



ADMINISTRATIVE REGISTER OF KENTUCKY

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

MEETING NOTICES

The Administrative Regulation Review Subcommittee is tentatively scheduled to meet on August 13, 2024 at 1:00 p.m. in room 149 Capitol Annex. ARRS Tentative Agenda – 187 [Online agenda updated as needed](#)

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

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

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all of the administrative regulations that may be removed to complete the public comment process or deferred or withdrawn by promulgating agencies.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



**Administrative Regulation Review Subcommittee
TENTATIVE Meeting Agenda
Tuesday, August 13, 2024 at 1:00 p.m.
Annex Room 149**



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

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY

**Division of Student Financial Aid
Kentucky Higher Education Assistance Authority**
011 KAR 004:080. Student aid application. (Deferred from July)

Kentucky Educational Excellence Scholarship Program
011 KAR 015:090. Kentucky Educational Excellence Scholarship (KEES) program. (Deferred from July)
011 KAR 015:110. Scholarships for Registered Apprenticeship and Qualified Workplace Training programs. (Deferred from July)

GENERAL GOVERNMENT CABINET

**Council on Postsecondary Education
Public Educational Institutions**

013 KAR 002:120. Comprehensive funding model for the allocation of state general fund appropriations to public universities.
013 KAR 002:130. Comprehensive funding model for the allocation of state general fund appropriations to the Kentucky Community and Technical College System institutions.

EDUCATION AND LABOR CABINET

**Education Professional Standards Board
Teaching Certificates**

016 KAR 002:110. Endorsement for teachers for gifted education.
016 KAR 002:140. Probationary certificate for teachers of exceptional children and interdisciplinary early childhood education.
016 KAR 002:160. Probationary certificate for teachers of exceptional children. (Deferred from May)
016 KAR 002:170. Probationary certificate for middle school teachers.
016 KAR 002:200. Probationary endorsement for teachers for English as a second language.

Alternative Routes to Certification

016 KAR 009:030E. Professional and provisional certificate for college faculty. (Filed with Ordinary) ("E" expires 02-25-2025)

STATE BOARD OF ELECTIONS

Forms and Procedures

031 KAR 004:031E. Reporting. (Filed with Ordinary) ("E" expires 01-10-2025) (Not Amended After Comments) (Deferred from July)
031 KAR 004:031. Reporting. (Filed with Emergency) (Deferred from July)

Voting

031 KAR 005:040E. Questions regarding voter eligibility. (Filed with Ordinary) ("E" expires 01-10-2025) (Not Amended After Comments)
031 KAR 005:040. Questions regarding voter eligibility. (Filed with Emergency)

OFFICE OF THE ATTORNEY GENERAL

**Department of Law
Criminal Investigations**

040 KAR 010:010. Uniform procedure and timeline for conducting independent election inquiries. (Deferred from June)

PERSONNEL BOARD

Board

101 KAR 001:335. Employee actions. (Deferred from July)
101 KAR 001:345. Disciplinary actions. (Deferred from July)
101 KAR 001:375. Employee grievances and complaints. (Deferred from July)
101 KAR 001:396. Repeal of 101 KAR 001:395. (Deferred from July)

FINANCE AND ADMINISTRATION CABINET

Purchasing

200 KAR 005:021E. Manual of policies and procedures. (Filed with Ordinary) ("E" expires 05-16-2024)

BOARDS AND COMMISSIONS

Board of Pharmacy

201 KAR 002:220. Collaborative care agreements. (Not Amended After Comments)

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Board of Nursing

201 KAR 020:320. Standards for curriculum of prelicensure registered nurse and practical nurse programs. (Amended After Comments)

Boxing and Wrestling Commission

201 KAR 027:006. Powers and duties of inspector.

201 KAR 027:023. Drug testing for boxing, kickboxing, mixed martial arts, wrestling, and elimination event shows.

201 KAR 027:041. Managers.

201 KAR 027:106. Violations, penalties, and appeals.

Board of Licensure for Occupational Therapy

201 KAR 028:240. Occupational Therapy Licensure Compact. (Filed with Emergency)

EDUCATION AND LABOR CABINET

Department for Workers' Claims

803 KAR 025:089. Workers' compensation medical fee for physicians. (Filed with Emergency)

ENERGY AND ENVIRONMENT CABINET

Public Service Commission

Utilities

807 KAR 005:015E. Access and attachments to utility poles and facilities. (Emergency Only) ("E" expires 02-25-2025)

PUBLIC PROTECTION CABINET

Department of Housing, Buildings and Construction

Kentucky Building Code

815 KAR 007:120. Kentucky Building Code. (Not Amended After Comments) (Deferred from July)

815 KAR 007:125. Kentucky Residential Code. (Not Amended After Comments) (Deferred from July)

CABINET FOR HEALTH AND FAMILY SERVICES

Department for Public Health

Food and Cosmetics

902 KAR 045:001E. Definitions for hemp-derived cannabinoid products. (Filed with Ordinary) ("E" expires 01-19-2025) (Not Amended After Comments)

902 KAR 045:001. Definitions for hemp-derived cannabinoid products. (Filed with Emergency)

902 KAR 045:012E. Hemp-derived cannabinoid product retail and food service establishment requirements. (Filed with Ordinary) ("E" expires 01-19-2025) (Not Amended After Comments)

902 KAR 045:012. Hemp-derived cannabinoid product retail and food service establishment requirements. (Filed with Emergency)

902 KAR 045:021E. Hemp-derived cannabinoid products registration, processing, manufacturing, storage and distribution requirements. (Filed with Ordinary) ("E" expires 01-19-2025) (Not Amended After Comments)

902 KAR 045:021. Hemp-derived cannabinoid products registration, processing, manufacturing, storage and distribution requirements. (Filed with Emergency)

902 KAR 045:031E. Hemp-derived cannabinoid product sampling and testing requirements. (Filed with Ordinary) ("E" expires 01-19-2025) (Not Amended After Comments)

902 KAR 045:031. Hemp-derived cannabinoid product sampling and tasting requirements. (Filed with Emergency)

Department for Medicaid Services

Medicaid Services

907 KAR 001:044. Coverage provisions and requirements regarding community mental health center behavioral health services. (Amended After Comments) (Deferred from March)

907 KAR 015:005. Definitions for 907 KAR Chapter 015. (Amended After Comments) (Deferred from March)

Office of the Secretary

General

915 KAR 001:010E. Initial and renewal applications for cannabis business licenses. (Filed with Ordinary) ("E" expires 01-13-2025) (Emergency Amended After Comments)

915 KAR 001:010. Initial and renewal application for cannabis business licenses. (Filed with Emergency)

915 KAR 001:020E. Cannabis business licenses. (Filed with Ordinary) ("E" expires 01-13-2025) (Emergency Amended After Comments)

915 KAR 001:020. Cannabis business licenses. (Filed with Emergency)

Department for Community Based Services

Day Care

922 KAR 002:090E. Child-care center licensure. (Filed with Ordinary) ("E" expires 02-14-2025)

3. REGULATIONS REMOVED FROM AUGUST'S AGENDA

BOARDS AND COMMISSIONS

Board of Pharmacy

201 KAR 002:015. Continuing education. (Comments Received; SOC ext. due 08-15-2024)

201 KAR 002:030. License transfer and Non-Resident Pharmacist License. (Comments Received; SOC ext. due 08-15-2024)

201 KAR 002:050. License and permits; fees. (Comments Received; SOC ext. due 08-15-2024)

201 KAR 002:465. Non-Resident Pharmacy Applications and Waivers. (Comments Received, SOC ext. due 08-15-2024)

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ENERGY AND ENVIRONMENT CABINET

Department for Environmental Protection

Air Quality - General Administrative Procedures

401 KAR 050:038. Air emissions fee. (Comments Received; SOC due 08-15-2024)

JUSTICE AND PUBLIC SAFETY CABINET

Department of Corrections

Office of the Secretary

501 KAR 006:021. Repeal of 501 KAR 006:020. (Deferred from August)

501 KAR 006:280. Risk and needs assessment. (Deferred from August)

501 KAR 006:300. News media. (Comments Received; SOC due 08-15-2024)

501 KAR 006:310. Monitoring and operation of private prisons. (Deferred from August)

501 KAR 006:320. Corrections policies and procedures: inmate funds. (Deferred from August)

501 KAR 006:330. Corrections policies and procedures: personnel. (Filed with Emergency) (Deferred from August)

501 KAR 006:340. Corrections policies and procedures: research and information. (Deferred from August)

501 KAR 006:350. Inmate or offender or supervision record request. (Deferred from August)

501 KAR 006:360. Corrections policies and procedures: safety and critical incident notification. (Deferred from August)

501 KAR 006:370. Corrections policies and procedures: security and control. (Deferred from August)

501 KAR 006:380. Corrections policies and procedures: special management and restrictive housing inmates, safekeepers, and contract prisoners. (Deferred from August)

501 KAR 006:390. Corrections policies and procedures: inmate diet. (Deferred from August)

501 KAR 006:400. Corrections policies and procedures: inmate health care. (Deferred from August)

501 KAR 006:410. Corrections policies and procedures: inmate life and issues. (Deferred from August)

501 KAR 006:420. Corrections policies and procedures: inmate rules and discipline. (Deferred from August)

501 KAR 006:430. Corrections policies and procedures: communication, mail, and visiting. (Filed with Emergency) (Comments Received; SOC due 08-15-2024)

501 KAR 006:440. Corrections policies and procedures: inmate reception, orientation, and personal property. (Deferred from August)

501 KAR 006:450. Corrections policies and procedures: classification. (Deferred from August)

501 KAR 006:460. Corrections policies and procedures: inmate work programs. (Deferred from August)

501 KAR 006:470. Corrections policies and procedures: inmate education and training. (Comments Received; SOC due 08-15-2024)

501 KAR 006:480. Library services. (Deferred from August)

501 KAR 006:490. Corrections policies and procedures: inmate recreation and activities. (Deferred from August)

501 KAR 006:500. Religious programs. (Deferred from August)

501 KAR 006:510. Corrections policies and procedures: release preparation and temporary release. (Deferred from August)

501 KAR 006:520. Citizen involvement, volunteer, and reentry mentor service programs. (Deferred from August)

501 KAR 006:530. Corrections policies and procedures: programs and sentence credits. (Deferred from August)

501 KAR 006:540. Inmate record. (Deferred from August)

****Expiration dates in this document have been determined pursuant to KRS Chapter 13A provisions. Other statutes or legislation may affect a regulation's actual end date.****

**STANDARD ADMINISTRATIVE REGULATION REVIEW PROCEDURE
Overview for Regulations Filed under KRS Chapter 13A**

(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 on state and local government; 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 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 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.

Review Procedure

After the public hearing and public comment period processes are completed, the administrative regulation will be tentatively scheduled for review at the next meeting of the Administrative Regulation Review Subcommittee. After review by the subcommittee, the regulation shall be referred by the Legislative Research Commission to an appropriate jurisdictional committee for a second review. If a quorum is present, unless the regulation is deferred or found deficient, an ordinary regulation shall be considered in effect upon adjournment of the appropriate jurisdictional committee or 90 days after being referred by LRC, whichever occurs first.

EMERGENCY ADMINISTRATIVE REGULATIONS

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

STATEMENT OF EMERGENCY
16 KAR 1:030E.

This emergency administrative regulation is being promulgated to meet an imminent deadline for the promulgation of an administrative regulation that is established by state statute. During the 2024 legislative session, the General Assembly passed House Bill 300 and the Governor signed it into law on April 18, 2024. This legislation, which is slated to become effective on July 15, 2024, amends the process by which the Education Professional Standards Board (EPSB) handles complaints against certificate holders under KRS 161.120. As there are only eighty-eight (88) days between the Governor signing this bill into law and its effective date, the ordinary administrative regulation process would not allow the EPSB time to promulgate an ordinary administrative regulation to be effective when the bill goes into effect. Therefore, the emergency regulation is necessary to comply with the process for handling complaints against certificate holders when the bill goes into effect. This emergency administrative regulation will be replaced by an ordinary administrative regulation because the process is expected to remain in statute. The ordinary administrative regulation is identical to this emergency administrative regulation.

ANDY BESHEAR, Governor
JUSTIN MITCHELL, Chair

EDUCATION AND LABOR CABINET
Education Professional Standards Board
(Emergency Amendment)

16 KAR 1:030E. Procedures for educator certificate surrender, revocation, suspension, reinstatement, and reissuance, and for application denial.

EFFECTIVE: July 15, 2024

RELATES TO: KRS Chapter 13B, 160.380, 161.010-161.100, 161.102, 161.120, 218A.010

STATUTORY AUTHORITY: KRS 161.028(1), 161.120(1), 161.175(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.028(1) authorizes the Education Professional Standards Board (EPSB) to establish standards and requirements for obtaining and maintaining an educator's certificate; revoke, suspend, or refuse to issue or renew a certificate; impose probationary or supervisory conditions upon a certificate; issue a written reprimand or admonishment; or any combination of those actions regarding any certificate issued to Kentucky certified educators for reasons delineated in KRS 161.120(1). KRS 161.175(2) authorizes the EPSB to promulgate administrative regulations requiring an educator whose certificate has been suspended or revoked by the EPSB to submit to drug testing when [because] the educator engaged in misconduct involving the illegal use of controlled substances [to submit to drug testing]. This administrative regulation identifies the conditions for initiating a disciplinary action against an educator's certificate and establishes procedures for certificate reinstatement, reissuance, and application denial.

Section 1. Purpose.

(1) In order to support the mission of the EPSB, the EPSB may take action against an educator's certificate in an effort:

- (a) To ensure that an educator has an understanding of an educator's professional duties and responsibilities; and
- (b) To protect students, parents of students, school personnel, or school officials.

(2) The EPSB may take action against any certificate issued under KRS 161.010 to 161.102 [161.400] for any of the reasons set forth in KRS 161.120(1).

Section 2. Complaints and Reports.

(1) A complaint may be made by any person, organization, or entity. The complaint shall be in writing and shall be signed by the person offering the complaint. The complaint shall be sent to the EPSB and contain:

(a) The name, phone number, and address of the person making the complaint, and the name of the educator against whom the complaint is made. If known, the person making the complaint shall include the address of the school district where the educator works; ~~and~~

(b) A clear and concise description of the issues of fact; ~~and~~ [.]

(c) Any supporting documentation necessary to provide sufficient credible evidence that a violation may have occurred. This may include but is not limited to signed witness statements, audio, video, contact information for eyewitnesses, or other documentary evidence.

(2) A report shall be sent to the EPSB by superintendents of local school districts pursuant to KRS 161.120(3) [161.120(2)(a)].

(a) A superintendent's duty to report shall include the reporting of criminal convictions discovered by the district pursuant to KRS 160.380, even if the conviction occurred prior to the date the educator's certification was issued.

(b) The superintendent shall have thirty (30) calendar days from the date the superintendent is made aware [receives notice] of the criminal conviction to report that criminal conviction to the EPSB pursuant to KRS 161.120(3)(a) [161.120(2)(a)].

(c) Failure of the superintendent to provide the full facts and circumstances or to forward copies of all relevant documents and records in the superintendent's possession pursuant to KRS 161.120(3)(b) [161.120(2)(b)], may result in action against the superintendent's certificate pursuant to 161.120(1)(j).

(d) The superintendent shall supplement the report in writing within thirty (30) calendar days of the superintendent receiving the additional information or supporting documentation.

(3) For complaints and reports received prior to July 15, 2024, EPSB staff shall do an initial review of all complaints and reports to determine whether there is sufficient credible evidence that a violation of KRS 161.120(1) may have occurred. If the report or complaint contains sufficient credible evidence that a violation of KRS 161.120(1) may have occurred, EPSB staff shall open a file and assign that file a number.

