom Teacher.]~~

Section 4. Administrative Certification. (1) An applicant for Kentucky administrative certification whose professional preparation was completed at an out-of-state educator preparation provider shall:

(a) Meet the degree, academic preparation, and grade point average requirements for issuance of the [Possess-an] administrative license or certificate equivalent to the Kentucky corresponding statement of eligibility or administrative certificate from the state, territory, or province where the applicant completed his or her preparation program;

(b) Satisfy the degree, academic preparation, and grade point average requirements for the administrative certificate established in 16 KAR Chapter 3;

(c) Provide evidence that the out-of-state license or certificate required [was obtained by] completion of an approved educator preparation program consisting of a minimum of thirty (30) post Masters' graduate-level hours in school administration; and

(d) Follow the procedures for certificate application established in 16 KAR Chapter 3.

(2) An applicant for Kentucky administrative certification whose

professional preparation was completed at an out-of-state educator preparation provider and who meets the requirements of Section 2 of this administrative regulation and subsection (1) of this section shall be issued a Kentucky administrative certificate or statement of eligibility established in 16 KAR Chapter 3 corresponding to the out-of-state preparation.

(3) An applicant for Kentucky principal certification who was admitted to a principal preparation program located outside the Commonwealth of Kentucky prior to January 1, 2012 and who completes the program prior to January 31, 2014 shall be exempt from subsection (1)(c) of this section.

Section 5. (1) An out-of-state applicant shall be subject to the testing and internship requirements of KRS Chapter 161 and the corresponding[implementing] administrative regulations of the EPSB[Education Professional Standard Board] in KAR Title 16.

(2) An out-of-state applicant shall be subject to the certificate issuance, recency, reissuance, renewal, and rank change provisions of KRS Chapter 161 and KAR Title 16.

[Section 6. Incorporation by Reference. (1) "The Standards for Reading Professionals—Revised 2010", 2010, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Education Professional Standards Board, 100 Airport Road, 3rd Floor, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m.]

JUSTIN MITCHELL, Board Chair

APPROVED BY AGENCY: February 12, 2024

FILED WITH LRC: February 15, 2024 at 11:40 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on April 29, 2024, at 10:00 a.m. in the State Board Room, Fifth Floor, 300 Sower Boulevard, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through April 30, 2024. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

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

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Todd Allen

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the certification provisions for applicants with out-of-state educator preparation who do not qualify for the Interstate Teacher Mobility Compact.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the certification provisions for applicants with out-of-state educator preparation who do not qualify for the Interstate Teacher Mobility Compact.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 161.020 and 161.030 require that a teacher and other professional school personnel hold a certificate of legal qualifications for the respective position to be issued upon completion of a program of preparation prescribed by the Education Professional Standards Board (EPSB). KRS 161.028 requires the EPSB to establish the standards for obtaining and maintaining a teaching certificate. This administrative regulation establishes the

certification provisions for applicants with out-of-state educator preparation who do not qualify for the Interstate Teacher Mobility Compact.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation delineates the certification requirements for applicants with out-of-state educator preparation who do not qualify for the Interstate Teacher Mobility Compact.

(2) If 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 Section 2 of the regulation to reflect the EPSB's recognition of multiple national educator preparation accreditors. It amends Section 3 and Section 4 of the regulation to remove the requirement that the applicant possess the out-of-state certificate but requires that they meet the preparation requirements for the out-of-state certificate. It also strikes language in Section 3 that adds an additional renewal requirement on out-of-state prepared applicants.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to establish the certification provisions for applicants with out-of-state educator preparation who do not qualify for the Interstate Teacher Mobility Compact.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment provides for issuance of a certificate for applicants with out-of-state educator preparation who do not qualify for the Interstate Teacher Mobility Compact.

(d) How the amendment will assist in the effective administration of the statutes: The amendments to Section 3 and 4 of the regulation will make it easier for an out-of-state prepared educator to obtain Kentucky certification by replacing the requirement that they hold the out-of-state certificate, which often requires completion of the state's certification assessments, with the requirement that they meet the preparation requirements for the out-of-state certificate.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 171 Kentucky school districts and applicants with out-of-state educator preparation who do not qualify for the Interstate Teacher Mobility Compact.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This amendment will not require any additional actions from school districts. Candidates for certification who completed out-of-state educator preparation programs will no longer have to show that they obtained the out-of-state certification, but simply that they met the education and preparation requirements for the out-of-state certificate.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no fee established by the Education Professional Standards Board in this regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Compliance will result in approval of a Kentucky certificate for an out-of-state prepared educator.

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

(a) Initially: There are no costs expected to implement this amendment.

(b) On a continuing basis: There are no expected continuing costs with this amendment.

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

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

regulation.

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

(9) TIERING: Is tiering applied? Tiering is not applicable to the requirements of this regulation because the standards apply to all out-of-state prepared educators.

#### FISCAL NOTE

(1) What 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 EPSB and public-school districts.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 161.020, KRS 161.028, KRS 161.030.

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

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

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

(c) How much will it cost to administer this program for the first year? There are no additional costs expected with this amendment.

(d) How much will it cost to administer this program for subsequent years? There are no additional costs expected with this amendment.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: The EPSB is not imposing or collecting any fees under this administrative regulation. Certification fees are established in 16 KAR 4:040.

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

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

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

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

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

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

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

#### TOURISM, ARTS AND HERITAGE CABINET Department of Fish and Wildlife Resources (Amendment)

#### 301 KAR 2:132. Elk hunting seasons, permits, zones, and requirements.

RELATES TO: KRS 150.010, 150.170(4), 150.180, 150.990  
STATUTORY AUTHORITY: KRS 150.025(1), 150.177, 150.178, 150.390(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish open seasons for the taking of wildlife, to regulate bag limits and methods of take, and to make these requirements apply to a limited area. KRS 150.177 authorizes the department to issue special commission permits for game species to nonprofit wildlife conservation organizations. KRS 150.178 authorizes the department to issue cooperator permits to landowners who enroll property for public hunting access. KRS 150.390(3) requires the department to promulgate administrative regulations establishing the conditions under which depredation permits for elk may be issued. This administrative regulation establishes the requirements for the elk permit drawing and quota hunts, the conditions under which special commission and landowner cooperator permits may be used, procedures for elk damage abatement, and any postseason hunt held after the quota hunts.

#### Section 1. Definitions.

(1) "Antlered elk" means an elk having visible polished antler protruding above the hairline.

(2) "Antlerless elk" means an elk without visible polished antler protruding above the hairline.

(3) "Archery equipment" means a long bow, recurve bow, or compound bow incapable of holding an arrow at full or partial draw without aid from the archer.

(4) "Bait":

(a) Means a substance composed of grains, minerals, salt, fruits, vegetables, hay, or any other food materials, whether natural or manufactured, that could lure, entice, or attract wildlife; and

(b) Does not mean the establishment and maintenance of plantings for wildlife, foods found scattered solely as the result of normal agricultural planning or harvesting practices, foods available to wildlife through normal agricultural practices of livestock feeding if the areas are occupied by livestock actively consuming the feed on a daily basis, or standing farm crops under normal agricultural practices.

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

(6) "Electronic decoy" means a motorized decoy powered by electricity, regardless of source.

(7) "Elk" means *Cervus canadensis nelsoni*.

(8) "Elk Restoration Permit" or "ERP" means an elk permit given to a landowner or lessee who allows the department to capture elk on the landowner or lessee's property for restoration or restocking purposes.

(9) "Firearm" means a breech or muzzle-loading rifle, shotgun, or handgun.

(10) "Landowner cooperator" means a landowner or lessee who owns or leases at least 5,000 acres of land in the restoration zone and enters into an agreement with the department to allow public access and hunting for at least five (5) years.

(11) "Loyalty Redraw" means a secondary drawing to award any unpurchased elk quota hunt permits, remaining after the purchase deadline for those individuals initially drawn for the elk quota hunt, to those applicants with the highest number of cumulative application years[members of the longest-applying year cohort of resident elk hunt drawing applicants].

(12) "Muzzleloader" means a rifle, shotgun, or handgun that is loaded from the discharging end of the barrel or discharging end of the cylinder.

(13) "Out-of-zone" means all counties not included in the restoration zone.

(14) "Restoration zone" means the Kentucky counties: Bell, Breathitt, Clay, Floyd, Harlan, Johnson, Knott, Knox, Leslie, Letcher, Magoffin, Martin, McCreary, Perry, Pike, and Whitley.

(15) "Shed" means an antler that has naturally been cast off the skull as a part of the annual growth and replacement process.

(16) "Unit" means a designated area in the restoration zone with specific management restrictions.

(17) "Voucher cooperator" means a landowner or lessee who owns or leases at least 100 acres of land in the restoration zone and enters into an agreement with the department to allow elk hunting access.

(18) "Youth" means a person under the age of sixteen (16) by the first date of the hunt.

Section 2. Elk Damage Control. The department may authorize the removal or destruction of elk that are causing property damage. A person authorized to destroy an elk shall:

(1) Attach a department-issued destruction tag to an elk prior to moving the carcass; and

(2) Not remove the destruction tag until the carcass is processed.

### Section 3. Elk Quota Hunts.

(1) The elk quota hunt application period shall be August 1 of the year preceding a given calendar year's elk hunt season to April 30 of the year of that season.

(2) An applicant shall:

(a) Complete the elk quota hunt application process on the department's Web site at fw.ky.gov; and

(b) Pay a nonrefundable application fee of ten (10) dollars.

(3) The commissioner shall extend the application deadline if technical difficulties with the application system prevent applications from being accepted for one (1) or more days during the application period.

(4) There shall be a random electronic drawing from each applicant pool.

(5) Youths may enter a separate drawing pool for either-sex elk permits that shall be valid for use during all elk seasons, pursuant to Section 9 of this administrative regulation.

(6) A youth shall not apply for the youth-only elk quota hunt more than once per application period.

(7) An applicant for the youth-only elk quota hunt may also apply for a regular quota hunt, as established in subsection (12) of this section.

(8) A youth drawn for the youth-only elk quota hunt shall not be drawn in any other elk quota hunt held during the same calendar year.

(9) A youth drawn for the youth-only elk quota hunt shall be ineligible to be drawn in the youth-only elk quota hunt in subsequent years.

(10) Nonresidents shall not comprise more than ten (10) percent of all drawn applicants in each quota hunt pool, except that the Loyalty Redraw shall exclude nonresidents.

(11) A quota hunt permit awarded from any department-administered drawing shall not be transferable.

(12) In addition to the youth-only quota hunt, there shall be three (3) separate regular elk quota hunts consisting of:

(a) Antlered firearms;

(b) Antlerless firearms; and

(c) Either-sex archery and crossbow.

(13) An applicant shall:

(a) Apply only once for an individual elk quota hunt;

(b) Not be eligible to be drawn in more than one (1) of the three

(3) quota hunt pools;

(c) Only be selected by a random electronic drawing;

(d) Pay a nonrefundable application fee of ten (10) dollars for each entry; and

(e) If selected, be eligible to purchase a quota elk hunt permit for the applicable season and hunt type until midnight (eastern) on June 15 of the hunt year.

(14) A person who is drawn for an elk quota hunt, including

Loyalty Redraw applicants who purchase elk quota hunt permits offered to them through the Loyalty Redraw secondary drawing, shall be ineligible to be drawn for any elk quota hunt for the following three (3) years.

(15) A person who does not have access to the department's Web site to apply for any quota hunt may contact the department toll free at (800)858-1549 for assistance in applying.

### Section 4. Loyalty Redraw.

(1) Annually, if there are unpurchased elk hunt permits remaining after the purchase deadline for those initially drawn for the elk quota hunt, a Loyalty Redraw shall be held.

(2) The Loyalty Redraw shall consist of a secondary random electronic drawing to award elk quota hunt permits not purchased before midnight (eastern) on June 15 of the hunt year, and shall be conducted before the Elk Hunting Unit drawing.

(3) The Loyalty Redraw shall be limited to resident applicants from the three (3) elk quota hunt pools, plus the youth-only quota hunt pool who have applied for at least one (1) elk quota hunt permit for the most ~~cumulative~~~~[consecutive]~~ years, including the current year, without ever being drawn for at least one (1) elk quota hunt permit.

(4) Resident applicants who are eligible for the Loyalty Redraw shall be automatically entered into the secondary drawing elk quota hunt pools for which they applied in the current hunt year.

(5) This secondary drawing procedure shall mirror the primary electronic random drawing for quota elk hunt permits, except that nonresident applicants shall be excluded.

(6) A Loyalty Redraw applicant who is drawn for an available leftover permit may purchase the appropriate quota elk hunt permit until midnight (eastern) on June 30.

(7) A Loyalty Redraw permit holder who does not apply for the Elk Hunting Unit drawing by midnight (eastern) on June 30 of the hunt year shall be automatically entered into the unit drawing for random assignment to an Elk Hunting Unit.

(8) An applicant who is eligible for the Loyalty Redraw in a given year and is drawn for quota elk hunt permit in the secondary drawing, and who does not purchase the elk quota hunt permit for which he or she is drawn in that year, shall ~~be~~:

(a) Have their number of cumulative years of application reset to zero and be ineligible~~[ineligible]~~ for the Loyalty Redraw until he or she accumulates the required number of ~~cumulative~~~~[consecutive]~~ years of applications necessary to again qualify for the Loyalty Redraw; and

(b) Be eligible~~[Eligible]~~ to apply for the next year's elk quota hunts without waiting three (3) years.

### Section 5. Landowner Cooperator Permits.

(1) With the approval of the commission, the commissioner shall issue to a landowner cooperator:

(a) One (1) either-sex permit annually per 5,000 acres of land enrolled with the department in a hunting access agreement for the duration of the agreement;

(b) Two (2) antlerless-only permits annually per 5,000 acres of land enrolled with the department in a hunting access agreement for the duration of the agreement; or

(c) One (1) antlerless-only permit annually per 5,000 acres of land enrolled with the department in an elk hunting access agreement for the duration of the agreement.

(2) A recipient of a landowner cooperator permit shall comply with the season, bag limit, and hunter requirements in Sections 8 and 9 of this administrative regulation.

(3) A landowner cooperator permit shall only be used on the land that is established in the agreement, except that it may be used on adjacent property if:

(a) The adjacent property is owned by a different landowner; and

(b) The adjacent landowner has granted permission to the permit holder.

(4) A landowner cooperator permit may be transferred to any person eligible to hunt in Kentucky, but prior to hunting, the landowner cooperator or person who has received the transferred permit shall provide the department with the hunter's:

(a) Name;

- (b) Fish and Wildlife customer identification number;
- (c) Address; and
- (d) Telephone number.
- (5) The landowner cooperators permit shall not be transferable if it was already used for the harvest of an elk.
- (6) Public access agreements with the department shall be recorded in writing.

Section 6. Voucher Cooperator Permits.

- (1) A voucher cooperator shall accrue one (1) voucher point for each legally harvested elk.
- (2) A voucher cooperator who accrues ten (10) total points from the voucher cooperator permit program alone, or in combination with points accumulated from the elk restoration permit program, on land enrolled pursuant to Section 1(17) of this administrative regulation shall receive one (1) either-sex elk permit from the department.
- (3) A recipient of a voucher cooperator elk permit shall comply with all the requirements established in Sections 8 and 9 of this administrative regulation.
- (4) A voucher cooperator elk permit shall only be used on:
  - (a) The property enrolled with the department per agreement; or
  - (b) Other property that the landowner or lessee owns or leases.
- (5) A voucher cooperator permit may be transferable to any person eligible to hunt in Kentucky.
- (6) If a voucher cooperator permit is to be transferred, then the landowner, lessee, or person who has received the transferred permit shall provide to the department by August 15 the hunter's:
  - (a) Name;
  - (b) Fish and Wildlife customer identification number;
  - (c) Address; and
  - (d) Telephone number.
- (7) A permit shall not be transferable after being used for the harvest of an elk.

Section 7. Elk Restoration Permits.

- (1) A landowner or lessee who allows the department to capture elk on the landowner or lessee's property shall accrue one (1) point for each captured elk.
- (2) A landowner or lessee who accrues ten (10) total points from the elk restoration permit program alone, or in combination with points accumulated from the voucher cooperator permit program shall receive one (1) either-sex elk permit from the department that shall only be used the following hunting season.
- (3) A recipient of an ERP shall comply with all the requirements established in Sections 8 and 9 of this administrative regulation.
- (4) An ERP shall only be used on property that the ERP recipient owns or leases.
- (5) An ERP recipient may transfer the permit to any person eligible to hunt in Kentucky.
- (6) If an ERP recipient transfers an ERP to another hunter, then the ERP recipient shall provide to the department by August 15 the hunter's:
  - (a) Name;
  - (b) Address;
  - (c) Telephone number; and
  - (d) Fish and Wildlife customer identification number.
- (7) An ERP shall be invalid if it has already been used to harvest an elk.

Section 8. Hunter Requirements.

- (1) A person shall carry proof of purchase of a valid Kentucky hunting license and valid elk permit while hunting, unless exempted by KRS 150.170.
- (2) The statewide bag limit shall be one (1) elk per hunter per license year.
- (3) If a legal elk hunter kills any elk:
  - (a) The person shall immediately cease hunting elk for the remainder of the elk season; and
  - (b) The elk permit held by that individual shall immediately become invalid.
- (4) A drawn applicant may apply to hunt in up to five (5) units. The drawn applicant shall complete the application process on the department's Web site at fw.ky.gov.

- (a) Up to three (3) drawn applicants may apply for their unit choices as a party.
- (b) If the party is drawn for a unit, then all hunters in the party shall be assigned to that same unit.
- (c) If the number of slots remaining in the quota is less than the number of hunters in the next party selected, the entire party shall be assigned to the party's next choice ranking or be assigned to a unit by the department.
- (5) A drawn applicant who does not apply for a unit shall be assigned to a unit by the department.
- (6) An applicant drawn for a unit may hunt only in the assigned unit, except that a person who is drawn for any elk quota hunt may hunt on his or her land within the restoration zone.
- (7) An elk hunter or any person accompanying an elk hunter shall comply with hunter orange requirements established in 301 KAR 2:172.
- (8) An elk hunter shall not:
  - (a) Take elk except during daylight hours;
  - (b) Use dogs, except to recover wounded elk using leashed tracking dogs;
  - (c) Hunt over bait inside the elk restoration zone;
  - (d) Drive elk from outside the assigned area;
  - (e) Take an elk while it is swimming;
  - (f) Use electronic calls or electronic decoys; or
  - (g) Take an elk if the hunter is in a vehicle, boat, or on horseback, except that a disabled hunter who has a hunting method exemption permit issued pursuant to 301 KAR 3:027 may use a stationary vehicle as a hunting platform.
- (9) A person shall:
  - (a) Obtain a vehicle tag from the department prior to hunting elk in the restoration zone; and
  - (b) Display the vehicle tag in the windshield of the vehicle while hunting elk.
- (10) A youth shall be accompanied by an adult who shall remain in a position to take immediate control of the youth's firearm.
- (11) An adult accompanying a youth shall not be required to possess a hunting license or elk permit if the adult is not hunting.
- (12) A person shall only use the equipment and ammunition established in paragraphs (a) through (e) of this subsection to take an elk:
  - (a) A crossbow or archery equipment loaded with a broadhead of seven-eighths (7/8) inch or wider, either fixed or upon expansion;
  - (b) A firearm:
    - 1. With an action that fires a single round of ammunition upon each manipulation of the trigger;
    - 2. Of .270 caliber or larger; and
    - 3. Loaded with centerfire, single projectile ammunition designed to expand upon impact;
  - (c) A muzzleloader of .50 caliber or larger;
  - (d) A shotgun of twenty (20) gauge or larger loaded with a shell containing one (1) projectile; or
  - (e) A handgun loaded with:
    - 1. Centerfire cartridges;
    - 2. Bullets of .270 caliber or larger designed to expand upon impact; and
    - 3. Cartridges with a case length of 1.285 inches or larger.
- (13) A crossbow shall contain a working safety device.
- (14) An elk hunter shall not use a magazine capable of holding more than ten (10) rounds.
- (15) A quota elk hunter shall only take an elk of the type and sex determined by the permit drawn.
- (16) A hunter drawn for a firearms elk permit shall hunt elk pursuant to that permit only during the five (5) day period assigned during the initial drawing.
- (17) An individual who receives or is transferred a landowner cooperators permit, a voucher cooperator permit, an elk restoration permit, or a special commission permit may hunt in all of the quota hunts and shall hunt in accordance with the seasons, limits, and equipment established in Section 8 of this administrative regulation.
- (18)
  - (a) A person who is drawn for an elk quota hunt permit or was issued a landowner cooperators permit, a special commission permit, an elk restoration permit, or voucher cooperator permit shall

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complete and submit a post-season elk hunting survey on the department's Web site at fw.ky.gov no later than the last day of February.

(b) A person who fails to comply with the requirements established in paragraph (a) of this subsection shall be ineligible to apply for any quota hunt or no-hunt option the following year.

### Section 9. Elk Quota Hunt Seasons and Limits.

(1) A person drawn for an either-sex archery and crossbow permit shall use archery or crossbow equipment to take either-sex elk from the:

(a) Second Saturday in September through the fourth Friday in September; and

(b) First Saturday in December through the second Friday in December.

(2) A person drawn for an antlered firearms permit shall use any legal equipment as established in Section 8(12) of this administrative regulation to take an antlered elk during one (1) of two (2) five (5) day periods randomly assigned by the department from the:

(a) Last Saturday in September for five (5) consecutive days; or

(b) First Saturday in October for five (5) consecutive days.

(3) A person drawn for an antlerless firearms permit shall use any legal equipment as established in Section 8(12) of this administrative regulation to take an antlerless elk during one (1) of two (2) five (5) day periods randomly assigned by the department from the:

(a) Last Saturday in November for five (5) consecutive days; or

(b) Last Saturday in December for five (5) consecutive days.

### Section 10. Unit Boundaries and Elk Viewing Areas.

(1) Hunting unit boundaries and the boundaries of the Appalachian Wildlife Center Viewing Area are incorporated by reference.

(2) Elk viewing areas shall be closed to all elk hunting.

### Section 11. Tagging and Checking Requirements.

(1) Immediately after taking an elk, a hunter shall record on a hunter's log:

(a) The species harvested;

(b) The sex of the animal;

(c) Date of harvest; and

(d) County of harvest.

(2) A hunter shall check a harvested elk before midnight on the day the elk is recovered by:

(a) Calling (800) 245-4263 and providing the requested information; or

(b) Completing the online check-in process at fw.ky.gov.

(3) A hunter who has checked in an elk shall record the confirmation number on a hunter's log.

(4) If the hide or head is removed from the carcass before the elk is checked in, then the hunter shall be required to demonstrate proof of the sex of the elk.

(a) For antlered elk the hunter shall retain the:

1. Head with antlers; or

2. Testicles, scrotum, or penis attached to the carcass; or

(b) For antlerless elk the hunter shall retain the:

1. Head;

2. Udder or vulva attached to the carcass; or

3. Testicles, scrotum, or penis attached to the carcass.

(5) If a harvested elk leaves the possession of the hunter, the hunter shall attach to the carcass a hand-made tag that contains the hunter's:

(a) Confirmation number;

(b) Name; and

(c) Telephone number.

(6) A person shall not provide false information in:

(a) Completing the hunter's log;

(b) Checking an elk; or

(c) Creating a carcass tag.

### Section 12. Elk Hunting on Public Land.

(1) A person drawn for an elk quota hunt or the recipient of a special commission permit may hunt on the areas listed in

paragraphs (a) through (f) of this subsection within the restoration zone pursuant to the conditions of the permit received:

(a) Wildlife Management Areas;

(b) Hunter Access Areas;

(c) State forests;

(d) Big South Fork National River and Recreation Area;

(e) Daniel Boone National Forest; or

(f) Jefferson National Forest.

(2) Portions of Paintsville Lake WMA that lie out of the restoration zone shall be subject to the requirements established in Section 14 of this administrative regulation.

(3) Elk hunting shall not be allowed on public areas during quota deer hunts listed in 301 KAR 2:178.

(4) Paul Van Booven WMA and Fishtrap Lake WMA shall be designated as an elk viewing area and shall be closed to all elk hunting.

(5) A person shall not mimic the sound of an elk on public land open to elk hunting from September 1 until the opening of the elk archery season.

### Section 13. Out-of-zone Elk Hunting.

(1) The methods for taking deer and the deer seasons established in 301 KAR 2:172 shall apply to a person taking elk outside of the restoration zone, except that a hunter shall comply with the equipment and ammunition requirements established in Section 8 of this administrative regulation.

(2) Unless exempted by KRS 150.170, a person who is hunting out-of-zone elk shall possess:

(a) A valid Kentucky hunting license; and

(b) An out-of-zone elk permit.

(3) A person may take an elk of either sex, which shall not count toward the person's deer bag limit.

(4) Any elk harvested out-of-zone shall be telechecked pursuant to Section 11 of this administrative regulation.

### Section 14. Elk Antlers.

(1) A person who takes possession of any elk antler that has the skull or skull plate attached to it shall contact the department's Law Enforcement Division within twenty-four (24) hours.

(2) An elk shed shall be legal to possess.

Section 15. Elk Permit Deferral. A person who is the holder of a valid elk quota hunt permit, landowner cooperator permit, voucher cooperator permit, an ERP, or special commission permit may defer use of the permit to the following year if:

(1)

(a) There is a death of the permit holder's:

1. Spouse;

2. Child; or

3. Legal guardian, if the permit holder is under eighteen (18) years old; and

(b) The permit holder provides to the department a death certificate and one (1) of the following documents prior to May 1 of the year following the hunting season:

1. A marriage certificate;

2. A birth certificate; or

3. An affidavit of paternity or maternity;

(2) The permit holder shall be a member of one (1) of the service branches of the U.S. Armed Forces in either an active duty, reserve component, or National Guard status as of April 30 of the hunt year:

(a) Is deployed or assigned to military duty outside the continental United States or assigned to military duty to another location or duty station so that his or her assignment makes impracticable participation in the hunt for which the permit was drawn; and

(b) The permit holder submits to the department electronically via email or fax or by mail, postmarked or received before midnight of the day immediately prior to the opening day of the applicable hunting season, a copy of military orders, or if unavailable, a letter from a commanding officer, documenting the permit holder's overseas deployment, overseas duty assignment, or assignment outside of Kentucky, showing that the effective date or dates of the assignment include one (1) or more of the hunt dates for which the



hunter holds a permit; or

(3) A permit holder that meets criteria in (3) above may also automatically defer his or her permit for a second year if the military assignment or assignments make impracticable participation in his or her assigned hunt during the year following his or her obtaining the permit, but in either case shall provide to the elk program by May 1 of his or her actual hunt year, a copy of applicable military orders (or official letter) that made use of the permit impracticable for the first, or first and second, elk seasons after first obtaining the elk permit.

Section 16. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Elk Hunting Units" map, 2019 edition; and

(b) "Appalachian Wildlife Center Viewing Area" map, 2019 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, 8:00 a.m. to 4:30 p.m., Eastern Time.

RICH STORM, Commissioner

APPROVED BY AGENCY: February 13, 2024

FILED WITH LRC: February 14, 2024 at 1:35 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on April 30, 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 April 30, 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](mailto:fwpubliccomments@ky.gov).

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jenny Gilbert

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for the elk permit drawing and quota hunts, the conditions under which special commission permits, landowner cooperator permits, elk restoration permits, and cooperator voucher permits can be used, and procedures for elk damage abatement.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to effectively manage elk populations in Kentucky, while providing optimal elk hunting and tourism opportunities.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish hunting seasons, bag limits, and the methods of taking wildlife. KRS 150.177 authorizes the department to issue special commission permits for game species to nonprofit wildlife conservation organizations. KRS 150.178 authorizes the department to issue cooperator permits to landowners who enroll property for public hunting access. KRS 150.390(3) authorizes the department to promulgate administrative regulations establishing the conditions under which depredation permits for elk may be issued.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the statutes by establishing all the requirements for elk hunting and the procedures for elk damage abatement.

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

(a) How the amendment will change this existing administrative regulation: This amendment will allow for the pooling of Voucher Cooperator and Elk Restoration permit points used towards an elk permit. Additionally, this amendment will adjust the Loyalty Redraw system from consecutive years to cumulative years.

(b) The necessity of the amendment to this administrative regulation: The combining of Voucher Cooperator and Elk Restoration Permit points will help incentivize private landowners to open their lands to elk hunting. The adjustments to the loyalty redraw system will provide a greater opportunity for an elk tag to those hunters who have been consistently applying over the duration of the Kentucky elk hunt.

(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 elk hunters, as well as those members of the public applying for elk permits will have the potential to be positively impacted. Additionally, landowners in the elk zone will be positively impacted by the combination of the Voucher Cooperator and Elk Restoration Permit points.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: None.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no cost associated with these amendments.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Greater access to elk hunting land as well as a greater chance of drawing an elk permit will result from this amendment.

(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: The source of funding is the State Game and Fish Fund.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No new fees will be established.

(9) TIERING: Is tiering applied? Tiering will not be applied as this will pertain to all hunters, landowners within the elk zone and those applying to hunt elk in Kentucky.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Fish and Wildlife Resources' Divisions of Wildlife and Law Enforcement will be impacted by this amendment.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.025, KRS 150.177, KRS 150.178, and KRS 150.390.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 for the state or local government.

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

(c) How much will it cost to administer this program for the first year? There will be no additional costs for the first year.

(d) How much will it cost to administer this program for subsequent years? There will be no additional costs incurred for subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? No money will be saved from this administrative regulation.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? No money will be saved from this administrative regulation.

(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)] No major economic impact will be derived from the regulatory amendment.

**TOURISM, ARTS AND HERITAGE CABINET**  
**Department of Fish and Wildlife Resources**  
**(Amendment)**

**301 KAR 3:030. Year-round season for wildlife.**

RELATES TO: KRS 150.010, 150.025, 150.170, 150.175, 150.320, 150.360, 150.370, 150.990.

STATUTORY AUTHORITY: KRS 150.025(1), 150.360(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes Kentucky Department of Fish and Wildlife Resources ~~the department~~ to establish seasons and other administrative regulations necessary to carry out the purpose of KRS Chapter 150. KRS 150.175 authorizes the types of licenses, permits, and tags set by the department. This administrative regulation establishes hunting requirements for species that may be taken year-round and specifies species that are unprotected.

Section 1. Definition. "Exotic wildlife" means ~~living terrestrial~~ wildlife species that have never naturally existed in the wild in Kentucky, including species introduced by man that have become naturalized ~~starlings (Sturnus vulgaris), English sparrows (Passer domesticus), and Eurasian collared doves (Streptopelia decaocto).~~

Section 2. Year-Round ~~Year-Round~~ Seasons. (1) A person may take coyotes ~~-, wild hogs and woodchucks~~ year-round ~~year-round~~ pursuant to 301 KAR 2:251.

(2) A person may take groundhogs year-round.

(3) A person taking coyotes ~~-, wild hogs,~~ or

groundhogs ~~woodchucks~~, unless exempted by KRS 150.170, shall possess a hunting or trapping license as required for the method of take.:]

~~[(a) A hunting license; and~~

~~(b) A hog permit issued by the National Park Service if he is hunting on the Big South Fork National River and Recreational Area.]~~

(4) A person may take pheasants year-round except as otherwise prohibited by 301 KAR 2:049 for department sponsored pheasant quota hunts.

**Section 3. Unprotected Species.**

(1) A person may take the following wildlife species year-round:

(a) Moles (Scalopus aquaticus, Parascalops breweri, Condalyra cristata);

(b) Mice (Mus musculus);

(c) Rats (Rattus rattus, R. norvegicus);

(d) Terrestrial invertebrates; and

(e) Exotic wildlife, except for pheasants, as restricted in Section 2(4) of this administrative regulation, and the species listed in Section 4 of this administrative regulation. ~~Except for rare, threatened or endangered species protected by federal laws, a person may take year-round:~~

~~(a) Exotic wildlife, except pheasants released during department administered quota hunts pursuant to 301 KAR 2:249;~~

~~(b) Moles (Scalopus aquaticus, Parascalops breweri, Condalyra cristata);~~

~~(c) Mice (Mus musculus);~~

~~(d) Rats (Rattus rattus, R. norvegicus); and~~

~~(e) Terrestrial invertebrates.]~~

(2) A person may take the species listed in subsection (1) of this section without a hunting or trapping license, except that take of English sparrow and starlings requires a hunting license.

Section 4. Species with Restricted Take. A person shall not take the following species:

(1) Members of the Family Suidae (pigs or hogs), except if landowners are incurring damage, they may be taken pursuant to KRS 150.170 section 7;

(2) Federally protected migratory birds; or

(3) Federally threatened or endangered species.

RICH STORM, Commissioner

APPROVED BY AGENCY: February 14, 2024

FILED WITH LRC: February 14, 2024 at 1:35 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on April 30, 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 April 30, 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 requirements and prohibitions for take of protected and unprotected species and sets year-round hunting seasons for specific species.

(b) The necessity of this administrative regulation: This regulation is necessary to provide clear guidance on which species can be taken year-round and identifies species as protected or unprotected.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.025 authorizes the Department to make administrative regulations as to game and fish, including seasons and limits. KRS 150.360 authorizes the Department to provide restrictions on the take of wildlife. KRS 150.320 authorizes the Department to require a hunting license for the take of Starlings and English sparrows.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation defines exotic wildlife and sets forth the requirements and prohibitions for take of protected and unprotected species.

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

(a) How the amendment will change this existing administrative regulation: This amendment will prohibit sport hunting of wild pigs, require a hunting license to hunt starlings or English sparrows to adhere to statute KRS 150.320, correct inaccurate language regarding coyote trapping seasons, and align the definition of exotic wildlife with other Department regulations.

(b) The necessity of the amendment to this administrative regulation: See 1(b) above

(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: These amendments may impact those persons interested in sport hunting of pigs, although wild pigs are scarce in Kentucky, and few hunting opportunities exist. Amendments are necessary to allow for eradication of wild pigs in the state, which will reduce damage to crops, financial losses to farmers, protect native wildlife, forests, and domestic swine operations from transmission of diseases.

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

(a) List 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 needed.

(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 to individuals

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Benefits include a reduction in crop damage and financial losses to farmers as well as protections from transmission of disease from wild pigs to domestic swine.

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

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

(b) On a continuing basis: There will be no cost to the department on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding is the State Game and Fish Fund.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No new fees will be established.

(9) TIERING: Is tiering applied? No. Tiering is not applied because no costs are associated with this amendment.

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Fish and Wildlife Resources Divisions of Wildlife and Law Enforcement will be impacted by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.025(1) authorizes the Department to promulgate regulations to fix, close, terminate, shorten, or divide open season or regulate or restrict take. KRS 150.360(1) authorizes the Department to prescribe by regulation legal methods of take.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 for entities for the first year.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? There will be no cost savings for entities for subsequent years.

(c) How much will it cost the regulated entities for the first year? There will be no costs to administer this program for the first year.

(d) How much will it cost the regulated entities for subsequent years? There will be no 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.

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)] Amendments to this administrative regulation will not have a major economic impact.

JUSTICE AND PUBLIC SAFETY CABINET  
Department of Corrections  
(Amendment)

**501 KAR 2:060. Procedures for housing of Class C and D felons.**

RELATES TO: KRS 196.035, 197.020, 197.045, 431.215, 441.045, 441.075, 441.510, 532.100

STATUTORY AUTHORITY: KRS 196.035, 197.020, 532.100

NECESSITY, FUNCTION, AND CONFORMITY: KRS 532.100(5) requires the Department of Corrections to house qualifying Class C and D felons in jails. KRS 196.035 authorizes the secretary to promulgate administrative regulations necessary or suitable for the proper administration of the functions of the cabinet or any division in the cabinet. This administrative regulation establishes the procedures to implement the required housing program.

Section 1. Eligibility. Any county housing qualified inmates pursuant to KRS 532.100(5) shall be eligible to continue to do so unless the department, through its minimum jail standards enforcement procedures established by KRS 441.075, orders a jail to cease housing Class C and D felons.

Section 2. Submission of documents for Class D felons. In any jail housing Class D felons, the jailer shall forward to the assessment and classification center the following documents, within ten (10) working days of receipt of the judgment, for each Class D felon for whom a transfer has not been requested:

(1) Picture, which shall be updated annually in accordance with Section 12 of this administrative regulation;

(2) Any detainers;

(3) Any incident or disciplinary reports; and

(4) Body identification sheet.

Section 3. Custody Assignment for Class D Felons.

(1) Offender Information Services staff shall, within fifteen (15) working days of receipt of the presentence investigation and the judgment and sentence, calculate the inmate sentence. The assessment and classification center staff shall, within fifteen (15) working days of receipt of the calculated sentence, review the inmate file and assign a custody classification level to the Class D felon. [The assessment and classification center staff shall, within ten (10) working days of receipt of the presentence investigation and the judgment documents, review the inmate file and assign a custody classification level to the Class D felon.]