(a) The EPSB staff shall send a copy of these complaints and reports by certified mail to the educator's address on file with EPSB.

(b) The educator shall have the right to file a rebuttal with the EPSB within thirty (30) calendar days from the date the educator receives the complaint or report from the EPSB unless the parties agree to extend that deadline.

(c) EPSB staff shall add the case to the EPSB's docket and prepare the file for EPSB review by redacting all the educator's identifiers if one (1) of the following occurs:

- 1. The educator's rebuttal is received;
- 2. The notice is returned as undeliverable; or
- 3. The educator:
 - a. Fails to file a rebuttal with the EPSB; and
 - b. Has not requested to extend the thirty (30) day deadline.

(d) The EPSB shall determine whether the nature and quality of the alleged violation warrants deferral, dismissal, training, admonishment, further investigation, or initiation of a hearing.

(e) In making its determination, the EPSB shall consider if the allegation, if proven, would warrant sanction by the EPSB.

(4) For complaints and reports received on or after July 15, 2024, the EPSB shall use the process established in KRS 161.120(2).

(a) A complaint shall be considered complete when the complainant indicates that the complaint contains all information in the complainant's possession and is complete.

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(b) If the initial review under KRS 161.120(2)(a) finds sufficient evidence that a violation may have occurred, EPSB staff shall open a file and assign that file a number.

(c) Notices to the certificate holder and superintendents required by KRS 161.120(2)-(3) shall be made using the Kentucky Educator Credentialing System (KECS). Notices to non-superintendent complainants shall be sent to the contact information provided by the complainant.

(d) To extend the rebuttal period an additional thirty (30) days, the written request under KRS 161.120(2)(b) shall be received by EPSB staff on or before noon eastern time on the date the rebuttal period expires.

(e) Conferences with certificate holders under KRS 161.120(2)(d) shall be virtual unless both parties agree to hold the conference in-person.

(5)(f) When making a determination as to the level of sanctions warranted, the EPSB shall consider the following factors:

(a)[4-] The seriousness of the alleged violation;

[2-] Whether the alleged violation was premeditated or intentional;

(b)[3-] Whether an attempt to conceal the alleged violation was made;

(c)[4-] Whether there were any prior violations;

(d)[5-] Whether training is appropriate to prevent further violations;

(e)[6-] Whether the sanction is necessary to deter future violations; or

(f)[7-] Other relevant circumstances or facts.

(6)(4)

[(a) If after further investigation occurs, the EPSB determines that sanctions may be] warranted, and an agreed upon resolution could not be achieved, the EPSB shall initiate a [refer the matter to] hearing.

(a)[(b) If the EPSB votes to initiate a] [refers the matter to] hearing, the EPSB shall, by majority vote, approve the issuance of a notice of hearing and the statement of charges. The statement of charges shall include specific reasons for the EPSB's proposed action, including the:

1. Statutory or regulatory violation;
2. Factual basis on which the disciplinary action is based; and
3. Penalty sought.

(b)[(c)] The parties may agree to resolve the matter informally at any time, in accordance with KRS 161.120(9)[161.120(9)]. Any agreement to resolve the matter shall be memorialized in an agreed order. To be valid, the agreement shall be approved by the EPSB. The agreed order shall be signed by the educator, the educator's attorney, if any, and the EPSB chair.

(c)[(d)] The EPSB staff shall initiate the hearing process by filing the statement of charges with the hearing officer, in accordance with KRS Chapter 13B, [within thirty (30) days-] after the EPSB refers the matter to hearing.

Section 3. Hearing Process.

(1) The hearing shall be held in accordance with KRS Chapter 13B.

(2) ~~Either party may be entitled to a reasonable continuance of the hearing date for good cause.~~

~~[(3)] The educator has the right to request a private in-person hearing, in accordance with KRS 161.120(6)(c)[161.120(5)(b)].~~

(a) The educator shall waive the right to a private in-person hearing if the educator fails to specifically make a written request for a private in-person hearing at least five (5) days prior to the hearing.

(b) Even if the educator elects to proceed with a private, in-person hearing, the hearing transcript for that hearing shall be subject to disclosure after the EPSB issues its final order unless exempt from disclosure by law.

(c) All hearings shall be conducted in the office of the EPSB unless a new location is agreed upon by the parties.

~~[(3)(4)] The hearing officer's recommended order shall include a discussion of the factors set forth in Section 2(5)[Section 2(3)(f)] of this administrative regulation if recommending sanctions.~~

~~[(4)(5)] A party may file any exceptions to the recommended order within fifteen (15) calendar days from the date the~~

recommended order is mailed.

(a) This time limit shall not be extended, and responses to exceptions shall not be considered by the EPSB.

(b) Any disagreement with a factual finding or conclusion of law in the recommended order not contained in the exceptions shall be waived.

Section 4. Final Decision.

(1) The EPSB may delegate to the EPSB chair the authority to sign a decision made or order issued under this section on behalf of a majority of the EPSB members.

(2) After the EPSB chair certifies that a quorum is present, a majority of the voting members present shall be required to make a final decision on the recommended order, agreed order, or request for the issuance of an order of default judgment.

(3) In making a final order in accordance with KRS 13B.120, the EPSB shall consider the record including the recommended order and any exceptions filed.[.]

Section 5. Procedure for Suspension, Surrender, or Revocation of a Certificate.

(1) When the EPSB issues a final decision, the EPSB staff shall upload a copy to the certificate holder's KECS account. Final orders issued pursuant to KRS 13B.120 shall also be sent to the certificate holder [mail a copy of the final decision to the educator] by certified mail using the address the educator provided to the EPSB, or any other means permitted by law.

(2) A record of EPSB action shall become part of the educator's official records maintained by EPSB staff.

~~[(3) If the EPSB final decision impacts the certificate holder's eligibility for employment, the EPSB staff shall notify the certificate holder's employing district of the action taken. Immediately following the issuance of the EPSB final decision, the EPSB staff shall notify the reporting parties of the action taken.]~~

(4) EPSB staff shall also ensure that the suspension, surrender, or revocation is noted on the EPSB's Web site.

(5) EPSB staff shall also ensure that the information is provided to the National Association of State Directors of Teacher Education and Certification (NASDTEC) for inclusion in the NASDTEC Clearinghouse, which is a searchable database administered by NASDTEC relating to educator certification and discipline.

Section 6. Procedure for Reinstatement of a Suspended Certificate.

(1) Reinstatement of a suspended certificate for reasons other than misconduct involving the illegal use of controlled substance as defined in KRS 218A.010 shall be subject to the following requirements:

(a) A certificate that has been suspended by the EPSB shall not be reinstated until the certificate holder has met all conditions and requirements ordered by the EPSB.

(b) If a certificate lapses during a period of suspension, the certificate holder shall apply for renewal of the certificate at the end of the suspension period. The EPSB shall renew the certification if the certificate holder has met all educational requirements for renewal and has completed all of the conditions and requirements ordered by the EPSB.

(c) The burden to initiate the process to reinstate a suspended certificate shall be on the certificate holder.

1. If the suspension does not include conditions, the EPSB staff shall remove all references of the suspension from the Web site at the conclusion of the suspension period.

2. If the suspension includes conditions, the certificate holder shall provide the EPSB proof that all conditions have been met.

a. The EPSB shall reinstate the certificate at the conclusion of the suspension period once the EPSB receives evidence from the certificate holder demonstrating that the conditions of suspension were met.

b. The EPSB shall remove from its Web site any reference to the suspension once the certificate holder has provided evidence that the conditions of suspension have been met.

(d) The record of suspension as well as reinstatement of the certification shall become part of the educator's official certification

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records, but the record of suspension shall not be referenced on any certificate subsequently issued to the certificate holder.

(2) Reinstatement of a suspended certificate for misconduct involving the illegal use of controlled substance as defined in KRS 218A.010 shall be subject to the following requirements:

(a) In addition to conditions for reinstatement of a suspended certificate established in subsection (1) of this section, the certificate holder shall provide written evidence that the certificate holder has submitted to a drug test at the certificate holder's own expense administered by a drug testing facility approved by the EPSB within thirty (30) days of reinstatement.

(b) The certificate holder shall arrange for the drug testing facility to send the results of the drug test directly to the EPSB.

(c) A certificate holder subject to the terms of this subsection may petition the EPSB to approve a state approved drug testing facility of the certificate holder's choice.

1. Petition to Approve Drug Testing Facility. The petition shall contain the following information:

- a. The drug testing facility's name and location;
- b. The name and telephone number for the director of the facility;
- c. The method of test specimen collection;
- d. The drug testing facility's method of assuring identity of the test subject;
- e. Procedures for testing specimens, including forensic testing methods; and
- f. Chain of custody protocols.

2. The drug testing facility shall test at a minimum for the following named controlled substances:

- a. Marijuana;
- b. Cocaine;
- c. Opiates;
- d. Amphetamines;
- e. Phencyclidine;
- f. Morphine;
- g. MDMA (Ecstasy);
- h. Methadone;
- i. Benzodiazepines;
- j. Barbiturates; and
- k. Oxycodone.

(d) If the results of the drug test indicate illegal drug use by the certificate holder, the certificate shall not be reinstated.

Section 7. Procedure for Reissuance of a Certificate after Revocation.

(1) If revocation was for reasons other than misconduct involving the illegal use of controlled substance as defined in KRS 218A.010, the conditions established in this subsection shall apply.

(a) The former certificate holder shall complete the same application that all educators in Kentucky shall complete to obtain certification.

(b) The former certificate holder shall bear the burden of proving that the certificate holder is fit for practice.

(c) The former certificate holder shall satisfy all current educational requirements for the certificate sought.

(d) The EPSB may include terms and conditions that the EPSB reasonably deems appropriate as a condition of reissuance in accordance with KRS 161.120(12)(b)[461-420(14)(b)] if reissuing the certificate.

(2) If revocation was for misconduct involving the illegal use of controlled substance as defined in KRS 218A.010, the former certificate holder shall:

- (a) Comply with the requirements established in Section 6(1) of this administrative regulation; and
- (b) Submit to drug testing as established in Section 6(2) of this administrative regulation.

(3) Regardless of the reason for the revocation, the revocation shall be noted on the certificate that is issued and shall remain on the EPSB Web site.

Section 8. Denial of Application for a Certificate. If the EPSB denies an individual's application for a Kentucky certificate pursuant to this administrative regulation, the applicant may file an appeal in accordance with KRS 161.120(6)(a)2[461-420(5)(a)2].

Section 9. Motion to Reconsider.

(1) In accordance with KRS 161.120(10)[461-420(9)], the EPSB may reconsider, modify, or reverse its decision of its own volition.

(2) Under exceptional circumstances, the EPSB may reconsider, modify or reverse its decision on any disciplinary matter upon a motion by one (1) of the parties.

JUSTIN MITCHELL, Board Chair

APPROVED BY AGENCY: July 15, 2024

FILED WITH LRC: July 15, 2024 at 10:50 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on August 27, 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 August 31, 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 identifies the conditions for initiating a disciplinary action against a teaching or administrative certificate and establishes procedures for certificate surrender, revocation, suspension, reinstatement, reissuance, and application denial.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to identify the conditions for initiating a disciplinary action against an educator's certificate and establishes procedures for certificate surrender, revocation, suspension, reinstatement, reissuance and application denial.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 161.028 requires the Education Professional Standards Board to establish the standards and requirements for obtaining and maintaining a teaching certificate; and provides the authority to issue, renew, revoke, suspend, or refuse to issue or renew; impose probationary or supervisory conditions upon; issue a written reprimand or admonishment; or any combination of actions regarding any certificate for reasons delineated in KRS 161.120(1). KRS 161.175(2) authorizes the Education Professional Standards Board to promulgate administrative regulations requiring an educator whose certificate has been suspended or revoked by the Education Professional Standards Board because the educator engaged in misconduct involving the illegal use of controlled substances to submit to drug testing.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation sets forth the process for initiating a disciplinary action against a teaching or administrative certificate and establishes procedures for certificate surrender, revocation, suspension, reinstatement, reissuance, and application denial.

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

(a) How the administrative regulation will change this existing administrative regulation: This amendment specifies how the Education Professional Standards Board will process complaints against certificate holders that are received prior to July 15, 2024, and how

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they will process those complaints received on or after July 15, 2024. The process for processing complaints after July 15, 2024, is created to comply with the new process created by House Bill 300 of the 2024 legislative session. Additional amendments are made to update statutory references.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to comply with the changes to KRS 161.120 from House Bill 300 of the 2024 Legislative Session.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 161.028(1) authorizes the Education Professional Standards Board to establish standards and requirements for obtaining and maintaining a teaching certificate, and provides the authority to issue, renew, revoke, suspend, or refuse to issue or renew; impose probationary or supervisory conditions upon; issue a written reprimand or admonishment; or any combination of actions regarding any certificate for reasons delineated in KRS 161.120(1). KRS 161.175(2) authorizes the Education Professional Standards Board to promulgate administrative regulations requiring an educator whose certificate has been suspended or revoked by the Education Professional Standards Board because the educator engaged in misconduct involving the illegal use of controlled substances to submit to drug testing. House Bill 300 of the 2024 legislative session establishes the process by which EPSB is to handle complaints filed against certificate holders in KRS 161.120(2).

(d) How the amendment will assist in the effective administration of the statutes: This amendment updates the regulation to comply with the changes to KRS 161.120 and will ensure the processing of complaints and reports filed against certificate holders meets the statutory requirements.

(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 seeking teaching certifications, educators currently holding certifications, and superintendents for the 171 Kentucky public school districts that employ educators holding certifications.

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

(a) List 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 by the applicants or certificate holders will be required. Superintendents will be required to submit complaints in accordance with KRS 161.120(3) and indicate when complaints are complete.

(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 amendment for districts, certificate holders or applicants for certification.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Complaints and reports will be processed in the timelines provided in KRS 161.120 and the requisite notifications will be issued.

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

(a) Initially: \$226,509

(b) On a continuing basis: \$197,519

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Restricted funds generated by educator certification application fees.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: While the amendments necessary to comply with the new process created by House Bill 300's amendment to KRS 161.120 comes at a significant cost, the Education Professional Standards Board is working to implement this without raising certification fees.

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

fees are established by this regulation.

(9) TIERING: Is tiering applied? Tiering is not applicable to the requirements of this regulation.

FISCAL IMPACT STATEMENT

(1) Identify each state statute, federal statute, or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 161.028, KRS 161.120.

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: The Education Professional Standards Board.

(a) Estimate the following for the first year:

Expenditures: Significant expenditures are expected in the first year to comply with the requirements of House Bill 300 from the 2024 legislative session. This will include the cost of two additional staff members (\$190,629 salary and benefits) and updates to the case management system (\$35,880). Total additional expenditures for the first year are estimated at \$226,509. An increase in hearing expenses is also expected, but it is difficult to estimate at this time.

Revenues: The amendment to this administrative regulation is not expected to generate any revenue during the first year as this regulation does not create fees or generate funds for the Education Professional Standards Board.

Cost Savings: No cost savings are expected with this amendment.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? Expenditure is expected to remain in subsequent years. Staff hired in the first year will still be needed in subsequent years. (\$190,629 for salary and benefits) While the cost for updating the case management system will be specific to the first year, there will be costs for maintenance and upkeep in subsequent years (\$6,890). Cost for subsequent years is estimated at \$197,519. Revenues and cost savings are not expected to differ in subsequent years.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): Public-school districts.

(a) Estimate the following for the first year:

Expenditures: There are no expected expenditures for districts as there are no fees established in this regulation.

Revenues: This regulation does not generate revenue.

Cost Savings: There are no cost savings expected with this amendment.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? The expenditures, revenues and cost savings are not expected to differ in subsequent years.

(4) Identify additional regulated entities not listed in questions (2) or (3): Applicants for certification and certificate holders.

(a) Estimate the following for the first year:

Expenditures: There are no required expenditures for certificate holders or applicants to comply with this amendment.

Revenues: This regulation does not generate any revenue.

Cost Savings: There is no expected cost savings since there are no fees for applicants or certificate holders created or reduced by this regulation.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? The expenditures, revenues and cost savings are not expected to differ in subsequent years.

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: There is a fiscal impact on the Education Professional Standards Board as a result of the proposed amendments to this regulation necessary to comply with the requirements of House Bill 300 from the 2024 legislative session. This impact is the cost of the additional staff members and updates to the case management system necessary to comply with the amendments. Initial costs will be \$226,509, with a cost of \$197,519 in subsequent years.

(b) Methodology and resources used to determine the fiscal impact: The methodology and resources used to determine this is looking to current systems and processes to see if they are sufficient to carry out the processes established by House Bill 300. It was determined that a minimum of two additional staff members were needed to comply with the timelines, conference requirements and

notice requirements of House Bill 300. It was also determined that the case management system would need to be updated to comply with the new process. The cost of the salary and fringe benefits for the new staff members was added to the estimated cost of the system updates and upkeep to determine the fiscal impact.

(6) Explain:

(a) Whether this administrative regulation will have an overall negative or adverse major economic impact to the entities identified in questions (2) - (4). (\$500,000 or more, in aggregate) There is an expected negative economic impact for the Education Professional Standards Board as there are significant costs with the staffing needs and updates of the case management system necessary to implement the process created under House Bill 300 of the 2024 legislative session. Given the initial expenditure of \$226,509 and subsequent \$190,629, the Education Professional Standards Board will incur costs of over \$500,000 in under three years. There is not an expected major economic impact from this regulation for the other entities.

(b) The methodology and resources used to reach this conclusion: The methodology and resources used to determine this is looking to current systems and processes to see if they are sufficient to carry out the processes established by House Bill 300. It was determined that a minimum of two additional staff members were needed to comply with the timelines, conference requirements and notice requirements of House Bill 300. It was also determined that the case management system would need to be updated to comply with the new process. The cost of the salary and fringe benefits for the new staff members was added to the estimated cost of the system updates and upkeep to determine the economic impact.

**EDUCATION AND LABOR CABINET
Education Professional Standards Board
(Emergency Amendment)**

16 KAR 2:030E. Substitute teachers[and emergency school personnel].

EFFECTIVE: July 15, 2024

RELATES TO: KRS 161.020, 161.028(1)(a), (f), 161.030[(4), (9)], 161.100

STATUTORY AUTHORITY: KRS 161.020, 161.028(1)(a), (f), 161.030[(4), (9)], 161.100, 161.102

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.020, 161.028, and 161.030 require that a teacher and other professional school personnel hold a certificate of legal qualifications for the respective position issued by the Education Professional Standards Board (EPSB). KRS 161.102 creates a one (1) year, five (5) year, and ten (10) year certificate for substitute teaching.[KRS 161.100 provides for the issuance of an emergency certificate.] This administrative regulation establishes the requirements for the issuance of the certificates for substitute teaching and[a Certificate for Substitute Teaching,] the priority selection process for employing a substitute teacher, [and the Emergency Noncertified School Personnel Program.]

Section 1. One (1) Year Emergency Certificate for Substitute Teaching.

(1) 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 substitute teachers.

(2) A one (1) year emergency certificate for substitute teaching may be issued to a candidate who possesses a minimum of a high school diploma or high school equivalency diploma.

(3) A local school district shall review the qualifications and transcripts for each applicant for an emergency substitute certificate and verify to the EPSB that the candidate possesses a minimum of a high school diploma or a high school equivalency diploma.

(4) Application for the one (1) year emergency certificate for substitute teaching shall be submitted to the EPSB and shall:

(a) Contain verification of an offer of employment in a Kentucky school district:

- (b) Contain verification that the candidate possesses a minimum of a high school diploma or high school equivalency; and
- (c) Be in compliance with 16 KAR 2:010, Section 3(1).

Section 2. Five (5) Year Certificate for Substitute Teaching.

(1) A five (5) year certificate for substitute teaching may be issued to a candidate who possesses a bachelor's degree from a regionally or nationally accredited postsecondary education institution.

(2) Application for the five (5) year certificate for substitute teaching shall be submitted to the EPSB and shall:

- (a) Contain an official transcript from the college or university attended resulting in a bachelor's degree; and
- (b) Be in compliance with 16 KAR 2:010, Section 3(1).

(3) Application for renewal of the five (5) year certificate for substitute teaching shall be submitted to the EPSB and be in compliance with 16 KAR 2:010, Section 3(1).

(4) The five (5) year certificate for substitute teaching shall be issued at a Rank IV.

Section 3. Ten (10) Year Certificate for Substitute Teaching.

(1) A ten (10) year certificate for substitute teaching may be issued to a candidate who:~~[The Certificate for Substitute Teaching shall be issued in accordance with the pertinent Kentucky statutes and administrative regulations of the Education Professional Standards Board to an applicant who:]~~

(a) Holds a valid statement of eligibility for a Kentucky teaching certificate;~~[or]~~

(b) Has previously held a Kentucky certificate for classroom teaching for which the completion of a four (4) year program of teacher preparation and a bachelor's degree were required;~~[or]~~

(c) Currently holds or previously held a valid out-of-state teaching certificate for which the completion of a four (4) year program of teacher preparation and a bachelor's degree were required.

(2) Application for the ten (10) year certificate for substitute teaching shall be submitted to the EPSB and shall:

- (a) Contain an official transcript from the college or university attended resulting in a bachelor's degree; and
- (b) Be in compliance with 16 KAR 2:010, Section 3(1).

(3) Application for renewal of the ten (10) year certificate for substitute teaching shall be submitted to the EPSB and be in compliance with 16 KAR 2:010, Section 3(1).

(4) A teacher holding a valid Kentucky teaching certificate shall be issued a ten (10) year certificate for substitute teaching at the rank designated on the teacher's regular certificate.

(5) A teacher holding or previously holding a valid out-of-state teaching certificate shall be issued a ten (10) year certificate for substitute teaching at the rank corresponding to the teacher's regular certificate.

~~[(2)] [The Certificate for Substitute Teaching shall be issued initially for a duration period of five (5) years and may be reissued or renewed upon recommendation of the employing school district superintendent.]~~

~~[(3)] [The Certificate for Substitute Teaching shall:]~~

~~[(a)] [Be valid for substitute teaching; and]~~

~~[(b)] [Not be valid:]~~

~~[1:] [For continuous part-time employment for classroom teaching; or]~~

~~[2:] [As a permanent replacement for a teacher of record for the remainder of the school year.]~~

Section 4.~~[Section 2.]~~ To employ a substitute teacher during the temporary absence of the teacher of record for a position, priority in selection and employment shall be given in accordance with the following order:

(1) A teacher who holds appropriate regular certification corresponding to the grade level of the teaching assignment;

(2) A teacher who holds regular certification for classroom teaching at any grade level;

(3) A teacher who holds the ten (10) year certificate for substitute teaching~~[Certificate for Substitute Teaching];~~

(4) A candidate who holds the five (5) year certificate for

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substitute teaching:

~~(5) A candidate who holds the one (1) year emergency certificate for substitute teaching.~~

~~[(4)] [Except as provided in subsection (5) of this section, a person certified on an emergency basis for substitute teaching pursuant to 16 KAR 2:120, who shall be called according to the following descending order relating to the amount of college hours completed:]~~

~~[(a)] [A Bachelor's degree;]~~

~~[(b)] [At least ninety-six (96) semester hours of college credit;]~~

~~[(c)] [From sixty-four (64) to ninety-five (95) semester hours of college credit;]~~

~~[(5)] [A person certified on an emergency basis for substitute teaching in a health, technical, or industrial occupation with 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.]~~

~~[Section 3.] [If a district is unable to employ a substitute teacher using the priority selection process established in Section 2 of this administrative regulation, a district may utilize a person through the Emergency Noncertified School Personnel Program established by the Education Professional Standards Board. A district seeking participation in this program shall apply to and receive approval from the Education Professional Standards Board on an annual basis.]~~

~~[(1)] [A district shall submit a written letter of application for participation in the Emergency Noncertified School Personnel Program. A district may make application at any time during the school year. The application letter shall be reviewed for approval by the Education Professional Standards Board based upon the following documented components:]~~

~~[(a)] [The number of teaching days not filled with an appropriately certified teacher or appropriately certified emergency substitute in the preceding school year;]~~

~~[(b)] [The extent and anticipated usage of emergency school personnel;]~~

~~[(c)] [A plan to eliminate the need for emergency school personnel in the future;]~~

~~[(d)] [The steps taken by the district to recruit and retain emergency certified personnel;]~~

~~[(e)] [The recruitment of persons with a high school diploma or its equivalent as determined by evidence of a passing score on the General Education Development Test, age twenty-five (25) or over, except an individual enrolled in an approved teacher education program who may be less than twenty-five (25) years old;]~~

~~[(f)] [Recruitment of parents or other paraprofessionals assigned to the school;]~~

~~[(g)] [A detailed outline of a minimum eighteen (18) clock hour orientation program including emphasis on student safety, district policies, and procedures; and]~~

~~[(h)] [An outline of the district screening process, including the required criminal record and reference check.]~~

~~[(2)] [Upon Education Professional Standards Board approval of the plan for the school year, the district shall:]~~

~~[(a)] [Submit a list, by name, Social Security number, and school, of personnel meeting the requirements established in subsection (1) of this section;]~~

~~[(b)] [Submit a quarterly report to the Education Professional Standards Board identifying the number of days personnel were utilized under this plan;]~~

~~[(c)] [Submit a summary evaluation of the program at the end of the school year for which approval was received from the Education Professional Standards Board; and]~~

~~[(d)]~~

~~[1.] [Utilize emergency school personnel in a single school for which the staff member has been approved and assigned by the district; or]~~

~~[2.] [If the staff member participated in the district's Emergency Noncertified School Personnel Program the previous school year, the district may choose to utilize the staff member in more than one (1) school in the district.]~~

~~[(3)] [A district that was approved by the Education Professional~~

~~Standards Board to operate an Emergency Noncertified School Personnel Program the preceding year may file Form TC-EN requesting renewal for continuation of the program. Renewal shall be contingent upon:]~~

~~[(a)] [Demonstration of the continued need for the program; and]~~

~~[(b)] [Successful evaluation of the previous year's program pursuant to reporting requirements of this administrative regulation.]~~

~~[Section 4.] [Incorporation by Reference.]~~

~~[(1)] [Form TC-EN, May 2002, 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: July 15, 2024

FILED WITH LRC: July 15, 2024 at 10:50 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on September 23, 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 September 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 three certificates for substitute teaching and the priority selection process.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to set the certification requirements for the three certificates for substitute teaching and the priority selection process.

(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 approved by the Education Professional Standards Board. KRS 161.102 creates a one (1) year emergency certificate for substitute teaching, a five (5) year certificate for substitute teaching, and a ten (10) year certificate for substitute teaching.

(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 three certificates for substitute teaching.

(2) If 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 includes the certification requirements for all three certificates and updates the priority selection process accordingly. Additionally, the amendment removes the emergency noncertified personnel program, since the amendments to KRS 161.102 in House Bill 387 of the legislative session allow these individuals to qualify the one (1) year emergency certificate for substitute teaching.

(b) The necessity of the amendment to this administrative

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regulation: This amendment is necessary to comply with the amendments to KRS 161.102 in House Bill 387 of the 2024 legislative session and set the requirements for the three certificates for substitute teaching it established. It is also necessary to remove the emergency noncertified personnel program as those candidates qualify for the new one (1) year emergency certificate.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment sets the requirements for issuance of the three certificates for substitute teaching established in KRS 161.120.

(d) How the amendment will assist in the effective administration of the statutes: This amendment sets clear certification standards for the issuance of the three certificates for substitute teaching and amends the priority selection process accordingly.

(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 for certification for substitute teaching.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Applicants for certification for substitute teaching will have to meet the requirements of the certificate that they are pursuing. Districts will have to employ substitutes utilizing the priority selection process.

(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 substitute teaching certificates to qualified candidates.

(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? There are three substitute teaching certificates for created in KRS 161.102 with different requirements for each. A candidate's academic preparation determines which substitute teaching certificate is available to them. These requirements are mirrored in the regulation.

FISCAL IMPACT STATEMENT

(1) Identify each state statute, federal statute, or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 161.020, 161.028, 161.030, 161.102

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: The Education Professional Standards Board.

(a) Estimate the following for the first year:

Expenditures: No additional expenditure is expected to be needed since the systems and staff are already in place for processing applications and issuing certificates for substitute teaching.

Revenues: The amendment to this administrative regulation is not expected to generate any revenue during the first year as this regulation does not create fees. There are also no fees associated with one (1) year certificates.

Cost Savings: No cost savings are expected with this amendment.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? Expenditures, revenues and cost savings are not expected to differ in subsequent years.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): Public-school districts.

(a) Estimate the following for the first year:

Expenditures: There are no expected expenditures for districts as there are no fees established in this regulation.

Revenues: This regulation sets the standards for issuance of the certificates for substitute teaching and will not generate revenue for districts.

Cost Savings: There is no expected cost savings since there are no fees created or reduced by this regulation.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? The expenditures, revenues and cost savings are not expected to differ in subsequent years.

(4) Identify additional regulated entities not listed in questions (2) or (3): Applicants for certification for substitute teaching.

(a) Estimate the following for the first year:

Expenditures: There are no expected expenditures for applicants to comply with this amendment.

Revenues: This regulation sets the standards for the certificates for substitute teaching. It will not generate revenue for applicants.

Cost Savings: There is no expected cost savings since there are no fees created or reduced by this regulation.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? The expenditures, revenues and cost savings are not expected to differ in subsequent years.

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: There is no fiscal impact as a result of the proposed amendments to this regulation. No fees are established or increased in this regulation. While processing applications and issuing certificates does require staff time and resources from the Education Professional Standards Board, the amendments can be carried out by the existing staff and systems.

(b) Methodology and resources used to determine the fiscal impact: The methodology and resources used to determine that there is no fiscal impact, is looking to current systems and processes to see if additional expenditures or resources are needed to carry out the amendments. Since no additional expenditures or resources are needed to carry out the amendments, and there are no fees established or increased by this regulation, it was determined there is no fiscal impact.

(6) Explain:

(a) Whether this administrative regulation will have an overall negative or adverse major economic impact to the entities identified in questions (2) - (4). (\$500,000 or more, in aggregate) There is not an expected major economic impact from this regulation as it does not create additional costs for the Education Professional Standards Board or the regulated entities.

(b) The methodology and resources used to reach this conclusion: The methodology and resources used to determine this is looking to current systems and processes to see if additional expenditures or resources are needed to carry out the amendments. Since no additional expenditures or resources are needed to carry out the amendments, and there are no fees are established or increased by this regulation, there will not be a negative or adverse major economic impact.

STATEMENT OF EMERGENCY 16 KAR 9:010E.

This emergency administrative regulation is being promulgated in order to meet an imminent deadline for the promulgation of an administrative regulation that is established by state statute. During the 2024 legislative session, the General Assembly passed Senate Bill 265 and the Governor signed it into law on April 9, 2024. This legislation, which became effective on the Governor's signature, amends KRS 161.048(2) to remove the requirement of an offer of employment prior to issuance of the certificate and require one (1) year of successful teaching experience and recommendation of the employing school district prior to issuance of the professional

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certificate. Per KRS 161.048(1)(e) the Education Professional Standards Board (EPSB) has the authority to promulgate administrative regulations establishing the standards and procedures for the Option 1 alternative route to certification. Since this emergency legislation became effective upon the Governor's signature, the emergency regulation is necessary to establish the application requirements for certification under the Option 1 alternative route to certification. This emergency administrative regulation will be replaced by an ordinary administrative regulation because the requirements for certification under this route are expected to remain in statute. The ordinary administrative regulation is identical to this emergency administrative regulation.