(2) The AC Center staff shall notify the jailer of the custody classification level assignment. Offender Information Services, Central Office, shall audit the file within five (5) working days of receipt.

(3) If the custody level assigned is minimum or community, the Class D felon may:

(a) Participate in community service work or any program offered inside or outside the secure perimeter of the jail; and

(b) Be housed inside the secure perimeter of the jail, in the restricted custody area of the jail, or in a restricted custody center.

(4) If the custody level assigned is medium or maximum, the Class D felon:

(a) Shall not be eligible to participate in any program or work outside the secure perimeter of the jail; and

(b) Shall be housed in the secure perimeter of the jail.

(5) The jailer may request the department to review the assignment ninety (90) days from the date of the last assignment. Any additional custody review may be completed as deemed necessary by the Director of Population Management.

Section 4. Assignment of Class C felons. (1) The assessment and classification center shall identify and inform the jailer of a Class C felon who qualifies under KRS 532.100(5)(c)1. to be housed in a jail.

(2) The AC center shall notify the jailer when an inmate has been assigned as a Class C felon.

Section 5. Parole Board. (1) Prior to the meeting of the Parole Board, jail personnel shall provide each qualified inmate scheduled for review by the board with a jail offender information to the Kentucky Parole Board form. Jail personnel shall submit the completed form to the Division of Local Facilities via KOMS or electronically, as requested by the Parole Board.

(2) Jail personnel shall inquire if a qualified inmate scheduled for review by the board would like to waive his or her Parole Board hearing and request a serve out if the qualified inmate scheduled to meet the Parole Board has ninety (90) days or less remaining until his or her minimum expiration date. If the qualified inmate decides to waive his or her Parole Board hearing and request a serve out, jail personnel shall have the inmate sign the Request Declining Parole form and submit it to the Parole Board via KOMS or electronically.

(3) Deaf or Hard of Hearing Inmate.

(a) If a deaf or hard of hearing inmate has a hearing before the Parole Board, the jail shall assist the Parole Board with appropriate accommodation necessary for effective communication for the inmate for the hearing.

(b) The jail shall provide headphones if headphones are necessary to meet the needs of deaf and hard of hearing inmates for effective communication or work with the Parole Board to provide other necessary hearing accommodation services for the Parole Board hearing.

Section 6. Transportation. Jail personnel shall be responsible for the transportation of a qualified inmate except as specified in KRS 431.215(1) and 441.510.

Section 7. Release Procedures. (1) The release of a qualified inmate shall follow the procedure established by CPP 25.6, incorporated by reference in 501 KAR 6:020.

(2) (a) Jail personnel shall not release a qualified inmate to any other jail or agency without submission of external movement information to the Director of Local Facilities or designee. The information shall include:

1. Name;

2. Inmate number;

3. Facility transferring felon;

4. Facility receiving felon; and

5. Date transferred and received.

(b) Any jail that is under order of the department relating to restrictions on state inmates shall receive prior authorization from the Director of Local Facilities before requesting state inmates from the department or any other jail.

(c) A qualified inmate shall not be released to another state or to federal authorities without advance notice and approval of the Director of Local Facilities or designee.

(3) Jail personnel shall notify the Director of Local Facilities or the Offender Information Services of any detainer or holder lodged against the qualified inmate by another jurisdiction.

Section 8. (1) Furlough requests shall be submitted to the Classification Branch Manager.

(2) Furloughs shall be governed by CPP 25.4, incorporated by reference in 501 KAR 6:020.

Section 9. Escape. If a qualified inmate escapes, the jailer, jail administrator, or jail personnel shall immediately:

(1) Notify the Division of Local Facilities jail inspector;

(2) Notify Kentucky State Police (KSP) or local law enforcement;

(3) Activate VINE through use of the Emergency Override Line (EOL); and

(4) Enter the prisoner's escape status into the jail management system.

Section 10. Medical Needs. The department shall pay each jail a per diem for state prisoners as established by KRS 532.100(7). The jail shall pay for routine medical and medication expenses but may charge a copay as provided by KRS 441.045(13). If the inmate requires an admission to a hospital with at least one (1) night stay or

outpatient surgery in which a general anesthesia is used, the cost shall be paid by the department. The jailer, jail administrator, or jail personnel shall notify the Department of Corrections Medical Division designee if any qualified inmate is admitted to the hospital for twenty-four (24) hours or longer.

Section 11. Inmate Pay. A qualified inmate on a work assignment shall be paid in accordance with CPP 19.3, incorporated by reference in 501 KAR 6:020.

Section 12. Good Time. For a qualified inmate housed in a jail, the awarding of good time or sentence credit shall be in accordance with this section.

(1) Statutory good time shall follow the procedures established in KRS 197.045(1)(b)1.

(2) Meritorious good time shall follow procedures established in KRS 197.045(1)(b)2. and CPP 15.3, incorporated by reference in 501 KAR 6:020.

(3) Educational good time shall follow procedures established in KRS 197.045(1)(a)2. and CPP 20.1, incorporated by reference in 501 KAR 6:020.

(4) If the jail has a substance abuse program approved by the department, then the felon shall receive credit to his sentence allowed by KRS 197.045(1)(a)3.

Section 13. Annual Photograph. The jailer, jail administrator, or jail personnel shall take a photograph each year of each qualified inmate and immediately send it by United States mail, electronically, or via KOMS to Department of Corrections, Offender Information Services, P.O. Box 2400, Frankfort, Kentucky 40602.

Section 14. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Information to the Kentucky Parole Board", 2021; and

(b) "Request Declining Parole", 2021.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Corrections, Division of Population Management, 275 East Main Street, P.O. Box 2400, Frankfort, Kentucky 40602-2400, Monday through Friday, 8 a.m. to 4:30 p.m. This material may be obtained from the Department of Corrections Web site at <https://corrections.ky.gov/About/Pages/Ircfilings.aspx>.

COOKIE CREWS, Commissioner

APPROVED BY AGENCY: February 6, 2024

FILED WITH LRC: February 15, 2024 at 8:50 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on April 23, 2024, at 9:00 a.m. at the Justice and Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through April 30, 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: Amy V. Barker, Assistant General Counsel, Justice and Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-3279, fax (502) 564-6686, email [Justice.RegContact@ky.gov](mailto:Justice.RegContact@ky.gov).

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Amy Barker

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedures for the housing program

required by KRS 532.100(5) for Class C or D state inmates in a jail.

(b) The necessity of this administrative regulation: The housing program is required by KRS 532.100(5) and provides jailers with the process and form to request the move of a Class C or D inmate from a jail to a state correctional institution for security or medical reasons.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes the housing program required by KRS 532.100(5). KRS 532.100(6) authorizes a jailer to request the transfer of a Class C or D inmate for specific reasons. KRS 196.035 gives authority to promulgate administrative regulations necessary or suitable for the proper administration of the functions of the cabinet or any division in the cabinet.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The administrative regulation provides jailers with the process and form to request the move of a Class C or D inmate from a jail to a state correctional institution and management requirements for Class C or D inmates in the jail.

(2) If 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 initial sentence calculation and custody classification requirements.

(b) The necessity of the amendment to this administrative regulation: The amendment provide useful instructions for management of incoming inmates.

(c) How the amendment conforms to the content of the authorizing statutes: The changes are within the authority granted by the authorizing statutes.

(d) How the amendment will assist in the effective administration of the statutes: It provides clarity for those who are involved in the Class C and D program.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects approximately 74 county and regional jails that house Class C and D felons and their staff, approximately 50 Department of Corrections' employees, including 12 Local Facilities staff, and approximately 5,682 Class C and D felons in the jails.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The regulated entities are not required to take any action concerning the amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Additional cost is not anticipated.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The changes will allow for efficient processing of sentence calculation and custody classification.

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

(a) Initially: An increase in cost is not anticipated.

(b) On a continuing basis: An increase in cost is not anticipated.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: State budgeted funds for the Department of Corrections and county budgeted funds for jail operating expenses.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: Fees are not established or increased.

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

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The amendment impacts the Department of Corrections and jails that house state inmates.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 196.035, 532.100

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

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

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

(c) How much will it cost to administer this program for the first year? The amendment is not expected to increase cost for the Department of Corrections, the counties, or other government entity.

(d) How much will it cost to administer this program for subsequent years? The amendment adds initial sentence calculation and custody classification requirements. The amendment is not expected to increase cost for the Department of Corrections, the counties, or other government entity.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

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

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

(c) How much will it cost the regulated entities for the first year? The regulation impacts how the DOC operates, but does not increase costs from what is budgeted for the biennium. The amendment is not expected to increase cost for the Department of Corrections, the counties, or other government entity.

(d) How much will it cost the regulated entities for subsequent years? The regulation impacts how the DOC operates, but does not increase costs from what is budgeted for the biennium. The amendment is not expected to increase cost for the Department of Corrections, the counties, or other government entity.

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

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

JUSTICE AND PUBLIC SAFETY CABINET  
Department of Corrections  
(Amendment)

501 KAR 3:010. Definitions for 501 KAR Chapter 3.

RELATES TO: KRS 67A.028, 67B.020(1), 441.005, 441.045, 441.055, Ky. Const. Sec. 99, 152, 42 U.S.C. 15601-15609

STATUTORY AUTHORITY: KRS 196.035, 197.020, 441.055

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035 authorizes the secretary to promulgate administrative regulations necessary or suitable for the proper administration of the functions of the cabinet or any division in the cabinet. KRS 441.055(1) requires the Department of Corrections to promulgate administrative regulations establishing minimum standards for jails that house state prisoners. This administrative regulation establishes definitions for 501 KAR Chapter 3, regulating full-service jail facilities.

Section 1. Definitions. (1) "Automatic fire extinguishing system" means an approved system of devices and equipment that automatically detects a fire and discharges an approved fire extinguishing agent onto or in the area of a fire in accordance with 815 KAR 7:120.

(2) "Ceiling" means the overhead area in any area of the jail which is below the secure deck.

(3) "Cell" means an area for housing no more than two (2) prisoners.

(4) "Commissioner" is defined by KRS 196.010(2).

(5) "Dayroom" means a secure area with controlled access from the prisoner living area, to which prisoners may be admitted for daytime activities including dining, bathing, and selected recreation or exercise.

(6) "Deck" means the secure overhead area of the jail, which is part of the security perimeter.

(7) "Department" is defined by KRS 441.005(5).

(8) "Detoxification area" means an area used to hold one (1) or more chemically impaired persons temporarily during the detoxification process until they can care for themselves.

(9) "Direct supervision area" means an area used to house seventy (70) or fewer prisoners in which jail personnel is always present and directly supervising the prisoners.

(10) "Dormitory" means:

(a) An area equipped for housing not less than three (3) nor more than thirty-six (36) persons; or

(b) If in a direct supervision area, an area equipped for housing not more than seventy (70) persons.

(11) "Full-service jails" means jails that may house state prisoners pursuant to KRS 441.055 and that meet the standards established by 501 KAR Chapter 3.

(12) "Governing authority" means a county fiscal court, urban-county government, charter county government, consolidated local government, unified local government, or regional jail authority.

(13) "Jail" means:

(a) A jail as defined by KRS 441.005(1) [or]

(b) A regional jail as defined by KRS 441.005(7); or

(c) A correctional services division as created by KRS 67A.028.

(14) "Jail administrator" means:

(a) The official appointed by a regional jail authority and charged with the responsibility of administering the regional jail defined by KRS 441.005(7); or

(b) The administrator or executive director of a department as defined by KRS 67B.020(1); or

(c) The administrator or director of a correctional services division as created by KRS 67A.028.

(15) "Jail personnel" is defined by KRS 441.005(6).

(16) "Jailer" means:

[(a)] the official duly elected or appointed pursuant to Section 99 or 152 of the Kentucky Constitution, charged with the responsibility of administering the jail; or

(b) A department as defined by KRS 67B.020(1); or

(c) A correctional services division as created by KRS 67A.028.]

(17) "Medical authority" means the person or persons licensed to provide medical care to prisoners in the jail's custody.

(18) "Passive Holding Area", "Diversion Holding Area", or "Temporary Holding Area" means an area used to hold one (1) or more persons temporarily while awaiting processing, booking, court appearance, or discharge, or until they can be moved to a general housing area.

(19) "Pat" or "frisk" means a manual search of a clothed person and includes a visual inspection of the open mouth.

(20) "Penal type" means furnishings, fixtures, and equipment approved by the department.

(21) "PREA" means the Prison Rape Elimination Act, 42 U.S.C. 15601-15609.

(22) "Prisoner" is defined by KRS 441.005(3).

(23) "Prisoner living area" means a group of rooms or cells that provide housing for the prisoner population.

(24) "Probing of body cavities" means a manual or instrument search of a person's oral, anal, vaginal, or other body cavity, performed by medical personnel.

(25) "Religion Reference Manual" means the Kentucky Department of Corrections Religion Reference Manual incorporated by reference in 501 KAR 6:080.

(26) "Sally port" means a covered vehicular drive-through, located adjacent to the jail intake area.

(27) "Security area" means a defined space whose physical boundaries have controlled ingress and egress.

(28) "Security vestibule" means a defined space that promotes security by the use of two (2) or more doors used to contain and observe those who pass.

(29) "Sexually abusive conduct" means:

(a) Sexual contact, sexual intercourse, and deviate sexual intercourse, as defined by KRS 510.010;

(b) Sexual abuse as defined by 28 C.F.R. 115.6; and

(c) Other types of similar sexually based conduct.

(30) "Sick call" means the evaluation and treatment of an ambulatory patient in a clinical setting, either on or off site of the jail, by the medical authority.

(31) "Special Needs Area" means an area used to hold one (1) prisoner for observation when displaying violent, erratic, or suicidal behavior or expressing suicidal ideations.

(32) "Strip search" means a body search during which a person is required to open or remove clothing, during which a person is subject to visual inspection of the torso, female breast, genital area, anal area, and other body cavities.

(33) "Telehealth" means the use of interactive audio, video, or other electronic media to deliver health care. It includes the use of electronic media for diagnosis, consultation, transfer of health or medical data, and continuing education.

The Jail Standards Review Commission established pursuant to KRS 441.055(1)(b) has approved the standards in this administrative regulation at its meeting on January 8, 2024, prior to its filing with the Legislative Research Commission in compliance with KRS 13A.120(3), 13A.220(6)(a), and 441.055(2).

COOKIE CREWS, Commissioner

APPROVED BY AGENCY: February 6, 2024

FILED WITH LRC: February 15, 2024 at 8:50 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation will be held on April 23, 2024, 2023, at 9:00 a.m. at the Justice and Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601. Any person who wishes to be heard at this hearing shall notify the agency in writing by five workdays prior to the hearing of their intent to attend. If a notice of intent to attend the hearing is not received by that date, the hearing may be cancelled. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through April 30, 2024, 2023. Send written notice of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Amy V. Barker, Assistant General Counsel, Justice and Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-3279, fax (502) 564-6686, email Justice.RegContact@ky.gov.

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Amy Barker

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes definitions for 501 KAR Chapter 3, regulating full-service jail facilities.

(b) The necessity of this administrative regulation: This administrative regulation complies with the requirement to adopt jail standards in KRS 441.055(1)(a), (b). Definitions are needed to explain terms used in the chapter.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 196.035 gives authority to promulgate administrative regulations necessary or suitable for the proper administration of the functions of the cabinet or any division in the cabinet. This administrative regulation complies with the requirement to adopt jail standards in KRS 441.055(1)(a), (b).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It establishes definitions for the regulation of full-service jail facilities that house state prisoners.

(2) If 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 to the necessity language. The amendment revises the definition of jailer and jail administrator to match language in 501 KAR Chapters 7 and 13.

(b) The necessity of the amendment to this administrative regulation: The administrative regulation provides definitions for use in the chapter.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 196.035 gives authority to promulgate administrative regulations necessary or suitable for the proper administration of the functions of the cabinet or any division in the cabinet. The amendment revises the standards as part of the review process in KRS 441.055(1)(b).

(d) How the amendment will assist in the effective administration of the statutes: It provides current and clear definitions for the regulation of full-service jails that house state prisoners.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects approximately 74 county and regional jails and their staff, approximately 50 Department of Corrections employees, including 12 Local Facilities staff, and approximately 19,683 prisoners in the jails, including 5,682 Class C and D felons.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Additional action is not anticipated.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Additional cost is not anticipated.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will all have a better understanding of who is included in the definition of jailer and jail administrator.

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

(a) Initially: An increase in cost is not anticipated.

(b) On a continuing basis: An increase in cost is not anticipated.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: State budgeted funds for the Department of Corrections and county budgeted funds for jail operating expenses.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: Fees are not

established or increased.

(9) TIERING: Is tiering applied? No. The standards apply equally to all full-service jails.

#### FISCAL NOTE

(1) What 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 Corrections and full-service county jails that house state inmates.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 196.035, 197.020, 441.055

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

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

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

(c) How much will it cost to administer this program for the first year? Costs are not associated with this administrative regulation establishing definitions.

(d) How much will it cost to administer this program for subsequent years? Costs are not associated with this administrative regulation establishing definitions.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

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

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

(c) How much will it cost the regulated entities for the first year? The regulation impacts how the jails operate, but does not increase costs from what is budgeted for the biennium.

(d) How much will it cost the regulated entities for subsequent years? The regulation impacts how the jails operate, but does not increase costs from what is budgeted for the biennium.

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

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

#### JUSTICE AND PUBLIC SAFETY CABINET Department of Corrections (Amendment)

#### 501 KAR 3:040. Personnel.

RELATES TO: KRS 441.045, 441.055, 441.115

STATUTORY AUTHORITY: KRS 196.035, 197.020, 441.055

NECESSITY, FUNCTION, AND CONFORMITY: KRS 441.055 requires the Department of Corrections to promulgate administrative regulations establishing minimum standards for jails that house state prisoners. This administrative regulation establishes personnel procedures to be followed in full-service jails.

##### Section 1. Staffing.

(1) A category I, II, III, IV, and V jail shall provide twenty-four (24) hour awake supervision for all prisoners by providing a minimum of three (3) jail personnel, excluding jail personnel designated for communication.

(2) A staffing analysis may be requested by the jailer or governing authority.

(3) If a female prisoner is booked, detained, or otherwise lodged in the jail, the jail shall provide a female deputy to perform twenty-four (24) hour awake supervision.

Section 2. Qualifications. (1) Persons who are at least eighteen (18) years old may be appointed or employed to work inside the secure perimeter of the jail.

(2) A person under the age of twenty-one (21) years:

(a) Shall not:

1. Be employed as a deputy jailer;

2. Possess or exercise peace officer powers;

3. Function in a role similar to that of a deputy jailer or correctional officer; or

4. Be in a position that involves supervision over prisoners or persons yet to be booked into the jail; and

(b) Shall have a high school diploma or a high school equivalency diploma[All persons who work inside the secure perimeter of the jail shall be at least twenty-one (21) years of age].

Section 3. Compensation. Each employee shall receive a wage at least equal to the State Minimum Wage Law except if Federal Minimum Wage Law applies.

Section 4. Policy and Procedure. Written policy shall specify that equal employment opportunities exist for every position.

Section 5. Physical Fitness. The jailer or jail administrator shall ensure a level of physical fitness is maintained that will allow each employee to satisfactorily perform his or her duties.

##### Section 6. Code of Ethics.

(1) The jailer or jail administrator shall make a written code of ethics available to each employee.

(2) The written code of ethics shall be incorporated in the jail's policy and procedures manual and shall include the following:

(a) An employee shall not:

1. Exchange a personal gift or favor with a prisoner, prisoner's family, or prisoner's friend;

2. Accept any form of bribe or unlawful inducement;

3. Perform duties under the influence of an intoxicant or consume an intoxicant while on duty;

4. Violate or disobey an established rule, administrative regulation, or lawful order from a superior;

5. Discriminate against a prisoner on the basis of race, religion, creed, gender, national origin, or other individual characteristic;

6. Employ corporal punishment or unnecessary physical force;

7. Subject a prisoner to physical or mental abuse;

8. Intentionally demean or humiliate a prisoner;

9. Bring a weapon or an item declared as contraband into the jail without proper authorization;

10. Engage in critical discussion of jail employees or a prisoner in the presence of another prisoner;



11. Divulge confidential information without proper authorization;

12. Withhold information which threatens the security of the jail, jail employees, visitors, or the community;

13. Through negligence or intentionally, endanger the well-being of self or another;

14. Engage in a business or profitable enterprise with a prisoner;

15. Inquire about, disclose, or discuss details of a prisoner's crime other than as may be absolutely necessary in performing official duties;

16. Enter into an intimate, personal relationship with a prisoner while the prisoner is incarcerated at the same jail that the employee is employed by; or

17. Enter into an intimate, personal relationship with a former prisoner of the jail within six (6) months of that prisoner's release; and

(b) An employee shall:

1. Comply with established rules, administrative regulations, and lawful orders from a superior;

2. Treat each prisoner in a fair, impartial manner; and

3. Report a violation of the code of ethics to the jailer.

(3) A violation of the code of ethics shall be made a part of the employee's personnel file.

The Jail Standards Review Commission established pursuant to KRS 441.055(1)(b) has approved the standards in this administrative regulation at its meeting on August 15, 2023, prior to its filing with the Legislative Research Commission in compliance with KRS 13A.120(3), 13A.220(6)(a), and 441.055(2).

COOKIE CREWS, Commissioner

APPROVED BY AGENCY: February 6, 2024

FILED WITH LRC: February 15, 2024 at 8:50 a.m.

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:** A public hearing on this administrative regulation will be held on April 23, 2024, at 9:00 a.m. at the Justice and Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601. Any person who wishes to be heard at this hearing shall notify the agency in writing by five workdays prior to the hearing of their intent to attend. If a notice of intent to attend the hearing is not received by that date, the hearing may be cancelled. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through April 30, 2024. Send written notice of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

**CONTACT PERSON:** Amy V. Barker, Assistant General Counsel, Justice and Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-3279, fax (502) 564-6686, email Justice.RegContact@ky.gov.

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Amy Barker

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes personnel procedures to be followed in full-service jails.

(b) The necessity of this administrative regulation: This administrative regulation complies with the requirement to adopt jail standards in KRS 441.055(1)(a), (b).

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation complies with the requirement to adopt jail standards in KRS 441.055(1)(a), (b).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It establishes minimum standards to be followed for personnel procedures in full-service jails.

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

(a) How the amendment will change this existing administrative regulation: The amendment revises section 2 to comply with changes to KRS 441.055(1)(a)2.b.

(b) The necessity of the amendment to this administrative

regulation: The amendment revises the standards as part of the review process in KRS 441.055(1)(b).

(c) How the amendment conforms to the content of the authorizing statutes: The amendment revises the standards as part of the review process in KRS 441.055(1)(b).

(d) How the amendment will assist in the effective administration of the statutes: It complies with statutory changes.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects approximately 74 county and regional jails and their staff, approximately 50 Department of Corrections employees, including 12 Local Facilities staff, and approximately 19,683 prisoners in the jails, including 5,682 Class C and D felons.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Jails will have to comply with the statutory and regulatory qualifications required for jail staff.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): An estimated cost for this change is unknown and the change is required by statute.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The regulation is clearer and adds statutory requirements.

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

(a) Initially: Additional cost is not anticipated.

(b) On a continuing basis: Additional cost is not anticipated.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: State budgeted funds for the Department of Corrections and county budgeted funds for jail operating expenses.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: Fees are not established or increased.

(9) TIERING: Is tiering applied? No. The standards apply equally to all full-service jails.

## FISCAL NOTE

(1) What 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 Corrections and full-service county jails that house state inmates.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 196.035, 197.020, 441.055

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

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

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

(c) How much will it cost to administer this program for the first year? For fiscal year 2023, the department paid the local jails approximately \$139,275,752.09 for the housing, transportation, and medical care and programming incentives for state inmates. Full-service jails receive the largest portion of this funding. In addition, the department incurred approximately \$1,669,365.54 in staff salaries and

administrative costs. The jails will have some staff and administrative costs, but this program is a source of revenue for them.

(d) How much will it cost to administer this program for subsequent years? Approximately the same as in (c).

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

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

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

(c) How much will it cost the regulated entities for the first year? The regulation impacts how the jails operate, but does not increase costs from what is budgeted for the biennium.

(d) How much will it cost the regulated entities for subsequent years? The regulation impacts how the jails operate, but does not increase costs from what is budgeted for the biennium.

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

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

**JUSTICE AND PUBLIC SAFETY CABINET**  
**Department of Corrections**  
**(Amendment)**

**501 KAR 3:060. Security; control.**

RELATES TO: KRS 196.173, 441.045, 441.055

STATUTORY AUTHORITY: KRS 196.035, 197.020, 441.055(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035 authorizes the secretary to promulgate administrative regulations necessary or suitable for the proper administration of the functions of the cabinet or any division in the cabinet. KRS 441.055 requires the Department of Corrections to promulgate administrative regulations establishing minimum standards for jails that house state prisoners. KRS 196.173 limits restraint situations for pregnant prisoners. This administrative regulation establishes security procedures to be followed in full-service jails.

Section 1. Policy and Procedure. (1) The jailer or jail administrator shall develop a written policy and procedure governing the security aspects of the jail's operation.

(2) If requested in writing, the department shall provide technical assistance to the jailer or jail administrator in formulating written policy and procedure.

(3) The policies and procedures shall include:

(a) Prisoner rules;

(b) Staffing;

(c) Searches of prisoner and of secure areas;

(d) Visitation;

(e) Key and weapon control;

(f) Prisoner head counts;

(g) Surveillance checks;

(h) Emergency situations;

(i) Jail schedule; and

(j) Administering medication.

Section 2. Prisoner Supervision. (1) Jail personnel shall conduct and document direct in-person surveillance of each prisoner on an irregular schedule, at least every sixty (60) minutes.

(2) Jail personnel shall conduct and document direct in-person surveillance on an irregular schedule, at least every twenty (20) minutes on the following classes of prisoners:

(a) Suicidal;

(b) Mentally or emotionally disturbed, if housed in a single cell; or

(c) In a detox cell.

(3) If available, closed-circuit television shall be used primarily to monitor hallways, stairwells, sally ports, perimeter security, points of egress, [and] common areas, and support areas.

(4) There shall be at least three (3) documented prisoner counts every twenty-four (24) hours during which each prisoner's physical presence, by show of skin or by movement, shall be observed. At least one (1) count shall be conducted per shift.

Section 3. Security Procedures. (1) Each jailer or jail administrator shall establish a procedure for weekly inspection, for contraband and physical security, of each area accessible to a prisoner.

(a) Isolated security spot checks for contraband shall be conducted daily.

(b) The prisoner rules, as specified in Section 1(3)(a) of this administrative regulation, shall contain a clear definition of each item permitted in the jail. All other items shall be considered contraband.

(c) There shall be a written procedure for reporting security irregularities.

(2) A weapon, ammunition, chemical agent, related security equipment, or object which may be used as a weapon shall not be permitted in the security area unless authorized by the jailer or jail administrator. Firearms shall not be permitted in the security area unless authorized by the jailer or jail administrator, under emergency circumstances.

(3) If a weapon, ammunition, chemical agent, or related security equipment is not being carried or used, as authorized by the jailer or jail administrator, it shall be stored in an arsenal, vault, or other secure room under lock.

(a) The weapons storage area shall be inaccessible to unauthorized persons.

(b) There shall be a written procedure for issuing and accounting for all weapons.

(4) Security devices and safety equipment shall be inspected monthly to ensure they are maintained in proper working order.

(5) Tools and toxic, corrosive, or flammable substances, and other potentially dangerous supplies and equipment shall be stored in a secure, locked area located outside the security perimeter of the confinement area.

(6) A prisoner shall not use hazardous tools, supplies, or equipment unless the prisoner is[only] under the direct supervision of jail personnel, and shall be provided with proper safety equipment.

(7) A prisoner:

(a) May be assigned the responsibility of providing prisoner services, including providing meals, under the direct supervision of jail personnel; and

(b) Shall not be assigned to a position of authority over another prisoner.

(8) A prisoner shall not be permitted to perform or assist in a security duty.

(9) A jail with a work release or community service program shall establish special control procedures to minimize contact between a prisoner with work release privileges and another prisoner.

(10) A prisoner shall be searched, in accordance with the requirements[guidelines] established in 501 KAR 3:120, if entering or leaving the security perimeter.

(11) Written procedures shall be developed for transporting a prisoner outside the jail and shall identify training required before jail personnel are permitted to transport any prisoner.

(12) Each jailer or jail administrator shall develop written policies

and procedures governing the use of physical restraints. Written policies and procedures shall include provisions for inmates known to be pregnant, in accordance and compliance with KRS 196.173.

(13) A prisoner placed in physical restraints shall be constantly monitored.

(14) The jail shall have key-control procedures as established in this subsection.

(a) A key control center shall be secure and inaccessible to an unauthorized person at all times.

(b) There shall be an accounting procedure for issuing and returning keys.

(c) There shall be a procedure for immediate reporting and repairing of a broken or malfunctioning key or lock;

(d) A set of duplicate keys shall be maintained in a separate, secure place.

(e) A prisoner shall not be permitted to handle a key used to operate a jail security lock.

(f) A key operating a lock to an outside door or gate shall not be permitted in the security area.

(g) An emergency key or any key to a critical security area shall be issued in accordance with written procedures established by the jailer or jail administrator.

(h) Precautions similar to those outlined in paragraphs (a) through (g) of this subsection shall be taken to ensure the security of nonkey operated locking devices including electrical switches or levers.

(i) A lock to an outside exit shall be keyed differently from an interior lock.

(j) The lock to the control room shall be keyed differently from all other locks.

(15) Trustees.

(a) A trustee shall not have access to, or control of, a weapon.

(b) An unsupervised trustee shall not be permitted in either a program, support, or housing area with a prisoner of the opposite sex.

(c) A trustee shall not be permitted in either a program, support, or housing area with a juvenile inmate.

Section 4. Daily Jail Log; Special Reports. A daily jail log shall be kept current and shall reflect significant occurrences within the jail. Special reports shall include:

(1) Use of force;

(2) Disciplinary action;

(3) Medical or mental health treatment;

(4) Feeding schedule and menus;

(5) Extraordinary occurrences, including:

(a) Fire;

(b) Assault;

(c) Suicide or attempted suicide; and

(d) Escape or attempted escape;

(6) Inmate vandalism, including:

(a) Destruction of jail property; and

(b) Flooding of plumbing fixtures;

(7) Jail personnel roster for each shift; and

(8) Visitor's log.

The Jail Standards Review Commission established pursuant to KRS 441.055(1)(b) has approved the standards in this administrative regulation at its meeting on January 8, 2024, prior to its filing with the Legislative Research Commission in compliance with KRS 13A.120(3), 13A.220(6)(a), and 441.055(2).

COOKIE CREWS, Commissioner

APPROVED BY AGENCY: February 6, 2024

FILED WITH LRC: February 15, 2024 at 8:50 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation will be held on April 23, 2024, at 9:00 a.m. at the Justice and Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601. Any person who wishes to be heard at this hearing shall notify the agency in writing by five workdays prior to the hearing of their intent to attend. If a notice of intent to attend the hearing is not received by that date, the hearing may be cancelled. If you do not wish to be heard at the public

hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through April 30, 2024. Send written notice of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Amy V. Barker, Assistant General Counsel, Justice and Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-3279, fax (502) 564-6686, email Justice.RegContact@ky.gov.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Amy Barker

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes security procedures to be followed in full-service jails.

(b) The necessity of this administrative regulation: This administrative regulation complies with the requirement to adopt jail standards in KRS 441.055(1)(a), (b).

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation complies with the requirement to adopt jail standards in KRS 441.055(1)(a), (b).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It establishes minimum standards to be followed for security procedures in full-service jails.

(2) If 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 statutes for authority and enlarges the necessity language. The amendment adds that inmates using hazardous materials or equipment shall be provided with safety equipment. It also adds that written policies and procedures regarding restraints shall include provisions for inmates known to be pregnant in compliance with KRS 196.173.

(b) The necessity of the amendment to this administrative regulation: The amendment revises the standards as part of the review process in KRS 441.055(1)(b).

(c) How the amendment conforms to the content of the authorizing statutes: The amendment revises the standards as part of the review process in KRS 441.055(1)(b).

(d) How the amendment will assist in the effective administration of the statutes: It up-dates the minimum security standards as required by KRS 441.055 and includes language from a statutory change.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects approximately 74 county and regional jails and their staff, approximately 50 Department of Corrections employees, including 12 Local Facilities staff, and approximately 19,683 prisoners in the jails, including 5,682 Class C and D felons.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Employees supervising prisoners using hazardous tools, supplies, or equipment shall provide the prisoners with proper safety equipment. Employees shall limit use of restraints on prisoners known to be pregnant. Jailers and jail administrator will need to develop written policies and procedures.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): If proper safety equipment is not already available, it will need to be purchased. There is no cost associated with limiting restraints or developing written policies and procedures.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The regulation is clearer and adds statutory requirements.

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

(a) Initially: Additional cost is not anticipated.

(b) On a continuing basis: Additional cost is not anticipated.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: State budgeted funds for the Department of Corrections and county budgeted funds for jail operating expenses.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: Fees are not established or increased.

(9) TIERING: Is tiering applied? No. The standards apply equally to all full-service jails.

#### FISCAL NOTE

(1) What 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 Corrections and full-service county jails that house state inmates.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 196.035, 197.020, 441.055

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

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

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

(c) How much will it cost to administer this program for the first year? For fiscal year 2023, the department paid the local jails approximately \$139,275,752.09 for the housing, transportation, and medical care and programming incentives for state inmates. Full-service jails receive the largest portion of this funding. In addition, the department incurred approximately \$1,669,365.54 in staff salaries and administrative costs. The jails will have some staff and administrative costs, but this program is a source of revenue for them.

(d) How much will it cost to administer this program for subsequent years? Approximately the same as in (c).

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

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

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

(c) How much will it cost the regulated entities for the first year? The regulation impacts how the jails operate, but does not increase costs from what is budgeted for the biennium.

(d) How much will it cost the regulated entities for subsequent years? The regulation impacts how the jails operate, but does not increase costs from what is budgeted for the biennium.

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

regulation.

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

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

#### JUSTICE AND PUBLIC SAFETY CABINET Department of Corrections (Amendment)

#### 501 KAR 3:080. Sanitation; hygiene.

RELATES TO: KRS 441.055

STATUTORY AUTHORITY: KRS 441.055

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035 authorizes the secretary to promulgate administrative regulations necessary or suitable for the proper administration of the functions of the cabinet or any division in the cabinet. KRS 441.055 requires the Department of Corrections to promulgate administrative regulations establishing minimum standards for jails that house state prisoners. This administrative regulation establishes procedures to provide proper sanitation and hygiene in full-service jails.

Section 1. Procedures. (1) The jailer or jail administrator shall provide for the control of vermin and pests.

(2) The jail shall provide for both solid and liquid waste disposal.

(3) The jailer or jail administrator shall have a written preventative maintenance plan that includes:

(a) A cleaning schedule for various locations and items in the jail;

(b) A schedule for inspections by the jailer or jail administrator;

(c) A schedule for trash and garbage removal; and

(d) A schedule for periodic inspection and maintenance of specific mechanical equipment.

(4) The jail shall have fresh air circulating within prisoner living and activity areas.

(5) The jail shall furnish clean sanitized bedding to prisoners except in holding areas and unless it is determined to be detrimental to a particular prisoner. Issuance of bedding in detoxification shall be optional. Bedding shall include:

(a) One (1) mattress;

(b) One (1) blanket, if conditions require;

(c) Two (2) sheets;

(d) One (1) pillow, if not part of the mattress; and

(e) One (1) pillowcase, if applicable.

(6) Prisoner bedding shall be cleaned on a regular basis according to the schedule established in this subsection.

(a) Sheets, pillowcases, and mattress cover shall be cleaned at least once per week and cleaned prior to reissue to the next prisoner.

(b) Blankets shall be laundered upon reissue or quarterly, whichever is sooner.

(c) Mattresses and pillows shall be cleaned quarterly and cleaned prior to reissue to the next prisoner.

(7) Each prisoner shall be issued a clean jail uniform and towel upon admission to a prisoner living area. If a prisoner does not have undergarments upon admission, then the jail shall issue them. Jail uniforms, undergarments, and towels shall be laundered at least twice weekly and laundered prior to reissue to the next prisoner. Prisoners shall not be required to be without a clean uniform, undergarment, or towel while laundry is being processed.

(8) Each female prisoner shall be issued an appropriate number of undergarments upon admission.

(9) All floors, toilets, and sinks in the jail shall be cleaned daily or more often as necessary.

~~(10)~~~~(9)~~ All showers shall be cleaned on at least a weekly basis.  
~~(11)~~~~(10)~~ (a) All prisoners assigned to prisoner living areas shall be issued or permitted to obtain the following hygienic items:

1. Soap;
2. Toothbrush;
3. Toothpaste; and
4. Toilet paper; ~~and~~
5. ~~Female sanitary supplies (if applicable)].~~

(b) Indigent prisoners shall be furnished these items by the jail.