ANDY BESHEAR, Governor
JUSTIN MITCHELL, Chair

EDUCATION AND LABOR CABINET Education Professional Standards Board (Emergency Amendment)

16 KAR 9:010E. Provisional and professional certificate for exceptional work experience.

EFFECTIVE: July 8, 2024

RELATES TO: KRS 161.028, 161.030, 161.048

STATUTORY AUTHORITY: KRS 161.028, 161.030, 161.048

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.048

establishes the eligibility requirements for a candidate seeking to participate in an alternative teacher preparation program. This administrative regulation establishes the requirements for issuance [and renewal] of a provisional and professional certificate based on exceptional work experience.

Section 1. Definitions.

(1) "Exceptional work experience" means a person with recognized superiority as compared with others in rank, status, and attainment or superior knowledge and skill in comparison with the generally accepted standards in the area in which certification is sought.

(2) "Population based certificate" means a certificate for teaching elementary, exceptional children, or interdisciplinary early childhood education.

Section 2. Verification of exceptional qualifications of an applicant for certification, in a field of endeavor taught or service practiced in a public school of Kentucky, shall include:

(1) Sufficient documentation that demonstrates to the local school district and the Education Professional Standards Board that an applicant is one who has exceptional work experience and has talents and abilities commensurate with the teacher standards, established in 16 KAR 1:010;

(2) Documentation may include advanced degrees earned, distinguished employment, evidence of related study or experience, publications, professional awards, achievement, or recognition attained for contributions to an applicant's field of endeavor; and recommendations from professional associations, former employers, professional colleagues, or any other individual or group whose evaluations shall support exceptional work in the field.

(3) Exceptional work experience shall not apply to population based certificates.

Section 3. Certification Requirements.

(1) An eligible candidate for certification other than a population based certificate who meets the requirements of KRS 161.048(2) and 16 KAR 2:010, Section 3(1), shall be issued a two (2) year provisional certificate for exceptional work experience.

(2) The provisional certificate shall be issued for the content area and grade range corresponding to the candidate's degree and teaching experience.

(3) The provisional certificate shall be valid for teaching the content area and grade range indicated on the face of the certificate.

(4) If a candidate does not complete one (1) year of successful teaching experience during the initial provisional certificate, the candidate may apply to renew the provisional certificate.

(5) Application for renewal of the two (2) year provisional certificate shall be submitted to the EPSB and be in compliance with 16 KAR 2:010, Section 3(1).

(6) Upon completion of one (1) year of successful teaching experience on the provisional certificate, the candidate may apply for the professional certificate.

(2) Application for the professional certificate shall be submitted to the EPSB and shall:

(a) Contain proof of successful completion of one (1) year of teaching experience;

(b) Contain a recommendation from the employing school district; and

(c) Be in compliance with 16 KAR 2:010, Section 3(1).

JUSTIN MITCHELL, Board Chair

APPROVED BY AGENCY: June 4, 2024

FILED WITH LRC: July 8, 2024 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on August 27, 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 August 31, 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 requirements for the professional and provisional certificate for the Option 1 exceptional work experience alternative route to certification.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to set the certification requirements for Option 1, Exceptional Work Experience Route to Teacher Certification.

(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 approved by the Education Professional Standards Board. KRS 161.048 authorizes the Education Professional Standards Board to promulgate administrative regulations establishing the standards and procedures for the Option 1, Exceptional Work Experience Route to Teacher Certification.

(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 Option 1 Exceptional Work Experience Route to Teacher Certification.

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

(a) How the amendment will change this existing administrative regulation: The proposed amendment to 16 KAR 9:010 allows a candidate for the Option 1, Exceptional Work Experience Alternative Route to Certification to be issued a two (2) year provisional certificate upon application to the EPSB, proof of compliance with KRS 161.048(2), demonstration of exceptional work experience, and completion of the character and fitness

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review. Applicants are no longer required to have an offer of employment before issuance of the initial certificate but must successfully complete one (1) year of teaching experience and have a recommendation from the employing school district prior to issuance of the professional certificate.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to comply with the changes to KRS 161.048(2) from SB 265 of the 2024 Legislative Session.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment sets the requirements for issuance of certification under the Option 1 Exceptional Work Experience Route to Teacher Certification. The amendment removes the requirement that candidates have a job offer prior to issuance and adds the requirement that candidates complete one (1) year of teaching experience and have a recommendation from the employing district prior to issuance of the professional certificate.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in establishing the requirements for the provisional and professional certificate for the Option 1 Exceptional Work Experience Route to Teacher Certification.

(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 those pursuing the Option 1 Exceptional Work Experience Route to Teacher 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: Applicants for the Option 1 route will have to meet the requirements for issuance of the provisional certificate, then obtain one (1) year of teaching experience before applying for the professional certificates. Districts will no longer have to verify that candidates have an offer of employment but will have to provide a recommendation for those candidates that complete one (1) year of teaching experience.

(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 the provisional and professional certificate to eligible candidates.

(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 teachers seeking certification through the Option 1 Exceptional Work Experience Route to Teacher Certification.

FISCAL IMPACT STATEMENT

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

regulation. KRS 161.020, 161.028, 161.030, 161.048.

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: The Education Professional Standards Board.

(a) Estimate the following for the first year:

Expenditures: No additional expenditures are expected to be needed since the systems and staff are already in place for processing applications and issuing certificates under the Option 1 route.

Revenues: The amendment to this administrative regulation is not expected to generate any revenue during the first year as this regulation does not create fees.

Cost Savings: No cost savings are expected with this amendment.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? Expenditures, revenues and cost savings are not expected to differ in subsequent years.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): Public-school districts.

(a) Estimate the following for the first year:

Expenditures: There are no expected expenditures for districts as there are no fees established in this regulation.

Revenues: This regulation sets the standards for certification under the Option 1 route to certification. It will not generate revenues for districts.

Cost Savings: There are no cost savings expected with this amendment.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? The expenditures, revenues and cost savings are not expected to differ in subsequent years.

(4) Identify additional regulated entities not listed in questions (2) or (3): Applicants for certification under the Option 1 Exceptional Work Experience Route to Teacher Certification.

(a) Estimate the following for the first year:

Expenditures: There are no expected expenditures for applicants to comply with this amendment.

Revenues: This regulation sets the standards for certification under the Option 1 route. It will not generate revenue for applicants.

Cost Savings: There is no expected cost savings since there are no fees created or reduced by this regulation.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? The expenditures, revenues and cost savings are not expected to differ in subsequent years.

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: There is no fiscal impact as a result of the proposed amendments to this regulation. No fees are established or increased in this regulation, and there are no fees for two (2) year provisional certificates. While processing applications and issuing certificates does require staff time and resources from the Education Professional Standards Board, the amendments can be carried out by the existing staff and systems.

(b) Methodology and resources used to determine the fiscal impact: The methodology and resources used to determine that there is no fiscal impact, is looking to current systems and processes to see if additional expenditures or resources are needed to carry out the amendments. Since no additional expenditures or resources are needed to carry out the amendments, and there are no fees established or increased by this regulation, it was determined there is no fiscal impact.

(6) Explain:

(a) Whether this administrative regulation will have an overall negative or adverse major economic impact to the entities identified in questions (2) - (4). (\$500,000 or more, in aggregate) There is not an expected major economic impact from this regulation as it does not create additional costs for the Education Professional Standards Board or the regulated entities.

(b) The methodology and resources used to reach this conclusion: The methodology and resources used to determine this is looking to current systems and processes to see if additional expenditures or resources are needed to carry out the amendments. Since no additional expenditures or resources are needed to carry out the amendments, and there are no fees established or increased by this regulation, there will not be a negative or adverse major economic impact.

**STATEMENT OF EMERGENCY
16 KAR 9:080E.**

This emergency administrative regulation is being promulgated in order to meet an imminent deadline for the promulgation of an administrative regulation that is established by state statute. During the 2024 legislative session, the General Assembly passed Senate Bill 265 and the Governor signed it into law on April 9, 2024. This legislation, which became effective on the Governor's signature, amends KRS 161.030 to remove the Kentucky Teacher Internship Program. It also amends KRS 161.048(7) to require recommendation from an employing school district prior to issuance of the professional certificate. Per KRS 161.048(1)(e) the Education Professional Standards Board (EPSB) has the authority to promulgate administrative regulations establishing the standards and procedures for the Option 6 alternative route to certification. Since this emergency legislation became effective upon the Governor's signature, the emergency regulation is necessary to establish the application requirements for certification under the Option 6 alternative route to certification. This emergency administrative regulation will be replaced by an ordinary administrative regulation because the requirements for certification under this route are expected to remain in statute. The ordinary administrative regulation is identical to this emergency administrative regulation.

ANDY BESHEAR, Governor
JUSTIN MITCHELL, Chair

**EDUCATION AND LABOR CABINET
Education Professional Standards Board
(Emergency Amendment)**

16 KAR 9:080E. University-based alternative certification program.

EFFECTIVE: July 8, 2024

RELATES TO: KRS 156.111, 160.345(2)(h), 161.027, 161.028(1)(k), (s), (t), 161.030(11), 161.048, 161.1211, 34 C.F.R. 300.156 (c)(2)

STATUTORY AUTHORITY: KRS 161.027(1), 161.048(1)(d), (7)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.048(1)(d) and (7) require the Education Professional Standards Board (EPSB) to promulgate administrative regulations establishing the standards and procedures for a university alternative certification option for teacher and administrator certification. This administrative regulation establishes the requirements for entry and completion of the teacher and administrator university-based alternative certification options, the responsibilities of the employing school or school district, and the responsibilities of the approved college or university alternative program.

Section 1. Definitions.

(1) "Alternative certification administrator program" means a college or university post baccalaureate or post masters administrator preparation program for an individual enrolled concurrently with employment in a local school district as an assistant principal, principal, assistant superintendent, school counselor, director of special education, director of pupil personnel, supervisor of instruction, or superintendent.

(2) "Alternative certification teacher program" means a college or university post baccalaureate teacher preparation program for an individual enrolled concurrently with employment as a teacher.

Section 2. Admission Requirements.

(1) An applicant for an alternative certification teacher program shall meet the admission standards for an initial certification program established in 16 KAR 5:020.

(2) An applicant for an alternative certification administrator program shall meet the admission standards for the corresponding administrator certification program established in 16 KAR Chapter 3.

Section 3. University Requirements for Alternative Certification Teacher Program.

(1) An accredited college or university seeking to offer an alternative certification teacher program shall apply to the EPSB for program approval in accordance with 16 KAR 5:010.

(2) In addition to the standards for program approval established in 16 KAR 5:010, the educator preparation provider seeking alternative certification teacher program approval shall design the alternative certification teacher program to provide a candidate with the coursework and mentoring necessary to permit a candidate to maintain employment in an eligible position and to successfully complete any applicable assessments, [including—internship programs;] within a period of three (3) years for those enrolled in an alternative certification teacher program for teachers of exceptional children or interdisciplinary early childhood education employed in a public school, or a period of five (5) years for all other alternative certification teacher programs.

(3) Upon approval, the alternative certification teacher program unit shall:

(a) Assess a candidate's educational background and develop a plan of coursework that shall adequately prepare the candidate for successful completion of the requirements for program completion and certification for the areas and grade ranges that correspond with the candidate's school placement;

(b) Provide a candidate written and dated documentation of eligibility for the university alternative certification teacher program so that the candidate may be considered for employment pursuant to KRS 160.345(2)(h);

(c) Ensure that a candidate begins coursework no later than ninety (90) days from the date the eligibility notice is issued;

(d) Develop a written agreement to provide, in collaboration with the administration of the candidate's employing school, mentoring to the candidate in the employment setting which shall include:

1. A minimum of fifteen (15) hours of annual observation utilizing university faculty and a district-based mentor of the candidate practicing instruction in the classroom, as follows:

a. A minimum of five (5) hours of observation by university faculty;

b. A minimum of five (5) hours of observation by a district-based mentor; and

c. A minimum of five (5) hours of observation by either the university faculty or the district-based mentor;

2. A description of how support shall be offered to the candidate during in-class and out-of-class time to assist the candidate in meeting the teacher's instructional responsibilities;

3. The name, contact person, and role for the collaborating educator preparation provider mentor; and

4. The name and role of all school district mentor teachers;

(e) Establish a process to maintain regular communication with the employing school so that the educator preparation provider and employing school may assist the candidate as needed and address identified areas of improvement; and

(f) Notify the EPSB in writing if a candidate's employment in a covered position or enrollment in the alternative certification teacher program permanently ceases.

(4) Student teaching shall not be required for program completion.

Section 4. Temporary Provisional Certificate for Teaching.

(1) The temporary provisional certificate for teaching shall be issued and renewed in accordance with KRS 161.048(7).

(2) The temporary provisional certificate for teaching shall be issued in accordance with a 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.

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

Section 5. Issuance of a Temporary Provisional Certificate for Teaching.

(1) Prior to seeking employment in a Kentucky public school, a candidate shall request from the educator preparation provider

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written and dated documentation of eligibility for the alternative certification teacher program to provide to school districts pursuant to KRS 160.345(2)(h).

(2) Prior to employment, a superintendent, on behalf of the employing local board of education, shall be responsible for requesting the temporary provisional certificate.

(3) The candidate shall submit to the EPSB an official college transcript from each college or university attended.

(4) The candidate shall demonstrate compliance with 16 KAR 2:010, Section 3(1).

(5) The employing school district shall submit a completed and signed copy of the mentoring collaboration agreement with the alternative certification teacher program as required by Section 3(3)(d) of this administrative regulation.

(6) The educator preparation provider shall submit a recommendation for the grade level and specialization of the temporary provisional certificate.

Section 6. Requirements for Renewal of the Temporary Provisional Certificate for Teaching.

(1) A candidate shall be eligible for renewal of the temporary provisional certificate 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, completion of annual observation hours, and progress towards the completion of the alternative teacher preparation program.

~~[(2)] [If a candidate is required to complete an internship in accordance with KRS 161.030, the candidate shall complete the required assessments as established in 16 KAR 6:010 prior to issuance of the final temporary provisional certificate and shall complete the internship during the final temporary provisional certificate.]~~

~~[(2)]~~[(3)] A candidate for exceptional children or interdisciplinary early childhood certification employed in a public school may only renew the temporary provisional certificate two (2) times.

~~[(3)]~~[(4)] All other alternative certification teacher candidates may renew the temporary provisional certificate four (4) times.

Section 7. Alternative Certification Teacher Program Completion Requirements.

(1) An applicant for teacher certification shall meet all certification requirements for the corresponding certificate established in 16 KAR Chapter 2 and the assessment requirements established in 16 KAR 6:010.

(2) Upon completion of all program requirements of the university based alternative teacher program, the candidate may apply to the EPSB for the professional certificate.

(3) Upon application to the EPSB, compliance with 16 KAR 2:010, Section 3(1), recommendation of the employing school district, and verification that a candidate has met all eligibility requirements for certificate issuance, the EPSB shall issue a professional certificate.

Section 8. University Requirements for an Alternative Certification Administrator Program.

(1) An accredited college or university seeking to offer an alternative certification administrator program shall apply to the EPSB for program approval in accordance with 16 KAR 5:010.

(2) In addition to the standards for program approval established in 16 KAR 5:010, the educator preparation provider seeking alternative certification administrator program approval shall design the alternative certification administrator program to provide a candidate with the coursework and mentoring appropriate to permit a candidate to maintain employment in an eligible position and successfully complete any applicable assessments, including any internship or training programs, within a period of two (2) years for those enrolled in an alternative certification administrator program.

(3) Upon approval, the alternative certification administrator

program unit shall:

(a) Assess a candidate's educational background and develop a plan of coursework that shall adequately prepare the candidate for successful completion of the requirements for program completion and certification for the areas and grade ranges that correspond with the candidate's school placement;

(b) Provide a candidate written and dated documentation of eligibility for the university alternative certification administrator program so that the candidate may be considered for employment pursuant to KRS 160.345(2)(h);

(c) Ensure that a candidate begins coursework no later than ninety (90) days from the date the eligibility notice is issued;

(d) Develop a written agreement to provide, in collaboration with the administration of the candidate's employing school, mentoring to the candidate in the employment setting which shall include:

1. A minimum of fifteen (15) hours of annual observation utilizing university faculty and a district-based mentor of the candidate practicing in the appropriate administrative role, as follows:

a. A minimum of five (5) hours of observation by university faculty;

b. A minimum of five (5) hours of observation by a district-based mentor; and

c. Five (5) hours of observation by either the university faculty or the district-based mentor;

2. A description of how support shall be offered to the candidate to assist the candidate in meeting the candidate's administrative responsibilities;

3. The name, contact person, and role for the collaborating educator preparation provider mentor; and

4. The name and role of all school district mentors;

(e) Establish a process to maintain regular communication with the employing school so that the educator preparation provider and employing school may assist the candidate as needed and address identified areas of improvement; and

(f) Notify the EPSB in writing if a candidate's employment in a covered position or enrollment in the alternative certification administrator program permanently ceases.

Section 9. Temporary Provisional Administrative Certificate.

(1) The temporary provisional administrative certificate shall be issued for a validity period not to exceed one (1) year.

(2) The temporary provisional administrative certificate may be renewed a maximum of one (1) time.

(3) The temporary provisional administrative certificate shall be valid for employment in a position consistent with the area of certification being sought through the preparation program.

Section 10. Issuance of a Temporary Provisional Administrative Certificate.

(1) Prior to seeking employment in a Kentucky public school, a candidate shall request from the educator preparation provider written and dated documentation of eligibility for the university based alternative certification administrator program to provide to school districts pursuant to KRS 160.345(2)(h).

(2) Prior to employment, a superintendent, on behalf of the employing local board of education, shall be responsible for requesting the temporary provisional certificate.

(3) The candidate shall submit to the EPSB an official college transcript from each college or university attended.

(4) The candidate shall demonstrate compliance with 16 KAR 2:010, Section 3(1).

(5) The employing school district shall submit a completed and signed copy of the mentoring collaboration agreement with the university based alternative certification program as required by Section 8(3)(d) of this administrative regulation.

(6) The educator preparation provider shall submit a recommendation for the specialization of the temporary provisional certificate.

Section 11. Requirements for renewal of the temporary provisional certificate for an administrator.

(1) A candidate shall be eligible for no more than one (1) renewal of the temporary provisional certificate.

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(2) A candidate shall be eligible for renewal of the temporary provisional certificate 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 nonpublic school in the position indicated on the initial certificate; and

(b) Recommendation from the educator preparation provider based on continued enrollment, completion of annual observation hours, and progress towards the completion of the alternative administrator program.

(3) If a candidate is seeking principal certification and is required to complete an internship in accordance with KRS 161.030, the candidate shall complete the required assessments as established in 16 KAR 3:090 prior to renewal of the temporary provisional certificate and shall complete the internship during the final temporary provisional certificate.

Section 12. Alternative Certification Administrator Program Completion Requirements.

(1)

(a) During the period of enrollment in the alternative certification administrator program, a candidate seeking superintendent certification and serving in a local school district as a superintendent or assistant superintendent shall successfully complete both the coursework in the institution's alternative certification administrator program as well as the Superintendents Training Program and assessments required in KRS 156.111.

(b) The college or university faculty shall maintain contact with the employing school district and the Kentucky Department of Education regarding the completion of coursework to ensure that a superintendent candidate has completed the required coursework to prepare for the assessments and participation in the Superintendents Training Program.

(2) An applicant for administrator certification shall meet all certification requirements for the corresponding certificate established in 16 KAR Chapter 3.

(3) Upon completion of all program requirements of the alternative administrator program the candidate may apply to the EPSB for the professional certificate.

(4) Upon application to the EPSB, compliance with 16 KAR 2:010, Section 3(1), and verification that a candidate has met all eligibility requirements for certificate issuance, the EPSB shall issue a professional certificate.

JUSTIN MITCHELL, Board Chair

APPROVED BY AGENCY: June 4, 2024

FILED WITH LRC: July 8, 2024 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on August 27, 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 August 31, 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 requirements for entry and completion of the teacher and administrator university-based alternative certification options, the responsibilities of the employing school or school district, and the responsibilities of the approved college or university alternative program.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the requirements for the teacher and administrator university-based alternative certification options.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 161.028 requires the Education Professional Standards Board to establish standards and requirements for obtaining and maintaining a teaching certificate. KRS 161.028(1)(p) creates the alternative administrator preparation program. KRS 161.048(7) creates the Option 6 alternative route to certification and KRS 161.048(1)(e) requires the Education Professional Standards Board to promulgate administrative regulations establishing standards and procedures for the alternative certification options.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation sets the requirements for the teacher and administrator university-based alternative certification options.

(2) If 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 removes the reference to the Kentucky Teacher Internship Program and requires that a candidate for the Option 6 Alternative Route to Teacher Certification have a recommendation from the employing school district prior to issuance of the professional certificate.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to comply with the changes to KRS 161.030 and KRS 161.048(7) from Senate Bill 265 of the 2024 Legislative Session.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment sets the requirements for issuance of certification under the Option 6 Alternative Route to Teacher Certification. The amendment adds the requirement that candidates have a recommendation from the employing district prior to issuance of the professional certificate and removes the reference to the Kentucky Teacher Internship Program.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in establishing the requirements for certification under the Option 6 Alternative Route to Teacher Certification.

(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 those pursuing the Option 6 Alternative Route to Teacher 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: Applicants for professional certification under the Option 6 route will have to have a recommendation from an employing school district for issuance of the certificate. Districts will have to provide a recommendation for those candidates that complete teaching experience under the Option 6 route.

(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 the professional certificate to eligible candidates.

(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.

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(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 teachers seeking certification through the Option 6 Alternative Route to Teacher Certification.

FISCAL IMPACT STATEMENT

(1) Identify each state statute, 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, KRS 161.048.

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: The Education Professional Standards Board.

(a) Estimate the following for the first year:

Expenditures: No additional expenditures are expected to be needed since the systems and staff are already in place for processing applications and issuing certificates under the Option 6 route.

Revenues: The amendment to this administrative regulation is not expected to generate any revenue during the first year as this regulation does not create fees.

Cost Savings: No cost savings are expected with this amendment.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? Expenditures, revenues and cost savings are not expected to differ in subsequent years.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): Public-school districts.

(a) Estimate the following for the first year:

Expenditures: There are no expected expenditures for districts as there are no fees established in this regulation.

Revenues: This regulation sets the standards for certification under the Option 6 route to certification. It will not generate revenues for districts.

Cost Savings: There are no cost savings expected with this amendment.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? The expenditures, revenues and cost savings are not expected to differ in subsequent years.

(4) Identify additional regulated entities not listed in questions (2) or (3): Applicants for certification under the Option 6 Alternative Route to Teacher Certification.

(a) Estimate the following for the first year:

Expenditures: There are no expected expenditures for applicants to comply with this amendment.

Revenues: This regulation sets the standards for certification under the Option 6 route. It will not generate revenue for applicants.

Cost Savings: There is no expected cost savings since there are no fees created or reduced by this regulation.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? The expenditures, revenues and cost savings are not expected to differ in subsequent years.

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: There is no fiscal impact as a result of the proposed amendments to this regulation. No fees are established or increased in this regulation, and there are no fees for temporary provisional certificates. While

processing applications and issuing certificates does require staff time and resources from the Education Professional Standards Board, the amendments can be carried out by the existing staff and systems.

(b) Methodology and resources used to determine the fiscal impact: The methodology and resources used to determine that there is no fiscal impact, is looking to current systems and processes to see if additional expenditures or resources are needed to carry out the amendments. Since no additional expenditures or resources are needed to carry out the amendments, and there are no fees established or increased by this regulation, it was determined there is no fiscal impact.

(6) Explain:

(a) Whether this administrative regulation will have an overall negative or adverse major economic impact to the entities identified in questions (2) - (4). (\$500,000 or more, in aggregate) There is not an expected major economic impact from this regulation as it does not create additional costs for the Education Professional Standards Board or the regulated entities.

(b) The methodology and resources used to reach this conclusion: The methodology and resources used to determine this is looking to current systems and processes to see if additional expenditures or resources are needed to carry out the amendments. Since no additional expenditures or resources are needed to carry out the amendments, and there are no fees established or increased by this regulation, there will not be a negative or adverse major economic impact.

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 Option 6 contained in this administrative regulation comply with the requirement in 34 C.F.R. § 300.156 (c)(2) because candidates using the alternative pathway to obtain special education certification will 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.

(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 in the Option 6 alternative route to certification 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 temporary provisional certification for special education instructors 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.

**STATEMENT OF EMERGENCY
16 KAR 9:100E.**

This emergency administrative regulation is being promulgated in order to meet an imminent deadline for the promulgation of an administrative regulation that is established by state statute. During the 2024 legislative session, the General Assembly passed Senate Bill 265 and the Governor signed it into law on April 9, 2024. This legislation, which became effective on the Governor's signature, amends KRS 161.048(8) to remove the requirement of an offer of employment prior to issuance of the certificate and require one (1) year of successful teaching experience and recommendation of the employing school district prior to issuance of the professional certificate. The amendment also moves the requirement that a candidate pass the content assessment to the end of the route prior to issuance of the professional certificate and removes the requirement that candidates complete an admission assessment. Per KRS 161.048(1)(e) the Education Professional Standards Board (EPSB) has the authority to promulgate administrative regulations establishing the standards and procedures for the Option 7 alternative route to certification. Since this emergency legislation became effective upon the Governor's signature, the emergency regulation is necessary to establish the application requirements for certification under the Option 7 alternative route to certification. This emergency administrative regulation will be replaced by an ordinary administrative regulation because the requirements for certification under this route are expected to remain in statute. The ordinary administrative regulation is identical to this emergency administrative regulation.

ANDY BESHEAR, Governor
JUSTIN MITCHELL, Chair

**EDUCATION AND LABOR CABINET
Education Professional Standards Board
(Emergency Amendment)**

16 KAR 9:100E. Alternative Route to Certification Institute.

EFFECTIVE: July 8, 2024

RELATES TO: KRS 161.028, 161.030, 161.048, 34 C.F.R. 300.156 (c)(2)

STATUTORY AUTHORITY: KRS 161.028, 161.030, 161.048(1)(e)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.048(1)(e) requires the Education Professional Standards Board (EPSB) to promulgate administrative regulations establishing standards and procedures for the Alternative Route to Certification Institute and the approval criteria for these programs. This administrative regulation establishes the required elements of the alternative route to certification and the application review process.

Section 1. Institute Providers.

(1) A provider not currently accredited by the EPSB in accordance with 16 KAR 5:010, may demonstrate a partnership with an institution of higher education accredited by the EPSB and a school district or cooperative recognized by the Kentucky Department of Education.

(2) A provider shall submit an application to the EPSB in accordance with the Guidelines for Submitting an Application to Provide an Alternative Route to Certification Institute (Option 7).

Section 2. Application Review.

(1) An application to provide an alternative route to certification institute shall be submitted to EPSB staff.

(2) EPSB staff shall complete an initial review to ensure that the application addresses the requirements of KRS 161.048(8) and the Guidelines for Submitting an Application to Provide an Alternative Route to Certification Institute (Option 7).

(a) If EPSB staff determines that the application addresses the requirements of this subsection, the application shall be forwarded to an external review team.

(b) If EPSB staff determines that the application does not address all the requirements of this subsection, staff shall notify the

provider of the deficiencies.

(3) An external review team of trained reviewers appointed by EPSB pursuant to subsection (4) of this section, staff shall review the application in accordance with KRS 161.048(8) and the Guidelines for Submitting an Application to Provide an Alternative Route to Certification Institute (Option 7).

(4) The external review team shall be comprised of:

(a) One (1) representative from an EPSB accredited postsecondary institution;

(b) One (1) representative from a Kentucky education cooperative; and

(c) One (1) representative from a Kentucky public school district.

(5) The external review team shall review the application to provide an alternative route to certification institute and determine the quality of the application based on compliance with subsection (2) of this section. The review team shall recommend acceptance or denial of the application to the EPSB and shall include a supporting rationale for the recommendation.

(6) The EPSB shall review the external review team's recommendation, shall approve or deny each application, and shall transmit the decision and rationale for the decision to the provider.

(7) The provider may revise and resubmit a plan that has been denied.

(8) Any approval granted by the EPSB shall specify the period of approval of the institute, which shall not exceed two (2) years for initial approval. A provider may apply for an extension of approval as established in Section 3 of this administrative regulation.

Section 3. Continuance of Program Approval.

(1) An institute provider may apply for continuance of an approved alternative route to certification institute for an additional period of time not to exceed seven (7) years. The request for continuance shall specify any changes in program components that have occurred since the institute received prior EPSB approval and that are planned for implementation in subsequent training periods.

(2) The request for continuance shall provide specific examples of demonstrating program quality as established in this section and the application required by this administrative regulation. The request for continuance shall include statistical information related to teacher retention for all prior candidates who have completed the institute. Standards for program approval established under this administrative regulation shall be maintained under any program extension.

Section 4. Revocation for Cause.

(1) If an area of concern or an allegation of misconduct arises after an institute has been approved, staff shall bring a complaint to the EPSB for initial review.

(2) After review of the allegations in the complaint, the EPSB may refer the matter to the external review team for further investigation.

(3)

(a) Notice of the EPSB's decision to refer the matter and the complaint shall be sent to the provider.

(b) Within thirty (30) days of receipt of the complaint, the provider shall respond to the allegations in writing and provide information pertaining to the allegations in the complaint to the EPSB.

(4)

(a) The external review team shall review any evidence supporting the allegations and any information submitted by the provider.

(b) The external review team may conduct on-site evaluations to evaluate the quality of the program.

(c) Upon completion of the review, the external review team shall issue a report recommending to the EPSB continued approval of the institute or revocation of institute approval if the institute no longer meets the standards and requirements for approval established in this administrative regulation.

(5) The provider shall receive a copy of the external review team's report and may file a response to the recommendation.

(6)

(a) The recommendation from the external review team and the provider's response shall be presented to the EPSB.

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(b) The EPSB shall consider the findings and recommendations of the external review team and make a final determination regarding the approval of the institute.

Section 5. Reconsideration.

(1) If a provider seeks reconsideration of an EPSB decision, the provider shall submit a request within thirty (30) days of receipt of the EPSB official notification. A provider shall submit the request on the grounds that:

- (a) A prescribed standard was disregarded;
- (b) A procedure was not followed; or
- (c) Evidence of compliance in place at the time of the review and favorable to the provider was not considered.

(2) A panel of no fewer than three (3) members shall be appointed by the EPSB chair from members of the EPSB who do not have a conflict of interest regarding the provider or institute. The ad hoc committee shall recommend action on the request to the full EPSB.

Section 6. Data Reports.