~~(12)~~~~(11)~~ All prisoners shall be permitted to shave a minimum of two (2) times per week. Communal razors shall not be used. A sanitized electric razor may be substituted with jailer or jail administrator approval.

(13) Prisoners assigned to prisoner living areas shall be issued an adequate number of sanitary supplies, if applicable.

~~(14)~~~~(12)~~ Hair cutting services or sanitized hair cutting equipment shall be available to all prisoners.

~~(15)~~~~(13)~~ All prisoners shall be provided shower facilities within twenty-four (24) hours of admission. Prisoners shall be permitted to shower daily unless there is a documented security risk.

~~(16)~~~~(14)~~ All prisoners in the jail shall be provided with hot and cold running water in showers and lavatories.

The Jail Standards Review Commission established pursuant to KRS 441.055(1)(b) has approved the standards in this administrative regulation at its meeting on January 8, 2024, prior to its filing with the Legislative Research Commission in compliance with KRS 13A.120(3), 13A.220(6)(a), and 441.055(2).

COOKIE CREWS, Commissioner

APPROVED BY AGENCY: February 6, 2024

FILED WITH LRC: February 15, 2024 at 8:50 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on April 23, 2024, at 9:00 a.m. at the Justice and Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through April 30, 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: Amy V. Barker, Assistant General Counsel, Justice and Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-3279, fax (502) 564-6686, email Justice.RegContact@ky.gov.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Amy Barker

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes sanitation and hygiene procedures to be followed in full-service jails.

(b) The necessity of this administrative regulation: This administrative regulation complies with the requirement to adopt jail standards in KRS 441.055(1)(a), (b).

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation complies with the requirement to adopt jail standards in KRS 441.055(1)(a), (b).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It establishes minimum standards to be followed for sanitation and hygiene procedures in full-service jails.

(2) If 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 statutes for authority and enlarges the necessity language. The amendment adds that each female

prisoner shall be issued an appropriate number of undergarments upon admission as required by statute. It revises and changes the location of language that requires availability of female sanitary supplies. It also renumbers subsections and corrects typographical errors.

(b) The necessity of the amendment to this administrative regulation: The amendment revises the standards as part of the review process in KRS 441.055(1)(b).

(c) How the amendment conforms to the content of the authorizing statutes: The amendment revises the standards as part of the review process in KRS 441.055(1)(b).

(d) How the amendment will assist in the effective administration of the statutes: It up-dates the minimum sanitation and hygiene standards as required by KRS 441.055.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects approximately 74 county and regional jails and their staff, approximately 50 Department of Corrections employees, including 12 Local Facilities staff, and approximately 19,683 in the jails, including 5,682 Class C and D felons.

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

(a) List 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 jail will have to provide an appropriate number of undergarments to female prisoners and an adequate number of sanitary supplies.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The cost of additional undergarments and sanitary supplies, if the jail is not already providing them.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The regulation is clearer.

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

(a) Initially: Additional cost is not anticipated.

(b) On a continuing basis: Additional cost is not anticipated.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: State budgeted funds for the Department of Corrections and county budgeted funds for jail operating expenses.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: Fees are not established or increased.

(9) TIERING: Is tiering applied? No. The standards apply equally to all full-service jails.

#### FISCAL NOTE

(1) What 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 Corrections and full-service county jails that house state inmates.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 441.055.

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

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

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? Revenue is

not generated by this administrative regulation.

(c) How much will it cost to administer this program for the first year? For fiscal year 2023, the department paid the local jails approximately \$139,275,752.09 for the housing, transportation, medical care and programming incentives for state inmates. Full-service jails receive the largest portion of this funding. In addition, the department incurred approximately \$1,669,365.54 in staff salaries and administrative costs. The jails will have some staff and administrative costs, but this program is a source of revenue for them.

(d) How much will it cost to administer this program for subsequent years? Approximately the same as in (c).

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

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

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

(c) How much will it cost the regulated entities for the first year? The regulation impacts how the jails operate, but does not increase costs from what is budgeted for the biennium.

(d) How much will it cost the regulated entities for subsequent years? The regulation impacts how the jails operate, but does not increase costs from what is budgeted for the biennium.

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

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

**JUSTICE AND PUBLIC SAFETY CABINET**  
**Department of Corrections**  
**(Amendment)**

**501 KAR 3:090. Medical services.**

RELATES TO: KRS 72.025, 441.045, 441.047, 441.055, 441.560

STATUTORY AUTHORITY: KRS 196.035, 197.020, 441.055, 441.560

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035 requires the secretary to promulgate administrative regulations necessary or suitable for the proper administration of the functions of the cabinet. KRS 197.020(1)(e) requires the Department of Corrections to promulgate administrative regulations to require telehealth services in county jails. KRS 441.560 requires the department to promulgate administrative regulations relating to the transfer of prisoners to the department for medical treatment and care. KRS 441.055 requires the Department of Corrections to promulgate administrative regulations establishing minimum health standards for jails that house state prisoners. This administrative regulation establishes procedures for the proper delivery of medical services in full-service jails.

Section 1. Medical Services. (1) The jail's medical services shall be provided by contracting with a health care provider licensed in

Kentucky.

(2) The medical authority shall be a licensed practical nurse (LPN), a higher level of licensed nurse, a licensed medical doctor, or licensed doctor of osteopathy. Telehealth services may be used, except for mental health evaluations for involuntary commitments pursuant to KRS Chapter 202A.

(3) The health care staff shall not be restricted by the jailer or jail administrator in the performance of their duties except to adhere to the jail's security requirements.

(4) All health care staff working in the jail shall comply with state licensure and certificate requirements commensurate with similar health care personnel working elsewhere in the community. Copies of licenses and certificates for health care staff employed by the jail shall be maintained on file within the jail.

(5) A daily medical log shall be maintained documenting specific medical treatment rendered in the jail. This log shall be kept current to the preceding hour.

(6) Prisoners shall not perform any medical functions within the jail.

(7) Prisoners shall be informed verbally and in writing at the time of admission about the methods of gaining access to medical care within the jail.

(8) All medical procedures shall be performed according to orders issued by the responsible medical authority. All medical procedures that require hospital care shall use the Kentucky Correctional Health Care Services Network, or other contracted health care network.

(9) Medical screening shall be performed by the receiving jail personnel on all prisoners upon their admission to the jail and before their placement in prisoner living areas. The findings of this medical screening shall be recorded on a printed screening form approved by the medical authority. The medical screening inquiry shall include:

(a) Current illnesses and health problems;

(b) Medications taken and special health requirements;

(c) Screening of other health problems designated by the medical authority;

(d) Behavioral observation, state of consciousness, and mental status;

(e) Notation of body deformities, markings, bruises, lesions, jaundice, ease of movement, and other distinguishing characteristics;

(f) Condition of skin and body orifices, including rashes and infestations; and

(g) Disposition and referral of prisoners to qualified medical personnel on an emergency basis.

(10) Sick call conducted by the medical authority shall be available to each prisoner as provided by this subsection.

(a) Category I jails shall hold sick call two (2) days per week, at a minimum.

(b) Category II jails shall hold sick call three (3) days per week, at a minimum.

(c) Category III jails shall hold sick call four (4) days per week, at a minimum.

(d) Category IV jails shall hold sick call five (5) days per week, at a minimum.

(e) Category V jails shall hold sick call six (6) days per week, at a minimum.

(11) Jailers, jail administrators, or jail personnel shall report suicides or attempted suicides that constitute a serious health situation to the department within twenty-four (24) hours.

(12) Each jail shall have a written policy and procedure outlining jail personnel response to detainees who are at risk for suicide or have attempted or completed suicide.

(13) Emergency medical, vision, and dental care shall be available to all prisoners commensurate with the level of care available to the community.

(14) Medical research shall not be permitted on any prisoner in the jail.

(15) Access to the prisoner's medical file shall be controlled by the medical authority and the jailer or jail administrator. The medical record shall be separate from custody and other administrative records of the jail.

(16) The jail shall follow informed consent standards in the community for prisoner care.

(17) The jailer, jail ~~administrators~~~~administrator~~, or jail personnel shall notify the coroner, if a prisoner dies while in the jail's custody, to allow for a postmortem examination pursuant to KRS 72.025.

(18) The jailer or jail administrator shall have written delousing procedures.

(19) The jail shall have first aid kits available at all times.

(20) A prisoner who has been prescribed treatment by a recognized medical authority and cannot receive that treatment in the jail shall be moved to another confinement facility that can provide the treatment or may be moved to a hospital.

(21) If emergency care is needed, it shall be provided.

(22) Telehealth services shall be provided for prisoners.

Section 2. Medical Transfers Pursuant to KRS 441.560. (1) A jailer, jail ~~administrators~~~~administrator~~, or jail personnel may request that a prisoner be transferred to the department for necessary medical treatment and care if the prisoner:

(a) Is injured;

(b) Is pregnant;

(c) Becomes sick or ill;

(d)

1. Is severely and persistently mentally ill; and

2. Is presenting an imminent risk of harm to self or others; or

(e) Requires specialized medical care or long-term medical care that is not available at the local jail.

(2) The transfer request shall be submitted to the Classification Branch in writing and shall contain the following information:

(a) Prisoner's name;

(b) Prisoner's Social Security number;

(c) County where currently housed;

(d) Inmate number;

(e) Pending charge or conviction and whether felony or misdemeanor;

(f) Estimated sentence or time to serve;

(g) Whether the prisoner has insurance or not;

(h) Whether the prisoner is indigent or not;

(i) Justification for medical transfer;

(j) Whether the care is necessary or not;

(k) Any conflict reports; and

(l) Relevant attachments such as:

1. Copy of prisoner's insurance card;

2. Doctor's report;

3. Incident report;

4. Citation;

5. Booking information;

6. Preexisting medical records; or

7. Current medication.

(3) If a prisoner is approved for transfer to the department, pursuant to KRS 441.560, the jail shall provide the following, unless already provided with the transfer request:

(a) All medical information;

(b) Current medication in proper container;

(c) Booking information;

(d) Incident reports;

(e) Current citation;

(f) Classification information;

(g) Conflict reports;

(h) Any additional pertinent information; and

(i) Custody receipt.

(4) If a prisoner is approved for transfer to the department, pursuant to KRS 441.560, the prisoner shall be transported by the department.

Section 3. Inmate Medications. When a prisoner is transferred from the jail to another facility, or discharged:

(1) A copy of the most recent Medical Administration Record (MAR) shall be sent with the prisoner; and

(2) If prescribed medication was purchased for a prisoner[,] by the jail, then the jail may provide the medication, a prescription, or both to the prisoner.

The Jail Standards Review Commission established pursuant to KRS 441.055(1)(b) has approved the standards in this administrative regulation at its meeting on January 8, 2024, prior to its filing with the Legislative Research Commission in compliance with KRS 13A.120(3), 13A.220(6)(a), and 441.055(2).

COOKIE CREWS, Commissioner

APPROVED BY AGENCY: February 6, 2024

FILED WITH LRC: February 15, 2024 at 8:50 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on April 23, 2024, at 9:00 a.m. at the Justice and Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through April 30, 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: Amy V. Barker, Assistant General Counsel, Justice and Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-3279, fax (502) 564-6686, email Justice.RegContact@ky.gov.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Amy Barker

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes minimum standards to provide proper medical services in full-service jails.

(b) The necessity of this administrative regulation: This administrative regulation complies with the requirement to adopt jail standards in KRS 441.055(1)(a), (b).

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation complies with the requirement to adopt jail standards in KRS 441.055(1)(a), (b).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It establishes minimum medical services requirements for full-service jails.

(2) If 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 enlarges the necessity language, adds telehealth language required by statute, and corrects typographical errors.

(b) The necessity of the amendment to this administrative regulation: The amendment revises the standards as part of the review process in KRS 441.055(1)(b).

(c) How the amendment conforms to the content of the authorizing statutes: The amendment revises the standards as part of the review process in KRS 441.055(1)(b).

(d) How the amendment will assist in the effective administration of the statutes: It updates the minimum medical services requirements for full-service jails as required by KRS 441.055.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects approximately 74 county and regional jails and their staff, approximately 50 Department of Corrections employees, including 12 Local Facilities staff, and approximately 19,683 prisoners in the jails, including 5,682 Class C and D felons.

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

(a) List 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 jail will have to make provision for telehealth access for prisoners if it has not already done so.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Additional cost is not anticipated.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The regulation is clearer.

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

(a) Initially: An increase in cost is not anticipated.

(b) On a continuing basis: An increase in cost is not anticipated.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: State budgeted funds for the Department of Corrections and county budgeted funds for jail operating expenses.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: Fees are not established or increased.

(9) TIERING: Is tiering applied? No. The standards apply equally to all full-service jails.

#### FISCAL NOTE

(1) What 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 Corrections and full-service county jails that house state inmates.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 196.035, 197.020, 441.055, 441.560

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

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

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

(c) How much will it cost to administer this program for the first year? For fiscal year 2022, the department paid the local jails approximately \$139,275,752.09 for the housing, transportation, medical care and programming incentives of state inmates. Full-service jails receive the largest portion of this funding. In addition, the department incurred approximately \$1,669,365.54 in staff salaries and administrative costs. The jails will have some staff and administrative costs, but this program is a source of revenue for them.

(d) How much will it cost to administer this program for subsequent years? Approximately the same as in (c).

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

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

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

(c) How much will it cost the regulated entities for the first year? The regulation impacts how the jails operate, but does not increase costs from what is budgeted for the biennium.

(d) How much will it cost the regulated entities for subsequent

years? The regulation impacts how the jails operate, but does not increase costs from what is budgeted for the biennium.

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

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

#### JUSTICE AND PUBLIC SAFETY CABINET

##### Department of Corrections

##### (Amendment)

#### 501 KAR 3:100. Food services.

RELATES TO: KRS 196.035, 197.020, 217.280-217.390, 441.055

STATUTORY AUTHORITY: KRS 441.055

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035 authorizes the secretary to promulgate administrative regulations necessary or suitable for the proper administration of the functions of the cabinet or any division in the cabinet. KRS 441.055 requires the Department of Corrections to promulgate administrative regulations establishing minimum health standards for jails that house state prisoners. This administrative regulation establishes procedures for proper food services for full-service jails.

Section 1. Procedures. (1) The jail shall comply with KRS 217.280 through 217.390 and 902 KAR 45:005.

(2) The jailer or jail administrator shall provide adult prisoners with a nutritionally adequate diet containing at least 2,400 calories per day. Condiments shall not be included in the daily caloric totals. If prisoners are housed in the diversion holding area during normal meal times, they shall be fed. Meals may be either hot or cold.

(3)(a) Except as provided by paragraph (b) of this subsection, prisoners shall receive three (3) meals per day, one (1) of which shall be hot. More than fourteen (14) hours shall not elapse between any two (2) meals.

(b) The jailer or jail administrator may elect to provide only two (2) meals on Saturdays, Sundays, and holidays, if both meals still meet the minimum 2,400 calories per day. Condiments shall not be included in the daily caloric totals. If the jailer or jail administrator elects to serve only two (2) meals, more than sixteen (16) hours shall not elapse between any two (2) meals.

(4) The jailer or jail administrator shall provide for religious diets in accordance with 501 KAR 3:130 after review and approval by [of] religious authority.

(5) The jailer or jail administrator shall provide for medical diets if prescribed by a medical authority. This shall include any special dietary requirements to ensure adequate nutrition is provided for pregnant prisoners.

(6) The jailer or jail administrator shall maintain accurate records of all meals served.

(7) Food shall not be used for disciplinary purposes.

(8) A nutritionist or dietician shall approve the nutritional value of the jail menu on an annual basis.

(9) Jail personnel shall directly supervise all food prepared within the jail.

(10) All food shall be served under the direct supervision of jail personnel.

(11) The jail shall have sufficient cold and dry food storage facilities.

(12) The jailer, jail administrator, or jail personnel shall inspect the food service area daily.

(13) Canteen food items purchased by prisoners may be stored



or prepared in amounts that do not pose a threat to the health or security of the facility[institution].

The Jail Standards Review Commission established pursuant to KRS 441.055(1)(b) has approved the standards in this administrative regulation at its meeting on January 8, 2024, prior to its filing with the Legislative Research Commission in compliance with KRS 13A.120(3), 13A.220(6)(a), and 441.055(2).

COOKIE CREWS, Commissioner

APPROVED BY AGENCY: February 6, 2024

FILED WITH LRC: February 15, 2024 at 8:50 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on April 23, 2024, at 9:00 a.m. at the Justice and Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through April 30, 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: Amy V. Barker, Assistant General Counsel, Justice and Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-3279, fax (502) 564-6686, email Justice.RegContact@ky.gov.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Amy Barker

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes minimum standards for food services in full-service jails.

(b) The necessity of this administrative regulation: This administrative regulation complies with the requirement to adopt jail standards in KRS 441.055(1)(a), (b).

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation complies with the requirement to adopt jail standards in KRS 441.055(1)(a), (b).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It establishes minimum standards to be followed for food services in full-service jails.

(2) If 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 enlarges the necessity language, corrects typographical errors, and changes the term "institution" to "facility." It also adds that the jailer or jail administrator shall ensure special dietary requirements are met for pregnant prisoners as required by statute.

(b) The necessity of the amendment to this administrative regulation: The amendment revises the standards as part of the review process in KRS 441.055(1)(b).

(c) How the amendment conforms to the content of the authorizing statutes: The amendment revises the standards as part of the review process in KRS 441.055(1)(b).

(d) How the amendment will assist in the effective administration of the statutes: It up-dates the minimum food services standards as required by KRS 441.055.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects approximately 74 county and regional jails and their staff, approximately 50 Department of Corrections employees, including 12 Local Facilities staff, and approximately 19,683 prisoners in the jails, including 5,682 Class C and D felons.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Jailers and jail administrators will have to provide any special dietary requirements for pregnant prisoners for adequate nutrition.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Additional cost are not anticipated.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The regulation is clearer.

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

(a) Initially: Additional cost is not anticipated.

(b) On a continuing basis: Additional cost is not anticipated.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: State budgeted funds for the Department of Corrections and county budgeted funds for jail operating expenses.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: Fees are not established or increased.

(9) TIERING: Is tiering applied? No. The standards apply equally to all full-service jails.

#### FISCAL NOTE

(1) What 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 Corrections and full-service county jails that house state inmates.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 196.035, 197.020, 217.280-217.390, 441.055

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

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

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

(c) How much will it cost to administer this program for the first year? For fiscal year 2023, the department paid the local jails approximately \$139,275,752.09 for the housing, transportation, medical care and programming incentives for state inmates. Full-service jails receive the largest portion of this funding. In addition, the department incurred approximately \$1,669,365.54 in staff salaries and administrative costs. The jails will have some staff and administrative costs, but this program is a source of revenue for them.

(d) How much will it cost to administer this program for subsequent years? Approximately the same as in (c).

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

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

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

are not anticipated.

(c) How much will it cost the regulated entities for the first year? The regulation impacts how the jails operate, but does not increase costs from what is budgeted for the biennium.

(d) How much will it cost the regulated entities for subsequent years? The regulation impacts how the jails operate, but does not increase costs from what is budgeted for the biennium.

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

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

**JUSTICE AND PUBLIC SAFETY CABINET**  
**Department of Corrections**  
**(Amendment)**

**501 KAR 3:140. Prisoner rights.**

RELATES TO: KRS 441.045, 441.047, 441.055

STATUTORY AUTHORITY: KRS 196.035, 197.020, 441.055

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035 requires the secretary to promulgate administrative regulations necessary or suitable for the proper administration of the functions of the cabinet or any division in the cabinet. KRS 441.055(1) requires the Department of Corrections to promulgate administrative regulations establishing minimum standards for jails that house state prisoners. This administrative regulation establishes procedures to ensure the protection of rights of prisoners in [these] full-service jails.

Section 1. Policy and Procedure. (1) Each jail shall have a written statement of prisoner rights that shall address:

- (a) Access to court;
- (b) Access to attorney;
- (c) Mail;
- (d) Telephone;
- (e) Grievance procedure;
- (f) Search and seizure;
- (g) Disciplinary procedure;
- (h) Racial segregation;
- (i) Medical care;
- (j) Mental health care, if available; and
- (k) Religion.

(2) The statement of prisoner rights shall be made available to all inmates being assigned to general housing units. The prisoner rights may be posted in a conspicuous place, provided in hardcopy[hard-copy] format, or provided through closed circuit television.

(3) The jailer, jail administrator, or jail personnel shall not prohibit a prisoner's right of access to the judicial process.

(4) The jailer, jail administrator, or jail personnel shall ensure the right of a prisoner to have confidential access to his attorney or authorized representative. Confidential prisoner access to the prisoner's attorney through unmonitored phone lines in non-contact visitation areas shall be permitted.

(a) To the extent available in the jail and reasonable for use by an attorney, "confidential access" shall include a meeting with counsel in a private room in the jail. The room may be used for purposes other than attorney-client visits, but shall meet the conditions established in this paragraph:

1. Jail employees and other prisoners shall not enter the room during the attorney-client meeting, unless an emergency or the security of the jail requires.

2. The room should be located so that conversations in ordinary tones with the door closed cannot be overheard by others outside the room.

3. If the room is located so that jail personnel could not hear a call for aid from the room with the door closed, then the room shall contain some other means to summon aid.

4. The room shall contain a desk or table and seating for an attorney, an assistant, and a prisoner.

5. The room shall have a means to access electricity suitable for plugging in a laptop or portable television, if the jail allows these items to be brought into the jail by an attorney, for the purpose of viewing discovery or other litigation materials. The jail may provide a laptop, portable television, or other means for viewing discovery.

6. The attorney shall be permitted access to a telephone, unless an emergency or the security of the jail requires otherwise. The jail may provide a phone in the meeting room or in another location within the jail.

(b) Prisoners shall not be given access to cellular phones under any circumstances.

(c) Prisoners shall not be given access to a laptop, except to the extent required to review litigation materials in the immediate presence of an attorney or authorized representative, if the jail allows a laptop to be brought in for this purpose.

(d) The jail shall address in its policy and procedures manual the handling of legal mail sent or received by a prisoner. The policy shall include provisions concerning the constitutional limits on reading prisoner legal mail and opening and inspecting legal mail in the presence of the inmate.

(e) The jail shall address in its policy and procedures manual reasonable access for a prisoner to a telephone to make collect calls to counsel. The policy shall include provisions for any required actions by the prisoner or attorney to allow the telephone system to prevent recording of the attorney-client call.

(5) The jailer or jail administrator shall have a written policy and procedure that defines the jail's visitation rules, which shall include the requirements established in this subsection.

(a) There shall be a schedule identifying no fewer than two (2) visiting days each week, one (1) of which shall be during the weekend.

(b) At least one (1) visit per week per prisoner shall be allowed except if a prisoner is assessed a disciplinary penalty for an infraction of rules governing visitation or the prisoner's current institutional behavior presents an imminent danger or threat of danger to staff or other prisoners.

(c) A visit shall not be less than fifteen (15) minutes.

(d) Two (2) or more persons permitted to visit at the same time shall count as a single visit.

(e) Children, if accompanied by an adult, shall be permitted to visit a prisoner.

(6) Attorneys, clergy, and health care staff shall be permitted to visit a prisoner at reasonable hours, other than during regularly scheduled visiting hours and shall not count as an allotted visit.

(7) Each visitor shall register before admission and shall be denied admission for refusal to register, refusal to consent to search, or for a violation of the visitation rules established pursuant to subsection (5) of this section or established in subsection (6) of this section.

(8) A prisoner shall not be restricted in regard to whom he may have as a visitor unless the jailer or jail administrator determines to exclude the visitor on the basis of one (1) or more of the following conditions:

(a) The visitor:

- 1. Represents a clear and present danger to security;
- 2. Has a past history of disruptive conduct at the jail;
- 3. Is under the influence of alcohol or drugs;
- 4. Refuses to submit to a search; or
- 5. Refuses to show proper identification; or

(b) The prisoner refuses the visit.

(9) Except for visitors pursuant to subsection (6) of this section, the jail personnel may monitor and record visitor and prisoner conversation for security reasons. Notification shall be posted in a conspicuous location in the visiting areas.

Section 2. Mail. (1) The jailer or jail administrator shall have written policy and procedure for receiving and sending mail that:

- (a) Protects prisoners' personal rights; and
- (b) Provides for security practices consistent with the operation of the jail.

(2) A prisoner shall be allowed to correspond with anyone if the correspondence does not violate state or federal law. Caution shall be taken to protect prisoner rights in accordance with court decisions regarding correspondence. A jailer or jail administrator may enact a policy prohibiting the sending or receipt of prisoner-to-prisoner mail. The policy shall permit the jailer or jail administrator discretion to grant the privilege.

(3) Incoming mail may be opened and inspected for contraband prior to delivery. Mail received from the court, an attorney of record, or a public official may be opened and inspected only in the presence of the prisoner. After being opened and inspected in the presence of the prisoner, mail received from the court, an attorney of record, or a public official may be provided to the prisoner via an electronic copy through a secure, personal account.

(4) Measures to prevent receipt of prisoner mail containing intoxicants, including fabricated legal mail shall be permitted.

Section 3. Telephone. (1) A newly admitted prisoner shall be permitted a reasonable number of local or collect long distance telephone calls to an attorney of the prisoner's choice, or to a family member, as soon as practical, generally within one (1) hour after arrival, until one (1) call has been completed.

(2) The jailer, jail administrator, or jail personnel shall maintain a log of telephone calls made by a prisoner during the admission procedure unless those calls are made on a telephone in the housing area. The log shall document the date, time, and party contacted.

(3) Any prisoner admitted to a facility for a temporary stay of forty-eight (48) hours or less before proceeding or returning to another destination shall be considered in transit and therefore not entitled to a phone call.

(4) Written policy and procedure shall permit each prisoner to complete at least one (1) telephone call each week. The expense incurred for a call shall be borne by the prisoner or the party called.

(5) A minimum of five (5) minutes shall be allotted for each phone call.

(6) If calls are monitored, the prisoner shall be notified.

(7) Telephone privileges may be suspended for a designated period of time if telephone rules are violated.

Section 4. Religion. (1) A prisoner shall be granted the right to practice his religion within limits necessary to maintain institution order and security.

(2) Each prisoner shall be afforded an opportunity to participate in religious services and receive religious counseling within the jail.

(3) A prisoner shall not be required to attend or participate in religious services or discussions.

Section 5. Access to Programs. The jailer, jail administrator, or jail personnel shall ensure each prisoner equal access to programs and services, if the security and order of the jail will not be jeopardized.

Section 6. Grievance Procedure. The jailer or jail administrator shall have a written prisoner grievance procedure. The procedures shall include provisions for:

- (1) A response to each written grievance within ten (10) days;
- (2) Equal access for each prisoner;
- (3) A guarantee against reprisal; and
- (4) Resolution of legitimate complaints.

Section 7. Disciplinary Rights. Each jail shall have a written policy and procedure for maintaining discipline, consistent with constitutional requirements for due process.

Section 8. Medical. Each prisoner shall be afforded access to necessary medical care.

The Jail Standards Review Commission established pursuant to KRS 441.055(1)(b) has approved the standards in this administrative regulation at its meeting on January 8, 2024, prior to its filing with the Legislative Research Commission in compliance with KRS 13A.120(3), 13A.220(6)(a), and 441.055(2).

COOKIE CREWS, Commissioner

APPROVED BY AGENCY: February 6, 2024

FILED WITH LRC: February 15, 2024 at 8:50 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on April 23, 2024, at 9:00 a.m. at the Justice and Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through April 30, 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: Amy V. Barker, Assistant General Counsel, Justice and Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-3279, fax (502) 564-6686, email Justice.RegContact@ky.gov.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Amy Barker

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes minimum standards to protect prisoner rights in full-service jails.

(b) The necessity of this administrative regulation: This administrative regulation complies with the requirement to adopt jail standards in KRS 441.055(1)(a), (b).

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation complies with the requirement to adopt jail standards in KRS 441.055(1)(a), (b).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It establishes minimum standards to be followed for prisoner rights in full-service jails.

(2) If 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 enlarges the necessity language and removes unnecessary words. It adds permission for prisoners to have confidential, unmonitored phone access to the prisoner's attorney in non-contact visitation areas, provides standards for prisoners to have access to electronic copies of legal mail, and permits measures to prevent receipt of prisoner mail containing intoxicants and fabricated legal mail as required by statute.

(b) The necessity of the amendment to this administrative regulation: The amendment revises the standards as part of the review process in KRS 441.055(1)(b).

(c) How the amendment conforms to the content of the authorizing statutes: The amendment revises the standards as part of the review process in KRS 441.055(1)(b).

(d) How the amendment will assist in the effective administration of the statutes: It up-dates the minimum prisoner rights standards as required by KRS 441.055.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects approximately 74 county and regional jails and their staff, approximately 50 Department of Corrections employees, including 12 Local Facilities staff, and approximately 19,683 prisoners in the jails, including 5,682 Class C and D felons.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative

regulation, if new, or by the change, if it is an amendment, including:

(a) List 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 jailer, jail administrator, or jail personnel will have to permit prisoners to have confidential access to the prisoner's attorney through an unmonitored phone line in a non-contact visitation area. Employees will have to open legal mail and inspect it in the presence of the prisoner and may provide it to the prisoner by electronic means. Jail personnel may use measures to prevent receipt of intoxicants or fabricated legal mail via prisoner mail.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): An additional cost is not anticipated.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The regulation is clearer.

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

(a) Initially: An additional cost is not anticipated.

(b) On a continuing basis: An additional cost is not anticipated.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: State budgeted funds for the Department of Corrections and county budgeted funds for jail operating expenses.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: Fees are not established or increased.

(9) TIERING: Is tiering applied? No. The standards apply equally to all full-service jails.

#### FISCAL NOTE

(1) What 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 Corrections and full-service county jails that house state inmates.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 196.035, 197.020, 441.055

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

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

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

(c) How much will it cost to administer this program for the first year? For fiscal year 2023, the department paid the local jails approximately \$139,275,752.09 for the housing, transportation, medical care and programming incentives for state inmates. Full-service jails receive the largest portion of this funding. In addition, the department incurred approximately \$1,669,365.54 in staff salaries and administrative costs. The jails will have some staff and administrative costs, but this program is a source of revenue for them.

(d) How much will it cost to administer this program for subsequent years? Approximately the same as in (c).

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

(a) How much cost savings will this administrative regulation

generate for the regulated entities for the first year? Cost savings are not anticipated.

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

(c) How much will it cost the regulated entities for the first year? The regulation impacts how the jails operate, but does not increase costs from what is budgeted for the biennium.

(d) How much will it cost the regulated entities for subsequent years? The regulation impacts how the jails operate, but does not increase costs from what is budgeted for the biennium.

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

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

### JUSTICE AND PUBLIC SAFETY CABINET Department of Corrections (Amendment)

#### 501 KAR 7:010. Definitions for 501 KAR Chapter 7.

RELATES TO: KRS 67.900, 67A.028, 67B.020(1), 441.045, 441.055, Ky. Const. Sec. 99, 152

STATUTORY AUTHORITY: KRS 196.035, 441.055

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035 authorizes the secretary to promulgate administrative regulations necessary or suitable for the proper administration of the functions of the cabinet or any division in the cabinet. KRS 441.055(1) requires the Department of Corrections to promulgate administrative regulations establishing minimum standards for jails that house state prisoners. This administrative regulation establishes definitions for 501 KAR Chapter 7, regulating restricted custody centers.

Section 1. Definitions. (1) "Automatic fire extinguishing system" means an approved system of devices and equipment that automatically detects a fire and discharges an approved fire extinguishing agent onto or in the area of a fire in accordance with 815 KAR 7:120.

(2) "Department" is defined by KRS 441.005(5).

(3) "Governing authority" means a county fiscal court, urban-county government, charter county government, consolidated local government, unified local government, or regional jail authority.

(4) "Jail administrator" means:

(a) The official appointed by a regional jail authority and charged with the responsibility of administering the regional jail as defined by KRS 441.005(7);

(b) The administrator or executive director of a department as defined by KRS 67B.020(1); or

(c) The administrator or director of a correctional services division as created by KRS 67A.028.

(5) "Jailer" means[;]

[{a}] The official duly elected or appointed pursuant to Section 99 or 152 of the Kentucky Constitution, charged with the responsibility of administering the center[;]

(b) A department as defined by KRS 67B.020(1); or

(c) A correctional services division as created by KRS 67A.028;  
or.

(d) Jail administrator[;]

(6) "Jail personnel" is defined by KRS 441.005(6).

(7) "Medical authority" means the person or persons licensed to provide medical care to prisoners in the jail's custody.

(8) "Pat" or "frisk" means a manual search of a clothed person

and includes a visual inspection of the open mouth.

(9) "Prisoner" is defined by KRS 441.005(3).

(10) "Prisoner living area" means a group of rooms or cells which provide housing for the prisoner population.

(11) "Probing of body cavities" means a manual or instrument search of a person's oral, anal, vaginal, or other body cavity, performed by medical personnel.

(12) "Restricted custody center" or "center" means a facility or area separate from the jail used for the housing of:

(a) Sentenced prisoners who have been approved for educational, work, or program participation release; and

(b) Pretrial prisoners who have been approved by the court for educational, work, or program participation release.

(13) "Security area" means a defined space whose physical boundaries have controlled ingress and egress.

(14) "Sexually abusive conduct" means:

(a) Sexual contact, sexual intercourse, and deviate sexual intercourse, as defined by KRS 510.010;

(b) Sexual abuse as defined by 28 C.F.R. 115.6; and

(c) Other types of similar sexually based conduct.

(15) "Strip search" means a body search during which a person is required to open or remove clothing, and during which a person is subject to visual inspection of the torso, female breast, genital area, and anal area, as well as other body cavities.

(16) "Telehealth" means the use of interactive audio, video, or other electronic media to deliver health care. It includes the use of electronic media for diagnosis, consultation, transfer of health or medical data, and continuing education.

The Jail Standards Review Commission established pursuant to KRS 441.055(1)(b) has approved the standards in this administrative regulation at its meeting on January 8, 2024, prior to its filing with the Legislative Research Commission in compliance with KRS 13A.120(3), 13A.220(6)(a), and 441.055(2).

COOKIE CREWS, Commissioner

APPROVED BY AGENCY: February 6, 2024

FILED WITH LRC: February 15, 2024 at 8:50 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on April 23, 2024, at 9:00 a.m. at the Justice and Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through April 30, 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: Amy V. Barker, Assistant General Counsel, Justice and Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-3279, fax (502) 564-6686, email Justice.RegContact@ky.gov.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Amy Barker

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes definitions for 501 KAR Chapter 7, which regulates restricted custody centers.

(b) The necessity of this administrative regulation: This administrative regulation complies with the requirement to adopt jail standards in KRS 441.055(1)(a), (b). Definitions are needed to explain terms used in the chapter.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 196.035 gives authority to promulgate administrative regulations necessary or suitable for the proper administration of the functions of the cabinet or any division in the cabinet. This administrative regulation complies with the requirement

to adopt jail standards in KRS 441.055(1)(a), (b).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It establishes definitions for the regulation of restricted custody centers that house state prisoners.

(2) If 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 to the necessity language. The amendment revises the definition of Jailer to match language in KRS 67B.020(1) and 67A.028, and add KRS441.005(7).

(b) The necessity of the amendment to this administrative regulation: It revises the definitions used within Chapter 7 as part of the standard review process in KRS 441.055(1)(b).

(c) How the amendment conforms to the content of the authorizing statutes: KRS 196.035 gives authority to promulgate administrative regulations necessary or suitable for the proper administration of the functions of the cabinet or any division in the cabinet. The amendment revises the standards as part of the review process in KRS 441.055(1)(b).

(d) How the amendment will assist in the effective administration of the statutes: It provides current and clear definitions for Chapter 7.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects approximately 35 county and regional jails that house Class C and D felons and their staff, approximately 50 Department of Corrections' employees, including 12 Local Facilities staff, and approximately 1,530 Class C and D felons in the restricted custody centers.

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

(a) List 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 need to apply the new definitions in their operations.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Additional cost is not anticipated.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Jail staff will have a clear understanding of the definitions within Chapter 7.

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

(a) Initially: An increase in cost is not anticipated.

(b) On a continuing basis: An increase in cost is not anticipated.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: State budgeted funds for the Department of Corrections and county budgeted funds for jail operating expenses.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: Fees are not established or increased.

(9) TIERING: Is tiering applied? No. Definitions apply equally to all restricted custody centers.

#### FISCAL NOTE

(1) What 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 Corrections and restricted custody centers.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 196.035, 441.055

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

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

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

(c) How much will it cost to administer this program for the first year? For fiscal year 2023, the department paid the local jails approximately \$139,275,752.09 for the housing, transportation, and medical care and programming incentives for state inmates. Full-service jails receive the largest portion of this funding. Plus, the department incurred approximately \$1,669,365.54 in staff salaries and administrative costs. The jails will have some staff and administrative costs, but this program is a source of revenue for them.