(1) The EPSB shall maintain data reports related to:

- (a) Approval status of all EPSB approved Option 7 programs;
 - (b) Contact information for the person responsible for the institute;
 - (c) Year of last program review;
 - (d) Tables relating the institute total enrollment disaggregated by ethnicity and gender for the last three (3) years;
 - (e) Tables relating the institute faculty disaggregated by the number of full-time equivalents (FTE), ethnicity, and gender for the last three (3) years;
 - (f) Table of the number of program completers for the last three (3) years;
 - (g) Table relating pass rates on the required assessments;
 - (h) Table relating program completer satisfaction with the preparation program; and
 - (i) Table relating new teacher (under three (3) years) and supervisor satisfaction with the preparation program.
- (2) A provider shall report to the EPSB staff at the end of each school year continuous improvement efforts relating to the institute.

Section 7. Temporary Provisional Certificate.

(1) An eligible candidate who meets the requirements of KRS 161.048(8)(a)[4. through 4.] and 16 KAR 2:010, Section 3(1), shall be issued a one (1) year provisional teaching certificate.

(2) The candidate shall apply to the EPSB and provide:

(a) Official transcripts of all college work undertaken by the candidate establishing proof of a bachelor's degree or graduate degree and grade point average; and

(b) [Proof of a passing score on the admission assessments as established in 16 KAR 5:020, unless the applicant holds a terminal degree;]

[(c)] [Proof of a passing score on the academic content assessment, as established in 16 KAR 6:010, in the area in which certification is being sought;]

[(d)] Verification by the institute provider of enrollment in an EPSB approved institute[completion of half of the requisite institute hours; and]

[(e)] [Evidence of employment in a Kentucky school district or regionally- or nationally accredited nonpublic school in the content area of the certification.]

(3) A candidate shall be eligible for first renewal of the temporary provisional certificate upon application to the EPSB, compliance with 16 KAR 2:010, Section 3(1), and verification[-];

[(a)] [Verification] of completion of:

- (a)[1.-] 240 hour institute for elementary or K-12 certification; or
- (b)[2.-] 180 hour institute for middle or high school certification.]; and]

[(b)] [Evidence of employment in a Kentucky school district or regionally- or nationally accredited nonpublic school in the content area of the certification.]

(4) A candidate shall be eligible for subsequent renewal of the temporary provisional certificate upon application to the EPSB, compliance with 16 KAR 2:010, Section 3(1), and

recommendation[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 institute provider based on continued enrollment, completion of mentoring, and progress towards the completion of the program.

[(5)] [If a candidate is required to complete an internship in accordance with KRS 161.030, the candidate shall complete the required assessments as established in 16 KAR 6:010 prior to issuance of the final temporary provisional certificate and shall complete the internship during the final temporary provisional certificate.]

[(6)] A candidate for exceptional children or interdisciplinary early childhood certification employed in a public school may only renew the temporary provisional certificate two (2) times.

[(7)] All other candidates may renew the temporary provisional certificate four (4) times.

Section 8. Professional Certificate.

(1) Upon completion of all program requirements established in this administrative regulation, and successfully completing one (1) year of teaching, the applicant may apply for the professional certificate.

(2) Prior to issuance of the professional certificate, the candidate shall obtain a passing score on the requisite assessments[pedagogy assessment], as established in 16 KAR 6:010, for the certificate being sought.

(3) Upon application to the EPSB, compliance with 16 KAR 2:010, Section 3(1), and verification that a candidate has met all eligibility requirements for certificate issuance, the EPSB shall issue the candidate a professional certificate.

Section 9. Incorporation by Reference.

(1) "Guidelines for Submitting an Application to Provide an Alternative Route to Certification Institute (Option 7)", 2024[2022], is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Education Professional Standards Board, 300 Sower Boulevard, 5th Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available on the Education Professional Standards Board's Web site at <http://www.epsb.ky.gov/course/view.php?id=2>.

JUSTIN MITCHELL, Board Chair

APPROVED BY AGENCY: June 4, 2024

FILED WITH LRC: July 8, 2024 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on August 27, 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 August 31, 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

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regulation establishes the standards and procedures of the Option 7 institute route to certification.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to set the standards and procedures for the Option 7 institute route to certification.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 161.028 requires the Education Professional Standards Board to establish standards and requirements for obtaining and maintaining a teaching certificate. KRS 161.048(8) creates the Option 7 alternative route to certification and KRS 161.048(1)(e) requires the Education Professional Standards Board to promulgate administrative regulations establishing standards and procedures for the alternative certification options.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation delineates the requirements for providing an Option 7 alternative route to certification program as well as the requirements for candidates of the route to obtain certification.

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

(a) How the amendment will change this existing administrative regulation: The proposed amendment allows a candidate for the Option 7 route to be issued a temporary provisional certificate upon application the Education Professional Standards Board, proof of meeting the degree requirements, and enrollment in an approved institute. The amendment removes the requirement that applicants have an offer of employment, passing assessment scores, and completion of half of the institute hours before issuance of the initial certificate. Candidates must successfully complete one (1) year of teaching experience, have a recommendation from the employing school district, and pass the requisite assessments prior to issuance of the professional certificate.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to comply with the changes to KRS 161.048(8) from Senate Bill 265 of the 2024 Legislative Session.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment sets the requirements for issuance of certification under the Option 7 Institute Route to Teacher Certification. The amendment removes the requirements that candidates have a job offer, complete assessments, and complete half of the institute hours prior to issuance of the temporary provisional certificate. The amendment adds the requirement that candidates complete one (1) year of teaching experience and have a recommendation from the employing district prior to issuance of the professional certificate.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in establishing the requirements for certification under the Option 7 Institute Route to Teacher Certification.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 171 Kentucky school districts, entities seeking approval to offer an Option 7 Institute, and those pursuing the Option 7 Institute Route to Teacher 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: Applicants for the Option 7 route will only have to meet degree requirements and enrollment in an approved Option 7 institute for issuance of the temporary provisional certificate. They will no longer have to have an offer of employment, complete assessments, and complete half of the institute hours prior to issuance of the temporary provisional certificate. Candidates will have to obtain one (1) year of teaching experience and pass the assessments before applying for the professional certificates. Districts will no longer have to verify that candidates have an offer of employment but will have to provide a recommendation for those candidates that complete one (1) year of teaching experience.

(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 certification to eligible candidates.

(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 teachers seeking certification through the Option 7 Institute Route to Teacher Certification and all entities seeking to provide an Option 7 Institute.

FISCAL IMPACT STATEMENT

(1) Identify each state statute, 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, KRS 161.048.

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: The Education Professional Standards Board.

(a) Estimate the following for the first year:

Expenditures: No additional expenditures are expected to be needed since the systems and staff are already in place for processing applications and issuing certificates under the Option 7 route.

Revenues: The amendment to this administrative regulation is not expected to generate any revenue during the first year as this regulation does not create fees.

Cost Savings: No cost savings are expected with this amendment.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? Expenditures, revenues and cost savings are not expected to differ in subsequent years.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): Public-school districts.

(a) Estimate the following for the first year:

Expenditures: There are no expected expenditures for districts as there are no fees established in this regulation.

Revenues: This regulation sets the standards for certification under the Option 7 route to certification. It will not generate revenues for districts.

Cost Savings: There are no cost savings expected with this amendment.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? The expenditures, revenues and cost savings are not expected to differ in subsequent years.

(4) Identify additional regulated entities not listed in questions (2) or (3): Applicants for certification under the Option 7 Institute Route to Teacher Certification and Option 7 Institute Providers.

(a) Estimate the following for the first year:

Expenditures: There are no expected expenditures for applicants or providers to comply with this amendment.

Revenues: This regulation sets the standards for certification

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under the Option 7 route. It will not generate revenue for applicants or providers.

Cost Savings: There is no expected cost savings since there are no fees created or reduced by this regulation.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? The expenditures, revenues and cost savings are not expected to differ in subsequent years.

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: There is no fiscal impact as a result of the proposed amendments to this regulation. No fees are established or increased in this regulation, and there are no fees for temporary provisional certificates. While processing applications and issuing certificates does require staff time and resources from the Education Professional Standards Board, the amendments can be carried out by the existing staff and systems.

(b) Methodology and resources used to determine the fiscal impact: The methodology and resources used to determine that there is no fiscal impact, is looking to current systems and processes to see if additional expenditures or resources are needed to carry out the amendments. Since no additional expenditures or resources are needed to carry out the amendments, and there are no fees established or increased by this regulation, it was determined there is no fiscal impact.

(6) Explain:

(a) Whether this administrative regulation will have an overall negative or adverse major economic impact to the entities identified in questions (2) - (4). (\$500,000 or more, in aggregate) There is not an expected major economic impact from this regulation as it does not create additional costs for the Education Professional Standards Board or the regulated entities.

(b) The methodology and resources used to reach this conclusion: The methodology and resources used to determine this is looking to current systems and processes to see if additional expenditures or resources are needed to carry out the amendments. Since no additional expenditures or resources are needed to carry out the amendments, and there are no fees established or increased by this regulation, there will not be a negative or adverse major economic impact.

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 Option 7 contained in this administrative regulation comply with the requirement in 34 C.F.R. § 300.156 (c)(2) because candidates using the alternative pathway to obtain special education certification will 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.

(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 in the Option 7 alternative route to certification 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 temporary provisional certification for special education instructors 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.

STATEMENT OF EMERGENCY 922 KAR 1:350E.

This emergency administrative regulation is necessary in order to immediately support relative and fictive kin caregivers who are caring for children in the state's custody, provide increased permanency for children, and decrease unnecessary administrative tasks that front-line social workers have to undertake every day. The U.S. Department of Health and Human Services, Administration for Children and Families, amended federal regulations to allow Title IV-E agencies to create foster family home licensing or approval standards for relative or fictive kin foster families that are different from the standards used for non-relative or nonfamilial foster family homes. The federal government recognized that placement with relative and fictive kin caregivers reduces trauma for children removed from their homes, produces better outcomes for children, and results in the preservation of a sense of family, community, and culture. Federal law amendments are in effect, guidance for implementation has been received from the Administration for Children and Families, and the cabinet has submitted a state plan amendment that included the establishment of these different standards. This emergency amendment will result in relative and fictive kin caregivers having a more streamlined and less burdensome process to become public foster homes for the children in their care and receive ongoing additional supports from the cabinet. This amendment is deemed to be an emergency pursuant to KRS 13A.190(1)(a)1., as supporting relative and fictive kin caregivers and reducing administrative burdens for front-line social workers (which results in decreasing their workload) is necessary for the health, safety, and welfare of children in the state's custody. This emergency administrative regulation will be replaced by an ordinary administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.

ANDY BESHEAR, Governor
ERIC C. FRIEDLANDER, Secretary

CABINET FOR HEALTH AND FAMILY SERVICES Department for Community Based Services Division of Protection and Permanency (Emergency Amendment)

922 KAR 1:350E. Requirements for public child welfare agency foster parents, adoptive parents, and respite care providers.

EFFECTIVE: July 1, 2024

RELATES TO: KRS 2.015, 61.870-61.884, 194A.005(1), 194A.060, ~~189.125~~, 199.011, ~~199.430(3)~~, ~~199.802~~, 258.015, 258.035, 311.720(12), 311.840(3), 314.011(5), (7), [(9)-]527.100, 527.110, 600.020, 605.090, 610.110, 620.030, 620.050, 620.140(1)(d), 620.360, 620.363, [Chapter 625-]116 C.F.R. 1219-1220, 1632-1633, 42 C.F.R. 435.407, 45 C.F.R. Parts 160, 164, 8 U.S.C. 1151, 1181, 42 U.S.C. 671, 672

STATUTORY AUTHORITY: KRS 194A.050(1), 199.472(1), 605.100(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate programs and fulfill the responsibilities vested in the cabinet and to implement programs mandated by federal law or to qualify for the receipt of federal funds. KRS 605.100(1) requires the cabinet to arrange programs designed to provide for classification, segregation, and specialized treatment of children according to their respective problems, needs, and characteristics. KRS 199.472(1)

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requires the cabinet to promulgate administrative regulations to establish the process of determining an applicant's capacity for foster or adoptive parenthood. This administrative regulation

Section 1. Definitions.

(1) "Adoptive home" means a home in which a parent is approved by the cabinet to provide services as specified in Section 2(11)(42) of this administrative regulation.

(2) "Applicant" means an individual or family subject to approval by the cabinet as a foster or adoptive home.

(3) "Cabinet" is defined by KRS 194A.005(1) and 600.020(7).

(4) "Care Plus" means a foster care program for a child who is determined to have specialized care needs as specified in Section 7(5) of this administrative regulation.

(5) "Child" means:

(a) A child as defined by KRS 199.011(4) and 600.020(9);

(b) A person age eighteen (18) or older whose commitment to the cabinet has been extended or reinstated by a court in accordance with KRS 610.110(6) or 620.140(1)(d); or

(c) A person under age twenty-one (21) who meets the exceptions to the age of majority in accordance with KRS 2.015.

(6) ["Child-specific foster home" means an individual or family subject to approval by the cabinet as a foster family home for a relative or fictive kin placement.]

(7) "Child with medical complexity" means a child who has a medical condition in accordance with Section 6(4)(1)(b) of this administrative regulation.

(8) "Commissioner" means commissioner of the Department for Community Based Services.

(9) "Department" means the Department for Community Based Services.

(10) "Fictive kin" is defined by KRS 199.011(9) and 600.020(28).

(11) "Foster home" means:

(a) A "foster family home" as defined by KRS 199.011(10) and 600.020(30), if referring to a physical structure; or

(b) If referring to an individual, any individual approved as a foster parent by the cabinet to provide services as specified in Section 2(11)(42) of this administrative regulation.

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

(a) Physician as defined by KRS 311.720(12);

(b) Physician assistant as defined by KRS 311.840(3);

(c) Advanced practice registered nurse as defined by KRS 314.011(7); or

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

(13) "Home study" means an assessment done on a prospective foster or adoptive home by a social services worker.

(14) "Independent living services" means services provided to an eligible child to assist the child in the natural progression from adolescence to adulthood.

(15) "Nonfamilial" means:

(a) Not related; and

(b) Not fictive kin.

(16) "Placement" means the physical change in the location and living arrangement of a child in the custody of the cabinet removed from the child's home of origin.

(17) "Relative" means an individual related to a child by blood, marriage, or adoption.

(18) "Respite care" means temporary care provided by a provider, as specified in Section 19(47) of this administrative regulation, to meet the needs of the child or provide relief to the foster or adoptive parents with the expectation of a child's return to the current foster or adoptive home.

Section 2. General Requirements for a Nonfamilial Foster or Adoptive Parent.

(1) This section establishes the requirements for a foster or adoptive parent applicant who is nonfamilial to a child in state custody.

(2)(a) ~~A[Unless an exception is approved pursuant to paragraph (b) of this subsection by designated cabinet staff, a] foster or adoptive parent applicant shall be at least twenty-one (21) years~~

of age.

~~(3)(b) [A foster or adoptive parent applicant between eighteen (18) and twenty-one (21) years of age may be approved as a foster or adoptive parent if:]~~

~~[1.] [The foster or adoptive parent applicant is related to the child under the custodial control of the cabinet;]~~

~~[2.] [The foster or adoptive parent applicant can meet the needs of the child; and]~~

~~[3.] [Cabinet staff determines the placement is in the best interest of the child.]~~

~~[2] A foster or adoptive parent applicant shall provide proof of the applicant's United States citizenship or legal immigrant status, as described in 8 U.S.C. 1151, 8 U.S.C. 1181, and 42 C.F.R. 435.407.~~

~~(3) [A department employee who provides protection and permanency services may apply to adopt a child in the care and custody of the cabinet if the commissioner approves the employee to adopt and the adoption is in the best interest of the child.]~~

~~(4)~~

~~(a) [A department employee who provides protection and permanency services shall be approved as a respite care provider or foster parent for a child in the care and custody of the cabinet if prior approval by the commissioner or designee is granted in writing through the service region administrator in the region of employment.]~~

~~(b) [If approval is granted, the department shall:]~~

~~[1.] [Ensure the employee completes pre-service training outside the region of employment;]~~

~~[2.] [Assign a social services worker outside of the applicant employee's region of employment to complete the home study;]~~

~~[3.] [Maintain the case outside of the applicant employee's region of employment; and]~~

~~[4.] [Ensure that the employee shall not accept the placement of a child from within the region of employment unless:]~~

~~[a.] [The employee is related to the child; or]~~

~~[b.] [The employee is determined to be fictive kin as the result of a relationship developed outside of employment prior to the child being placed in the custody of the cabinet.]~~

~~(5) A married couple may apply to become foster or adoptive parents; or.]~~

~~(6) A single, unmarried person may apply to become a foster or adoptive parent.~~

~~(7) The decision to foster or adopt a child shall be agreed to by each adult member of the applicant's household.~~

~~(8) A foster or adoptive applicant shall participate in the home study process and complete required questionnaires, screening, and individual interviews and may be required to provide additional documentation in order to mitigate needs or concerns identified in the home study process.~~

~~(9)(a)~~

~~(a) Each foster or adoptive applicant and adult member of the applicant's family shall submit a DPP-107, Health Information Required for Foster or Adoptive Parents, Applicants, or Adult Household Members, completed:~~

~~1. By a health professional who is not a member of the applicant's household, based upon health information within the past year, documenting:~~

~~a. The individual has no illness or condition that would present a health or safety risk to a child placed in the applicant's home, which may include a communicable disease; and~~

~~b. That there are no known health factors that would interfere with the applicant's ability to become a foster or adoptive parent;~~

~~2. As part of:~~

~~a. The initial application;~~

~~b. The reevaluation; or~~

~~c. A foster or adoptive home review pursuant to Section 15(43) of this administrative regulation; and~~

~~3. By all household members in which the household member discloses mental health and substance abuse issues, including any history of drug or alcohol abuse or treatment.~~

~~(b) The department shall require further documentation or evaluation to determine the suitability of the home if there is an indicator of current or past mental health or substance abuse issues~~

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in a household member.

~~(8)~~~~(9)~~ Each foster or adoptive parent applicant shall submit a DPP-108, Health Information Required for Foster or Adoptive Parents or Applicants Regarding Dependent Children, for each child member of the applicant family.

~~(9)~~~~(40)~~ A foster or adoptive parent applicant shall have a source of income:

- (a) Sufficient to meet the applicant's household expenses; and
- (b) Separate from:
 - 1. Foster care reimbursement; or
 - 2. Adoption assistance.

~~(10)~~~~(41)~~ Unless specified in a contract between the cabinet and a child welfare agency that provides foster care services, a foster or adoptive parent shall accept a child for foster care only from the cabinet.

~~(11)~~~~(42)~~ An approved foster or adoptive parent shall be willing to:

- (a) Provide foster care services for a child placed in out-of-home care by the cabinet;
- (b) Adopt a child:
 - 1. Whose parent's parental rights have been terminated; and
 - 2. Who is under the custodial control of the cabinet;
- (c) Provide respite care for a child under the custodial control of the cabinet; or
- (d) Provide any combination of the services described in paragraphs (a) through (c) of this subsection.

~~(12)~~~~(43)~~ A foster or adoptive applicant shall provide to the cabinet:

- (a)
 - 1. The names of three (3) personal references including:
 - a. One (1) relative reference; and
 - b. Two (2) non-relative references.
 - 2. The references required by subparagraph 1. of this paragraph shall:
 - a. Be interviewed by cabinet staff in person or by telephone; or
 - b. Provide letters of reference for the applicant; and
- (b) Two (2) credit references or a credit report.

~~(13)~~~~(44)~~ Unless a documented exception exists and is approved by designated cabinet staff due to inaccessibility, each adult child of the foster or adoptive parent applicant who does not live in the home shall be interviewed by cabinet staff in person or by telephone regarding the applicant's parenting history.

~~(14)~~~~(45)~~ If applicable, verification shall be obtained from the foster or adoptive parent applicant regarding:

- (a) Previous divorce;
- (b) Death of a spouse; and
- (c) Present marriage.

~~(15)~~~~(46)~~ A foster or adoptive parent applicant who does not have custody of his or her own child shall provide:

- (a) A copy of the visitation order, if applicable;
- (b) A copy of the child support order, if applicable; and
- (c) Proof of current payment of child support, if applicable.

~~(16)~~~~(47)~~ A foster or adoptive parent applicant and any member of the applicant's household shall submit to the background checks required by 922 KAR 1:490.

~~(18)~~ ~~[The cabinet shall perform background checks in accordance with criteria established in 922 KAR 1:490.]~~

Section 3. General Requirements for a Relative or Fictive Kin Foster or Adoptive Parent.

(1) This section establishes the requirements for a foster or adoptive parent applicant who is a relative or fictive kin to a child in state custody.

(2)

(a) Unless an exception is approved pursuant to paragraph (b) of this subsection, a foster or adoptive parent applicant shall be at least twenty-one (21) years of age.

(b) A foster or adoptive parent applicant between eighteen (18) and twenty-one (21) years of age may be approved as a foster or adoptive parent if cabinet staff determine the placement is in the best interest of the child.

(3) A foster or adoptive parent applicant shall provide proof of the applicant's United States citizenship or legal immigrant status,

as described in 8 U.S.C. 1151, 8 U.S.C. 1181, and 42 C.F.R. 435.407.

(4)

(a) A married couple may apply to become foster or adoptive parents; or

(b) A single, unmarried person may apply to become a foster or adoptive parent.

(5) The decision to foster or adopt a child shall be agreed to by each adult member of the applicant's household.

(6) Unless specified in a contract between the cabinet and a child welfare agency that provides foster care services, a foster or adoptive parent shall accept a child for foster care only from the cabinet.

(7) A foster or adoptive applicant shall participate in the home study process and complete required questionnaires, screening, and individual interviews and may be required to provide additional documentation to mitigate needs or concerns identified in the home study process.

(8) An approved foster or adoptive parent shall be willing to:

(a) Provide foster care services for a child placed in out-of-home care by the cabinet;

(b) Adopt a child;

1. Whose parent's parental rights have been terminated; and
2. Who is under the custodial control of the cabinet;

(c) Provide respite care for a child under the custodial control of the cabinet;

(d) Enter into a subsidized permanent custody agreement; or

(e) Provide any combination of the services described in paragraphs (a) through (d) of this subsection.

(9) A foster or adoptive parent applicant who does not have custody of his or her own child shall provide:

(a) A copy of the visitation order, if applicable;

(b) A copy of the child support order, if applicable; and

(c) Proof of current payment of child support, if applicable.

(10) A foster or adoptive parent applicant and any member of the applicant's household shall submit to the background checks required by 922 KAR 1:490.

Section 4. Department Staff Applying to be a Foster or Adoptive Parent.

(1) A department employee who provides protection and permanency services may apply to adopt a child in the care and custody of the cabinet pursuant to Section 2 or 3 of this administrative regulation if the commissioner or designee approves the employee to adopt and the adoption is in the best interest of the child.

(2)

(a) A department employee who provides protection and permanency services may apply to be a respite care provider or foster parent for a child in the care and custody of the cabinet pursuant to Section 2 or 3 of this administrative regulation and shall be approved if applicable requirements are met and prior approval by the commissioner or designee is granted in writing through the service region administrator in the region of employment.

(b) If approval is granted, the department shall:

1. Ensure the employee completes pre-service training outside the region of employment, as applicable pursuant to 922 KAR 1:495;

2. Assign a social services worker outside of the applicant employee's region of employment to complete the home study;

3. Maintain the case outside of the applicant employee's region of employment; and

4. Ensure that the employee shall not accept the placement of a child from within the region of employment unless:

a. The employee is related to the child; or

b. The employee is determined to be fictive kin as the result of a relationship developed outside of employment prior to the child being placed in the custody of the cabinet.

Section 5. Home Environment.

(1) The foster or adoptive parent shall request written approval from designated cabinet staff to provide services as a:

(a) Certified provider of supports for community living in accordance with 907 KAR 12:010;

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(b) Certified family child care home in accordance with 922 KAR 2:100; or

(c) Provider of child-care center services in accordance with 922 KAR 2:090.

(2) If the foster or adoptive home adjoins a place of business open to the public, potential negative impact on the family and the child shall be examined including the:

- (a) Hours of operation;
- (b) Type of business; and
- (c) Clientele.

(3) The foster or adoptive parent shall have access to:

(a) Reliable transportation that meets the child's needs, including restraint requirements pursuant to KRS 189.125;

- (b) School;
- (c) Recreation;
- (d) Medical care; and
- (e) Community facilities.

(4) A foster or adoptive parent who drives shall:

- (a) Possess a valid driver's license;
- (b) Possess proof of liability insurance; and
- (c) Abide by passenger restraint laws.

(5)

(a) More than four (4) children, including the foster or adoptive parent's own children, shall not share a bedroom, with thorough consideration given to each child's age, gender, and background.

(b) Children of different genders over the age of five (5) shall not share a bedroom except as approved by designated department staff if:

1. Necessary to facilitate the placement of a sibling group or children who are related and share a sibling-like relationship, such as cousins; and

2. There are no high-risk behaviors.

(6) Each child shall have:

(a) A separate bed that is age and size appropriate for the child;

or

(b) If the child is under age one (1), a crib that meets Consumer Products Safety Commission standards pursuant to 16 C.F.R. 1219-1220.

(7) A child's mattress shall:

(a) Meet current Consumer Products Safety Commission Standards in 16 C.F.R. Parts 1632 and 1633;

- (b) Be in good repair; and
- (c) Have a clean fitted sheet that shall be changed:
 - 1. Weekly; or
 - 2. Immediately if it is soiled or wet.

(8) Except as approved by designated cabinet staff, a foster or adoptive parent shall not share a bedroom with a child under the custodial control of the cabinet unless necessary due to the needs of the child.

(9) A bedroom used by a child under the custodial control of the cabinet shall be comparable to other bedrooms in the house.

(10) The physical condition of the foster or adoptive home shall:

- (a) Not present a hazard to the safety and health of a child;
- (b) Be well heated and ventilated;
- (c) Comply with state and local health requirements regarding water and sanitation;

(d) Provide access to indoor and outdoor recreation space appropriate to the developmental needs of a child placed in the foster or adoptive home;

(e) Provide functioning kitchen facilities; and

(f) Provide a functioning bathroom, including a:

- 1. Toilet;
- 2. Sink; and
- 3. Bathtub or shower.

(11) The following shall be inaccessible to a child:

(a) Medication, unless an exception is granted pursuant to subsection (12) of this section;

- (b) Alcoholic beverage;
- (c) Poisonous or cleaning material;
- (d) Ammunition; and

(e) Firearms in accordance with KRS 527.100 and 527.110.

(12) An exception may be provided by designated cabinet staff to subsection (11)(a) of this section if:

(a)

1. The child is approved by a health care professional to self-administer medicine under the supervision of the foster or adoptive parent; or

2. Emergency access to the medication may be necessary to save the child's life, such as in the case of severe allergic reaction or asthma attack; and

(b) Measures are taken to prevent unauthorized access by another child in the same home.

(13) Any household animal shall be vaccinated in accordance with KRS 258.015 and 258.035.

(14) A dangerous animal shall not be allowed near the child.

(15) First aid supplies shall be available and stored in a place easily accessible to an adult.

(16) A working telephone shall be accessible.

(17) The home shall be equipped with a working smoke alarm within ten (10) feet of each bedroom and on each floor of the home.

(18) A home with gas heating or appliances shall be equipped with a working carbon monoxide detector.

(19) Safety precautions related to an accessible swimming pool or body of water shall be documented, if applicable.

Section 6.~~[Section 4.]~~ Medically Complex Foster or Adoptive Home.

(1) An applicant shall be approved by cabinet staff as a medically complex home if the foster or adoptive parent:

(a) Meets the requirements in Sections 2 ~~or~~^{and} 3 ~~and~~ 5 of this administrative regulation, except for Section 2(9)~~(10)~~, which may be considered as an exclusion on a case-by-case basis by designated cabinet staff based on the best interests or needs of the child;

(b) Cares for a child in the custody of the cabinet who is determined to be medically complex by designated cabinet staff due to:

1. Significant medically oriented care needs related to a serious illness or condition diagnosed by a health professional that may become unstable or change abruptly, resulting in a life-threatening event;

2. A chronic condition that is expected to be life-long and progressive and to require extensive services;

3. An acute, time-limited condition requiring additional oversight; or

4. A severe disability that requires the routine use of medical devices or assistive technology to compensate for the loss of a vital body function needed to participate in activities of daily living and significant and sustained care to avert death or further disability;

(c) Is a primary caretaker who is not employed outside the home, except as approved by designated cabinet staff and based on the needs of the child;

(d) Completes training in accordance with 922 KAR 1:495, Section 4;

(e) Receives training with documentation of completion from a health professional or a previous caregiver that was trained by a health professional in how to care for the specific child with medical complexity who shall be placed in the foster or adoptive parent's care;

(f) Maintains current certification in:

- 1. Infant, child, and adult CPR; and
- 2. First aid; and

(g) Has a home within:

1. One (1) hour of a medical hospital with an emergency room; and

2. Thirty (30) minutes of a local medical facility.

(2) Except for a sibling group or unless approved by designated cabinet staff in accordance with Section 18~~[46]~~ of this administrative regulation, more than four (4) children, including the foster or adoptive parent's own children, shall not reside in a medically complex foster or adoptive home.

(3) Unless an exception is approved pursuant to Section 18~~[46]~~(2) of this administrative regulation and a medically complex foster or adoptive home has daily support staff to meet the needs of a child with medical complexity:

(a) A one (1) parent medically complex foster or adoptive home

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shall:

1. Not care for more than one (1) child with medical complexity; and

2. Demonstrate access to available support services; and

(b) A two (2) parent medically complex foster or adoptive home shall:

1. Not care for more than two (2) children with medical complexity; and

2. Demonstrate access to available support services.

(4) Unless an exception pursuant to Section ~~18[46]~~(2) of this administrative regulation is approved, a child with medical complexity shall be placed in an approved medically complex foster or adoptive home.

(5) Unless the home is closed pursuant to Section ~~16[44]~~ of this administrative regulation, an approved medically complex foster or adoptive parent shall receive reapproval by the cabinet as a medically complex home if the parent:

(a) Annually completes training specified in 922 KAR 1:495, Section 4; and

(b) Continues to meet the requirements of this section.

(6) An approved medically complex foster or adoptive parent shall cooperate in carrying out the child's health plan.

Section 7. ~~[Section 5.]~~ Care Plus Home.