(d) How much will it cost to administer this program for subsequent years? Approximately the same as in (c).

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

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

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

(c) How much will it cost the regulated entities for the first year? The regulation impacts how the jails operate, but does not increase costs from what is budgeted for the biennium.

(d) How much will it cost the regulated entities for subsequent years? The regulation impacts how the jails operate, but does not increase costs from what is budgeted for the biennium.

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

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

**JUSTICE AND PUBLIC SAFETY CABINET  
Department of Corrections  
(Amendment)**

**501 KAR 7:040. Personnel.**

RELATES TO: KRS 441.045, 441.055

STATUTORY AUTHORITY: KRS 196.035, 197.020, 441.055

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035 authorizes the secretary to promulgate administrative regulations necessary or suitable for the proper administration of the functions of the cabinet or any division in the cabinet. KRS 441.055(1) requires the Department of Corrections to promulgate administrative regulations establishing minimum standards for jails that house state prisoners. This administrative regulation establishes personnel procedures to be followed in restricted custody centers.

Section 1. Staffing. (1) Each jail shall provide twenty-four (24) hour awake supervision for all prisoners by providing a minimum of

one (1) jail personnel excluding jail personnel designated for communication. If requested by the jailer or governing authority, the department may conduct a staffing analysis.

(2) If a female prisoner is housed in the center, the center shall provide a female deputy to perform twenty-four (24) hour awake supervision.

Section 2. Qualifications. (1) Persons who are at least eighteen (18) years old may be appointed or employed to work inside the secure perimeter of the jail.

(2) A person under the age of twenty-one (21) years:

(a) Shall not:

1. Be employed as a deputy jailer;

2. Possess or exercise peace officer powers;

3. Function in a role similar to that of a deputy jailer or correctional officer; or

4. Be in a position that involves supervision over prisoners or persons yet to be booked into the jail; and

(b) Shall have a high school diploma or a high school equivalency diploma [Sworn jail personnel shall be at least twenty-one (21) years of age].

Section 3. Compensation. Each employee shall receive a wage that is at least equal to the State Minimum Wage Law except if Federal Minimum Wage Law applies.

Section 4. Policy and Procedure. Written policy shall specify that equal employment opportunities exist for every position.

Section 5. Physical Fitness. The jailer shall ensure that a level of physical fitness is maintained that will allow each employee to satisfactorily perform the employee's duties.

Section 6. Code of Ethics.

(1) The jailer shall make a written code of ethics available to each employee.

(2) The written code of ethics shall be incorporated in the center's policy and procedures manual and shall include the following:

(a) An employee shall not:

1. Exchange a personal gift or a favor with a prisoner, prisoner's family, or prisoner's friend;

2. Accept any form of bribe or unlawful inducement;

3. Perform duties under the influence of an intoxicant or consume an intoxicant while on duty;

4. Violate or disobey an established rule, administrative regulation, or lawful order from a superior;

5. Discriminate against any prisoner on the basis of race, religion, creed, gender, national origin, or other individual characteristic;

6. Employ corporal punishment or unnecessary physical force;

7. Subject a prisoner to physical or mental abuse;

8. Intentionally demean or humiliate a prisoner;

9. Bring a weapon or an item declared as contraband into the center without proper authorization;

10. Engage in critical discussion of jail employees or any prisoner in the presence of a prisoner;

11. Divulge confidential information without proper authorization;

12. Withhold information which, in so doing, threatens the security of the center, jail employees, visitors, or the community;

13. Through negligence, endanger the well-being of self or others;

14. Engage in any form of business or profitable enterprise with a prisoner;

15. Inquire about, disclose, or discuss details of a prisoner's crime other than as may be absolutely necessary in performing official duties;

16. Enter into an intimate, personal relationship with a prisoner while the prisoner is incarcerated at the same jail by which the employee is employed; or

17. Enter into an intimate, personal relationship with a former prisoner of the jail within six (6) months of that prisoner's release.

(b) An employee shall:

1. Comply with established rules, administrative regulations, and lawful orders from superiors;
  2. Treat prisoners in a fair, impartial manner; and
  3. Report a violation of the code of ethics to the jailer.
- (3) A violation of the code of ethics shall be made a part of the employee's personnel file.

The Jail Standards Review Commission established pursuant to KRS 441.055(1)(b) has approved the standards in this administrative regulation at its meeting on August 15, 2023, prior to its filing with the Legislative Research Commission in compliance with KRS 13A.120(3), 13A.220(6)(a), and 441.055(2).

COOKIE CREWS, Commissioner

APPROVED BY AGENCY: February 6, 2024

FILED WITH LRC: February 15, 2024 at 8:50 a.m.

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:** A public hearing on this administrative regulation shall be held on April 23, 2024, at 9:00 a.m. at the Justice and Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through April 30, 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:** Amy V. Barker, Assistant General Counsel, Justice and Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-3279, fax (502) 564-6686, email Justice.RegContact@ky.gov.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Amy Barker

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes personnel procedures to be followed in restricted custody centers.

(b) The necessity of this administrative regulation: This administrative regulation complies with the requirement to adopt jail standards in KRS 441.055(1)(a), (b).

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation complies with the requirement to adopt jail standards in KRS 441.055(1)(a), (b).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It establishes personnel procedures to be followed in restricted custody centers.

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

(a) How the amendment will change this existing administrative regulation: The amendment revises section 2 to comply with changes to KRS 441.055(1)(a)2.b.

(b) The necessity of the amendment to this administrative regulation: The amendment revises the standards as part of the review process in KRS 441.055(1)(b).

(c) How the amendment conforms to the content of the authorizing statutes: The amendment revises the standards as part of the review process in KRS 441.055(1)(b).

(d) How the amendment will assist in the effective administration of the statutes: It complies with statutory changes.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects approximately 35 county and regional restricted custody centers that house reduced custody Class C and D felons and their staff, approximately 50 Department of Corrections employees, including 12 Local Facilities staff, and approximately 1,530 inmates in the restricted custody centers.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Jails will have to comply with the statutory and regulatory qualifications required for jail staff.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): An estimated cost for this change is unknown and the change is required by statute.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The regulation is clearer and adds statutory requirements.

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

(a) Initially: An increase in cost is not anticipated.

(b) On a continuing basis: An increase in cost is not anticipated.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: State budgeted funds for the Department of Corrections and county budgeted funds for jail operating expenses.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: Fees are not established or increased.

(9) TIERING: Is tiering applied? No. The standards apply equally to all restricted custody centers.

#### FISCAL NOTE

(1) What 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 Corrections and restricted custody centers.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 196.035, 197.020, 441.055

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

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

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

(c) How much will it cost to administer this program for the first year? For fiscal year 2023, the department paid the local jails approximately \$139,275,752.09 for the housing, transportation, and medical care of and programming incentives for state inmates. Full service jails receive the largest portion of this funding. Plus, the department incurred approximately \$1,669,365.54 in staff salaries and administrative costs. The jails will have some staff and administrative costs, but this program is a source of revenue for them.

(d) How much will it cost to administer this program for subsequent years? Approximately the same as in (c).

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

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

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

(c) How much will it cost the regulated entities for the first year? The regulation impacts how the jails operate, but does not increase costs from what is budgeted for the biennium.

(d) How much will it cost the regulated entities for subsequent years? The regulation impacts how the jails operate, but does not increase costs from what is budgeted for the biennium.

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

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

**JUSTICE AND PUBLIC SAFETY CABINET  
Department of Corrections  
(Amendment)**

**501 KAR 7:080. Sanitation; hygiene.**

RELATES TO: KRS 441.045, 441.055

STATUTORY AUTHORITY: KRS 196.035, 197.020, 441.055

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035 authorizes the secretary to promulgate administrative regulations necessary or suitable for the proper administration of the functions of the cabinet or any division in the cabinet. KRS 441.055(1) requires the Department of Corrections to promulgate administrative regulations establishing minimum standards for jails that house state prisoners. This administrative regulation establishes procedures for proper sanitation and hygiene in restricted custody centers.

Section 1. Procedures. (1) The jailer shall provide for:

- (a) The control of vermin and pests; and
- (b) Both solid and liquid waste disposal.

(2) The jailer shall have a written preventative maintenance plan which includes schedules for:

- (a) Cleaning various specified locations and items in the center;
- (b) Inspections by the jailer;
- (c) Trash and garbage removal; and
- (d) Periodic inspection and maintenance of specified mechanical equipment.

(3) The center shall have fresh, purified air circulating within each prisoner living and activity area.

(4) The center shall furnish clean, sanitized bedding to prisoners, including:

- (a) One (1) penal mattress;
- (b) One (1) blanket, if conditions require;
- (c) Two (2) sheets;
- (d) One (1) pillow, if not part of the mattress; and
- (e) One (1) pillowcase, if applicable.

(5) Prisoner bedding shall be cleaned on a regular basis according to the schedule established in this subsection.

(a) Sheets, pillowcases, and mattress cover shall be cleaned at least once per week and cleaned prior to reissue to another prisoner[inmate].

(b) Blankets shall be laundered upon reissue or quarterly, whichever is sooner.

(c) Mattresses and pillows shall be cleaned quarterly and cleaned prior to reissue to another inmate.

(6) Each prisoner shall be issued a clean towel. Towels shall be

laundered at least twice weekly and laundered prior to reissue to another inmate. Prisoners shall not be required to be without a towel while laundry is being processed.

(7) Provisions shall be made for laundering prisoner clothing at least twice weekly. Prisoners shall not be required to be without clean clothing while laundry is being processed.

(8) Floors, toilets, and sinks shall be cleaned daily or more often as necessary.

(9) Showers shall be cleaned on at least a weekly basis.

(10)(a) Prisoners shall be issued or permitted to obtain the following hygienic items:

- 1. Soap;
- 2. Toothbrush;
- 3. Toothpaste; and
- 4. Toilet paper[; and
- 5. ~~Female sanitary supplies, if applicable~~].

(b) An indigent prisoner shall be furnished these items by the center.

(11) Hair cutting services or sanitized hair cutting equipment shall be available to all prisoners.

(12) All prisoners shall be permitted to shave a minimum of two (2) times per week. Communal razors shall not be used. A sanitized electric razor may be substituted with jailer approval.

(13) Prisoners assigned to prisoner living areas shall be issued an adequate number of sanitary supplies, if applicable.

~~(14)~~[(13)] All prisoners shall be provided shower facilities within twenty-four (24) hours of admission. Prisoners shall be permitted to shower daily.

~~(15)~~[(14)] All prisoners in the center shall be provided with hot and cold running water in showers and lavatories.

The Jail Standards Review Commission established pursuant to KRS 441.055(1)(b) has approved the standards in this administrative regulation at its meeting on August 15, 2023, prior to its filing with the Legislative Research Commission in compliance with KRS 13A.120(3), 13A.220(6)(a), and 441.055(2).

COOKIE CREWS, Commissioner

APPROVED BY AGENCY: February 6, 2024

FILED WITH LRC: February 15, 2024 at 8:50 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on April 23, 2024, at 9:00 a.m. at the Justice and Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through April 30, 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: Amy V. Barker, Assistant General Counsel, Justice and Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-3279, fax (502) 564-6686, email Justice.RegContact@ky.gov.

**REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT**

Contact Person: Amy Barker

(1) Provide a brief summary of:

(a) What this administrative regulation does: It establishes minimum standards to be followed for proper sanitation and hygiene in restricted custody centers.

(b) The necessity of this administrative regulation: This administrative regulation complies with the requirement to adopt jail standards in KRS 441.055(1)(a), (b).

(c) How this administrative regulation conforms to the content of the authorizing statutes: It establishes sanitation and hygiene procedures to be followed in restricted custody centers as required by KRS 441.055.



(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It establishes minimum sanitation and hygiene requirements for restricted custody centers.

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

(a) How the amendment will change this existing administrative regulation: The amendment enlarges the necessity language, changes the term "inmate" to "prisoner", and revises and changes the location of language that requires availability of female sanitary supplies.

(b) The necessity of the amendment to this administrative regulation: The amendment revises the standards as part of the review process in KRS 441.055(1)(b).

(c) How the amendment conforms to the content of the authorizing statutes: The amendment revises the standards as part of the review process in KRS 441.055(1)(b).

(d) How the amendment will assist in the effective administration of the statutes: It ensures appropriate sanitation and hygiene in restricted custody centers.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects approximately 35 county and regional restricted custody centers that house reduced custody Class C and D felons and their staff, approximately 50 Department of Corrections' employees, including 12 Local Facilities staff, and approximately 1,530 inmates in the restricted custody centers.

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

(a) List 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 jail will have to provide an adequate number of sanitary supplies.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Additional cost is not anticipated.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Sanitary conditions for prisoners in restricted custody centers will be better.

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

(a) Initially: Additional cost is not anticipated.

(b) On a continuing basis: Additional cost is not anticipated.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: State budgeted funds for the Department of Corrections and county budgeted funds for jail operating expenses.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: Fees are not established or increased.

(9) TIERING: Is tiering applied? No. The standards apply equally to all restricted custody centers.

#### FISCAL NOTE

(1) What 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 Corrections and restricted custody centers.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 196.035, 197.020, 441.055

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire

departments, or school districts) for the first year? Revenue is not generated by this administrative regulation.

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

(c) How much will it cost to administer this program for the first year? For fiscal year 2023, the department paid the local jails approximately \$139,275,752.09 for the housing, transportation, and medical care and programming incentives for state inmates. Full-service jails receive the largest portion of this funding. In addition, the department incurred approximately \$1,669,365.54 in staff salaries and administrative costs. The jails will have some staff and administrative costs, but this program is a source of revenue for them.

(d) How much will it cost to administer this program for subsequent years? Approximately the same as in (c).

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

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

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

(c) How much will it cost the regulated entities for the first year? The regulation impacts how the jails operate, but does not increase costs from what is budgeted for the biennium.

(d) How much will it cost the regulated entities for subsequent years? The regulation impacts how the jails operate, but does not increase costs from what is budgeted for the biennium.

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

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

#### JUSTICE AND PUBLIC SAFETY CABINET Department of Corrections (Amendment)

##### 501 KAR 7:090. Medical services.

RELATES TO: KRS 72.025, 441.045, 441.055, 441.560

STATUTORY AUTHORITY: KRS 196.035, 197.020, 441.055, 441.560

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035 authorizes the secretary to promulgate administrative regulations necessary or suitable for the proper administration of the functions of the cabinet or any division in the cabinet. KRS 197.020(1)(e) requires the Department of Corrections to promulgate administrative regulations to require telehealth services in county jails. KRS 441.560 requires the department to promulgate administrative regulations relating to the transfer of prisoners to the department for medical treatment and care. KRS 441.055 requires the Department of Corrections to promulgate administrative regulations establishing minimum standards for jails that house state prisoners. This administrative regulation establishes procedures to provide proper

medical services in restricted custody centers.

Section 1. Medical Services. (1) The center's medical services shall be provided by contracting with a Kentucky licensed health care provider.

(2) The medical authority shall be a licensed practical nurse (LPN), a higher level of licensed nurse, a licensed medical doctor, or licensed doctor of osteopathy. Telehealth services may be used.

(3) The health care staff and mental health professionals shall not be restricted by the jailer in the performance of their duties except to adhere to the center's security requirements.

(4) All health care staff working in the center shall comply with state licensure and certificate requirements commensurate with similar health care personnel working elsewhere in the community. Copies of the licenses and certificates for health care staff employed by the center shall be maintained on file within the center.

(5) A daily medical log shall be maintained documenting specific medical treatment rendered in the center. This log shall be kept current to the preceding hour.

(6) Prisoners shall not perform any medical functions within the center.

(7) Prisoners shall be informed verbally and in writing at the time of admission the methods of gaining access to medical care within the center.

(8) All medical procedures shall be performed according to orders issued by the responsible medical authority.

(9) Medical screening information shall be transferred to the center from the jail on each prisoner. Jail personnel shall ensure that the information is current when the prisoner is transferred. The medical screening inquiry shall include:

(a) Current illnesses and health problems;

(b) Medications taken and special health requirements;

(c) Screening of other health problems designated by the medical authority;

(d) Behavioral observation, state of consciousness, and mental status;

(e) Notation of body deformities, markings, bruises, lesions, jaundice, ease of movement, and other distinguishing characteristics;

(f) Condition of skin and body orifices, including rashes and infestations; and

(g) Disposition and referral of prisoners to qualified medical personnel on an emergency basis.

(10) Medical, dental, and psychological care for prisoners shall be provided in accordance with KRS Chapter 441.

(11) Medical research shall not be permitted on any prisoner in the center.

(12) Access to the prisoner's medical file shall be controlled by the medical authority and the jailer. The medical record shall be separate from custody and other administrative records of the center.

(13) The jailer or designee shall notify the coroner, if a prisoner dies while in the jail's custody, to allow for a postmortem examination pursuant to KRS 72.025.

(14) The center shall have first aid kits available at all times.

(15) If a urine surveillance program is in effect, there shall be written procedures for carrying out the program

(16) Telehealth services shall be provided for prisoners.

Section 2. Medical Transfers pursuant to KRS 441.560. (1) A jailer may request that a prisoner be transferred to the department for necessary medical treatment and care if the prisoner:

(a) Is injured;

(b) Is pregnant;

(c) Becomes sick or ill;

(d)

1. Is severely and persistently mentally ill; and

2. Is presenting an imminent risk of harm to self or others; or

(e) Requires specialized medical care or long-term medical care which is not available at the local jail.

(2) The transfer request shall be submitted to the Classification Branch in writing and shall contain the following information:

(a) Prisoner's name;

(b) Prisoner's Social Security number;

(c) County where currently housed;

(d) Inmate number;

(e) Pending charge or conviction and whether felony or misdemeanor;

(f) Estimated sentence or time to serve;

(g) Whether the prisoner has insurance or not;

(h) Whether the prisoner is indigent or not;

(i) Justification for medical transfer;

(j) Whether the care is necessary or not;

(k) Any conflict reports; and

(l) Relevant attachments such as:

1. Copy of prisoner's insurance card;

2. Doctor's report;

3. Incident report;

4. Citation;

5. Booking information;

6. Preexisting medical records; or

7. Current medication.

(3) If a prisoner is approved for transfer to the department, pursuant to KRS 441.560, the jail shall provide the following, unless already provided with the transfer request:

(a) All medical information;

(b) Current medication in proper container;

(c) Booking information;

(d) Incident reports;

(e) Current citation;

(f) Classification information;

(g) Conflict reports;

(h) Any additional pertinent information; and

(i) Custody receipt.

(4) If a prisoner is approved for transfer to the department pursuant to KRS 441.560, the prisoner shall be transported by the department.

The Jail Standards Review Commission established pursuant to KRS 441.055(1)(b) has approved the standards in this administrative regulation at its meeting on August 15, 2023, prior to its filing with the Legislative Research Commission in compliance with KRS 13A.120(3), 13A.220(6)(a), and 441.055(2).

COOKIE CREWS, Commissioner

APPROVED BY AGENCY: February 6, 2024

FILED WITH LRC: February 15, 2024 at 8:50 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on April 23, 2024, at 9:00 a.m. at the Justice and Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through April 30, 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: Amy V. Barker, Assistant General Counsel, Justice and Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-3279, fax (502) 564-6686, email Justice.RegContact@ky.gov.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Amy Barker

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes minimum standards to provide proper medical services in restricted custody centers.

(b) The necessity of this administrative regulation: This administrative regulation complies with the requirement to adopt jail standards in KRS 441.055(1)(a), (b).

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation complies with the requirement to adopt jail standards in KRS 441.055(1)(a), (b).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It establishes minimum medical services requirements for restricted custody centers.

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

(a) How the amendment will change this existing administrative regulation: The amendment enlarges the necessity language and adds telehealth language required by statute.

(b) The necessity of the amendment to this administrative regulation: The amendment revises the standards as part of the review process in KRS 441.055(1)(b).

(c) How the amendment conforms to the content of the authorizing statutes: The amendment revises the standards as part of the review process in KRS 441.055(1)(b).

(d) How the amendment will assist in the effective administration of the statutes: It updates the minimum medical services requirements for restricted custody centers as required by KRS 441.055.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects approximately 35 county and regional restricted custody centers that house reduced custody Class C and D felons and their staff, approximately 50 Department of Corrections employees, including 12 Local Facilities staff, and approximately 1,530 inmates in the restricted custody centers.

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

(a) List 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 jail will have to make provision for telehealth access for prisoners if it has not already done so.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Additional cost is not anticipated.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The regulation is clearer.

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

(a) Initially: An increase in cost is not anticipated.

(b) On a continuing basis: An increase in cost is not anticipated.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: State budgeted funds for the Department of Corrections and county budgeted funds for restricted custody center operating expenses.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: Fees are not established or increased.

(9) TIERING: Is tiering applied? No. The standards apply equally to all restricted custody centers.

#### FISCAL NOTE

(1) What 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 Corrections and restricted custody centers.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 196.035, 197.020, 441.055, 441.560

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire

departments, or school districts) for the first year? Revenue is not generated by this administrative regulation.

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

(c) How much will it cost to administer this program for the first year? For fiscal year 2023, the department paid the local jails approximately \$139,275,752.09 for the housing, transportation, and medical care and programming incentives for state inmates. Full service jails receive the largest portion of this funding. Plus, the department incurred approximately \$1,669,365.54 in staff salaries and administrative costs. The jails will have some staff and administrative costs, but this program is a source of revenue for them.

(d) How much will it cost to administer this program for subsequent years? Approximately the same as in (c).

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

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

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

(c) How much will it cost the regulated entities for the first year? The regulation impacts how the jails operate, but does not increase costs from what is budgeted for the biennium.

(d) How much will it cost the regulated entities for subsequent years? The regulation impacts how the jails operate, but does not increase costs from what is budgeted for the biennium.

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

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

#### JUSTICE AND PUBLIC SAFETY CABINET Department of Corrections (Amendment)

#### 501 KAR 13:010. Life safety issues.

RELATES TO: KRS 67.900, 198B.650-198B.689, 217.280-217.390, 441.005, 441.045, 441.055, 441.560, 532.100

STATUTORY AUTHORITY: KRS 196.035, 197.020, 441.055, 441.560

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035 requires the secretary to promulgate administrative regulations necessary or suitable for the proper administration of the functions of the cabinet or any division in the cabinet. KRS 197.020(1)(e) requires the Department of Corrections to promulgate administrative regulations to require telehealth services in county jails. KRS 441.560 requires the department to promulgate administrative regulations relating to the transfer of prisoners to the department for medical treatment and care. KRS 441.055 requires the Department of Corrections to promulgate administrative regulations establishing minimum health and life safety standards for jails that do not house

state prisoners. This administrative regulation sets forth procedures to provide protection for basic health and life safety in jails that do not house state prisoners.

Section 1. Definitions. (1) "Department" is defined by KRS 441.005(5).

(2) "Governing authority" means a county fiscal court, urban-county government, charter county government, consolidated local government, unified local government, or regional jail authority.

(3) "Jail" or "Life Safety Jail" means any county jail and correctional or detention facility, including correctional facilities defined by KRS 67B.020, operated by and under the supervision of a governing authority that does not house state prisoners pursuant to KRS 532.100.

(4) "Jail personnel" is defined by KRS 441.005(6).

(5) "Medical authority" means the person or persons licensed to provide medical care to prisoners in the jail's custody.

(6) "Telehealth" means the use of interactive audio, video, or other electronic media to deliver health care. It includes the use of electronic media for diagnosis, consultation, transfer of health or medical data, and continuing education.

Section 2. Policy and Procedure. The jailer shall develop and maintain a policy and procedures manual that has been adopted by the governing authority and filed with the department. The policy and procedures manual shall include, at a minimum, the following aspects of the jail's operation:

- (1) Administration;
- (2) Staffing;
- (3) Security and control;
- (4) Physical plant;
- (5) Fire safety;
- (6) Sanitation and hygiene;
- (7) Medical services; and
- (8) Food services.

Section 3. Administration. (1) Jail information and prisoner records shall be stored in a secure manner so that they are protected from theft, loss, tampering, and destruction. Prisoner records shall be maintained as required by the Department of Libraries and Archives pursuant to 725 KAR Chapter 1.

(2) A telephonic report to the department shall be made of all extraordinary or unusual occurrences within twenty-four (24) hours of the occurrence, and a final written report shall be made within forty-eight (48) hours. This report shall be placed in the jail record. Extraordinary or unusual occurrences shall include:

- (a) Death of a prisoner;
  - (b) Suicide or attempted suicide that constitutes a serious health concern;
  - (c) Serious injury, whether accidental or self-inflicted;
  - (d) Escape or attempted escape from confinement;
  - (e) Fire;
  - (f) Riot;
  - (g) Assault, whether by jail personnel or prisoner;
  - (h) Sexually abusive conduct;
  - (i) Occurrence of contagious or infectious disease, or illness within the facility; and
  - (j) Any serious event that threatens the safety or security of the facility or jail personnel.
- (3) The jail shall, if there is an escape, immediately:
- (a) Notify the Division of Local Facilities jail inspector;
  - (b) Notify Kentucky State Police or local law enforcement;
  - (c) Activate VINE through use of the Emergency Override Line (EOL); and
  - (d) Enter the prisoner's escape status into the jail management system.

Section 4. Staffing. (1) Each jail shall provide twenty-four (24) hour awake supervision for all prisoners by providing a minimum of two (2) jail personnel, excluding jail personnel designated for communication. If requested by the jailer or governing authority, the department may conduct a staffing analysis.

(2) Each jail shall be required to provide the department with a

weekly population update.

(3) If a female prisoner is lodged in the jail, the jail shall provide a female deputy to perform twenty-four (24) hour awake supervision.

(4) Qualifications.

(a) Persons who are at least eighteen (18) years old may be appointed or employed to work inside the secure perimeter of the jail.

(b) A person under the age of twenty-one (21) years:

1. Shall not:

a. Be employed as a deputy jailer;

b. Possess or exercise peace officer powers;

c. Function in a role similar to that of a deputy jailer or correctional officer; or

d. Be in a position that involves supervision over prisoners or persons yet to be booked into the jail; and

2. Shall have a high school diploma or a high school equivalency diploma [Jail personnel shall be at least twenty-one (21) years of age].

(5) Compensation. Each employee shall receive a wage at least equal to the State Minimum Wage Law except if Federal Minimum Wage Law applies.

(6) Males and females shall be housed separately.

Section 5. Security and Control. (1) Jail personnel shall conduct and document direct, in-person surveillance of each prisoner on an irregular basis, at least every sixty (60) minutes.

(2) Jail personnel shall conduct and document direct, in-person surveillance every twenty (20) minutes, at irregular intervals, on the following classes of prisoners:

- (a) Suicidal; and
- (b) Mentally or emotionally disturbed.

(3) There shall be at least three (3) documented prisoner counts every twenty-four (24) hours during which each prisoner's physical presence, by show of skin or by movement, shall be observed. At least one (1) count shall be conducted per shift.

(4) A prisoner shall not be assigned to a position of authority over another prisoner.

(5) A prisoner shall not be permitted to perform or assist in a security duty.

(6) A trustee, if used, shall not have access to or control of a weapon.

(7) Daily Jail Log; Special reports. A daily log shall be kept current and shall reflect significant occurrences within the jail. Special reports shall include:

- (a) Disciplinary action;
- (b) Medical or mental health treatment;
- (c) Feeding schedule and menus;
- (d) Extraordinary occurrences:
  1. Fire;
  2. Assault;
  3. Suicide or attempted suicide; or
  4. Escape or attempted escape;
- (e) Inmate vandalism:
  1. Destruction of jail property; or
  2. Flooding of plumbing fixtures;
- (f) Jail personnel roster for each shift; and
- (g) Visitor's log.

Section 6. Physical Plant. (1) Square footage living space requirement for jails shall be the same as required in 501 KAR 3:050.

(2) All furnishings in the jail shall be noncombustible and nontoxic as approved by the department.

(3) Kitchen. The purpose of this area shall be to provide sufficient space and equipment for preparing meals for the maximum rated capacity of the jail. Design features shall include:

(a) Compliance with standards of the Kentucky Food Code, 902 KAR 45:005;

(b) Commercial type stoves and refrigeration units; and

(c) Walls, floors, and decks that are approved fire-rated masonry, concrete, or steel construction.

(4) Gauges, indicators, and alarms shall be located in an area monitored by jail personnel.

(5) The jail shall provide ventilation to meet the air exchange

requirements in the Kentucky Department of Corrections Jail Construction, Expansion, and Renovation Guidelines incorporated by reference in 501 KAR 3:050.

(6) Electrical outlets if provided shall be ground-faulted or have ground-fault circuit breakers.

(7) All tools, toxic, corrosive, and flammable substances, and other potentially dangerous supplies and equipment shall be stored in a locked area not accessible to prisoners.

(8) The jail shall have a procedure for immediate reporting and repairing any broken or malfunctioning key or lock.

(9) A set of duplicate keys shall be maintained in a separate, secure place.

(10) Each jail shall comply with the Kentucky Building Code, 815 KAR 7:120.

Section 7. Fire Safety. (1) Each jail shall have a written policy and procedure that specifies fire prevention practices to ensure the safety of prisoners, visitors, and jail personnel. These shall include, at a minimum:

(a) Fire emergency planning sessions for jail personnel at least quarterly;

(b) Maintaining written documentation of fire planning sessions and a written copy of the material taught;

(c) A fire safety inspection by the department at least once a year;

(d) Inspection and testing of fire protection equipment by qualified persons at least annually with visual inspections by jail personnel monthly;

(e) Being a tobacco-free facility; and

(f) A written evacuation plan coordinated with local fire officials.

(2) Each jail shall have exits distinctly and permanently marked, visible at all times, kept clear, and maintained in usable condition.

(3) Each jail shall have equipment necessary to maintain essential lights, power, HVAC, and communications in an emergency situation.

(4) In each area where a prisoner may be confined, there shall be an emergency smoke control system activated by smoke detectors and operated by emergency power. Inspection and testing of the smoke control system shall be conducted by a qualified person at least annually.

(5) Each jail shall have an approved fire alarm and smoke detection system.

Section 8. Sanitation; Hygiene. (1) The jailer shall provide for the control of vermin and pests.

(2) The jail shall provide for both solid and liquid waste disposal.

(3) The jail shall have fresh air circulating within prisoner living and activity areas.

(4) All prisoners shall be provided with hot and cold running water in showers and lavatories.

(5) All prisoners shall be provided with toilet paper or feminine hygiene items when needed.

Section 9. Medical Services. (1) Jail personnel shall have current training in standard first aid equivalent to that provided by the American Red Cross, the American Heart Association, or an equivalent nationally recognized organization. New jail personnel shall receive training within their first year of employment.

(2) At least one (1) jail personnel on site shall be certified to perform CPR (cardiopulmonary resuscitation), equivalent to that provided by the American Red Cross, the American Heart Association, or an equivalent nationally recognized organization. New jail personnel shall receive certification within their first year of employment.

(3) The jail shall have first aid kits available at all times.

(4) Medical screening shall be performed by the receiving jail personnel on all prisoners upon their admission to the jail and before their placement in prisoner living areas. The findings of this medical screening shall be recorded on a printed screening form approved by the medical authority. The medical screening inquiry shall include:

(a) Current illnesses and health problems;

(b) Medications taken and special health requirements;

(c) Screening of other health problems designated by the

medical authority;

(d) Behavioral observation, state of consciousness, and mental status;

(e) Notation of body deformities, markings, bruises, lesions, jaundice, ease of movement, and other distinguishing characteristics;

(f) Condition of skin and body orifices, including rashes and infestations; and

(g) Disposition and referral of prisoners to qualified medical personnel on an emergency basis.

(5) Each prisoner shall be afforded access to necessary medical care as in KRS 441.045.

(6) The medical authority shall be a licensed practical nurse (LPN), a higher level of licensed nurse, a licensed medical doctor, or licensed doctor of osteopathy. Telehealth services may be used.

(7) Telehealth services shall be provided for prisoners.

Section 10. Medical Transfers pursuant to KRS 441.560.

(1) A jailer may request that a prisoner be transferred to the department for necessary medical treatment and care if the prisoner:

(a) Is injured;

(b) Is pregnant;

(c) Becomes sick or ill;

(d) 1. Is severely and persistently mentally ill; and

2. Is presenting an imminent risk of harm to self or others; or

(e) Requires specialized medical care or long-term medical care which is not available at the local jail.

(2) The transfer request shall be submitted to the Classification Branch in writing and shall contain the following information:

(a) Prisoner's name;

(b) Prisoner's Social Security number;

(c) County where currently housed;

(d) Inmate number;

(e) Pending charge or conviction and whether felony or misdemeanor;

(f) Estimated sentence or time to serve;

(g) Whether the prisoner has insurance or not;

(h) Whether the prisoner is indigent or not;

(i) Justification for medical transfer;

(j) Whether the care is necessary or not;

(k) Any conflict reports; and

(l) Relevant attachments such as:

1. Copy of prisoner's insurance card;

2. Doctor's report;

3. Incident report;

4. Citation;

5. Booking information;

6. Preexisting medical records; or

7. Current medication.

(3) If a prisoner is approved for transfer to the department as a medical prisoner, the jail shall provide the following, unless already provided with the transfer request:

(a) All medical information;

(b) Current medication in proper container;

(c) Booking information;

(d) Incident reports;

(e) Current citation;

(f) Classification information;

(g) Conflict reports;

(h) Any additional pertinent information; and

(i) Custody receipt.

(4) If a prisoner is approved for transfer to the department as a medical prisoner, the prisoner shall be transported by the department.

Section 11. Food Services.

(1) The jail shall comply with KRS 217.280 to 217.390, 803 KAR 2:317, and 902 KAR 45:005.

(2) The jail shall provide prisoners with a nutritionally adequate diet containing at least 2,400 calories daily and jail menus shall be approved annually by a nutritionist or dietician. Condiments shall not be included in the daily caloric totals.

(3) Except as provided by subsection (4) of this section, prisoners shall receive three (3) meals per day, one (1) of which shall be hot. More than fourteen (14) hours shall not elapse between any

two (2) meals.

(4) The jailer may elect to provide only two (2) meals on Saturdays, Sundays, and holidays, if both meals still meet the minimum 2,400 calories per day. Condiments shall not be included in the daily caloric totals. If the jailer elects to serve only two (2) meals, more than sixteen (16) hours shall not elapse between any two (2) meals.

(5) The jailer shall provide for medical diets if prescribed by a medical authority. This shall include any special dietary requirements to ensure adequate nutrition is provided for pregnant prisoners.

(6) The jailer shall maintain accurate records of all meals served.

(7) Food shall not be used for disciplinary purposes.

(8) Jail personnel shall directly supervise all food prepared within the jail.

(9) All food shall be served under the direct supervision of jail personnel.

(10) The jail shall have sufficient cold and dry food storage facilities.

(11) The jailer or his designee shall inspect the food service area daily.

(12) Canteen food items purchased by prisoners may be stored and prepared in amounts that do not pose a threat to the health or security of the facility[institution].

The Jail Standards Review Commission established pursuant to KRS 441.055(2) has approved the standards in this administrative regulation at its meeting on August 15, 2023, prior to its filing with the Legislative Research Commission in compliance with KRS 13A.120(3), 13A.220(6)(a), and 441.055(2).

COOKIE CREWS, Commissioner

APPROVED BY AGENCY: February 6, 2024

FILED WITH LRC: February 15, 2024 at 8:50 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on April 23, 2024, at 9:00 a.m. at the Justice and Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through April 30, 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: Amy V. Barker, Assistant General Counsel, Justice and Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-3279, fax (502) 564-6686, email Justice.RegContact@ky.gov.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Amy Barker

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes procedures for the protection of basic health and life safety issues in jails that do not house state prisoners (life safety jails).

(b) The necessity of this administrative regulation: This administrative regulation complies with the requirement to adopt jail standards in KRS 441.055(2).

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation complies with the requirement to adopt jail standards in KRS 441.055(2).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It establishes procedures for the protection of basic health and life safety issues in jails that do not house state prisoners (life safety jails).

(2) If 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 requires telehealth services to be provided to comply with KRS 197.020(1)(e)2, requires provisions for special dietary requirements to ensure adequate nutrition is provided for pregnant prisoners to comply with changes to KRS 441.055(3), revises the personnel qualifications subsection to comply with changes to KRS 441.055(2), and changes institution to facility.

(b) The necessity of the amendment to this administrative regulation: The amendment revises the standards as part of the review process in KRS 441.055(2) and to comply with statute changes.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment revises the standards as part of the review process in KRS 441.055(2) and changes to KRS 197.020(1)(e)2 and 441.055 (2) & (3).

(d) How the amendment will assist in the effective administration of the statutes: It complies with statutory changes.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects approximately 3 county jails and their staff, approximately 7 Local Facilities staff, and approximately 80 prisoners in the jails.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Jails will have to comply with the statutory and regulatory qualification required for jail staff and provide statutory prisoner requirements.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3) An estimated cost for this change is unknown and the change is required by statute.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The regulation is clearer and adds statutory requirements.

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

(a) Initially: Any additional cost is the result of the statutory changes.

(b) On a continuing basis: Any additional cost is the result of the statutory changes.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: State budgeted funds for the Department of Corrections and county budgeted funds for jail operating expenses with payments from the DOC.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: Fees are not established or increased.

(9) TIERING: Is tiering applied? No. The standards apply equally to all life safety jails.

#### FISCAL NOTE

(1) What 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 Corrections and life safety jails that house county prisoners

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 196.035, 197.020, 441.055

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

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

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

(c) How much will it cost to administer this program for the first year? For fiscal year 2023, the department was appropriated \$860,000 to provide a monthly payment of an annual amount of \$20,000 to each county with a life safety or closed jail. The payment was in addition to the payment required by KRS 441.206(2). For fiscal year 2023, the Department of Corrections paid the three life safety jails \$202,257.29. In addition, the department incurred approximately \$1,669,365.54 in staff salaries and administrative costs. The jails will have some staff and administrative costs, but this program is required by statute.

(d) How much will it cost to administer this program for subsequent years? Approximately the same as in (c).

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

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

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

(c) How much will it cost the regulated entities for the first year? The regulation impacts how the jails operate with any increase in costs arising from the statutory changes.

(d) How much will it cost the regulated entities for subsequent years? The regulation impacts how the jails operate with any increase in costs arising from the statutory changes.

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

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

**PUBLIC PROTECTION CABINET**  
**Department of Housing, Buildings and Construction**  
**Division of Building Code Enforcement**  
**(Amendment)**

**815 KAR 7:120. Kentucky Building Code.**

RELATES TO: KRS 132.010, 198B.010, 198B.040, 198B.050, 198B.060, 198B.080, 198B.260, 198B.990, 227.300, 227.550(7)

STATUTORY AUTHORITY: KRS 198B.040(7), 198B.050

NECESSITY, FUNCTION, AND CONFORMITY: KRS 198B.040(7) and 198B.050 require the department to promulgate a mandatory uniform state building code that establishes standards for the construction of all buildings in the state. This administrative regulation establishes the Kentucky Building Code's general provisions.

**Section 1. Definitions.**

(1) "Building" is defined by KRS 198B.010(4).

(2) "Department" is defined by KRS 198B.010(13).

(3) "Industrialized building system" or "building system" is defined by KRS 198B.010(18).

(4) "Manufactured home" is defined by KRS 227.550(6).

(5) "Single-family dwelling" or "1 family dwelling" means a single unit that:

(a) Provides complete independent living facilities for one (1) or more persons, including permanent provisions for living, sleeping, eating, cooking, and sanitation; and

(b) Is not connected to another building.

(6) "Townhouse" means a single-family dwelling unit constructed in a group of three (3) or more attached units separated by property lines in which each unit extends from foundation to roof and with open space on at least two (2) sides.

(7) "Two (2) family dwelling" means a building containing not more than two (2) dwelling units that are connected.

**Section 2. Building Code.** The 2015 International Building shall be the mandatory state building code for all buildings constructed in Kentucky except that:

(1) The Kentucky amendments in the 2018 Kentucky Building Code shall supersede any conflicting provision in the 2015 International Building Code;

(2) One (1) family dwellings, two (2) family dwellings, and townhouses shall be governed by 815 KAR 7:125; and

(3) Manufactured homes shall be governed by KRS 227.550 through 227.665.

**Section 3. State Plan Review and Inspection Fees.** The fees required by this section shall apply for plan review and inspection by the department.

(1) Fast track elective.

(a) A request for expedited site and foundation approval of one (1) week or less, prior to full review of the complete set of construction documents, shall be accompanied by the fee required by Table 121.3.1 in subsection (3) of this section, plus an additional fifty (50) percent of the basic plan review or inspection fee.

(b) The additional fifty (50) percent fee shall not be less than \$400 and not more than \$3,000.

(c) The entire fee shall be paid with the initial plan submission.

(2) New buildings.

(a) The department's inspection fees shall be calculated by multiplying:

1. The cost per square foot of each occupancy type as listed in Table 121.3.1 in subsection (3) of this section; and

2. The square footage of the outside dimensions of the building.

(b) The fee for a building with multiple or mixed occupancies shall be calculated using the cost per square foot multiplier of the predominant use.

(c) The minimum fee for review of plans pursuant to this subsection shall be \$285.

(3) Table 121.3.1, Basic Department Fee Schedule. The basic plan review or inspection fee shall be as established in Table 121.3.1 in this subsection.

OCCUPANCY TYPE	COST PER SQUARE FOOT
Assembly	16 cents
Business	15 cents
Day care centers	15 cents
Educational	15 cents
High Hazard	16 cents
Industrial factories	15 cents
Institutional	16 cents
Mercantile	15 cents
Residential	15 cents
Storage	15 cents
Utility and Miscellaneous	13 cents
Production greenhouse	10 cents

(4) Additions to existing buildings.

(a) Plan review fees for additions to existing buildings shall be calculated by multiplying the cost per square foot of the occupancy type listed in Table 121.3.1 in subsection (3) of this section by the measurement of the square footage of the addition, as determined by the outside dimensions of the addition and any other changes made to the existing build.

(b) The minimum fee for review of plans pursuant to this subsection shall be \$285.

(5) Change in use.

(a) Plan review fees for existing buildings in which the use group or occupancy type is changed shall be calculated in accordance with the schedule listed in Table 121.3.1 in subsection (3) of this section by using the total square footage of the entire building or structure pursuant to the new occupancy type as determined by the outside dimensions.

(b) The minimum fee for review of plans pursuant to this subsection shall be \$285.

(6) Alterations and repairs.

(a) Plan review fees for alterations and repairs not otherwise covered by this fee schedule shall be calculated by using the lower result of multiplying the:

1. Cost of the alterations or repairs by 0.0030; or
2. Total area being altered or repaired by the cost per square foot of each occupancy type listed in the schedule in subsection (3) of this section.

(b) The total square footage shall be determined by the outside dimensions of the area being altered or repaired.

(c) The minimum fee for review of plans pursuant to this subsection shall be \$285.

(7) Specialized fees. In addition to the fees established by subsections (1) through (6) of this section, the following fees shall be applied for the specialized plan reviews listed in this subsection:

(a) Table 121.3.9, Automatic Sprinkler Review Fee Schedule. The inspection fee for automatic sprinklers shall be as established in Table 121.3.9 in this paragraph;

NUMBER OF SPRINKLERS	FEE
4-25	\$150
26 – 100	\$200
101 – 200	\$250
201 – 300	\$275
301 – 400	\$325
401 – 750	\$375
OVER 750	\$375 plus thirty (30) cents per sprinkler over 750

(b) Fire detection system review fee.

1. Zero through 20,000 square feet shall be \$275; and
2. Over 20,000 square feet shall be \$275 plus thirty (30) dollars for each additional 10,000 square feet in excess of 20,000 square feet;

(c) The standpipe plan review fee shall be \$275. The combination of stand pipe and riser plans shall be reviewed pursuant to the automatic sprinkler review fee schedule;

(d) Carbon dioxide suppression system review fee.

1. One (1) through 200 pounds of agent shall be \$275; and
2. Over 200 pounds of agent shall be \$275 plus five (5) cents per pound in excess of 200 pounds;

(e) Clean agent suppression system review fee.

1.
  - a. Up to thirty-five (35) pounds of agent shall be \$275; and
  - b. Over thirty-five (35) pounds of agent shall be \$275 plus ten (10) cents per pound in excess of thirty-five (35) pounds; and
2. The fee for gaseous systems shall be ten (10) cents per cubic foot and not less than \$150;

(f) Foam suppression system review fee.

1. The fee for review of a foam suppression system shall be fifty (50) cents per gallon of foam concentrate if the system is not part of an automatic sprinkler system.
2. Foam suppression system plans that are submitted as part of an automatic sprinkler system shall be reviewed pursuant to the automatic sprinkler review fee schedule.
3. The fee for review of plans pursuant to subclause 1. of this

paragraph shall not be less than \$275 or more than \$1,500;

(g) The commercial range hood review fee shall be \$225 per hood;

(h) Dry chemical systems review fee (except range hoods). The fee for review of:

1. One (1) through thirty (30) pounds of agent shall be \$275; and
2. Over thirty (30) pounds of agent shall be \$275 plus twenty-five (25) cents per pound in excess of thirty (30) pounds; and

(i) The flammable, combustible liquids or gases, and hazardous materials plan review fee shall be \$100 for the first tank, plus fifty (50) dollars for each additional tank and \$100 per piping system including valves, fill pipes, vents, leak detection, spill and overflow detection, cathodic protection, or associated components.

Section 4. General. All plans shall be designed and submitted to conform to this administrative regulation.

Section 5. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "2015 International Building Code", International Building Code Council, Inc.; and

(b) "2018 Kentucky Building Code", ~~Fourth~~[Third] Edition, February 2024[August 2022].

(2) This material may be inspected copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Housing, Buildings and Construction, 500 Mero Street, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m. and is available online at <http://dhbc.ky.gov/Pages/default.aspx>.

RAY A. PERRY, Secretary

JONATHON M. FULLER, Deputy Commissioner

APPROVED BY AGENCY: February 14, 2024

FILED WITH LRC: February 14, 2024 at 2:15 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on April 25, 2024 at 10:00 a.m., eastern time, in the Department of Housing, Buildings and Construction, 500 Mero Street, First Floor, Frankfort, Kentucky 40601. Individuals interest in being heard at this hearing shall notify this agency in writing by five working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The 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 April 30, 2024 at 11:59 p.m., eastern time. Send written notification of the intent to be head at the public hearing or written comments on the proposed administrative regulation by the above date to the contact person below:

CONTACT PERSON: Jonathon M. Fuller, Deputy Commissioner, Department of Housing, Buildings and Construction, 500 Mero St., First Floor, Frankfort, Kentucky 40601, (502) 782-0617, email [max.fuller@ky.gov](mailto:max.fuller@ky.gov).

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jonathon M. Fuller

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the Kentucky Building Code.

(b) The necessity of this administrative regulation: KRS 198B.040(7) and 198B.050 require the department to adopt and promulgate a mandatory Uniform State Building Code that establish the standards for the construction of all buildings, as defined in KRS 198B.010, in the state.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 198B.040(7) and 198B.050 require the department to adopt and promulgate a mandatory Uniform State Building Code that establish the standards for the construction of all buildings, as defined in KRS 198B.010, in the state. This administrative regulation incorporates by reference the 2015



International Building Code and 2018 Kentucky Building Code—the "Kentucky amendments".

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the Kentucky Building Code, as required by KRS 198B.040(7) and 198B.050 for the enforcement of the uniform state building code, incorporating all applicable codes and standards into its processes.

(2) If 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 adopts the 2023 National Electrical Code ("NEC"), a referenced standard of the Kentucky Building Code.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to adopt and implement an update to the National Electrical Code to the 2023 edition.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 198B.040(7) and 198B.050 require the department to adopt and promulgate a mandatory Uniform State Building Code that establish the standards for the construction of all buildings, as defined in KRS 198B.010, in the state. This administrative regulation incorporates by reference the 2015 International Building Code and 2018 Kentucky Building Code—the "Kentucky amendments". KRS 227.480(4) requires reasonable standards for the construction, alteration, and repair of any electrical system to be those adopted in the Uniform State Building Code, as promulgated by the department, and requires those standards to utilize the National Electrical Code as a minimum standard.

(d) How the amendment will assist in the effective administration of the statutes: These amendments to the Kentucky Building Code will enhance public safety and allow the construction industry to use current technologies, methods, and materials in the construction, alteration, and repair of electrical systems.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All electrical construction, alteration, and repair projects subject to the Kentucky Building Code are affected by this administrative regulation. Architects, engineers, contractors, electricians, electrical inspectors, project managers, businesses, local governments, and Department personnel will be affected by this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The identified entities must comply with any applicable amendments to the Kentucky Building Code and the referenced standard, the 2023 National Electrical Code.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Costs will vary based on entity and their role in the electrical trade. New copies of NFPA 70, the National Electrical Code, 2023 Edition are approximately \$140. The largest recurring cost that is new to the 2023 NEC is exterior emergency disconnects for dwelling units, which cost approximately \$200 plus labor for installation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The 2023 NEC includes a number of changes that increase life safety, safety of appliances and other electronics, offers guidance for emerging technologies in the electrical field and has removed some requirements due to industry feedback (e.g. receptacles are no longer required on kitchen islands and peninsulas).

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

(a) Initially: Initial implementation costs will be minimal to the administrative body and are estimated to be less than five thousand dollars. These costs will include updated physical code books and training.

(b) On a continuing basis: There are no anticipated additional costs 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:

Implementation and enforcement of this administrative regulation is anticipated to result in minimal additional costs to the agency. Any agency costs resulting from the implementation and enforcement of this administrative regulation will be met with existing 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: This amendment will not necessitate an increase in fees or funding. No fees are raised or changed by this amendment.

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

(9) TIERING: Is tiering applied? Tiering is not applied as all regulated entities are subject to the same amended 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 Housing, Buildings and Construction and electrical inspection programs of local governments.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This administrative regulation is required by KRS 198B.040(7) and KRS 198B.050.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This amendment is not anticipated to generate additional 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 amendment is not anticipated to 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? Costs related to local administration of this administrative regulation will vary, based upon the number of inspectors that the local government will be required to provide updated materials for. The cost for state-level administration of this administrative regulation will be minimal, as discussed in (5)(a) of the Regulatory Impact Analysis and Tiering Statement.

(d) How much will it cost to administer this program for subsequent years? There are no anticipated additional costs to administer this amendment for subsequent years.

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

Cost Savings:

Revenues (+/-): Neutral

Expenditures (+/-): Initial increase for updated code materials and training will vary by entity.

Other Explanation: None.

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? Costs savings will vary based on the type and scope of electrical construction project. For example, regulated entities may see cost savings by utilizing new provisions related to the use of reconditioned electrical equipment or by no longer being required to install receptacles in certain areas of a newly-constructed dwelling unit.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? Costs savings will vary based on the project, as discussed in 4(b).

(c) How much will it cost the regulated entities for the first year? Costs will vary based on entity, project, and the entity's role in the

electrical trade. New copies of NFPA 70, the National Electrical Code, 2023 Edition are approximately \$140. One of the largest recurring cost for new construction that is new to the 2023 NEC is expanded GFCI protection requirements, which will vary based on the size of the project.

(d) How much will it cost the regulated entities for subsequent years? Costs will vary based on the entity, project, and the entity's role in the electrical trade as discussed in 4(c).

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

Cost Savings (+/-): Neutral

Expenditures (+/-): Varies by type and scope of project.

Other Explanation: None.

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

**PUBLIC PROTECTION CABINET**  
**Department of Housing, Buildings and Construction**  
**Division of Building Code Enforcement**  
**(Amendment)**

**815 KAR 7:125. Kentucky Residential Code.**

RELATES TO: KRS 198B.010, 198B.040, 198B.050, 198B.060, 198B.080, 198B.260, 198B.990

STATUTORY AUTHORITY: KRS 198B.040(7), 198B.050

NECESSITY, FUNCTION, AND CONFORMITY: KRS 198B.040(7) and 198B.050 require the department to promulgate a mandatory uniform state building code that establishes standards for the construction of all buildings in the state. This administrative regulation establishes the basic mandatory uniform statewide code provisions relating to construction of one (1) and two (2) family dwellings and townhouses.

**Section 1. Definitions.**

(1) "Single-family dwelling" or "one (1)-family dwelling" means a single unit that:

(a) Provides complete independent living facilities for one (1) or more persons, including permanent provisions for living, sleeping, eating, cooking, and sanitation; and

(b) Is not connected to any other unit or building.

(2) "Townhouse" means a single-family dwelling unit constructed in a group of three (3) or more attached units separated by property lines in which each unit extends from foundation to roof and with open space on at least two (2) sides.

(3) "Two (2) family dwelling" means a building containing not more than two (2) dwelling units that are connected.

**Section 2. Residential Code.**

(1) Except as provided in subsection (2) of this section, the 2015 International Residential Code for One (1) and Two (2) Family Dwellings (IRC) shall be the mandatory state residential building code for all single-family dwellings, two (2) family dwellings, and townhouses constructed in Kentucky, except that the Kentucky amendments in the 2018 Kentucky Residential Code shall supersede any conflicting provision in the 2015 IRC.

(2) Exceptions.

(a) Permits, inspections, and certificates of occupancy shall not be required for a single-family dwelling unless required by local ordinance.

(b) All residential occupancies that are not single-family dwellings, two (2) family dwellings, or townhouses shall comply with the 2015 International Building Code and the 2018 Kentucky Building Code.

(3) Plans for single-family dwellings, two (2) family dwellings,

and townhouses shall be designed and submitted to conform to this administrative regulation.

**Section 3. Incorporation by Reference.**

(1) The following material is incorporated by reference:

(a) "2015 International Residential Code for One (1) and Two (2) Family Dwellings," International Code Council, Inc.; and

(b) "2018 Kentucky Residential Code," Third~~Second~~ Edition, February 2024~~May 2020~~.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Housing, Buildings and Construction, 500 Mero Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. and is available online at <http://dhbc.ky.gov/Pages/default.aspx>.

RAY A. PERRY, Secretary

JONATHON M. FULLER, Deputy Commissioner

APPROVED BY AGENCY: February 14, 2024

FILED WITH LRC: February 14, 2024 at 2:15 p.m.

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:** A public hearing on this administrative regulation shall be held on April 25, 2024 at 10:00 a.m., eastern time, in the Department of Housing, Buildings and Construction, 500 Mero Street, First Floor, Frankfort, Kentucky 40601. Individuals interest in being heard at this hearing shall notify this agency in writing by five working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The 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 April 30, 2024 at 11:59 p.m., eastern time. Send written notification of the intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to the contact person below:

**CONTACT PERSON:** Jonathon M. Fuller, Deputy Commissioner, Department of Housing, Buildings and Construction, 500 Mero St., First Floor, Frankfort, Kentucky 40601, (502) 782-0617, emailmax.fuller@ky.gov

**REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT**

Contact Person: Jonathon M. Fuller

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the Kentucky Residential Code.

(b) The necessity of this administrative regulation: KRS 198B.040(7) and 198B.050 require the department to adopt and promulgate a mandatory Uniform State Building Code that establish the standards for the construction of all buildings, as defined in KRS 198B.010, in the state.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 198B.040(7) and 198B.050 require the department to adopt and promulgate a mandatory Uniform State Building Code that establish the standards for the construction of all buildings, as defined in KRS 198B.010, in the state. This administrative regulation incorporates by reference the 2015 International Residential Code and 2018 Kentucky Residential Code—the "Kentucky amendments".

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the Kentucky Residential Code, as required by KRS 198B.040(7) and 198B.050 for the enforcement of the uniform state building code, incorporating all applicable codes and standards into its processes.

(2) If 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 adopts the 2023 National Electrical Code ("NEC"), a referenced standard of the Kentucky Residential Code.

(b) The necessity of the amendment to this administrative

regulation: This amendment is necessary to adopt and implement an update to the National Electrical Code to the 2023 edition.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 198B.040(7) and 198B.050 require the department to adopt and promulgate a mandatory Uniform State Building Code that establish the standards for the construction of all buildings, as defined in KRS 198B.010, in the state. This administrative regulation incorporates by reference the 2015 International Residential Code and 2018 Kentucky Residential Code—the “Kentucky amendments”. KRS 227.480(4) requires reasonable standards for the construction, alteration, and repair of any electrical system to be those adopted in the Uniform State Building Code, as promulgated by the department, and requires those standards to utilize the National Electrical Code as a minimum standard.

(d) How the amendment will assist in the effective administration of the statutes: These amendments to the Kentucky Residential Code will enhance public safety and allow the construction industry to use current technologies, methods, and materials in the construction, alteration, and repair of electrical systems.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All electrical construction, alteration, and repair projects subject to the Kentucky Residential Code are affected by this administrative regulation. Architects, engineers, contractors, electricians, electrical inspectors, project managers, businesses, local governments, and Department personnel will be affected by this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The identified entities must comply with any applicable amendments to the Kentucky Residential Code and the referenced standard, the 2023 National Electrical Code.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Costs will vary based on entity and their role in the electrical trade. New copies of NFPA 70, the National Electrical Code, 2023 Edition are approximately \$140. One of the largest recurring cost that is new to the 2023 NEC is exterior emergency disconnects for one- and two-family dwelling units, which cost approximately \$200 plus labor for installation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The 2023 NEC includes a number of changes that increase life safety, safety of appliances and other electronics, offers guidance for emerging technologies in the electrical field and has removed some requirements due to industry feedback (e.g. receptacles are no longer required on kitchen islands and peninsulas).

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

(a) Initially: Initial implementation costs will be minimal to the administrative body and are estimated to be less than five thousand dollars. These costs will include updated physical code books and training.

(b) On a continuing basis: There are no anticipated additional costs 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: Implementation and enforcement of this administrative regulation is anticipated to result in minimal additional costs to the agency. Any agency costs resulting from the implementation and enforcement of this administrative regulation will be met with existing 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: This amendment will not necessitate an increase in fees or funding. No fees are raised or changed by this amendment.

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

(9) TIERING: Is tiering applied? Tiering is not applied as all

regulated entities are subject to the same amended 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 Housing, Buildings and Construction and electrical inspection programs of local governments.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This administrative regulation is required by KRS 198B.040(7) and KRS 198B.050.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This amendment is not anticipated to generate additional 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 amendment is not anticipated to 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? Costs related to local administration of this administrative regulation will vary, based upon the number of inspectors that the local government will be required to provide updated materials for. The cost for state-level administration of this administrative regulation will be minimal, as discussed in (5)(a) of the Regulatory Impact Analysis and Tiering Statement.

(d) How much will it cost to administer this program for subsequent years? There are no anticipated additional costs to administer this amendment for subsequent years.

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

Revenues (+/-): Neutral

Expenditures (+/-): Initial increase for updated code materials and training will vary by entity.

Other Explanation: None.

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? Costs savings will vary based on the type and scope of electrical construction project. For example, regulated entities may see cost savings by no longer being required to install receptacles in certain areas of a newly-constructed home.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? Costs savings will vary based on the project, as discussed in 4(b).

(c) How much will it cost the regulated entities for the first year? Costs will vary based on entity, project, and the entity's role in the electrical trade. New copies of NFPA 70, the National Electrical Code, 2023 Edition are approximately \$140. One of the largest recurring cost for new construction that is new to the 2023 NEC is exterior emergency disconnects for one- and two-family dwelling units, which cost approximately \$200 plus labor for installation.

(d) How much will it cost the regulated entities for subsequent years? Costs will vary based on the entity, project, and the entity's role in the electrical trade as discussed in 4(c).

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

Cost Savings (+/-): Neutral

Expenditures (+/-): Varies by type and scope of project.

Other Explanation: None.

(5) Explain whether this administrative regulation will have a major

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

**CABINET FOR HEALTH AND FAMILY SERVICES**  
**Department for Aging and Independent Living**  
**Division of Quality Living**  
**(Amendment)**

**910 KAR 1:270. Hart-Supported Living grant program.**

RELATES TO: KRS 17.165, 194A.060, 209.030, 210.770-210.795, 45 C.F.R. 164.502-164.514, 164.530

STATUTORY AUTHORITY: KRS 210.780(3), 210.795(3)  
 NECESSITY, FUNCTION, AND CONFORMITY: KRS 210.780(3) authorizes the Hart-Supported Living Council to recommend necessary administrative regulations to carry out the purposes of KRS 210.770 to 210.795. KRS 210.795(3) requires the cabinet in concert with the Hart-Supported Living Council to promulgate administrative regulations to establish the methods of awarding Hart-Supported Living grants, monitoring the quality of service delivery, and providing for administrative appeals of decisions. This administrative regulation establishes the Hart-Supported Living grant program application and award procedures, the standards to monitor the quality of service delivery, and the appellate procedure.

Section 1. Definitions.

(1) "Adaptive and therapeutic equipment" means an item recommended by a physician, physician assistant, advanced practice registered nurse, or licensed therapist that is necessary for the recipient's independent functioning and communication.

(2) "Applicant" means a person who may be eligible for a Hart-Supported Living grant and submits a completed DAIL-HSL-01 Application to the regional Hart-Supported Living grant program coordinator by the deadline established by Section 3 of this administrative regulation.

(3) "Application" means a DAIL-HSL-01 Application that is completed and submitted in accordance with Section 3 of this administrative regulation to the regional Hart-Supported Living grant program coordinator.

(4) "Budget narrative" means a justification and explanation of the amount requested in each budget category.

(5) "Community resource developer" means an employee of a recipient who coordinates and assists a recipient to:

(a) Participate in the community with persons who are members of the general citizenry; and

(b) Learn and enhance skills and competencies in living in the community.

(6) "Council" means the Hart-Supported Living Council that oversees the Hart-Supported Living grant program as described by KRS 210.775 and 210.780.

(7) "Department" or "DAIL" means the Department for Aging and Independent Living.

(8) "Designated Representative" means an uncompensated individual designated by the consumer to assist in managing the consumer's Hart-Supported Living plan and needed services and be chose by the recipient, family, or legal guardian.

(9)[(8)] "Duplicative service" means a support or service received through the Hart-Supported Living grant program which an individual is eligible to receive from another agency or program and is offered or available at the same time.

(10)[(9)] "Eligibility" means meeting the financial eligibility criteria established in:

- (a) Section 2 of this administrative regulation; and
- (b) KRS 210.790.

(11)[(10)] "Extraordinary out of pocket expenses" means

medical expenses of the recipient or applicant not covered by insurance including:

- (a) Co-pays;
- (b) Deductibles;
- (c) Prescriptions;
- (d) Premiums for medical insurance;
- (e) Other medical, dental, or vision cost incurred as a result of

medically necessary treatments or procedures; or

(f) Other services or supports related to the person's disability.

(12)[(11)] "Family" means the recipient's parent, stepparent, adoptive parent, foster parent, grandparent, siblings, spouse, or legal guardian.

(13)[(12)] "Family responsibility" means:

(a) Activities or provisions that a family or legal guardian performs naturally until the recipient reaches eighteen (18) years of age including:

- 1. Educational activities;
- 2. Housing;
- 3. Food;
- 4. Clothing;
- 5. Child care; and
- 6. Medical care; and

(b) Personal care activities or provisions that a family performs naturally until the recipient reaches twelve (12) years of age.

(14)[(13)] "Federal poverty guidelines" means the poverty guidelines updated annually in the Federal Register by the U.S. Department of Health and Human Services under the authority of 42 U.S.C. 9902(2).

(15)[(14)] "Hart-Supported Living grant" means an award of funds for a fiscal year to a recipient and is defined by KRS 210.770(5) and (6).

(16)[(15)] "Hart-Supported Living grant program" or "HSL" is defined by KRS 210.770(5) and (6).

(17)[(16)] "Hart-Supported Living plan" means the DAIL-HSL-02 Plan document developed with the recipient to account for the services to be provided and the costs as outlined in DAIL-HSL-01 and DAIL-HSL-04.

(18)[(17)] "Hart-Supported Living plan amendment" means the DAIL-HSL-03 Plan Amendment document that is a written request for any change in the currently approved[a] Hart-supported living plan in the same fiscal year.

(19)[(18)] "Hart-Supported Living services" means services that are:

(a) Provided to a person with a disability; and

(b) Directed to the recipient toward integrated community living and include:

1.[A community resource developer:

a. ~~As authorized by KRS 210.770(8)(a);~~

b. ~~Who coordinates and assists a recipient to meet requirements pursuant to KRS 210.770(5)(a)-(e); and~~

c. ~~Who ensures compliance with KRS 210.770(6);~~

2.[Homemaker services:

a. As authorized by KRS 210.770(8)(b); and

b. That include:

- (i) Cooking;
- (ii) Cleaning;
- (iii) Shopping;
- (iv) Laundry; or
- (v) Housekeeping;

3.[Personal care services:

a. As authorized by KRS 205.900(3); or

b. For recipients twelve (12) years of age or older, as authorized by KRS 210.770(8)(c);

4.[In-home training and home management assistance:

a. As authorized by KRS 210.770(8)(d); and

b. That include services to individuals over the age of eighteen (18)[~~twelve~~-(12)] to assist with one-on-one instruction in the home, including:

(i) Property maintenance;

(ii) Financial planning;

(iii) Housekeeping such as laundering, meal preparation, vacuuming, storing purchased items, washing dishes, and changing

bed linens; and

(iv) Shopping;

4.[5.] Start-up grants:

a. As authorized by KRS 210.770(8)(e);[and]

b. That include a grant for one (1) time expenses if the expenses support the recipient's independent living and are for:

(i) A security deposit, not to exceed one month's rent;

(ii) Utility deposits, submitted with documentation and shall not include past due amounts owed by consumer; or

(iii) Purchases of furniture, and appliances[, and equipment] up to \$2,500[\$2,000];and

c. Limited to one start up grant per lifetime, per applicant.

5.[6.] Transportation:

a. As authorized by KRS 210.770(8)(f); and

b. That includes mileage reimbursement if it:

(i) Is for a person or provider who transports the recipient to work,~~or~~ community activities, medical appointments, or other destinations in the community as specified in the recipients Hart Supported Living plan~~[that are not customarily a family responsibility];~~ and

(ii) Does not exceed the state reimbursement rate for individual provider and as specified in DAIL-HSL-01 or DAIL-HSL-04;

(iii) Does not exceed the vendor specified budget amount in DAIL-HSL-02.

6.[7.] Home modifications that:

a. Are authorized by KRS 210.770(8)(g);

b. Include:

(i) An architectural change;

(ii) A ramp;

(iii) A widening of doors; or

(iv) Other adaptation if it is requested for the recipient's primary residence to directly accommodate the recipient's disability; and

c. Do not exceed the \$45,000 per recipient lifetime limit;

7.[8.] Adaptive and therapeutic equipment:

a. As authorized by KRS 210.770(8)(h); and

b. That includes an item which promotes the recipient's independent functioning and is recommended by a:

(i) Physician;

(ii) Physician assistant;

(iii) Advanced practice registered nurse; or

(iv) Licensed therapist; and

8.[9.] Individualized life planning authorized by KRS 210.770(8)(i).

9. Respite care.

a. Skilled or unskilled service provided to a recipient on a short-term basis if there is an absence or need for relief of a recipient's caregiver;

b. Be provided by someone who does not reside in the same household as the recipient; and

c. As defined in DAIL-HSL-02 Plan

(20)[(19)] "Operating agency" means the department or its designee that administers Hart-Supported Living.

(21)[(20)] "Person with a disability" is defined by KRS 210.770(2).

(22)[(21)] "Primary residence" means a dwelling where the recipient permanently resides and is owned or leased by the recipient or recipient's family as documented on the deed or lease agreement.

(23)[(22)] "Recipient" means a person who has applied,~~and~~ been approved for a Hart-Supported Living grant, and signed a DAIL-HSL-02 Plan.

(24)[(23)] "Recoupment" means a return of funds for any payment that was made in an incorrect amount including overpayments and underpayments under statutory, contractual, administrative, or other legally applicable requirements.

(25)[(24)] "Regional Hart-Supported Living grant program coordinator" means a person or entity designated by the DAIL who is responsible for fiscal and programmatic oversight of Hart-Supported Living grants and plans.

(26)[(25)] "Request for informal dispute resolution" means the process to be followed if a recipient disagrees with a decision made by the department~~[regional supported living coordinator]~~, review team, or council.

(27)[(26)] "Review team" means a team designated by the department to perform the functions established in Section 5 of this administrative regulation.

Section 2. Eligibility. (1) ~~[Eligibility shall be determined in accordance with KRS 210.790(1)].~~

(2) ~~Upon the effective date of this administrative regulation,~~ An applicant who is eligible for services through Medicaid or a Medicaid Waiver shall not be eligible for on-going services through a Hart-Supported Living grant unless the applicant is:

(a) Considered inappropriate for participant directed services due to:

1. An inability to manage his own services; and

2. A lack of availability of a person to act as his representative;

or

(b) Unable to access the Medicaid program though a traditional provider.

(2)[(3)] Medicaid eligible individuals requesting services that are not available or exceed program limits through Medicaid may apply for a Hart-Supported Living grant for those services not covered through Medicaid.

(3)[(4)] Applicants shall submit a copy of the following for each member of the applicant's household:

(a) The most recent year's income tax returns disclosing the adjusted gross income;

(b) The past three (3) months' pay stubs; or

(c) Other verification of income for the past year.

(4)[(5)] An individual receiving Social Security Insurance shall be considered a household of one (1).

(5)[(6)] Applicants with an annual household adjusted gross income at or below 300 percent of the federal poverty guidelines shall be considered an eligible applicant.

(6)[(7)] Applicants with a household adjusted gross income above 300 percent of the federal poverty guidelines shall not be considered an eligible applicant unless the deduction of allowable extraordinary out of pocket expenses adjusts the household income to 300 percent of the federal poverty guidelines or lower.

~~[(8) Recipients of a Hart-Supported Living grant prior to the effective date of this administrative regulation shall meet the requirements of this section by July 1, 2018.~~

~~[(9) An individual shall be limited to one (1) startup grant.]~~

Section 3. Applicant Responsibilities.

(1) To be considered for a Hart-Supported Living grant, the applicant shall submit a completed DAIL-HSL-01 or DAIL-HSL-04 Application~~[on or before the annual deadline]~~ to the regional Hart-Supported Living grant program coordinator where the applicant resides on or before~~[by]~~ the annual deadline of:

(a) February 1 for all on-going recipients submitting a DAIL-HSL-04 Request For Renewal; or

(b) April 1 for new applications or on-going recipients requesting a new item or service submitting a DAIL-HSL-01 Application.

(2) The DAIL-HSL-01 or DAIL-HSL-04 Application shall be submitted:

(a) With all sections and attachments completed; and

(b) Via:

1. The US postal service postmarked by annual deadline;

2. Hand delivered to the HSL staff~~[office];~~~~or~~

3. Electronically through email or Web site submission;or~~;~~

4. By facsimile to program staff.

(3) An applicant shall disclose any relationship with:

(a)~~[-A person employed by the contract agency;]~~

~~[(b)]~~ The regional Hart Supported-Living coordinator;

~~[(c)]~~ A council member; or

~~[(d)]~~ A department staff member.

(4) A Hart-Supported Living grant program application shall not be used or approved to pay for the following:

(a) Rent or mortgage payments;

(b) Payment of a recipient's or employee's insurance premium regardless of insurance type or medical bills;

(c) Supplementation of wages or employer related expenses for staff in other publicly-funded programs;

(d) Modifications costing over \$2,500 to rental property;

- (e) Modifications of rental property without written permission from the property owner;
- (f) A home improvement not related to a person's disability, including roofing, foundation, and regular home maintenance;
- (g) Rental of a vehicle ~~for more than thirty (30) days in a fiscal year~~;
- (h) Purchase of a vehicle;
- (i) Supports or services for individuals in accordance with KRS 210.770(6)(a)-(e);
- (j) Equipment or service that is duplicative or obtainable from another program or funding source for which the applicant qualifies;
- (k) Tuition and associated costs to any educational institution;
- ~~(l) Transportation, costs, or fees for a program or activity in which the majority of participants are persons with a disability;~~
- ~~(m) Furniture not related to a start-up grant;~~
- ~~(n) Household items;~~
- ~~(o) Utility bills including:~~
  - 1. Mobile phones;
  - 2. Land line phones;
  - 3. Internet access;
  - 4. Cable;
  - 5. Satellite dish;
  - 6. Gas;
  - 7. Electric;
  - 8. Water;
  - 9. Sewer; or
  - 10. Other home related costs that may be considered utility and ongoing;
- ~~(p) Vacations;~~
- ~~(q) Camps that are segregated;~~
- ~~(r) Payment of medical treatments including:~~
  - 1. Medical costs;
  - 2. Prescriptions;
  - 3. Vitamins and supplements;
  - 4. Nutritional supplements; or
  - 5. Medical supplies;
- ~~(s) Groceries, meals, or dining out;~~
- ~~(t) Fees and expenses for anyone other than the recipient and one (1) attendant; or~~
- ~~(u) Studies or research projects.~~
- (5) Community activity fees shall:
  - (a) Be limited to pay for the recipient and one (1) attendant to accompany the recipient to an activity that promotes participation in the community with members of the general citizenry;
  - (b) Not be provided for activities that are a family responsibility; and
  - (c) Not exceed \$1,000~~[\$750]~~ per grant year per recipient.
- (6) Community activity fees, membership fees, and services funded through a Hart-Supported Living grant shall be provided and purchased in Kentucky unless they are not available in Kentucky.

#### Section 4. Application Evaluation and Funding Criteria.

- (1) The review team shall recommend funding for a Hart-Supported Living grant based on the DAIL-HSL-01 Application which shall:
  - (a) Be received or postmarked on or before the due date;
  - (b) Be filled out in its entirety;
  - (c) Clearly identify the applicant's need for services requested;
  - (d) Clearly identify and justify the cost for requested services;
  - (e) Clearly identify how the services will be provided;
  - (f) Clearly identify who will provide the services;
  - (g) Include a budget sheet and budget narrative for the funding requested for each service and provider;
  - (h) Identify personal resources that will be utilized to provide identified services; and
  - (i) Adhere to the core principles and definitions of the Hart-Supported Living grant program in accordance with KRS 210.770(5) and (6) and 210.795.
- (2) Funding for the application shall be dependent upon:
  - (a) Meeting the eligibility criteria established in Section 2 of this administrative regulation;
  - (b) Completeness;
  - (c) Submission on or before the deadline;

- (d) Evaluation by the review team; and
- (e) Availability of funding.
- (3) Once the allocation of funds have been obligated to applications based on the review criteria, other applications shall not be approved for funding unless additional funding becomes available.

#### Section 5. Review Teams.

- (1) A review team shall:
  - (a) Evaluate applications in accordance with the criteria in Section 4 of this administrative regulation;
  - (b) Make recommendations for applications to be funded in accordance with subsection (2) of this section;
  - (c) Review requests for plan amendments utilizing the DAIL-HSL-03 Plan Amendment;
  - (d) Not authorize a plan amendment to increase the grant award; and
  - (e) Reallocate grant awards that are underspent to fund individuals in the following priority order:
    - 1. Applicants approved through the informal dispute or appeals process for the current fiscal year or, if no funding is available, these individuals shall be the first funded in the next fiscal year; and
    - 2. Applicants in the current fiscal year based on priority order according to subsection (1)(a-d) and (2)(a-b) of this section that funding was not available prior to the reallocation of grant awards.
- (2) Funding recommendations shall be made in the following order:
  - (a) Current recipients requesting the same amount or less for on-going supports;
  - (b) Current recipients requesting additional funding in order to ensure the continuation of their current plan. Additional funding may be granted for the following:
    - 1. An increase in the pay rate of a provider, agency, or vendor for services currently in the plan;
    - 2. An increase in employer taxes for services currently in the plan;
    - 3. An increase in worker's compensation rates; or
    - 4. Payment to a provider to compute required employer taxes and withholdings;
  - (c) Applicants denied funding from the previous fiscal year and approved for funding by the informal dispute resolution or administrative hearing process as outlined in Section 14 of this administrative regulation; and
  - (d) New applicants and current recipients requesting additions to their plans.
- (3) Multiple review teams may be established based upon the number of applications received annually and shall be designated by the department and made up of a minimum of three (3) individuals consisting of:
  - (a) One (1) employee of the department;
  - (b) One (1) council member; and
  - (c) One (1) representative of a community or advocacy organization that serves those with disabilities.
- (4) If needed and available, technical assistance may be provided for educational purposes to the review team by a subject matter expert.

#### Section 6. Recipient Responsibilities.

- (1) A recipient of a Hart-Supported Living grant shall:
  - (a) Meet the eligibility requirements established in Section 2 of this administrative regulation;
  - (b) Participate in the development of a DAIL-HSL-02 Plan with the regional Hart-Supported Living grant program coordinator;
  - (c) Adhere to the Hart-Supported Living plan and request a plan amendment for a necessary change;
  - (d) Negotiate the grant funded services to be provided by:
    - 1. A service providing agency; or
    - 2. An individual who provides services, as an employee or independent contractor; and
  - (e) Be responsible for the recoupment of funds when used for any purpose other than the approved plan or approved amended plan.
- (2) A recipient of a Hart-Supported Living grant who is an

employer shall:

(a) Be responsible for the computation, payment, and reporting of employee payroll, withholdings, workers' compensation, unemployment, and taxes;

(b) Establish terms of employment for an employee to:

1. Include time, duties, and responsibilities; ~~and~~

2. Be in the form of a signed agreement; and

3. Retain a copy of the valid driver's license and car insurance for any employee providing transportation.

(c) Establish terms for an independent contractor to include:

1. Proof of licensure or certification and insurance;

2. Services to be provided and compensation; and

3. A signed agreement.

(3) A recipient shall not sell or donate equipment or another item purchased with Hart-Supported Living grant funds without the written consent of the council.

(4) A recipient of a Hart-Supported Living grant shall comply with standards as set forth in KRS 210.795.

(5) A recipient shall immediately notify the regional Hart-Supported Living coordinator upon the receipt of additional supports or services.

(6) A recipient shall submit:

(a) Documentation with a request for payment that shows a support or service approved on a DAIL-HSL-02 Plan has been provided; and

(b) A timesheet that shall be signed and dated by an employee and employer.

(7) A recipient of grant funds shall submit an application to request an increase of services or funding by April 1 to be considered with all applicants for a Hart-Supported Living grant for the fiscal year beginning July 1.

(8) Recipients of grant funding~~[prior to the effective date of this administrative regulation]~~ shall:

(a) Receive priority for funding of existing services listed on the individuals Hart-Supported Living plan, if the application is complete and submitted in compliance with Section 3 of this administrative regulation; and

(b) Not receive priority funding for:

1. New services;

2. Expanded services; or

3. Requesting additional funding for existing services.

#### Section 7. Recipient's Employee Responsibilities.

(1) An employee shall:

(a) Be selected by the recipient;

(b) Be eighteen (18) years of age or older;

(c) Enter into and comply with the written agreement for terms of work required by the recipient's DAIL-HSL-02 Plan or DAIL-HSL-03 Plan Amendment;

(d) Be a citizen of the United States with a valid Social Security number or possess a valid work permit if not a U.S. citizen;

(e) Be able to communicate effectively with the recipient, recipient's representative, or family;

(f) Be able to understand and carry out instructions;

(g) Keep records as required by the recipient;

(h) Report to work as scheduled;

(i) Maintain the privacy and confidentiality of the recipient;

(j) Complete training on the reporting of abuse, neglect, or exploitation in accordance with KRS 209.030 and on the needs of the recipient;

(k) Maintain and submit timesheets documenting hours worked and services provided;

(l) Provide proof of the following background checks, completed no more than sixty (60) days prior to hire and submitted prior to the first day of employment:

1. A criminal background check from the Administrative Office of the Courts or Justice and Public Safety Cabinet that shows the employee has not plead guilty to or been convicted of:

a. Committing a sex crime or violent crime as defined in KRS 17.165(1)-(3); and

b. A felony offense related to theft, abuse of a person, or drugs;

2. A check of the nurse aid abuse registry maintained in accordance with 906 KAR 1:100 that shows the employee was not

found on the registry;

3. A check of the central registry maintained in accordance with 922 KAR 1:470 that shows the employee was not found on the registry; and

4. A check of the Adult Protective Services Caregiver Misconduct Registry maintained in accordance with 922 KAR 5:120 that shows the employee was not found on the registry; and

(m) Notify the regional Hart Supported-Living coordinator of conditions which seriously threaten the health or safety of the recipient or employee.

(n) Provide employer with proof of valid driver's license and insurance if providing transportation.

(2) An individual shall not be hired as an employee if the individual:

(a) Has not submitted proof of the background checks specified in subsection (1)(l)1.-4. of this section;

(b) Is on the Central Registry, Nurse Aid Abuse Registry, or Adult Protective Services Caregiver Misconduct Registry;

(c) Has pled guilty to or been convicted of committing a crime as specified in subsection (1)(l)1.a. or b. of this section; or

(d) Is not able to understand or carry out a recipient's instructions or services as listed on the DAIL-HSL-02 Plan or DAIL-HSL-03 Plan Amendment.

(3) An employee(s) are restricted from working over forty (40) hours in a Sunday to Saturday work week through all publicly funded programs. [An employee shall not work more than forty (40) hours in a calendar week (Sunday through Saturday)].

Section 8. Operating Agency Responsibilities. The operating agency for Hart-Supported Living grant program funds shall:

(1) Implement the Hart-Supported Living grant program in accordance with KRS 210.770, 210.790, and 210.795;

(2) Assume fiscal accountability for the state funds designated for the program;

(3) Provide necessary personnel within the operating agency office that shall:

(a) Meet qualifications for the position held that include at a minimum:

1. A bachelor's degree in human services or a related field;

2. One (1) year of experience working in a social service field; and

3. Documentation of completion of six (6) hours of annual training related to the position or population;

(b) Not have a conflict of interest; and

(c) Disclose any relationship with any applicant or recipient of a Hart-Supported Living grant to the department;

(4) Establish a cost center and record staff costs for administering the Hart-Supported Living grant Program;

(5) Maintain files and records for cabinet audit, including participant records, and statistical reports in accordance with 725 KAR 1:061. [ten (10) years after the last date funding is no longer received as required by the DAIL records retention schedule that include:

(a) Applications funded;

(b) Applications that were not funded;

(c) Names of recipients whose funding was terminated;

(d) Names of currently-funded recipients;

(e) Recipient plans;

(f) Amendments to plans;

(g) Financial records; and

(h) Recipient monitoring reports.]

(6) Issue payment of recoupment to DAIL if:

(a) The department's~~[operating agency's]~~ documentation is not sufficient to determine that HSL funds were used according to this administrative regulation; or

(b) The recipient used his or her plan inappropriately; and

(7) Not request the recouped funds back from the recipient unless:

(a) The department~~[agency]~~ demonstrates~~[-to the department]~~ by compelling evidence that the recipient used his or her plan inappropriately; and

(b) The department provides written approval to recoup the funds from the recipient.

Section 9. Council Responsibilities.

(1) A council member shall:

(a) Adhere to the:

1. Cabinet's confidentiality of records and reports requirements in accordance with KRS 194A.060; and

2. Confidentiality requirements for an applicant's or recipient's health information pursuant to 45 C.F.R. 164.502 - 164.514;

(b) Disclose any relationship with any person receiving a Hart-Supported Living grant, including themselves; and

(c) Adhere to the council's bylaws, KRS 210.770 through 210.795, and this administrative regulation.

(2) If a council member fails to act in accordance with this section, the chair or any council member may:

(a) Call for a vote of the council to recommend the dismissal of the council member; and

(b) Upon a majority vote for dismissal, recommend to the governor that the member be dismissed.

(3) A council member shall not:

(a) Influence, discuss, deliberate, or vote on a decision if the member has a conflict of interest that is:

1. Personal;

2. Professional; or

3. Financial;

(b) Be physically present in a meeting or portion of a meeting during which the subject matter of the conflict of interest is discussed or voted on; or

(c) Assist another individual, regardless of where the person resides, to complete an application for Hart-Supported Living grant funds or services except as provided in subsection (4) of this section.

(4) A council member may assist in the completion of an application for himself, if eligible, or an eligible family member.

(5) A council member shall assist in the review of applications in accordance with Section 5 of this administrative regulation.

Section 10. Department Responsibilities. The Department shall:

(1) In cooperation with the council, establish deadlines, budgets, and priorities for Hart-Supported Living grant program funds;

(2) Maintain aggregate financial and programmatic data;

(3) Provide staff support, technical assistance, and training for the Hart-Supported Living grant Program;

(4) Provide monitoring of the Hart-Supported Living grant Program[;]

~~(5) Issue recoupment notices to the provider agency if Hart-Supported Living grant program funds were not used in accordance with this administrative regulation; and~~

~~(6) Not allow the provider agency to request the recouped funds back from the recipient unless the agency can demonstrate by compelling evidence that the recipient purposely used plan funding inappropriately].~~

Section 11. Regional Hart-Supported Living Grant Program Coordinator Responsibilities. The regional Hart-Supported Living grant program coordinator shall:

(1) Disseminate applications for the Hart-Supported Living grant program[ that include the evaluation criteria];

(2) Provide assistance in the completion of the DAIL-HSL-01 Application upon request by an eligible applicant or individual on the applicant's behalf;

(3) Receive the DAIL-HSL-01 Application, document the date received, and send notice of receipt of application to the applicant;

(4) Prescreen applications to determine completeness, compliance with the instructions, and conformity with KRS 210.770(5) and (6);

(5) Maintain a database by fiscal year of applicants and recipients that shall include the individual's:

(a) Name;

(b) Address;

(c) Phone Number;

(d) Birth date;

(e) County of residence;

(f) Services or supports requested;

(g) Cost of each service or support;

(h) Contact person phone number; and

(i) Amount of allocated funding;

(6) Notify all applicants of the status of their applications:

(a) By June 15 for the fiscal year beginning July 1; or

(b) Within fifteen (15) days of the state budget allocation being received;

(7) Within thirty (30) days of the recommendation for funding of an applicant, conduct a face-to-face visit to finalize the Hart-Supported Living grant program plan and budget;

(8) Conduct a home visit to verify the need for home modifications;

(9) Educate a recipient on the recipient's responsibilities as outlined in Section 6 of this administrative regulation;

(10) Approve payments for funded Hart-Supported Living plans by:

(a) Receiving bills or other documentation that a service has been provided;

(b) Verifying the service as a part of the established plan; and

(c) Keeping a record of each payment;

(11) Arrange for the billing and payment directly to a vendor for one (1) time expenditures or to an agency as requested by a grant recipient;

(12) Ensure compliance with this administrative regulation and the successful implementation of the Hart-Supported Living plans through monitoring which shall include:

(a) Conducting a home visit or site visit at the location where the services are received;

(b) Visiting the home when home modifications are requested and completed;

(c) Completing a monitoring report that shall be completed for each recipient as follows:

1. Within ~~six (6)~~~~[three (3)]~~ months of completion of the service for one (1) time services received by a recipient; and

2. Within the first three (3) months of the initiation of the Hart-Supported Living plan and for services received by a recipient; and

(d) Maintaining monitoring reports as a permanent part of the recipient's record;

(13) Attend trainings and meetings as required by the council;

(14) Submit database information as outlined in this section to the department; and

(15) Disclose any relationship with an applicant or recipient of a Hart-Supported Living grant including:

(a) Family member;

(b) Friend;

(c) Co-worker;

(d) Co-worker family member; or

(e) Co-worker friend.

Section 12. Reduction of a Hart-Supported Living Grant.

(1) The regional Hart-Supported Living grant program coordinator shall recommend a reduction in Hart-Supported Living grant funding by the amount that duplicates a support or service on the Hart-Supported Living plan to the Hart-Supported Living council.

(2) The Hart-Supported Living grant shall be reduced if:

(a) The support does not comply with the principles and definition of the Hart-Supported Living grant program in KRS 210.770 through 210.795;

(b) The recipient no longer needs a support or service in whole or in part; or

(c) The recipient does not utilize funds in accordance with the approved DAIL-HSL-02 Plan.

Section 13. Termination of a Hart-Supported Living Plan. (1) The regional Hart-Supported Living grant program coordinator shall recommend to the council that a recipient's grant be terminated if the recipient:

(a) Does not use the funds in accordance with the principles and definition of Hart-Supported Living found in KRS 210.770, 210.795, and this administrative regulation;

(b) Does not comply with employer responsibilities, if applicable;

(c) Takes up residence outside of Kentucky;

(d) Requests termination of the Hart-Supported Living grant;

(e) Does not utilize funds in accordance with the approved DAIL-



HSL-02 Plan;

(f) Does not notify the Hart-Supported Living grant program coordinator upon receipt of additional supports or services as required in Section 6(5) of this administrative regulation; or

(g) Passes away.

(2) The regional Hart-Supported Living grant program coordinator shall recommend termination of the program if a council member or program staff is threatened, harassed, or intimidated by a recipient's:

(a) Caregiver;

(b) Family member;[-or]

(c) Employee; or

(d) Designated representative.

(3) A termination shall be appealable in accordance with Section 14 of this administrative regulation.

Section 14. Request for Informal Dispute Resolution or Administrative Hearing. (1) A recipient may request an informal dispute resolution.

(2) A dispute resolution shall be limited to:

(a) The denial, reduction, or termination of a:

1. Hart-Supported Living plan; or

2. Hart-Supported Living plan amendment;

(b) The reduction of Hart-Supported Living grant program funding as requested in the plan; or

(c) The reduction or termination of Hart-Supported Living grant program funding, unless due to state budget cuts.

(3) A request for an informal dispute resolution shall:

(a) Be submitted to the department's HSL program coordinator within thirty (30) days following the notification by the Hart-Supported Living grant program coordinator of a decision in subsection (2) of this section; and

(b) Contain the following information:

1. Name, address, and telephone number of the recipient;

2. Decision being disputed;

3. Justification for the dispute;

4. Documentation supporting the dispute; and

5. Signature of person requesting the dispute resolution.

(4) The dispute resolution shall be heard by:

(a) Three (3) members of the council, one (1) of whom shall be the chairman or the chairman's designee;

(b) One (1) member of the review team; and

(c) The Hart-Supported Living grant program coordinator.

(5) The recipient shall be provided an opportunity to appear before the dispute resolution team to present facts or concerns about the denial, reduction, or termination of the grant.

(6) The dispute resolution team shall inform a recipient, in writing, of the decision resulting from the dispute resolution within ten (10) business days of the review.

(7) A recipient dissatisfied with the result of the dispute resolution may appeal to the Division of Administrative Hearings of the Office of Communications and Administrative Review.

(8) The appeal shall be submitted:

(a) Within fifteen (15) business days from the date on the letter providing the decision of the dispute resolution team;

(b) In writing; and

(c) To the Department for Aging and Independent Living, 275 East Main Street, Frankfort, Kentucky 40621.

(9) The department shall request the Division of Administrative Hearings of the Office of Communications and Administrative Review to conduct a hearing pursuant to KRS Chapter 13B.

Section 15. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "DAIL-HSL-01 Application", January 2024[April 2015];

(b) "DAIL-HSL-02 Plan", January 2024[April 2015];

(c) "DAIL-HSL-03 Plan Amendment", January 2024[August 2015]; and

(d) "DAIL-HSL-04 Request for Renewal", January 2024[April 2015].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Aging and Independent Living, 275 East Main Street, Frankfort, Kentucky

40621, Monday through Friday, 8 a.m. through 4:30 p.m., or at  
<https://www.chfs.ky.gov/agencies/dail/Pages/hslp.aspx>

VICTORIA ELRIDGE, Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: January 30, 2024

FILED WITH LRC: January 31, 2024 at 2:10 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on, April 22, 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 hearing shall notify this agency in writing by April 15, 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 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, April 30, 2024. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. In the event of an emergency, the public hearing will be held using the CHFS Office of Legislative and Regulatory Affairs Zoom meeting room. The Zoom invitation will be emailed to each requestor in advance of the scheduled hearing. 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; 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 amended administrative regulation provides the guidelines and operations of the Hart-Supported Living grant program.

(b) The necessity of this administrative regulation: The necessity of this amended administrative regulation is to allow the Hart-Supported Living Council to establish the methods of awarding Hart-Supported Living grants, monitoring the quality of service delivery, and providing for administrative appeals of decisions.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This amended administrative regulation conforms to KRS 210.770 to 210.795 by establishing the Hart-Supported Living program service requirements. This amended administrative regulation sets out the eligibility services and responsibilities of the participants, support and service providers.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This amended administrative regulation assists in the effective administration of the statutes KRS 210.780(3) authorizes the Hart-Supported Living Council to recommend necessary administrative regulations to carry out the purposes of KRS 210.770 to 210.795. KRS 210.795(3) by establishing the method of award, monitoring the quality of service delivery, and providing administrative appeals of decisions. This amended administrative regulation provides updates to the materials incorporated, terminology, applicant and provider responsibilities, some award amounts, retention requirements, department responsibilities, and monitoring requirements.

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

(a) How the amendment will change this existing administrative regulation: This amendment updated terminology to include Designated Representative to provide guidance for participants. Throughout this amended regulation the term therapist is updated to be licensed therapist, and the term regional supported living

coordinator and contract agency has been updated to department because the coordinators are now department staff and the program is administered by the department. Section 1: This amendment will update the definition for Hart Supported Living services to remove community resource developer because it has a stand alone definition, update the in-home training for participants to over eighteen, several updates to the startup grants including the increase the amount from \$2,000 to \$2,500, updates the transportation guidelines to ensure the reimbursements are accurate, and added a definition for respite care. The proof of disability requirements was added to the definition of person with a disability. Section 2: The term eligibility is previously defined so the definition is removed from this section. There is a clean up that was no longer relevant after 2018, removed language as clean up measure. The startup grant definition was mentioned in Section 1, so it was removed from the eligibility section. Section 3: The applicant responsibilities section the postmarked date is now the deadline, and added fax as a form of submission. There were items added to what the program shall not approve, employer related expenses for staff in other publicly funded programs, roofing, foundation, regular home maintenance, and rental of a vehicle. The transportation specifications were removed because the restriction did not allow person centered decision making. The activity fees limit was raised from \$750 to \$1000/year. Section 6 & 7: The recipient responsibilities added to retain a copy of a valid license and car insurance for any employee providing transportation. The employee responsibilities updated to provide a valid drivers license and car insurance if providing transportation. The employee responsibilities regulations were updated to An employee(s) are restricted from working over forty (40) hours in a Sunday to Saturday work week through all publicly funded programs. Section 8: The detail for retention records were removed because they are outlined in 725 KAR 1:061 Section 10: The recoupment process was removed because it was only valid when the program was contracted. The timeline for monitoring was updated from three to six months following the initial service plan completion. This was extended to allow regional coordinators to provide a more in depth monitoring. Section 13: The termination section added the term harassed to protect the coordinators. The term designated representative was also added to the list.

(b) The necessity of the amendment to this administrative regulation: The Hart Supported living has had several changes since the previous amendment. The necessity of these changes is to ensure the department shall administer the grant program efficiently and equal. The regulation amendments are all suggestions of the council and direct program workers.

(c) How the amendment conforms to the content of the authorizing statutes: This amended administrative regulation conforms to KRS 210.770 to 210.795 by establishing the Hart-Supported Living program service provisions and requirements for eligibility. KRS 210.780(3) authorizes the Hart- Supported Living Council to recommend necessary administrative regulations. The council has approved and voted to submit the amended regulation for public comment and administrative review.

(d) How the amendment will assist in the effective administration of the statutes: The amended regulation is necessary for effective administration by updating terminology to ensure the Hart Supported Living program is administered using all of the original principles of the grant.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The number of individuals served each fiscal year is 300-500 depending on the type and amount of the funding requested. This amendment will not affect any businesses, organizations or government.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: In accordance with this administrative regulation, this action should not have any effect on regulated entities outside of the Hart Supported Living program and the participants.

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

amended administrative regulation has no cost to any entity.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This amended regulation will ensure the efficiency, equity and accountability of the Hart Supported Living program. This grant program is very broad based on what services and supports are funded. The amendments are to confirm that all applicants and participants are utilizing the program properly.

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

(a) Initially: There are no anticipated costs to implement this administrative regulation.

(b) On a continuing basis: There are no anticipated continuing costs to this regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The funding for the Hart Supported Living program is a state funded grant program.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: This administrative regulation as amended does not increase fees or funding necessary to administer the Hart Supported Living program. The number of services and supports provided annually is based on the amount of state funds received.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation as amended does not increase fees to administer the Hart Supported Living program.

(9) TIERING: Is tiering applied? Tiering is not applicable as compliance with this administrative regulation applies equally to all entities regulated.

#### FISCAL NOTE

(1) What 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 does impact the Cabinet for Health and Family Services, Department for Aging and Independent Living

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 210.780(3) authorizes the Hart- Supported Living Council to recommend necessary administrative regulations to carry out the purposes of KRS 210.770 to 210.795. KRS 210.795(3) requires the cabinet in concert with the Hart-Supported Living Council to promulgate administrative regulations.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This amended administrative regulation does not generate any revenue, there is no increase in revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This amended administrative regulation does not generate any revenue, there is no increase in revenue.

(c) How much will it cost to administer this program for the first year? There are no additional costs for the Department for Aging and Independent Living for implementation of this amended regulation.

(d) How much will it cost to administer this program for subsequent years? There are no additional costs for the Department for Aging and Independent Living for implementation of this amended 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.

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 are no anticipated cost savings.

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

(c) How much will it cost the regulated entities for the first year? There is no cost to regulated entities associated with this amendment.

(d) How much will it cost the regulated entities for subsequent years? There is no cost to regulated entities associated with this amendment.

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

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

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](#).

**TOURISM, ARTS AND HERITAGE CABINET**  
**Department of Fish and Wildlife Resources**  
**(New Administrative Regulation)**

**301 KAR 3:130. Public use of Conservation Camp Properties.**

RELATES TO: KRS 13B, 150.025, 150.0241

STATUTORY AUTHORITY: KRS 150.025, 150.179, 150.620, 150.0241

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations necessary to carry out the purposes of KRS Chapter 150. KRS 150.179(2) authorizes the department to approve certain special events that provide education or appreciation of the recreational activity. 43 C.F.R. Part 17 and 28 C.F.R. parts 35 and 36 mandate that state government agencies comply with the Americans with Disabilities Act. This administrative regulation establishes procedures to allow individuals meeting defined criteria for mentored events to boat, fish, hunt, shoot, or trap as part of a department-approved activity or program. KRS 150.0241 authorizes the department to impose and enforce special administrative regulations on lands managed for public hunting, fishing, and related recreational uses. This administrative regulation prohibits certain actions inconsistent with the intended purpose of conservation camp properties, establishes requirements for other uses, and stipulates the procedure for obtaining group use permits on these areas.

Section 1. Definitions.

(1) "Adult" means a person who is at least eighteen (18) years of age.

(2) "Bait" means:

(a) A substance composed of grains, minerals, salt, fruits, vegetables, hay, or any other food materials, whether natural or manufactured, that could lure, entice, or attract wildlife; and

(b) Does not mean the establishment and maintenance of plantings for wildlife, foods found scattered solely as the result of normal agricultural planting or harvesting practices, foods available to wildlife through normal agricultural practices of livestock feeding if the areas are occupied by livestock actively consuming the feed on a daily basis, or standing farm crops under normal agricultural practices.

(3) "Conservation camp" means a tract of land:

(a) Controlled by the department through ownership, lease, license or cooperative agreement; and

(b) That is utilized to host summer conservation camps for Kentucky children.

(4) "Event" means a boating, fishing, hunting, shooting, or trapping activity, conducted by the department.

(5) "Experienced" means a person who has often participated in a particular activity in the past and is well versed in the techniques, equipment, and safety concerns for the activity.

(6) "Injurious substance" means a substance which may be injurious to aquatic life, wildlife, or wildlife habitat.

(7) "Mentee" means a youth or novice adult hunter, trapper or angler that is participating or going to participate in a mentored event.

(8) "Mentor" means an adult, experienced in the type of activity that is to occur at an event, who must submit to and pass a background check prior to accompanying a mentee during a mentored event.

(9) "Mentored event" means an event during a statewide season in which mentors accompany mentees.

(10) "Mobility-impaired" means an individual who meets the requirements of 301 KAR 3:026, Section 2(1).

(11) "Novice" means a person who has not held the applicable license for an event activity for more than two (2) license years in

total, has not held the applicable license for an event activity within the past five (5) years, has not successfully harvested the targeted species for an event within the past five (5) years, or for shooting and boating activities, has not participated in the activity more than five (5) times within the past five (5) years.

(12) "Participant" means an individual who engages in boating, fishing, hunting, shooting, or trapping, as part of an event.

(13) "Youth" means a person fifteen (15) years old or younger on the date of their license purchase.

Section 2. General Requirements.

(1) Unless established in this administrative regulation, statewide requirements shall apply.

(2) A person shall only hunt or trap in the area assigned to them by department staff.

(3) While upon a conservation camp property, a person shall not:

(a) Enter a portion of a conservation camp property designated by signage as closed to public access.

(b) Camp, except in a designated area.

(c) Place or distribute bait or otherwise participate in baiting wildlife on a conservation camp property.

(d) Hunt over bait.

(e) Possess or be under the influence of alcohol or illicit substances, as established in KRS 351.010, at any time while on conservation camp property.

(4) Only individuals who possess valid hunter education certification may participate in a hunting or trapping event.

Section 3. Mentored Events.

(1) Unless license exempt, as established in KRS 150.170, the mentee shall abide by any license requirements and daily harvest and possession limits.

(2) A mentor shall:

(a) Accompany a mentee;

(b) Remain in a position at all times to take immediate control of a mentee's bow, crossbow, firearm or any equipment used to legally hunt, trap or fish;

(c) Not be required to possess a hunting license or related permits, if only assisting the mentee.

(3) A mentee shall:

(a) Accompany a mentor;

(b) Remain in a position at all times so that the mentor may take immediate control of the mentee's bow, crossbow, firearm or any equipment used to legally hunt, trap or fish; and

(c) Possess all required licenses and permits.

Section 4. Mobility-impaired individuals.

(1) Individuals who are participating in an event, possess a Mobility-impaired Access Permit, as established in 301 KAR 3:026, and carry the permit on their person during the event, shall be allowed, if otherwise qualified to do so at the event, to do the following acts:

(a) Discharge of a firearm or other legal hunting device from a motor vehicle if the vehicle is motionless and has its engine turned off. The motor vehicle shall be used as a place to wait or watch for game and shall not be used to chase, pursue, or drive game.

(b) May operate electric wheelchairs, ATV's, and other passenger vehicles on or off gated, ungated, or open-gated roads otherwise closed to vehicular traffic, but the individual shall do so only on designated portions of camp property.

(2) ATV users shall adhere to manufacturer recommendations while utilizing ATVs on camp property.

(3) A mentee or mentor accompanying a mobility-impaired individual during an event shall be permitted to:

(a) Track and dispatch a wounded animal;

(b) Retrieve an animal; or

(c) Render other assistance in accordance with KRS Chapter

150 and 301 KAR Chapters 2 and 3.

(4) A mentee or mentor accompanying a mobility-impaired individual during an event shall not:

- (a) Operate his or her own ATV; or
- (b) Hunt or shoot from an ATV.

Section 5. General Requirements on Federally Owned Areas.

(1) Unless established in this administrative regulation, statewide requirements shall apply.

(2) A person shall:

- (a) Not hunt except on assigned dates and in assigned areas; and
- (b) Comply with all requirements established by the agency controlling the area.

RICH STORM, Commissioner

APPROVED BY AGENCY: February 13, 2024

FILED WITH LRC: February 14, 2024 at 1:35 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on April 30, 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 April 30, 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 procedures to allow individuals meeting defined criteria for mentored events to boat, fish, hunt, shoot, or trap as part of a department-approved activity or program. KRS 150.0241 authorizes the department to impose and enforce special administrative regulations on lands managed for public hunting, fishing, and related recreational uses. This administrative regulation prohibits certain actions inconsistent with the intended purpose of conservation camp properties, establishes requirements for other uses, and stipulates the guidelines for participation in events.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish guidelines under which the department may operate special mentored events on conservation camp properties.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.025(e) authorizes the department to regulate or restrict the places where taking is permitted. KRS 150.025(g) authorizes the department to make administrative regulations apply to a limited area or to the entire state. KRS 150.0241 authorizes the department to impose and enforce special administrative regulations on lands managed for public hunting, fishing, and related recreational uses. This administrative regulation prohibits certain actions inconsistent with the intended purpose of conservation camp properties, establishes requirements for other uses, and stipulates the guidelines for participation in events.

(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 increasing opportunity for prospective or lapsed hunters and anglers to acquire skills that will encourage them to become regular participants in these activities and other forms of outdoor recreation.

(2) If this is an amendment to an existing administrative regulation,

provide a brief summary of:

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All individuals who participate in the department sponsored mentored events as either a mentor or mentee. It is estimated each event will have no more than 30 participants.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No one will be required to take any action to comply with the regulation. Those individuals wishing to participate in the department sponsored mentored events will have to contact the department.

(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 the regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Those individuals that participate in the mentored events will benefit from fellowship with the other participants, the opportunity to get outdoors and enjoy the event, and mentees will receive valuable experience in the event activities.

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

(a) Initially: Initially, there will be minimal added cost to the administrative body. The added expense will be in materials and supplies. For example, materials for the marking of activity areas, expendable equipment (ammunition, bait, tackle, etc.), and catering picnic style meals as necessary for participants. It is estimated each event will cost under one-thousand dollars (\$1,000).

(b) On a continuing basis: On a continuing basis, each event will cost under one-thousand dollars (\$1,000) in materials and supplies.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding will be a combination of federal and state 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: 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 is not applied. While individuals may qualify to participate as a mentor or as a mentee based upon their knowledge and experience, all mentors are treated the same and all mentees are treated the same.

#### FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Fish and Wildlife Resources' Division of Information and Education will be impacted by this regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.025(1) authorizes the department to promulgate administrative regulations necessary to carry out the purposes of KRS Chapter 150. KRS 150.179(2) authorizes the department to approve certain special events that provide education or appreciation of the recreational activity. 43 C.F.R. Part 17 and 28 C.F.R. parts 35 and 36 mandate that state government agencies comply with the Americans

with Disabilities Act.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation may generate additional income through license sales for those participating in the events. As it is unknown how many participants may otherwise purchase licenses without the events, the specific amount of revenue generated is unknown. It is estimated that no more than five-hundred dollars (\$500) will be generated by the event initially. Through exposure to such events, it is the department's hope to create long-term or lifelong customers.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? Revenue generation in subsequent years would also be estimated at no more than five-hundred dollars (\$500) by each event in subsequent years. Through exposure to such mentored events, it is the department's hope to create long-term or lifelong customers.

(c) How much will it cost to administer this program for the first year? The cost of administering this program for the first year is estimated as under three thousand dollars (\$3,000)

(d) How much will it cost to administer this program for subsequent years? It is estimated administering this program in subsequent years will cost under three thousand dollars (\$3,000) subject to the possibility of increasing the frequency of events based upon demand.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? There will be no cost savings for regulated individuals in the first year.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? There will be no cost savings for regulated individuals in the subsequent years.

(c) How much will it cost the regulated entities for the first year? There will be no cost for regulated individuals in the first year.

(d) How much will it cost the regulated entities for subsequent years? There will be no cost for regulated individuals in subsequent years.

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] This regulation will not have a major economic impact as the annual cost will be minimal while increasing exposure to the mentored activities. The mentees' exposure to the activities is expected to increase license sales and create long term or lifelong customers, likely offsetting the minimal expenses.

**TRANSPORTATION CABINET  
Department of Vehicle Regulation  
Division of Motor Vehicle Licensing  
(New Administrative Regulation)**

**601 KAR 023:040. Application form to become Kentucky electronic license title entity; and application form for electronic motor vehicle title application submission.**

RELATES TO: KRS 186A.017

STATUTORY AUTHORITY: KRS 186A.017

NECESSITY, FUNCTION, AND CONFORMITY: KRS 186A.017

establishes the requirements and procedures to become an approved entity pursuant to KRS 186A.005(1). KRS 186A.017(7) requires the Transportation Cabinet to promulgate administrative regulations to establish an electronic title application and registration system by which title applications, salvage title applications, title lien statements, other supporting documents, signatures, and fees can be transmitted through the title application process in an electronic format.

**Section 1. Definitions.**

(1) "Applicant" means any Kentucky Automobile Dealer or Lienholder making application to become an approved entity.

(2) "Application" means form TC 96-361 available electronically to establish qualifications to be an approved entity.

(3) "Approved entity" is defined by KRS 186A.005(1).

(4) "Cabinet" means the Transportation Cabinet.

(5) "Electronic Title Application Review Committee" or "committee" means the committee responsible for approving or rejecting properly submitted applications.

**Section 2. Electronic Title Application Review Committee.**

(1) The committee shall consist of:

(a) The Director of the Division of Motor Vehicle Licensing, or a proxy;

(b) Assistant Director, Division of Motor Vehicle Licensing, or a proxy;

(c) Title Branch Manager of the Division of Motor Vehicle Licensing, or a proxy;

(d) Investigator Supervisor of the Division of Motor Vehicle Licensing, or a proxy; and

(e) Assistant Director, Dealer Commission, Department of Vehicle Regulation, or a proxy.

(2) A simple majority of the members present at a meeting shall be required to recommend approval or denial of an application.

**Section 3. Applicant Qualification Standards.**

(1) Applicants that are dealerships shall be a legal entity legally authorized to conduct business in the Commonwealth of Kentucky, with proper documentation with the Commonwealth of Kentucky Secretary of State's office for all purposes including service of process and principal place of business address. A dealer approved entity shall submit electronically their title and registration applications to the county clerk's office of the county in which they are doing business or the county where the buyer has their primary residence.

(2) Applicants, dealerships, or lienholders shall be up to date on all annual reports or other required business filings and the entity in question shall be in good business standing.

(3) Applicant dealerships shall be in good standing with the Kentucky Motor Vehicle Dealer Commission.

(4) Applicant dealerships shall not have any open cases with the Division of Motor Vehicle Licensing.

(5) Applicant dealerships, lienholders, and any other user using this system consents to the requirements of KRS 186A.017 and other applicable laws.

(6) Applicant, dealership, or lienholder addresses shall be accurate and up to date with official street addresses. Post-office box addresses shall not be used. If the official street addresses change, notice of the address change shall be made as soon as possible to the county clerk of the county where the business is located.

(7) An applicant shall return the completed form, TC 96-361, to the Transportation address listed on the application form. Pursuant to KRS 186A.017(3), the application fee of \$150 shall be submitted with the application.

(8) Possible grounds for denial of a new application include:

- (a) An incomplete application;
- (b) An application containing false or misleading information;
- (c) Prior criminal history involving fraud, perjury, or history of trafficking in stolen vehicles covered under this administrative regulation;
- (d) Any history of theft or other crime relating intentional or negligent concealment of title source;
- (e) Evidence of past involvement in theft of vehicles or vehicle parts;
- (f) Falsification or tampering with existing odometer readings; or
- (g) Failure to maintain a proper street address, or failure to provide update of new address change.

(9) If an application becomes approved and later it is found by the committee that any of the possible grounds of denial in subsection (7) of this section were concealed, or developed at a later date, the committee shall immediately notify the applicant by letter that their approved status shall be revoked.

(10) If an application has been denied or revoked for any cause, the cabinet shall notify the applicant at its most recent known address by letter. The letter shall provide a brief explanation for the denial.

#### Section 4. Appeal of Denials or Revocations of Prior Approval.

(1) Within thirty (30) days of the date of the denial or revocation letter, an applicant may appeal the decision by letter stating that it is an appeal of denial or revocation in question with a copy of denial or revocation letter attached.

(2) Appeals shall be addressed to the Commissioner of the Department of Vehicle Regulation, 200 Mero Street, Frankfort, Kentucky 40622.

(3) Appeals shall be governed by KRS Chapter 13B.

#### Section 5. Incorporation by Reference.

(1) Form TC 96-361, "Application to Become a KYELT Approved Entity", October 2023, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Motor Vehicle Licensing, 2nd Floor, Transportation Cabinet Office Building, 200 Mero Street, Frankfort, Kentucky 40622, Monday through Friday, 8 a.m. to 4:30 p.m.

(3) This material is also available on Transportation Cabinet's Web site at drive.ky.gov.

JIM GRAY, Secretary

MATTHEW COLE, Commissioner

APPROVED BY AGENCY: February 5, 2024

FILED WITH LRC: February 15, 2024 at 11:50 a.m.

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:** A public hearing on this administrative regulation shall be held on Tuesday, April 23, 2024, at 10:00 a.m. EST, at the Kentucky Transportation Cabinet, 200 Mero Street, Frankfort, Kentucky 40622. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. on April 30, 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:** Jon Johnson, Staff Attorney  
Manager/Assistant General Counsel, Transportation Cabinet, Office of Legal Services, 200 Mero Street, Frankfort, Kentucky 40622, phone (502) 564-7650, fax (502) 564-5238, email jon.johnson@ky.gov,

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jon Johnson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation details requirements and procedures to become an approved entity pursuant to KRS 186A.005(1) and KRS 186A.017(1-4). KRS 186A.017(7) also requires the Transportation Cabinet to promulgate administrative regulations to establish an electronic title application and registration system. This system allows an entity to be approved to submit title applications, salvage title applications, title lien statements, other supported documents, signatures, and fees can be input and transmitted through the title application process in an electronic format.

(b) The necessity of this administrative regulation: This regulation is required by KRS 186A.017.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms by providing a legal electronic format to submit applications to become an approved entity.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides a legal electronic format to submit applications to become an approved entity.

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

(a) How the amendment will change this existing administrative regulation: This is a new regulation and not an amendment.

(b) The necessity of the amendment to this administrative regulation: This is a new regulation and not an amendment.

(c) How the amendment conforms to the content of the authorizing statutes: This is a new regulation and not an amendment.

(d) How the amendment will assist in the effective administration of the statutes: This is a new regulation and not an amendment.

(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 following:

(a) A motor vehicle dealer licensed under KRS Chapter 190 that applies to and is approved by the Transportation Cabinet to facilitate the title application or salvage title application process through the electronic title application and registration system;

(b) A state or federal financial institution chartered under the laws of this state, any other state, or the United States as a bank insured by the Federal Deposit Insurance Corporation (FDIC), bank holding company, trust company, credit union, savings and loan association, or a holding company or service corporation subsidiary thereof, or any agent of any of the entities listed in this paragraph.

(c) An owner of a fleet as defined in this section that applies to and is approved by the Transportation Cabinet to facilitate renewal of registration or maintenance of permanent registration under KRS 186A.127 through the electronic title application and registration system; and

(d) A retailer of manufactured homes, mobile homes, or recreational vehicles, as defined in KRS 227.550, that applies to and is approved by the Transportation Cabinet to facilitate the title application process through the electronic title application and registration system.

(4) Provide an analysis of how the entities identified in the previous question will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including: This new regulation should enhance and speed up the title process, as well as, reduce paperwork.

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Any dealer of goods, lienholder, or buyer that is covered must be qualified and approved by application

process in regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no cost associated with this administrative regulation. The costs are those described already in KRS 186A.017.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Compliance with this administrative regulation will speed up the title application process.

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

(a) Initially: There is no cost associated with implementing this administrative regulation.

(b) On a continuing basis: There is no cost associated with implementing this administrative regulation. Paper reduction may reduce costs over time.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: There is no cost associated with implementing this administrative regulation, therefore there is no source of the funding to be used for the implementation and enforcement of this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: All costs associated by this regulation are already contained in statutory language. The fees are already stated. KRS 186A.017

(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? No tiering is required.

#### FISCAL NOTE

(1) What 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 Transportation Cabinet, Department of Vehicle Regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 186A.017.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation. This administrative regulation should cause no effect on 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 is not expected to 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 is not expected to generate revenue.

(c) How much will it cost to administer this program for the first year? This administrative regulation is not expected to generate costs.

(d) How much will it cost to administer this program for subsequent years? This administrative regulation is not expected to generate costs.

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

Revenues (+/-): No revenues will be generated by this program.

Expenditures (+/-): No expenditures will be generated by this program.

Other Explanation: n/a

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full

year the administrative regulation is to be in effect.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year?

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

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

(d) How much will it cost the regulated entities for subsequent years?

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

(5) Explain whether this administrative regulation will have a major economic impact, as defined below.

#### FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. N/A.

(2) State compliance standards. KRS 186A.017.

(3) Minimum or uniform standards contained in the federal mandate. N/A.

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? N/A.

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. N/A



ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE  
Minutes of February 12, 2024

**Call to Order and Roll Call**

The February meeting of the Administrative Regulation Review Subcommittee was held on Monday, February 12, 2024 at 1:00 p.m. in Room 149 of the Capitol Annex. Representative Lewis, 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, Damon Thayer, and David Yates; 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, Public Pensions Authority; Joseph Donohue, Board of Accountancy; Leanne Diakov, Board of Medical Licensure; Kelly Jenkins, Jeffrey Prather, Board of Nursing; Steven Fields, Department of Fish and Wildlife; Heather Becker, Clint Quarles, Department of Agriculture; Jamie Eads, Jennifer Wolsing, Horse Racing Commission; Laura Begin, Andrea Day, David Lovely, Valerie Moore, Kelli Root, Cabinet for Families and Children; Mindy Coleman, Jockeys Guild; Brian Hooker, Jimmy Lewis, Anthony Lovett, Health Directions, Inc.; Deborah Carroll, Joyce Lewis, Christy Shannon, Professional Home Health Care Agency, Inc.; Heidi Schissler Lanham, Protection and Advocacy; Evan Reinhardt, Kentucky Home Health Care Association; Dr. Ryan Smith, MD, Kentucky Academy of Eye Physicians and Surgeons; and Marie Cull, Cull and Hayden, PSC.

**The Administrative Regulation Review Subcommittee met on Monday, February 12, 2024, and submits this report:**

**Administrative Regulations Reviewed by this Subcommittee:**

**FINANCE AND ADMINISTRATION CABINET: Kentucky Public Pensions Authority: General Rules**

105 KAR 001:215. Administrative hearing. 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 NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1, 3 through 6, 8, 9, 11 through 13, and 17 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

**BOARDS AND COMMISSIONS: State Board of Accountancy**

201 KAR 001:190. Examination sections, applications, and procedures. Joseph Donohue, executive director, represented the board.

In response to questions by Co-Chair Lewis, Mr. Donohue stated that the window to complete examinations for licensure would be increased from eighteen (18) months to thirty (30) months to align timelines more closely with surrounding states and to ease entry into the job market for new accountants because there was currently a surplus of jobs.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO paragraph and Section 4 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

**Board of Medical Licensure**

201 KAR 009:067. Professional standards and procedures for medicinal cannabis practitioners. Leanne Diakov, general counsel, Board of Medical Licensure, and Jeffrey Prather, general counsel, Board of Nursing, represented the board.

A motion was made and seconded to approve the following amendments: to amend Sections 1 through 4 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.

**Board of Nursing**

201 KAR 020:057. Scope and standards of practice of advanced practice registered nurses. Kelly Jenkins, executive director, and Jeffrey Prather, general counsel, represented the board.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO paragraph and Sections

1, 3, 6 through 9, 11, and 12 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 020:065. Professional standards for prescribing Buprenorphin- MonoProduct or Buprenorphine-Combined-with-Naloxone by ARNPs for medication assisted treatment for opioid disorder.

In response to a question by Co-Chair Lewis, Mr. Prather stated that this administrative regulation was changed to allow for medication monitoring programs other than the Kentucky All Schedule Prescription Electronic Reporting (KASPER) program in case KASPER stopped being implemented or was changed to a different monitoring system.

201 KAR 020:067. Professional standards for medicinal cannabis.

A motion was made and seconded to approve the following amendments: (1) to amend Section 6 to add that the required continuing education subject areas include indications of cannabis use disorder; (2) to amend the RELATES TO, STATUTORY AUTHORITY, and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1 through 8 and 10 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (3) to amend Section 10 to add incorporated material. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 020:215. Continuing competency requirements.

A motion was made and seconded to approve the following amendments: to amend Sections 5 and 8 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 020:225. Reinstatement of license.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Section 2 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 020:700. Medication aide training programs and credentialing of medication aides.

In response to a question by Representative Bridges, Mr. Prather stated that stakeholder concerns regarding funding options for training would most likely be addressed by statutory changes included in the proposed House Bill 493 from the 2024 Regular Session of the General Assembly. This administrative regulation would allow agencies to create and implement Certified Nursing Assistant (CNA) training programs if statutory requirements are met.

A motion was made and seconded at the January 8, 2024 subcommittee meeting to approve the following amendments: to amend the RELATES TO, STATUTORY AUTHORITY, and NECESSITY, FUNCTION, AND CONFORMITY paragraphs, Sections 1 through 8, and incorporated material 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: Wildlife**

301 KAR 004:021. Repeal of 301 KAR 004:020 and 301 KAR 004:050. Steven Fields, staff attorney, represented the department.

**Licensing**

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

A motion was made and seconded to approve the following amendments: to amend Section 1 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

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

A motion was made and seconded to approve the following amendments: to amend Sections 1 and 2 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

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

A motion was made and seconded to approve the following amendments: to amend Section 2 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

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

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 3 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

**GENERAL GOVERNMENT CABINET: Department of Agriculture**

302 KAR 002:010. Access to public records of the Kentucky Department of Agriculture. Heather Becker, general counsel, and Clint Quarles, attorney, represented the department.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO, STATUTORY AUTHORITY, and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 2 through 6 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

**Amusement Rides**

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

A motion was made and seconded to approve the following amendments: to amend the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs, Sections 1 through 3, and incorporated material, to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

**PUBLIC PROTECTION CABINET: Horse Racing Commission: Flat and Steeplechase Racing**

810 KAR 004:070. Jockeys and apprentices. Jamie Eads, executive director, and Jennifer Wolsing, general counsel, represented the commission. Mindy Coleman, counsel, Jockey's Guild, appeared in support of this administrative regulation.

In response to a question by Co-Chair Lewis, Ms. Coleman stated that the Jockey's Guild wanted to thank Senator Thayer as well as multiple inter-agency representatives who supported the new three-tier jockey fee schedules.

In response to a question by Co-Chair Lewis, Senator Thayer stated that after two (2) years of working to increase jockey pay scales to be commensurate with increased race purses, a new fee mount system would be implemented across the state. Senator Thayer thanked the agencies for working together to create this administrative regulation.

Co-Chair Lewis thanked Senator Thayer for his continued support of this important industry.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 4 and 14 to comply with the drafting 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: State Health Plan**

900 KAR 005:020. State Health Plan for facilities and services. David Lovely, acting deputy inspector general, and Valerie Moore, policy specialist, represented the office. Deborah Carroll, RN, administrator, Professional Home Health Care Agency, Inc.; Marie Cull, Cull and Hayden PSC; Joyce Lewis, president, Professional Home Health Care Agency; Evan Reinhardt, executive director, Kentucky Home Care Association; and Christy Shannon, general counsel, Health Directions, Inc., appeared in support of these administrative regulations. Heidi Schissler Lanham, legal director, Kentucky Protection and Advocacy, and Dr. Ryan Smith, M.D., Kentucky Academy of Eye Physicians and Surgeons, appeared in opposition to these administrative regulations.

In response to a question by Co-Chair Lewis, Ms. Carroll, Ms. Cull, Ms. Lewis, Mr. Reinhardt, and Ms. Shannon thanked the office for revising the home health provisions in these administrative regulations. While issues of concern remained, they could work within the revised framework.

In response to a question by Co-Chair Lewis, Dr. Smith stated that he was opposed to the revised ownership provisions for ambulatory surgical centers (ASCs). They would increase costs; create issues regarding referrals, including the potential for fraud; and undo the office's previous agreement to remove a less expansive exception. Any changes to the State Health Plan should originate from the Certificate of Need Task Force.

In response to a question by Co-Chair Lewis, Mr. Lovely stated that the ASC changes created a limited exception to increase access to these types of services. They did not override the federal financial prohibitions contained in the Stark Law.

In response to questions by Co-Chair West, Mr. Lovely stated that the proposed changes were intended to be a strategic carve out with minimal impact. They were submitted with the other changes due to previous amendments and delays.

In response to a question by Co-Chair West, Dr. Smith stated that compliance with the ASC changes would not be possible without violating a federal decision regarding fraud.

In response to a question by Co-Chair West, Mr. Lovely stated that when asked, the office had refused to remove this group of changes from the revised plan.

In response to a question by Co-Chair West, Ms. Schissler Lanham stated that there were four (4) new statutory criteria that needed to be included for intermediate-care facilities for individuals with an intellectual disability (ICF/ID). The terminology used also needed to be statutorily aligned. Implementation would be problematic without further clarification. Mr. Lovely stated that the ICF/ID provisions were more confusing than in conflict, but the statute would supersede regardless.

In response to a question by Co-Chair West, Ms. Schissler Lanham and Mr. Lovely agreed to work on additional amendments at the committee of jurisdiction to resolve these remaining issues.

A motion was made and seconded to approve the following amendments: to amend Section 2 and the State Health Plan for Facilities and Services to: (1) update the edition date to February 2024; (2) amend Level II Psychiatric Residential Treatment Facility (PRTF) provisions to delete: (a) documentation and inventory requirements; (b) a requirement that the number of beds requested for each specialized program shall be calculated using an annual average occupancy rate of seventy-five (75) percent; and (c) a requirement that certain applicants are given priority and establish

instead that the applications shall be subject to nonsubstantive review; (3) amend home health agency provisions to: (a) remove a requirement that an application by a licensed Kentucky acute care hospital, critical access hospital, or nursing facility proposing to establish a home health service under specified circumstances shall be subject to nonsubstantive review and establish instead that it shall be consistent with the state health plan if the service area is no larger than the county in which the facility is located and contiguous counties, and the facility documents in the last twelve (12) months, the inability to obtain timely discharge for patients who reside in the county of the facility or a contiguous county and who require home health services at the time of discharge; and (b) insert a requirement that an application by a licensed Kentucky acute care hospital, critical access hospital, or nursing facility proposing to expand a home health service shall be subject to nonsubstantive review if no existing, licensed home health agency is available and willing to accept the referral, the facility documents its efforts to find a home health agency, and the license issued specifies this limitation; (4) amend Cardiac Catheterization Service provisions to provide applicants an alternative of using other verifiable data under specified circumstances; (5) amend Ambulatory Surgical Center provisions to update and replace requirements for ownership, training, facility location, number of centers, accreditation requirements, and compliance with federal kickback and fee-splitting laws; and (6) comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

**Certificate of Need**

900 KAR 006:075. Certificate of need non-substantive review

A motion was made and seconded to approve the following amendments: (1) to amend Section 1 to add a definition for “psychiatric residential treatment facility” or “PRTF”; (2) to amend Section 2 to specify that Level II PRTFs shall be subject to the nonsubstantive review process; and (3) to amend Section 2(3)(i) to: (a) remove an application proposing to establish a home health service from nonsubstantive review; and (b) mirror the language from the State Health Plan for Facilities and Services in 900 KAR 5:020 regarding an application to expand a home health service by specifying that the application shall be subject to nonsubstantive review if the facility provides services exclusively to patients discharged from its facility who require home health services at the time of discharge; no existing, licensed home health agency is available and willing to accept the referral; the hospital or nursing facility documents its efforts to find a Home Health Agency; and the license issued under this subsection contains the limitation set forth herein. Without objection, and with agreement of the agency, the amendments were approved.

**Department for Community Based Services: Child Welfare**

922 KAR 1:520. Supplements to per diem rates. Laura Begin, regulation coordinator; Andrea Day, director, Division of Child Care; and Kelli Root, assistant director, Division of Protection and Permanency, represented the department.

**Daycare**

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

A motion was made and seconded to approve the following amendments: to amend Sections 2, 4, 11 through 13, 18, and 19 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

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

A motion was made and seconded to approve the following amendments: (1) to amend Sections 1 and 2 to comply with the drafting requirements of KRS Chapter 13A; and (2) to amend Section 9 and incorporated material to make revisions. Without objection, and with agreement of the agency, the amendments were approved.

**The following administrative regulations were deferred or removed from the February 12, 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.

**Board of Social Work**

201 KAR 023:170. Telehealth and social work practice.

**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.

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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 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**

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.

**The subcommittee adjourned at 2:10 p.m. The next meeting of this subcommittee was tentatively scheduled for March 11, 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 February 13, 2024**

The House Education Committee met on February 13, 2024 and a quorum was present. The following administrative regulations were available for consideration having been referred to the Committee on February 7, 2024, pursuant to KRS 13A.290(6):

702 KAR 3:330  
705 KAR 4:231

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 February 13, 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 February 14, 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 February 14, 2024, having been referred to the Committee on February 7, 2024, pursuant to KRS 13A.290(6):

February 7, 2024  
201 KAR 002:165 Proposed  
201 KAR 036:005 Proposed  
201 KAR 036:030 Proposed  
201 KAR 036:040 Proposed  
201 KAR 036:045 Proposed  
201 KAR 036:050 Proposed  
201 KAR 036:060 Proposed  
201 KAR 036:065 Proposed  
201 KAR 036:070 Proposed  
201 KAR 036:072 Proposed  
201 KAR 036:075 Proposed  
201 KAR 036:090 Proposed  
202 KAR 007:030 Proposed  
202 KAR 007:410 Proposed  
906 KAR 001:190 Proposed  
907 KAR 009:010 Proposed

Committee activity in regards to review of the above-referenced administrative regulations is reflected in the minutes of the February 14, 2024 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

**HOUSE STANDING COMMITTEE ON EDUCATION  
Meeting of February 15, 2024**

The Senate Education Committee met on February 15, 2024 and a quorum was present. The following administrative regulations were available for consideration having been referred to the Committee on February 12, 2024, pursuant to KRS 13A.290(6):

702 KAR 3:330  
705 KAR 4:231

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 2/15/24 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 February 15, 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 February 15, 2024, having been referred to the Committee on February 7, 2024, pursuant to KRS 13A.290(6):

February 7, 2024  
201 KAR 002:165 Proposed  
201 KAR 036:005 Proposed  
201 KAR 036:030 Proposed  
201 KAR 036:040 Proposed  
201 KAR 036:045 Proposed  
201 KAR 036:050 Proposed  
201 KAR 036:060 Proposed  
201 KAR 036:065 Proposed  
201 KAR 036:070 Proposed

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201 KAR 036:072 Proposed  
201 KAR 036:075 Proposed  
201 KAR 036:090 Proposed  
202 KAR 007:030 Proposed  
202 KAR 007:410 Proposed  
906 KAR 001:190 Proposed  
907 KAR 009:010 Proposed

Committee activity in regards to review of the above-referenced administrative regulations is reflected in the minutes of the February 15, 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 February 20, 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 February 15, 2024, having been referred to the Committee on February 7, 2024, pursuant to KRS 13A.290(6):

**Referred on February 7, 2024**

201 KAR 023:160 Proposed  
921 KAR 001:410 Proposed  
921 KAR 003:027 Proposed  
921 KAR 003:100 Proposed  
922 KAR 002:280 Proposed

Committee activity in regards to review of the above-referenced administrative regulations is reflected in the minutes of the February 15, 2024 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

**SENATE STANDING COMMITTEE ON FAMILIES AND CHILDREN**  
**Meeting of February 20, 2024**

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 on February 20, 2024, having been referred to the Committee on February 7, 2024, pursuant to KRS 13A.290(6):

**Referred on February 7, 2024**

201 KAR 023:160 Proposed  
921 KAR 001:410 Proposed  
921 KAR 003:027 Proposed  
921 KAR 003:100 Proposed  
922 KAR 002:280 Proposed

Committee activity in regards to review of the above-referenced administrative regulations is reflected in the minutes of the February 15, 2024 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

**SENATE AND HOUSE STANDING COMMITTEES ON NATURAL RESOURCES AND ENERGY**  
**Meeting of February 22, 2024**

The Senate and House Standing Committees on Natural Resources and Energy met on February 21, 2024, and February 22, 2024, respectively and a quorum was present at each. The following administrative regulations were available for consideration having been referred to the Committees on December 6, 2023, January 3, 2024, and February 7, 2024, pursuant to KRS 13A.290(6):

301 KAR 001:115  
301 KAR 001:125  
301 KAR 002:030  
301 KAR 002:083  
301 KAR 002:172  
401 KAR 042:250

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 February 22, 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 50<sup>th</sup> year of the *Administrative Register of Kentucky*, from July 2022 through June 2023.

### Locator Index - Effective Dates

I - 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

I - 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

I - 23

A list of administrative regulations for which certification letters have been filed pursuant to KRS 13A.3104 during this *Register* year.

### Technical Amendment Index

I - 24

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

I - 25

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 <a href="#">Administrative Registers of Kentucky</a> .					
<b>SYMBOL KEY:</b>			201 KAR 023:051E	49 Ky.R. 1239	11-15-2022
* Statement of Consideration not filed by deadline			Replaced	1803	7-5-2023
** Withdrawn, deferred more than twelve months (KRS 13A.300(2)(e) and 13A.315(1)(d))			201 KAR 023:160E	50 Ky.R. 326	6-28-2023
*** Withdrawn before being printed in Register			Replaced	1487	2-20-2024
IJC Interim Joint Committee			201 KAR 036:100E	50 Ky.R. 1649	9-14-2024
(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.			202 KAR 002:020E	50 Ky.R. 329	7-5-2023
			Replaced	1066	1-30-2024
			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
			Replaced	50 Ky.R. 40	9-21-2023
			505 KAR 001:200E	49 Ky.R. 2208	5-15-2023
			Am Comments	50 Ky.R. 385	7-12-2023
			Replaced	660	12-5-2023
			505 KAR 001:210E	49 Ky.R. 2211	5-15-2023
			505 KAR 001:220E	49 Ky.R. 2213	5-15-2023
			701 KAR 008:010E	49 Ky.R. 984	10-13-2022
			Replaced	1924	7-5-2023
			701 KAR 008:020E	49 Ky.R. 989	10-13-2022
			Replaced	1928	7-5-2023
			701 KAR 008:030E	49 Ky.R. 998	10-13-2022
			Replaced	1167	7-5-2023
			701 KAR 008:040E	49 Ky.R. 1001	10-13-2022
			Replaced	1935	7-5-2023
			701 KAR 008:050E	49 Ky.R. 1005	10-13-2022
			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
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			
Replaced	1038	1-30-2024			
030 KAR 010:020E	50 Ky.R. 305	6-29-2023			
Replaced	1039	1-30-2024			
030 KAR 010:030E	50 Ky.R. 307	6-29-2023			
Replaced	1040	1-30-2024			
030 KAR 010:040E	50 Ky.R. 309	6-29-2023			
Replaced	1040	1-30-2024			
030 KAR 010:050E	50 Ky.R. 311	6-29-2023			
Replaced	1041	1-30-2024			
030 KAR 010:060E	50 Ky.R. 312	6-29-2023			
Replaced	1042	1-30-2024			
030 KAR 010:070E	50 Ky.R. 314	6-29-2023			
Replaced	1042	1-30-2024			
030 KAR 010:080E	50 Ky.R. 315	6-29-2023			
Replaced	1042	1-30-2024			
030 KAR 010:090E	50 Ky.R. 317	6-29-2023			
Replaced	1042	1-30-2024			
030 KAR 010:100E	50 Ky.R. 318	6-29-2023			
Replaced	1043	1-30-2024			
030 KAR 010:110E	50 Ky.R. 320	6-29-2023			
Replaced	1043	1-30-2024			
030 KAR 010:120E	50 Ky.R. 321	6-29-2023			
Replaced	1043	1-30-2024			
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			
Replaced	1049	1-30-2024			
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			



# LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	46 Ky.R. Page No.	Effective Date	Regulation Number	46 Ky.R. Page No.	Effective Date
900 KAR 006:080E	50 Ky.R. 11	5-19-2023	As Amended	50 Ky.R. 618	12-5-2023
Replaced	177	12-13-2023	016 KAR 009:100		
900 KAR 014:010E	49 Ky.R. 2052	3-29-2023	Amended	49 Ky.R. 2339	
Replaced	2164	9-27-2023	As Amended	50 Ky.R. 621	12-5-2023
902 KAR 020:490E	49 Ky.R. 1576	12-29-2022	017 KAR 003:020		
Replaced	2307	6-21-2023	Amended	49 Ky.R. 1469	
902 KAR 045:190E	50 Ky.R. 584	8-1-2023	As Amended	1898	6-21-2023
Am Comments	1021	10-13-2023	017 KAR 006:020	50 Ky.R. 984	
As Amended	1459	12-13-2023	Am Comments	1700	
902 KAR 055:015E	49 Ky.R. 2054	3-23-2023	017 KAR 006:030	50 Ky.R. 986	
Replaced	50 Ky.R. 2171	10-25-2023	Am Comments	1702	
907 KAR 001:038E	49 Ky.R. 2057	4-12-2023	030 KAR 006:011		
As Amended	2261	5-9-2023	Repealed	50 Ky.R. 492	1-30-2024
907 KAR 001:126E	49 Ky.R. 2062	4-12-2023	030 KAR 006:012	50 Ky.R. 492	1-30-2024
As Amended	2263	5-9-2023	030 KAR 010:010	50 Ky.R. 493	
907 KAR 001:632E	49 Ky.R. 2069	4-12-2023	As Amended	1038	1-30-2024
As Amended	2268	5-9-2023	030 KAR 010:020	50 Ky.R. 494	
Am Comments	50 Ky.R. 14	6-13-2023	As Amended	1039	1-30-2024
907 KAR 009:010E	50 Ky.R. 1017	10-4-2023	030 KAR 010:030	50 Ky.R. 496	
Replaced	1194	2-16-2024	As Amended	1040	1-30-2024
907 KAR 020:010E	49 Ky.R. 2234	5-15-2023	030 KAR 010:040	50 Ky.R. 498	
Replaced	50 Ky.R. 695	9-27-2023	As Amended	1040	1-30-2024
907 KAR 020:045E	49 Ky.R. 2237	5-15-2023	030 KAR 010:050	50 Ky.R. 500	
Replaced	50 Ky.R. 697	9-27-2023	As Amended	1041	1-30-2024
907 KAR 020:075E	49 Ky.R. 2240	5-15-2023	030 KAR 010:060	50 Ky.R. 501	
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907 KAR 020:100E	49 Ky.R. 2243	5-15-2023	030 KAR 010:070	50 Ky.R. 502	
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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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39E.210	106 KAR 001:131		105 KAR 001:455
39E.220	106 KAR 001:131		105 KAR 001:457
39E.990	106 KAR 001:131	78.5518	105 KAR 001:455
40.310	017 KAR 006:020		105 KAR 001:457
	017 KAR 006:030	78.5524	105 KAR 001:455
40.350	017 KAR 006:030	78.5528	105 KAR 001:455
40.560	017 KAR 006:020		105 KAR 001:457
	017 KAR 006:030	78.5532	105 KAR 001:455
40.600	017 KAR 006:020		105 KAR 001:457
45.570	702 KAR 003:340	78.5534	105 KAR 001:457
45.A	702 KAR 003:340	78.5540	105 KAR 001:390
45.237 – 45.241	922 KAR 001:565	78.625	105 KAR 001:390
45.345	301 KAR 005:020	78.635	105 KAR 001:390
61.505	105 KAR 001:390	95.022	105 KAR 001:390
	105 KAR 001:455	96A.095	907 KAR 003:066
	105 KAR 001:457	117.066	031 KAR 004:196
61.505	105 KAR 001:270	121.015	032 KAR 001:050
61.510	105 KAR 001:270		032 KAR 002:221
	105 KAR 001:390	121.120	032 KAR 002:020
	105 KAR 001:455		032 KAR 002:221
61.510 – 61.705	105 KAR 001:215	121.135	032 KAR 002:060
	105 KAR 001:470		032 KAR 002:230
61.520	105 KAR 001:148	121.140	032 KAR 002:020
61.522	105 KAR 001:148		032 KAR 002:030
61.542	105 KAR 001:455		032 KAR 002:040
61.565	105 KAR 001:148		032 KAR 002:050
	105 KAR 001:390	121.160	032 KAR 001:020
61.590	105 KAR 001:390	121.170	032 KAR 001:050
61.592	105 KAR 001:455	121.172	032 KAR 001:046
61.610	105 KAR 001:455	121.180	032 KAR 001:020
61.615	105 KAR 001:455		032 KAR 001:030
	105 KAR 001:457		032 KAR 001:046
61.625	105 KAR 001:270		032 KAR 002:221
61.635	105 KAR 001:270	131.570	921 KAR 001:410
61.637	105 KAR 001:390	132.010	815 KAR 007:120
61.640	105 KAR 001:270	142.361	907 KAR 001:065
	105 KAR 001:455	142.363	907 KAR 001:025
61.645	105 KAR 001:148		907 KAR 001:065
61.665	105 KAR 001:455	146.200 – 146.990	401 KAR 045:030
	105 KAR 001:457	150.010	301 KAR 001:140
61.675	105 KAR 001:148		301 KAR 001:146
	105 KAR 001:390		301 KAR 001:150
61.685	105 KAR 001:148		301 KAR 001:155
	105 KAR 001:455		301 KAR 001:201
61.690	105 KAR 001:270		301 KAR 001:125
61.691	105 KAR 001:455		301 KAR 001:410
	105 KAR 001:457		301 KAR 002:083
61.702	105 KAR 001:390		301 KAR 002:132
61.805 – 61.850	702 KAR 007:065		301 KAR 002:172
61.870 – 61.884	810 KAR 002:100		301 KAR 002:178
	302 KAR 002:010		301 KAR 003:030
	900 KAR 007:040	150.0241	301 KAR 003:130
61.872	922 KAR 005:070	150.025	301 KAR 001:146
61.878	401 KAR 042:250		301 KAR 003:030
64.840	301 KAR 005:020		301 KAR 003:130
65.944	702 KAR 003:340		301 KAR 004:021
65.946	702 KAR 003:340	150.120	301 KAR 001:146
67.900	501 KAR 007:010		301 KAR 001:150
	501 KAR 013:010		301 KAR 001:155
67A.028	501 KAR 003:010	150.170	301 KAR 001:125
	501 KAR 007:010		301 KAR 001:150
67B.020(1)	501 KAR 003:010		301 KAR 001:170
	501 KAR 007:010		301 KAR 001:155
70.291 – 70.293	105 KAR 001:390		301 KAR 001:201
72.020	202 KAR 007:410		301 KAR 001:410
72.025	501 KAR 003:090		301 KAR 002:030
	501 KAR 007:090		301 KAR 002:132
78.510	105 KAR 001:270		301 KAR 002:178

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150.175	301 KAR 003:030	158.100	702 KAR 007:125
	301 KAR 005:200	158.135	922 KAR 001:495
	301 KAR 001:146	158.240	702 KAR 007:125
	301 KAR 001:150	158.305	704 KAR 003:095
	301 KAR 001:201	158.441	105 KAR 001:390
	301 KAR 001:410	158.645	704 KAR 003:095
	301 KAR 003:030	158.6451	704 KAR 003:095
	301 KAR 005:010	158.6453	704 KAR 003:095
	301 KAR 005:020	158.6459	704 KAR 003:095
150.177	301 KAR 005:200	158.791	704 KAR 003:095
150.180	301 KAR 002:172	159.010	702 KAR 007:125
	301 KAR 001:122	159.030	702 KAR 007:125
	301 KAR 002:132		922 KAR 002:100
	301 KAR 002:172	159.035	702 KAR 007:125
150.195	301 KAR 005:001	159.140	702 KAR 007:125
150.235	301 KAR 001:125	159.170	702 KAR 007:125
	301 KAR 001:410	160.160	701 KAR 005:110
150.290	301 KAR 001:115		702 KAR 003:340
	301 KAR 002:083	160.380	702 KAR 007:065
150.320	301 KAR 003:030	160.445	702 KAR 007:065
150.340	301 KAR 001:201	161.020	016 KAR 004:020
	301 KAR 002:178	161.020	016 KAR 002:120
150.360	301 KAR 003:030		016 KAR 002:160
150.370(1)	301 KAR 002:178		016 KAR 002:240
	301 KAR 003:030		016 KAR 004:030
150.411	301 KAR 002:172	161.028	016 KAR 002:120
150.412	301 KAR 002:030		016 KAR 002:160
150.445	301 KAR 001:146		016 KAR 004:020
	301 KAR 001:150		016 KAR 004:030
	301 KAR 001:155		016 KAR 005:060
	301 KAR 001:410	161.030	016 KAR 002:120
150.450	301 KAR 001:140		016 KAR 002:160
	301 KAR 001:146		016 KAR 004:020
	301 KAR 001:150		016 KAR 004:030
	301 KAR 001:155		016 KAR 005:060
150.485	301 KAR 001:115	161.100	016 KAR 002:120
	301 KAR 001:125	161.102	016 KAR 002:120
150.600	301 KAR 004:021	161.124	016 KAR 004:030
150.620	301 KAR 001:201	161.126	016 KAR 004:030
	301 KAR 001:410	161.135	016 KAR 004:030
150.725	301 KAR 002:083	161.200	702 KAR 007:125
150.740	301 KAR 002:083	161.212	702 KAR 003:330
150.990	301 KAR 001:146	161.1211	016 KAR 002:120
	301 KAR 001:150	161.1221	016 KAR 002:120
	301 KAR 001:155	162.1002	907 KAR 001:479
	301 KAR 001:201	164.0401	013 KAR 005:010
	301 KAR 001:410		013 KAR 005:020
	301 KAR 002:020	164.0402	013 KAR 005:010
	301 KAR 002:132		013 KAR 005:020
	301 KAR 002:172	164.0403	013 KAR 005:010
	301 KAR 002:178	164.0404	013 KAR 005:020
	301 KAR 003:030	164.530	910 KAR 001:270
150.730 – 150.735	302 KAR 022:150	164.740	011 KAR 008:030
156.029	705 KAR 004:231	164.740 – 164.785	011 KAR 005:001
156.070	701 KAR 005:110	164.744	011 KAR 008:030
	702 KAR 003:340	164.753	011 KAR 008:030
	702 KAR 007:065	164.769	011 KAR 008:030
	704 KAR 003:095	164.772	301 KAR 002:030
156.160	704 KAR 003:095		301 KAR 002:083
156.488	704 KAR 003:095	164.7871 – 164.7885	011 KAR 015:110
156.496	922 KAR 001:565	164.7881	011 KAR 015:040
156.802	705 KAR 004:231	164.952	105 KAR 001:390
157.200	016 KAR 004:020	176.010	603 KAR 005:155
157.250	016 KAR 004:020	176.050	603 KAR 005:155
157.320	702 KAR 007:125	177.106	603 KAR 005:155
157.350	702 KAR 007:125	177.830	603 KAR 005:155
157.390	016 KAR 002:120	177.990	603 KAR 005:155
157.650	701 KAR 005:110	186.018	922 KAR 002:100
157.655	701 KAR 005:110	186.020	922 KAR 002:100
157.660	701 KAR 005:110	186.412	601 KAR 012:080
157.665	701 KAR 005:110	186.4122	601 KAR 012:080
158.030	702 KAR 007:125	186A.017	601 KAR 023:040
158.070	702 KAR 007:125	189.125	922 KAR 002:100
158.070	704 KAR 003:095	191.881-888	922 KAR 002:165

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194A	921 KAR 002:015	199.895	922 KAR 002:100
194A.005	908 KAR 002:300	199.8951	922 KAR 002:100
194A.705	201 KAR 020:700	199.896	922 KAR 002:100
194.540	201 KAR 020:620	199.897	922 KAR 002:100
194.705	902 KAR 020:300	199.898	922 KAR 002:100
194A.005	902 KAR 100:040	199.8982	922 KAR 002:100
	902 KAR 100:050	200.080 – 200.120	505 KAR 001:100
	902 KAR 100:058		505 KAR 001:110
	902 KAR 100:065		505 KAR 001:185
	902 KAR 100:185		505 KAR 001:200
	902 KAR 100:195		505 KAR 001:240
	902 KAR 100:200		505 KAR 001:250
	908 KAR 002:300		505 KAR 001:260
194A.005	922 KAR 001:140		505 KAR 001:270
	922 KAR 001:495		505 KAR 001:280
	922 KAR 001:565		505 KAR 001:290
194A.025	907 KAR 015:005		505 KAR 001:300
194A.050	922 KAR 002:100		505 KAR 001:310
194A.060	907 KAR 001:044		505 KAR 001:320
	910 KAR 001:270		505 KAR 001:330
	922 KAR 005:120		505 KAR 001:340
194A.540	201 KAR 020:215		505 KAR 001:350
	201 KAR 020:225		505 KAR 001:360
	201 KAR 036:030		505 KAR 001:370
194A.700	902 KAR 020:048		505 KAR 001:380
194A.700	902 KAR 020:036		505 KAR 001:390
194A.705	902 KAR 020:036		505 KAR 001:400
	902 KAR 020:048		505 KAR 001:410
	902 KAR 020:086		505 KAR 001:420
196.030	501 KAR 016:310	202A.011	907 KAR 001:044
196.035	501 KAR 002:060	202A.011	902 KAR 020:036
	501 KAR 003:100		921 KAR 002:015
	501 KAR 016:310	202A.051	922 KAR 005:070
196.173	501 KAR 003:060	202B.010	907 KAR 001:025
196.280	505 KAR 001:420	202B.100	922 KAR 005:070
196.070	501 KAR 016:310	205.140	922 KAR 005:120
196.180	501 KAR 045:310	205.200	921 KAR 003:020
197.020	501 KAR 002:060	205.201	910 KAR 001:170
	501 KAR 003:100	205.203	910 KAR 001:170
197.045	501 KAR 002:060	205.211	922 KAR 001:565
	505 KAR 001:420	205.245	921 KAR 002:015
198A.740 – 198A.750	202 KAR 002:020	205.455 – 205.460	910 KAR 001:170
198B.010	815 KAR 007:120	205.510	907 KAR 015:005
	815 KAR 007:125	205.520	907 KAR 001:061
198B.040	815 KAR 007:120		907 KAR 001:479
	815 KAR 007:125		907 KAR 003:066
198B.050	815 KAR 007:120		907 KAR 009:010
	815 KAR 007:125		907 KAR 013:010
198B.060	815 KAR 007:120		907 KAR 013:015
	815 KAR 007:125		907 KAR 015:090
198B.080	815 KAR 007:120	205.560	907 KAR 001:479
	815 KAR 007:125	205.622	907 KAR 001:044
198B.260	815 KAR 007:120	205.6333	907 KAR 001:479
	815 KAR 007:125	205.712 – 205.795	921 KAR 001:410
198B.650-198B.689	501 KAR 013:010	205.720	921 KAR 001:420
198B.990	815 KAR 007:120	205.750	921 KAR 001:420
	815 KAR 007:125	205.755	921 KAR 001:420
199.011	922 KAR 001:145	205.795	921 KAR 001:420
	922 KAR 001:360	205.2005	921 KAR 003:027
	922 KAR 001:495	205.8451	907 KAR 001:044
	922 KAR 001:565		907 KAR 001:061
	922 KAR 002:100		907 KAR 015:005
199.011	922 KAR 001:140	209	922 KAR 005:070
199.462	922 KAR 001:140		922 KAR 005:120
	922 KAR 001:565	209.020	921 KAR 002:015
199.464	922 KAR 001:495	209.030	902 KAR 020:036
199.470 – 199.590	922 KAR 001:565		902 KAR 020:048
199.555	922 KAR 001:140		902 KAR 020:086
199.557	922 KAR 001:140		902 KAR 020:300
199.640 – 199.680	922 KAR 001:360		910 KAR 001:270
199.801	922 KAR 001:140	209.032	902 KAR 020:036
	922 KAR 001:360		902 KAR 020:048
199.894	922 KAR 002:100		902 KAR 020:086
199.8943	922 KAR 002:165		902 KAR 020:300

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210	908 KAR 002:300	216B.040	902 KAR 020:036
210.366	201 KAR 036:030	216B.042	902 KAR 020:036
210.410	908 KAR 002:300	216B.045 – 216B.130	902 KAR 020:036
210.770-210.795	910 KAR 001:270	216B.450	705 KAR 004:231
211.180	902 KAR 100:185	216B.455	705 KAR 004:231
	902 KAR 100:195	216B.990	902 KAR 020:036
	902 KAR 100:200	216B.010	900 KAR 006:075
	902 KAR 004:120	216B.010 – 216B.130	900 KAR 006:020
211.185	908 KAR 002:300	216B.015	900 KAR 006:075
211.332	201 KAR 036:045		900 KAR 006:080
211.334	201 KAR 036:045		902 KAR 100:185
211.336	201 KAR 036:045	216B.020	900 KAR 006:080
211.338	201 KAR 036:045	216B.040	900 KAR 006:075
211.689	902 KAR 004:120	216B.061	900 KAR 006:080
211.842 – 11.852	902 KAR 100:019	216B.062	900 KAR 006:075
	902 KAR 100:040	216B.090	900 KAR 006:075
	902 KAR 100:050	216B.095	900 KAR 006:075
	902 KAR 100:058	216B.115	900 KAR 006:075
	902 KAR 100:065	216B.178	900 KAR 006:020
	902 KAR 100:165	216B.455	900 KAR 006:075
	902 KAR 100:185	216B.990	900 KAR 006:075
	902 KAR 100:195		900 KAR 006:080
	902 KAR 100:200	217.015	201 KAR 002:225
211.990	902 KAR 100:019		902 KAR 045:190E
	902 KAR 100:040	217.015	301 KAR 001:155
	902 KAR 100:050	217.025	902 KAR 045:190E
	902 KAR 100:058	217.035	902 KAR 045:190E
	902 KAR 100:065	217.037	902 KAR 045:190E
	902 KAR 100:165	217.0	902 KAR 045:190E
	902 KAR 100:185	217.055	201 KAR 002:076
	902 KAR 100:195	217.065	201 KAR 002:076
	902 KAR 100:200	217.177	201 KAR 016:550
212.132	105 KAR 001:148	217.215	201 KAR 002:165
214.010	922 KAR 002:100	217.280-217.390	501 KAR 003:100
214.036	922 KAR 002:100		501 KAR 013:010
216.380	907 KAR 001:065	218	915 KAR 001:100
216.510	201 KAR 020:700	218A.205	201 KAR 002:020
216.2920	900 KAR 007:030		201 KAR 002:050
	900 KAR 007:040		201 KAR 020:056
216.2925	900 KAR 007:030		201 KAR 005:005
216.2927	900 KAR 007:030	218A.010	201 KAR 020:065
	900 KAR 007:040	218A.170	201 KAR 020:065
216.2929	900 KAR 007:040	218A.171 – 218A.172	201 KAR 020:057
216.510 – 216.525	902 KAR 020:036	218A.202	201 KAR 020:057
	902 KAR 020:048	218A.205	201 KAR 008:533
	902 KAR 020:086		902 KAR 020:300
	902 KAR 020:300		201 KAR 020:057
216.530	902 KAR 020:036		201 KAR 020:215
216.532	902 KAR 020:036		201 KAR 002:050
	902 KAR 020:048	218B	915 KAR 001:001
	902 KAR 020:086		915 KAR 001:030
	902 KAR 020:300		915 KAR 001:040
216.535	902 KAR 020:300		915 KAR 001:050
216.537	902 KAR 020:048		915 KAR 001:060
216.540	902 KAR 020:048		915 KAR 001:070
	902 KAR 020:300		915 KAR 001:080
216.543	902 KAR 020:300		915 KAR 001:090
216.545	902 KAR 020:300		915 KAR 001:110
216.547	902 KAR 020:300	218B.010	201 KAR 020:067
216.555 – 216.567	902 KAR 020:036	218B.015	201 KAR 009:067
216.570 – 216.597	902 KAR 020:036		201 KAR 020:067
216.765	902 KAR 020:036	218B.050	201 KAR 009:067
216.765	921 KAR 002:015		201 KAR 020:067
216.785 – 216.793	902 KAR 020:036	218B.080	201 KAR 020:067
216.789	902 KAR 020:048	218B.202	201 KAR 009:067
	902 KAR 020:086	218B.050	201 KAR 009:067
216.793	902 KAR 020:048	22.1-400	401 KAR 042:250
	902 KAR 020:086	224.01	401 KAR 045:025
216.597	902 KAR 020:036	224.01-110	401 KAR 045:030
216A.080	902 KAR 020:036	224.10	401 KAR 045:020
	902 KAR 020:048		401 KAR 045:030
	902 KAR 020:086		401 KAR 045:040
216B	921 KAR 002:015		401 KAR 045:050
216B.010	902 KAR 020:036		401 KAR 045:080

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	401 KAR 045:100	224.99	401 KAR 045:020
	401 KAR 045:105		401 KAR 045:030
	401 KAR 045:140		401 KAR 045:040
	401 KAR 045:160		401 KAR 045:080
224.1-010	401 KAR 045:010		401 KAR 045:105
224.1-405	401 KAR 042:250		401 KAR 045:140
224.10	401 KAR 042:020		401 KAR 045:160
	401 KAR 045:025	227.300	815 KAR 007:120
	401 KAR 045:030	227.550	815 KAR 007:120
	401 KAR 045:040	229.011	201 KAR 027:005
	401 KAR 045:050	229.021	201 KAR 027:012
	401 KAR 045:080	229.025	201 KAR 027:008
	401 KAR 045:100		201 KAR 027:011
	401 KAR 045:105		201 KAR 027:016
	401 KAR 045:140	229.031	201 KAR 027:005
	401 KAR 045:160		201 KAR 027:011
224.10-100	401 KAR 103:005		201 KAR 027:012
	401 KAR 103:010		201 KAR 027:016
	401 KAR 103:020	229.035	201 KAR 027:008
	401 KAR 103:030	229.055	201 KAR 027:011
224.10-285	401 KAR 103:005		201 KAR 027:016
	401 KAR 103:010	229.065	201 KAR 027:008
	401 KAR 103:020	229.071	201 KAR 027:012
	401 KAR 103:030	229.081	201 KAR 027:012
224.10-410	401 KAR 042:250	229.091	201 KAR 027:012
224.10-420	401 KAR 042:250	229.111	201 KAR 027:005
224.10-430	401 KAR 042:250		201 KAR 027:011
224.10-440	401 KAR 042:250		201 KAR 027:016
224.10-470	401 KAR 042:250	229.131	201 KAR 027:005
224.20-100	401 KAR 051:010		201 KAR 027:011
224.20-110	401 KAR 051:010		201 KAR 027:016
224.20-120	401 KAR 051:010	229.155	201 KAR 027:005
224.40	401 KAR 045:020		201 KAR 027:011
	401 KAR 045:025		201 KAR 027:016
	401 KAR 045:030	229.171	201 KAR 027:005
	401 KAR 045:040		201 KAR 027:008
	401 KAR 045:050		201 KAR 027:011
	401 KAR 045:080		201 KAR 027:012
	401 KAR 045:100		201 KAR 027:016
	401 KAR 045:105	230	809 KAR 001:002
	401 KAR 045:140		809 KAR 010:001
	401 KAR 045:160		809 KAR 010:002
224.43-345	401 KAR 045:250		809 KAR 010:002
	401 KAR 103:005		809 KAR 010:003
	401 KAR 103:010		809 KAR 010:003
	401 KAR 103:020		809 KAR 010:004
	401 KAR 103:030		809 KAR 010:004
224.46	401 KAR 045:020		809 KAR 010:005
	401 KAR 045:040		809 KAR 010:006
	401 KAR 045:050		809 KAR 010:006
	401 KAR 045:080		809 KAR 010:007
	401 KAR 045:140		809 KAR 010:008
	401 KAR 045:160	230.210	810 KAR 004:001
224.50	401 KAR 045:020	230.215	810 KAR 002:020
	401 KAR 045:025		810 KAR 002:070
	401 KAR 045:030		810 KAR 003:010
	401 KAR 045:040		810 KAR 004:010
	401 KAR 045:050		810 KAR 004:030
	401 KAR 045:080		810 KAR 004:040
	401 KAR 045:100		810 KAR 004:070
	401 KAR 045:140	230.240	810 KAR 002:020
	401 KAR 045:160		810 KAR 004:030
224.50-760	401 KAR 045:010	230.260	810 KAR 002:020
224.50-765	401 KAR 045:010		810 KAR 002:070
224.60-110	401 KAR 042:250		810 KAR 002:100
224.60-120	401 KAR 042:250		810 KAR 003:010
224.60-130	401 KAR 042:250		810 KAR 004:030
224.60-135	401 KAR 042:250		810 KAR 004:040
224.60-140	401 KAR 042:250		810 KAR 004:070
224.60-150	401 KAR 042:250	230.280	810 KAR 003:010
224.70	401 KAR 045:020	230.290	810 KAR 003:010
	401 KAR 045:030		810 KAR 004:030
	401 KAR 045:105	230.300	810 KAR 003:010
224.90	401 KAR 045:090	230.310	810 KAR 004:030

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230.320	810 KAR 004:030	304.17A-168	806 KAR 017:290
230.811	810 KAR 003:010	304.17A-505	806 KAR 017:290
230.817	810 KAR 003:010	304.17A-535	806 KAR 017:290
237.110	301 KAR 002:172	304.17A-600	806 KAR 017:290
	921 KAR 001:410	304.17A-607	806 KAR 017:290
246.030	302 KAR 022:150	304.17A-617	806 KAR 017:290
	302 KAR 045:020	304.17A-621 – 304.17A-631	806 KAR 017:290
246.650	302 KAR 045:020	304.17A-732	806 KAR 017:590
246.660	302 KAR 045:020		907 KAR 015:005
246.990	302 KAR 045:020	304.40-075	201 KAR 008:533
247.232	302 KAR 016:020	309.080	908 KAR 002:300
	302 KAR 016:030	309.130	907 KAR 015:005
247.233	302 KAR 016:072		908 KAR 002:300
	302 KAR 016:111	309.460	907 KAR 003:310
247.234	301 KAR 001:410	309.462	907 KAR 003:310
	302 KAR 016:020	309.464	907 KAR 003:310
	302 KAR 016:030	310.021	902 KAR 020:036
	302 KAR 016:050		902 KAR 020:048
247.236	302 KAR 016:020	310.031	902 KAR 020:036
	302 KAR 016:030		902 KAR 020:048
251.355	302 KAR 033:010		902 KAR 020:086
251.375	302 KAR 033:010	311	201 KAR 027:008
251.380	302 KAR 033:010	311.571	908 KAR 002:300
251.470	302 KAR 033:010	311.592	201 KAR 009:067
251.990	302 KAR 033:010	311.646	922 KAR 002:100
257.020	302 KAR 022:150	311.840	907 KAR 015:005
257.030	302 KAR 022:150	311.840 – 311.862	908 KAR 002:300
257.080	201 KAR 016:701	311A.025	202 KAR 007:410
	302 KAR 022:150	311A.030	202 KAR 007:550
257.160	201 KAR 016:560		202 KAR 007:555
257.990	302 KAR 022:150	311A.050 – 311A.100	202 KAR 007:410
258	201 KAR 016:550	311A.120 – 311A.135	202 KAR 007:410
258.043	201 KAR 016:701	311A.142	202 KAR 007:410
258.065	201 KAR 016:701	311A.145	202 KAR 007:030
260.020	302 KAR 045:020	311A.170	202 KAR 007:410
260.030	302 KAR 045:020	311A.180	202 KAR 007:550
260.850	902 KAR 045:190E	311A.185	202 KAR 007:410
273	922 KAR 001:580	311A.190	202 KAR 007:410
273.2	921 KAR 003:095		202 KAR 007:550
273.10	921 KAR 003:095		202 KAR 007:555
278.700-716	401 KAR 103:005	311.595	201 KAR 009:067
	401 KAR 103:010	311.599	201 KAR 009:067
	401 KAR 103:020	311.720	922 KAR 001:495
	401 KAR 103:030	311.840	922 KAR 001:495
281.010	907 KAR 003:066	313.010(9)	201 KAR 008:533
281.605	907 KAR 003:066	313.030	201 KAR 008:533
281.635	907 KAR 003:066	313.254	201 KAR 005:533
281.872	907 KAR 003:066	314.011	201 KAR 020:056
281.875	907 KAR 003:066		201 KAR 020:057
292.330	808 KAR 010:501		201 KAR 020:065
292.410	808 KAR 010:501		201 KAR 020:067
292.411	808 KAR 010:501		201 KAR 020:215
292.412	808 KAR 010:501		201 KAR 020:220
301	201 KAR 016:550		902 KAR 020:036
302.32	921 KAR 001:420		907 KAR 015:005
302.38	921 KAR 001:420		922 KAR 002:100
302.51 – 302.54	921 KAR 001:420	314.011	922 KAR 001:495
303.72	921 KAR 001:420	314.041	201 KAR 020:225
304.1-050	806 KAR 017:290		201 KAR 020:370
	806 KAR 017:590	314.042	908 KAR 002:300
304.2-100	806 KAR 017:290		201 KAR 020:057
304.2-230	806 KAR 017:290		201 KAR 020:065
304.2-310	806 KAR 017:290		201 KAR 020:067
304.39-110	915 KAR 001:080		201 KAR 020:215
304.9-020	806 KAR 009:400		201 KAR 020:225
	806 KAR 017:590		201 KAR 020:370
304.9-055	806 KAR 017:590	314.051	201 KAR 020:225
304.9-430	806 KAR 009:400		201 KAR 020:370
304.9-433	806 KAR 009:400	314.071	201 KAR 020:225
304.9-435	806 KAR 009:400		201 KAR 020:370
304.9-440	806 KAR 009:400	314.073	201 KAR 020:215
304.14-135	900 KAR 007:030		201 KAR 020:220
304.17A-005	806 KAR 017:290		201 KAR 020:225
304.17A-1631	806 KAR 017:290	314.075	201 KAR 020:225



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314.085	201 KAR 020:067	315.410	201 KAR 002:105
	201 KAR 020:225	315.4102	201 KAR 002:390
314.089	201 KAR 020:067	315.4104	201 KAR 002:390
314.091	201 KAR 020:056	315.4106	201 KAR 002:390
	201 KAR 020:057	315.4108	201 KAR 002:390
	201 KAR 020:091	315.4110	201 KAR 002:390
	201 KAR 020:225	315.412	201 KAR 002:105
	201 KAR 020:370	319.050	908 KAR 002:300
314.103	201 KAR 020:056	319.053	907 KAR 015:005
	201 KAR 020:225	319.056	907 KAR 015:005
	201 KAR 020:370		908 KAR 002:300
314.109	201 KAR 020:056	319.064	907 KAR 015:005
	201 KAR 020:225		908 KAR 002:300
314.131	201 KAR 020:220	319C.010	907 KAR 015:005
314.161	201 KAR 020:056		908 KAR 002:300
314.175	201 KAR 020:056	320	809 KAR 010:001
314.193	201 KAR 020:057	320.220	201 KAR 005:005
314.195	201 KAR 020:057	320.250	201 KAR 005:005
314.400 – 314.414	201 KAR 020:620	320.270	201 KAR 005:005
314.475	201 KAR 020:370	321	302 KAR 022:150
	201 KAR 020:506	321.175	201 KAR 016:701
314.991	201 KAR 020:215		201 KAR 016:702
315.010	201 KAR 002:040		201 KAR 016:750
	201 KAR 002:105	321.181	201 KAR 016:701
	201 KAR 002:225		201 KAR 016:552
	201 KAR 002:320	321.185	201 KAR 016:701
	201 KAR 002:340	321.187	201 KAR 016:701
315.020	201 KAR 002:040	321.188	201 KAR 016:701
	201 KAR 002:076	321.190	201 KAR 016:510
	201 KAR 002:205		201 KAR 016:512
	201 KAR 002:225		201 KAR 016:501
	201 KAR 002:320		201 KAR 016:051
	201 KAR 002:340		201 KAR 016:702
315.035	201 KAR 002:050		201 KAR 016:750
	201 KAR 002:076	321.193	201 KAR 016:702
	201 KAR 002:225		201 KAR 016:510
	201 KAR 002:240	321.200	201 KAR 016:701
	201 KAR 002:340		201 KAR 016:514
	201 KAR 002:050	321.201	201 KAR 016:510
	902 KAR 020:048	321.211	201 KAR 016:510
	902 KAR 020:086		201 KAR 016:510
315.036	201 KAR 002:320	321.207	201 KAR 016:514
315.0351	201 KAR 002:050		201 KAR 016:550
	201 KAR 002:076		201 KAR 016:552
	201 KAR 002:205		201 KAR 016:560
315.036	201 KAR 002:050	321.208	201 KAR 016:514
315.050	201 KAR 002:020	321.235	201 KAR 016:512
	201 KAR 002:040		201 KAR 016:516
	201 KAR 002:050		201 KAR 016:552
315.060	201 KAR 002:050		201 KAR 016:510
315.110	201 KAR 002:050		201 KAR 016:514
315.120	201 KAR 002:050	321.351	201 KAR 016:550
315.121	201 KAR 002:105		201 KAR 016:552
315.191	105 KAR 001:457		201 KAR 016:560
	201 KAR 002:040	321.441	201 KAR 016:702
	201 KAR 002:050		201 KAR 016:750
	201 KAR 002:076		201 KAR 016:512
	201 KAR 002:205	321.442	201 KAR 016:512
	201 KAR 002:225	321.443	201 KAR 016:702
	201 KAR 002:320		201 KAR 016:750
	201 KAR 002:340	323A.040	201 KAR 010:040
	201 KAR 002:390		201 KAR 010:050
315.300	201 KAR 002:205	323A.050	201 KAR 010:040
315.335	201 KAR 002:205		201 KAR 010:050
315.350	201 KAR 002:105	323A.060	201 KAR 010:040
315.400	201 KAR 002:105		201 KAR 010:050
	201 KAR 002:320	323A.070	201 KAR 010:040
	201 KAR 002:390		201 KAR 010:050
315.402	201 KAR 002:050	323A.080	201 KAR 010:070
	201 KAR 002:105	323A.100	201 KAR 010:050
315.404	201 KAR 002:105		201 KAR 010:080
	201 KAR 002:320	323A.110	201 KAR 010:030
315.406	201 KAR 002:105	323A.210	201 KAR 010:080
315.408	201 KAR 002:105	325.240	201 KAR 001:200

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325.261	201 KAR 001:190		905 KAR 045:070
325.270	201 KAR 001:190	387.025	922 KAR 001:140
327.040	201 KAR 022:053	387.540	922 KAR 005:070
327.070	201 KAR 022:053	400.203	907 KAR 001:044
327.300	201 KAR 022:170	403.270 – 403.355	922 KAR 001:145
333.030	902 KAR 020:048		922 KAR 001:565
334A.030	016 KAR 002:120	405.024	922 KAR 001:565
334A.033	016 KAR 002:120	405.060	921 KAR 001:410
334A.035	016 KAR 002:120	405.520	921 KAR 001:420
334A.050	016 KAR 002:120	407.5101	921 KAR 001:420
334A.060	016 KAR 002:120	415.208	907 KAR 001:044
335B	201 KAR 016:560	422.317	907 KAR 001:044
	201 KAR 036:070	424.57	907 KAR 001:479
335.070	201 KAR 036:072	424.260	702 KAR 003:340
335.080	201 KAR 023:055	431	907 KAR 001:044
	201 KAR 023:160	431.17	907 KAR 001:044
	907 KAR 015:005	431.52	907 KAR 001:044
335.090	908 KAR 002:300	431.213 – 431.270	501 KAR 045:310
335.100	201 KAR 023:160	431.215	501 KAR 002:060
	201 KAR 023:160	434.840 – 434.860	907 KAR 001:044
	907 KAR 015:005	438.305	902 KAR 045:190E
	908 KAR 002:300	439.265	505 KAR 001:420
335.158	201 KAR 023:170	439.267	505 KAR 001:420
335.300	907 KAR 015:005	439.600	505 KAR 001:310
	908 KAR 002:300	440.70	907 KAR 001:479
335.500	907 KAR 015:005	440.230	907 KAR 001:479
	908 KAR 002:300	441.005	501 KAR 003:010
	201 KAR 036:005		501 KAR 013:010
	201 KAR 036:060	441.045	501 KAR 002:060
	201 KAR 036:065		501 KAR 003:010
335.500 – 335.599	201 KAR 036:070		501 KAR 003:040
335.505	201 KAR 036:030		501 KAR 003:060
	201 KAR 036:045		501 KAR 003:090
	201 KAR 036:060		501 KAR 003:140
	201 KAR 036:065		501 KAR 007:010
335.515	201 KAR 036:072		501 KAR 007:040
	201 KAR 036:090		501 KAR 007:080
335.525	201 KAR 036:060		501 KAR 007:090
	201 KAR 036:065		501 KAR 013:010
	201 KAR 036:070	441.047	501 KAR 003:090
335.527	201 KAR 036:070		501 KAR 003:140
335.535	201 KAR 036:005	441.055	501 KAR 003:010
	201 KAR 036:072		501 KAR 003:040
	201 KAR 036:075		501 KAR 003:060
	201 KAR 036:535		501 KAR 003:080
335.540	201 KAR 036:040		501 KAR 003:090
	201 KAR 036:050		501 KAR 003:100
335.545	201 KAR 036:050		501 KAR 003:140
	201 KAR 036:090		501 KAR 007:010
	201 KAR 036:090		501 KAR 007:040
335.560	201 KAR 036:100E		501 KAR 007:080
	201 KAR 036:100		501 KAR 007:090
342.640	902 KAR 020:500		501 KAR 013:010
344.010	104 KAR 001:080	441.075	501 KAR 002:060
344.010 – 344.500	104 KAR 001:050	441.115	501 KAR 003:040
344.030	101 KAR 001:365	441.510	501 KAR 002:060
344.040	104 KAR 001:040	441.560	501 KAR 003:090
344.050	104 KAR 001:040		501 KAR 007:090
	104 KAR 001:100		501 KAR 013:010
344.060	104 KAR 001:040	446.440	202 KAR 007:410
	104 KAR 001:100	514	921 KAR 002:015
344.070	104 KAR 001:040	508.125	902 KAR 045:070
344.120	104 KAR 001:100	527.070	922 KAR 002:100
344.130	104 KAR 001:100	527.100	922 KAR 001:140
344.190	104 KAR 001:010		922 KAR 001:565
344.360 – 344.385	104 KAR 001:080	527.110	922 KAR 001:140
344.500	104 KAR 001:100		922 KAR 001:565
344.600 – 344.680	104 KAR 001:080	532.100	501 KAR 002:060
344.990	104 KAR 001:050		501 KAR 013:010
363.610	302 KAR 045:020	600 – 645	505 KAR 001:100
363.900 – 363.908	302 KAR 016:071		505 KAR 001:110
369.101 – 369.120	907 KAR 001:044		505 KAR 001:185
387	922 KAR 001:565		505 KAR 001:200
387.010	902 KAR 045:065		505 KAR 001:240

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	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
	505 KAR 001:330		902 KAR 045:070
	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
	505 KAR 001:410	34 C.F.R.	505 KAR 001:185
	505 KAR 001:420		902 KAR 020:086
600.020	922 KAR 001:140		902 KAR 045:070
	922 KAR 001:145	31 C.F.R.	921 KAR 001:410
	922 KAR 001:360	34 C.F.R.	016 KAR 002:120
	922 KAR 001:495		016 KAR 002:160
	922 KAR 001:565		016 KAR 004:020
	922 KAR 001:580	40 C.F.R.	302 KAR 016:071
605.100	922 KAR 001:145		401 KAR 042:250
605.110	505 KAR 001:260		401 KAR 051:010
605.120	922 KAR 001:565	42 C.F.R.	902 KAR 020:086
605.130	922 KAR 001:145		902 KAR 020:300
610.110	922 KAR 001:140		907 KAR 001:025
	922 KAR 001:565		907 KAR 001:044
610.110	922 KAR 001:145		907 KAR 001:065
610.125	922 KAR 001:140		907 KAR 001:479
	922 KAR 001:145		907 KAR 003:066
610.127	922 KAR 001:140		907 KAR 015:005
620.020	201 KAR 020:215	45 C.F.R.	902 KAR 020:048
	201 KAR 020:620		902 KAR 020:086
	922 KAR 001:360		907 KAR 001:044
	922 KAR 002:100		907 KAR 001:061
620.010	922 KAR 001:140		907 KAR 001:479
620.020	922 KAR 001:565		910 KAR 001:270
620.020	922 KAR 002:100		921 KAR 001:410
	922 KAR 001:580		921 KAR 001:420
620.030	902 KAR 020:086		921 KAR 003:027
	922 KAR 002:100		922 KAR 001:140
620.045	922 KAR 001:580		922 KAR 001:145
620.050	922 KAR 001:580		922 KAR 002:100
620.060	922 KAR 001:140	49 C.F.R.	922 KAR 002:100
620.090	922 KAR 001:140	50 C.F.R.	302 KAR 045:020
	922 KAR 001:145		401 KAR 045:030
	922 KAR 001:565	7 U.S.C.	921 KAR 003:020
620.140	922 KAR 001:140		401 KAR 045:100
	922 KAR 001:145		921 KAR 003:027
	922 KAR 001:565	10 U.S.C.	106 KAR 004:020
620.142	922 KAR 001:565	15 U.S.C.	201 KAR 027:008
620.170	922 KAR 001:145		201 KAR 027:011
	922 KAR 001:565		921 KAR 001:410
625.040	922 KAR 001:140	16 U.S.C.	401 KAR 045:030
625.090	922 KAR 001:140	20 U.S.C.	016 KAR 004:020
7 C.F.R.	921 KAR 003:020		705 KAR 004:231
	921 KAR 003:095		702 KAR 007:065
	921 KAR 003:027		921 KAR 003:027
	921 KAR 003:100		922 KAR 002:100
	922 KAR 002:100	21 U.S.C.	201 KAR 020:065
9 C.F.R.	302 KAR 022:150		201 KAR 002:076
10 C.F.R.	902 KAR 100:040		921 KAR 003:027
	902 KAR 100:050	25 U.S.C.	922 KAR 001:140
	902 KAR 100:058	26 U.S.C.	105 KAR 001:390
	902 KAR 100:065		105 KAR 001:457
	902 KAR 100:165		301 KAR 005:200
	902 KAR 100:185		908 KAR 001:410
	902 KAR 100:195	29 U.S.C.	907 KAR 015:005
	902 KAR 100:200		921 KAR 003:020
16 C.F.R.	302 KAR 016:071	38 U.S.C.	921 KAR 003:020
	922 KAR 002:100	42 U.S.C.	104 KAR 001:040

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			501 KAR 003:010
			705 KAR 004:231
			902 KAR 020:048
			902 KAR 020:086
			902 KAR 100:040
			902 KAR 100:050
			902 KAR 100:065
			902 KAR 100:185
			902 KAR 100:195
			902 KAR 100:200
			907 KAR 001:025
			907 KAR 001:044
			907 KAR 001:061
			907 KAR 001:065
			907 KAR 003:066
			908 KAR 001:410
			921 KAR 003:020
			921 KAR 001:410
			921 KAR 001:420
			921 KAR 003:027
			922 KAR 001:360
			922 KAR 002:100
			922 KAR 002:165
42 U.S.C.			922 KAR 001:140
42 U.S.C.			922 KAR 001:140
42 U.S.C.			601 KAR 012:080
42 U.S.C.			922 KAR 005:120
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
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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
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Ky Acts ch. 172			030 KAR 010:010
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			030 KAR 010:070
			030 KAR 010:080
			030 KAR 010:090
			030 KAR 010:100
			030 KAR 010:110
			030 KAR 010:120
Ky Acts ch 173 (2005)			907 KAR 001:061
Ky Acts ch 335			401 KAR 045:080
Ky Constitution s. 99,152			501 KAR 003:010
			501 KAR 007:010

## CERTIFICATION LETTER SUMMARIES

The certification process is established in KRS 13A.3104. If the certification letter states the regulation shall be amended, the administrative body shall file an amendment to the regulation within 18 months of the date the certification letter was filed. If the certification letter states that the regulation shall remain in effect without amendment, the last effective date of the regulation is changed to the date the regulations compiler received the letter.

\* KRS 13A.010(6) - "Effective" or "eff." means that an administrative regulation has completed the legislative review process established by KRS 13A.290, 13A.330, and 13A.331.

Regulation Number	Letter Filed Date	Action
002 KAR 002:010	06-27-2023	Remain in Effect without Amendment
002 KAR 002:020	06-27-2023	Remain in Effect without Amendment
002 KAR 002:040	06-27-2023	Remain in Effect without Amendment
002 KAR 002:050	06-27-2023	Remain in Effect without Amendment
002 KAR 002:060	06-27-2023	Remain in Effect without Amendment
002 KAR 002:070	06-27-2023	Remain in Effect without Amendment
013 KAR 002:060	11-20-2023	Remain in Effect without Amendment
103 KAR 008:160	11-13-2023	Remain in Effect without Amendment
106 KAR 001:131	12-01-2023	Shall be Amended; Filing deadline 06-01-2025
200 KAR 005:355	12-18-2023	Remain in Effect without Amendment
201 KAR 002:045	11/6/2023	To be amended, filing deadline 05-06-2025
201 KAR 020:520	07-17-2023	Remain in Effect without Amendment
201 KAR 023:055	09-06-2023	To be amended, going through process now 9-6-2023
201 KAR 036:020	12-20-2023	Remain in Effect without Amendment
201 KAR 036:055	12-21-2023	Remain in Effect without Amendment
201 KAR 043:110	10-07-2023	Remain in Effect without Amendment
201 KAR 046:090	11-08-2023	Remain in Effect without Amendment
201 KAR 047:020	12-20-2023	Remain in Effect without Amendment
301 KAR 002:122	07-14-2023	To be amended, filing deadline 01-04-2025
301 KAR 005:040	08-03-2023	To be amended, filing deadline 02-03-2025
302 KAR 017:010	01-22-2024	Remain in Effect without Amendment
302 KAR 039:020	01-22-2024	Remain in Effect without Amendment
705 KAR 004:231	10-11-2023	To be amended, In process 10-11-2023
780 KAR 007:060	08-07-2023	Remain in Effect without Amendment
803 KAR 002:307	08-31-2023	Remain in Effect without Amendment
803 KAR 002:318	08-31-2023	Remain in Effect without Amendment
803 KAR 002:412	01-05-2024	Remain in Effect without Amendment
803 KAR 002:421	08-31-2023	Remain in Effect without Amendment
806 KAR 018:020	06-13-2023	Remain in Effect without Amendment
902 KAR 002:060	08-10-2023	Remain in Effect without Amendment
902 KAR 010:085	08-10-2023	Remain in Effect without Amendment
902 KAR 020:091	02-19-2024	Remain in Effect without Amendment
902 KAR 021:030	08-10-2023	Remain in Effect without Amendment
902 KAR 100:080	06-12-2023	Remain in Effect without Amendment
902 KAR 100:085	06-12-2023	Remain in Effect without Amendment
921 KAR 001:001	01-16-2024	Remain in Effect without Amendment
921 KAR 001:410	10-11-2023	To be amended, in process, filed 10-9-2023
921 KAR 001:420	10-11-2023	To be amended, in process, filed 8-14-2023
921 KAR 002:040	01-16-2024	Remain in Effect without Amendment
922 KAR 002:020	06-19-2023	To be amended, filing deadline 12-19-2024

## TECHNICAL AMENDMENT INDEX

The Technical Amendment Index is a list of administrative regulations that have had technical, nonsubstantive amendments made during the 50<sup>th</sup> year of the *Administrative Register of Kentucky*. These technical changes have been made by the Regulations Compiler pursuant to KRS 13A.040(9) and (10), 13A.2255(2), 13A.312(2), or 13A.320(1)(d). Since these changes were not substantive in nature, administrative regulations appearing in this index will NOT be published to show the technical corrections in the *Register*. NOTE: Technical amendments may be available online for a short period of time. To view regulations on the Legislative Research Commission Web site, go to <https://apps.legislature.ky.gov/law/kar/titles.htm>.

‡ - A technical change was made to this administrative regulation during the promulgation process, pursuant to KRS 13A.320(1)(e).

† - A nonsubstantive change was made by the Compiler pursuant to KRS 13A.040(9).

Regulation Number	Date Corrected	Regulation Number	Date Corrected
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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