(1) An applicant shall be approved by cabinet staff as a care plus parent if the foster or adoptive parent:

(a) Meets the requirements of Sections 2 ~~or~~ and 3 ~~and~~ 5 of this administrative regulation, except for Section ~~2(9).~~ ~~(10)~~ which may be considered as an exclusion on a case-by-case basis by designated cabinet staff based on the best interests or needs of the child;

(b) Agrees to care for a child in the custody of the cabinet approved by cabinet staff as a care plus child. The child shall be approved as a care plus child if at least one (1) of the following criteria has been met: The child ~~because the child~~:

1. Has a diagnosed emotional or behavioral problem;

2. Is due to be released from a treatment facility;

3. Is aggressive ~~[Displays aggressive]~~, destructive, or displays ~~disruptive~~ disruptive behavior;

4. Is at risk of being placed in a more restrictive setting;

5. Is at risk of institutionalization; or

6. Has experienced numerous placement failures;

(c) Is a primary caretaker who is not employed outside the home, unless the cabinet determines that the child's needs continue to be met;

(d) Completes training in accordance with 922 KAR 1:495, Section 6; and

(e) Agrees to maintain a weekly record of the care plus child's activities and behaviors; ~~and~~

~~[(f) Agrees to attend case planning conferences].~~

(2) Unless an exception is approved pursuant to Section ~~18[46]~~(2) of this administrative regulation and the care plus home parent can demonstrate access to available support services:

(a) No more than four (4) children, including the foster or adoptive parent's own children, shall reside in a care plus home;

(b) A one (1) parent care plus home shall not care for more than one (1) care plus child as described in subsection (1)(b) of this section; and

(c) A two (2) parent care plus home shall not care for more than two (2) care plus children as described in subsection (1)(b) of this section.

(3) Unless the home is closed pursuant to Section ~~16[44]~~ of this administrative regulation, an approved care plus foster or adoptive parent shall receive reapproval by the cabinet as a care plus home, if the parent:

(a) Annually completes training in accordance with 922 KAR 1:495, Section 6;

(b) Submits to a review of the parent's:

1. Strengths and needs;

2. Records maintained on services provided to the child; and

3. Ability to meet the goals established for the child; and

(c) Continues to meet the requirements of this section.

Section 8. ~~[Section 6.]~~ Preparation and Selection of a Foster or Adoptive Home.

(1) The cabinet shall recruit a foster or adoptive home and approve the home prior to the placement of a child, except in the case of a ~~[child-specific]~~ placement with a relative or fictive kin caregiver.

(2) Upon recruitment of a foster home, the cabinet shall register the foster home in the foster care registry within fourteen (14) days.

(3) Prior to approval as a foster or adoptive parent, the cabinet shall check the foster care registry for information relating to a previous closure or corrective action.

(4) If an applicant previously approved to foster or adopt by a child-placing agency or the cabinet was:

(a) Closed pursuant to 922 KAR 1:310 or Section ~~16[44]~~ of this administrative regulation, the home shall be reviewed by the cabinet, including reviewing agency records relating to the cause for closure, and may be approved and operated as a cabinet foster home; or

(b) Under a corrective action plan issued by a child-placing agency or the cabinet prior to closure, the cabinet shall review and approve the home study prior to the home being approved.

(5) Prior to approval as a foster or adoptive parent, an applicant shall complete training requirements in accordance with 922 KAR 1:495, if applicable.

(6) If a new adult moves into an approved foster or adoptive home where a child is already placed by the cabinet, the child may remain and additional children may be placed if the new adult:

(a) Completes training in accordance with subsection (5) of this section within six (6) months of entering the home; and

(b) Meets the applicable requirements ~~[specified in Sections 2 and 3]~~ of this administrative regulation.

(7) An adult child or incapacitated person who resides in the foster or adoptive home shall not be required to complete training in accordance with 922 KAR 1:495 if that individual shall not be responsible for routine daily care of a child placed in the home by the cabinet.

(8) The cabinet shall not be obligated to grant foster or adoptive home approval or placement of a specific child to an individual or family that completes pre-service training.

(9) In addition to completion of training in accordance with 922 KAR 1:495, at least one ~~(1)~~ ~~two~~ ~~(2)~~ family consultation ~~[consultations]~~ shall be conducted by cabinet staff in the home of an applicant, to include:

(a) Documentation that the applicable requirements ~~[in Sections 2 and 3]~~ of this administrative regulation have been met;

(b) Documentation that a personal interview with each member of the applicant's household has been completed;

(c) Discussion of the attitude of each member of the applicant's household toward placement of a child;

(d) Observation of the functioning of the applicant's household, including interpersonal relationships and patterns of interaction; and

(e) Assurance that the applicant is willing to accept a child's relationship with the child's family of origin.

(10) An applicant approved as a foster or adoptive parent or respite care provider by another state or by a child-placing agency as defined in KRS 199.011(6) shall:

(a) Meet the applicable requirements established ~~[provided]~~ within ~~[Sections 2 and 3 of]~~ this administrative regulation;

(b) Be assessed by cabinet staff to ascertain the applicant's level of skill as a potential Kentucky foster or adoptive parent;

(c) Provide verification of the closure and a statement to indicate whether the closure was at the request of the foster or adoptive parent, the other state, or the agency; and

(d) Not be required to complete training in accordance with 922 KAR 1:495 for approval as a Kentucky foster or adoptive parent if cabinet staff:

1. Determine that the applicant possesses the necessary skills for fostering; and

2. Obtain records and recommendation from the other state or child-placing agency.

(11) Following initial training as specified in 922 KAR 1:495, if cabinet staff determines that an applicant or adult household member lacks the necessary skills to become a foster or adoptive parent, an individualized training curriculum shall be developed to

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fulfill unmet training needs.

(12)

(a) A foster or adoptive parent shall request the recommendation of cabinet staff prior to enrolling in training specified in 922 KAR 1:495, Section 4(1) or 6(1); and

(b) Cabinet staff may recommend the foster or adoptive parent to receive training specified in 922 KAR 1:495, Section 4(1) or 6(1), if the parent possesses the aptitude to care for a child described in Section ~~6~~(4)(1)(b) or ~~7~~(5)(1)(b) of this administrative regulation.

Section 9.~~[Section 7.]~~ Completion of the Foster or Adoptive Approval Process.

(1) Designated cabinet staff in a supervisory role shall approve a foster or adoptive applicant if:

(a) The applicant meets all applicable requirements of this administrative regulation~~[provides written and signed information pertaining to family history and background;]~~

~~[(b)] [The applicant completes training requirements as required by 922 KAR 1:495;]~~

~~[(c)] [The information required in Section 2(8) through (10) and (13) through (17) of this administrative regulation has been obtained, unless a waiver has been granted for a child specific placement with a relative or fictive kin caregiver;]~~

~~[(d)] [Background checks have been completed pursuant to 922 KAR 1:490 and did not result in a disqualifying background check result;]~~

~~[(e)]~~ Designated cabinet staff recommends approval; and

~~[(f)]~~ The applicant's ability to provide a foster, adoptive, or respite care service is consistent with the:

1. Cabinet's minimum foster or adoptive home requirements established in this administrative regulation; and

2. Needs of the families and children served by the cabinet.

(2) If the designated cabinet staff determines that an applicant does not meet the minimum requirements for approval as a foster or adoptive parent, the cabinet shall:

(a)

1. Recommend that the applicant withdraw the application; or

2. Deny the application pursuant to Section ~~10~~(8) of this administrative regulation; and

(b) Document the recommendation or denial in the foster care registry].

Section 10.~~[Section 8.]~~ Denial of a Foster or Adoptive Home Application].

(1) Designated cabinet staff shall notify an applicant, in writing, if the application to become a foster or adoptive parent is not recommended or denied for one (1) of the following reasons:

(a) The applicant is unwilling to withdraw the application to become a foster or adoptive parent after receiving a recommendation to withdraw; or

(b) The applicant desires to adopt, but is unwilling to adopt a child under the custodial control of the cabinet.

(2) If the foster or adoptive applicant disagrees with the cabinet's recommendation to not accept the applicant as a foster or adoptive home or denial, designated cabinet staff shall review the application to become a foster or adoptive parent and issue a final written determination regarding the cabinet's recommendation or denial.

(3) Cabinet staff shall enter information regarding the recommendation, denial, and final determination, if written, into the foster care registry.

Section 11.~~[Section 9.]~~ Expectations of a Foster or Adoptive Home. A foster or adoptive home providing services for a child in the custody of the cabinet shall:

(1) Provide a child placed by the cabinet with a family life, including:

(a) Nutritious food;

(b) Clothing comparable in quality and variety to that worn by other children with whom the child may associate;

(c) Affection;

(d) Life skills development;

(e) Recreational opportunities;

(f) Educational opportunities;

(g) Nonmedical transportation;

(h) Independent living services for a child age fourteen (14) and older;

(i) Opportunities for development consistent with their religious, ethnic, and cultural heritage;

(j) Adequate supervision; and

(k) Refraining from smoking in the direct presence of a child for whom the child's physician recommends, in writing, a smoke-free environment.

(2) Permit cabinet staff to visit;

(3) Share with cabinet staff pertinent information about a child placed by the cabinet;

(4) Comply with the general supervision and direction of the cabinet concerning the care of a child placed by the cabinet;

(5) Report immediately to the cabinet if there is a:

(a) Change of address;

(b) Hospitalization or life-threatening accident or illness of a child placed by the cabinet;

(c) Change in the number of people living in the home;

(d) Significant change in circumstances in the foster or adoptive home, such as income loss, marital separation, or other household stressor;

(e) Child placed in the home that is absent without official leave;

(f) Suicide attempt of a child placed by the cabinet; or

(g) Criminal activity by the child placed by the cabinet;

(6) Notify the cabinet if:

(a) Leaving the state with a child placed by the cabinet for more than twenty-four (24) hours; or

(b) A child placed by the cabinet is to be absent from the foster or adoptive home for more than twenty-four (24) hours;

(7) Cooperate with the cabinet if a contact is arranged by cabinet staff between a child placed by the cabinet and the child's birth family including:

(a) Visits;

(b) Telephone calls; ~~or~~

(c) Mail; or

(d) Other method approved by the cabinet.

(8) Surrender a child to the authorized representative of the cabinet upon request;

(9) Keep confidential all personal or protected health information as shared by the cabinet, in accordance with KRS 194A.060, 620.050, and 45 C.F.R. Parts 160 and 164 concerning a child placed by the cabinet or the child's birth family;

(10) Support an assessment of the service needs of a child placed by the cabinet;

(11) Participate in case-planning conferences concerning a child placed by the cabinet;

(12) Cooperate with the implementation of the permanency goal established for a child placed by the cabinet;

(13) Notify the cabinet at least fourteen (14) calendar days in advance of the home's intent to become certified to provide foster care or adoption services through a private child-placing agency in accordance with 922 KAR 1:310;

(14) Treat a child placed by the cabinet with dignity;

(15) Provide trauma-informed discipline;

(16) Arrange for respite care services in accordance with Section ~~12~~(14)(5) of this administrative regulation;

~~[(17)]~~~~[(46)]~~ Ensure that a child in the custody of the cabinet receives the child's designated per diem allowance;

~~[(18)]~~~~[(47)]~~ Facilitate the delivery of medical care to a child placed by the cabinet as needed, including:

(a) Administration of medication to the child and daily documentation of the medication's administration; and

(b) Physicals and examinations for the child;

~~[(19)]~~~~[(48)]~~ Report suspected incidents of child abuse, neglect, and exploitation in accordance with KRS 620.030;

~~[(20)]~~~~[(49)]~~ Comply with KRS 620.360(2);

~~[(21)]~~~~[(20)]~~ Be informed of and comply with KRS 620.363;

~~[(22)]~~~~[(24)]~~ Have appeal rights in accordance with 922 KAR 1:320; and

~~[(23)]~~~~[(22)]~~ Demonstrate functional literacy.

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~~Section 12.~~~~[Section 10.]~~ Reimbursements for Foster Homes.

(1) Types of per diem reimbursement. ~~If the~~~~[The]~~ cabinet ~~approves~~~~[shall approve]~~ a foster home ~~pursuant to~~~~[as specified in Sections 2 and 3 of]~~ this administrative regulation, ~~it shall~~~~[and]~~ authorize a per diem reimbursement as established in this subsection.

~~(a) [A child-specific per diem reimbursement shall be made to a foster home that:]~~

~~[1.] [Has been approved pursuant to Section 7 of this administrative regulation; and]~~

~~[2.] [Meets initial training requirements for a child-specific foster home.]~~

~~[(b)]~~ A basic per diem reimbursement shall be:

1. Based on the age of a child placed by the cabinet in the foster home; and

2. Made to the foster home that meets annual training requirements in accordance with 922 KAR 1:495, Section 3.

~~(b)~~~~[(e)]~~ An advanced per diem reimbursement shall be:

1. Made to a foster home that has:

a. Been approved for two (2) years as a foster or adoptive parent; and

b. Met training requirements in accordance with 922 KAR 1:495, Section 3; and

2. Based on the age of the child placed by the cabinet.

~~(c)~~~~[(d)]~~ A basic medically complex per diem reimbursement shall be made to a foster parent who:

1. Meets criteria specified in Section ~~6~~~~[4]~~ of this administrative regulation; and

2. Provides for the care of a child with medical complexity.

~~(d)~~~~[(e)]~~ An advanced medically complex per diem reimbursement shall be made to a foster parent who:

1. Meets criteria specified in Section ~~6~~~~[4]~~ of this administrative regulation;

2. Has been approved for one (1) year as a medically complex foster or adoptive parent;

3. Has met training requirements in accordance with KRS 922 KAR 1:495, Section 3; and

4. Provides for the care of a child with medical complexity.

~~(e)~~~~[(f)]~~ A degreed medically complex per diem reimbursement shall be made to a foster parent who:

1. Meets criteria specified in Section ~~6~~~~[4]~~ of this administrative regulation;

2. Maintains a current license as a health professional; and

3. Provides for the care of a child with medical complexity.

~~(f)~~~~[(g)]~~ A basic care plus foster home per diem reimbursement shall be made to a foster parent who:

1. Meets criteria specified in Section ~~7~~~~[5]~~ of this administrative regulation; and

2. Provides for the care of a child described in Section ~~7~~~~[5]~~(1)(b) of this administrative regulation.

~~(g)~~~~[(h)]~~ An advanced care plus foster home per diem reimbursement shall be made to a foster parent who:

1. Meets criteria specified in Section ~~7~~~~[5]~~ of this administrative regulation;

2. Has been approved for one (1) year as a care plus foster or adoptive parent;

3. Has met training requirements in accordance with 922 KAR 1:495, Section 3(1); and

4. Provides for the care of a child described in Section ~~7~~~~[5]~~(1)(b) of this administrative regulation.

~~(h)~~~~[(i)]~~ A specialized medically complex per diem reimbursement shall be made to a foster parent who:

1. Meets criteria specified in Section ~~6~~~~[4]~~ of this administrative regulation; and

2. Provides for the care of a child with medical complexity determined by designated cabinet staff to meet specialized medically complex criteria due to a required higher level of medical care or oversight, which may also include behavioral or emotional needs related to the medical condition.

~~(i)~~~~[(j)]~~ A degreed specialized medically complex per diem reimbursement shall be made to a foster parent who:

1. Maintains a current license as a health professional;

2. Meets criteria specified in Section ~~6~~~~[4]~~ of this administrative

regulation; and

3. Provides for the care of a child with medical complexity determined by designated cabinet staff to meet specialized medically complex criteria due to a required higher level of medical care or oversight, which may also include behavioral or emotional needs related to the medical condition.

~~(j)~~~~[(k)]~~ Upon placement of a child by the cabinet, a per diem reimbursement shall:

1. Be specified in a contract between an approved foster home and the cabinet; and

2. Provide for the care of a child placed by the cabinet, to include:

a. Housing expenses;

b. Food-related expenses;

c. Nonmedical transportation;

d. Clothing;

e. Allowance;

f. Incidentals;

g. Babysitting, excluding childcare authorized in subsection (4)(b) of this section;

h. Sports, recreation, and school activities;

i. One (1) day of respite care per child per month; and

j. School expenses.

(2) Medical coverage.

(a) Cabinet staff may authorize payment for medical expenses for a child in the custody of the cabinet after verification is provided that the child is not covered by health insurance, Medicaid, or the Kentucky Children's Health Insurance Program (K-CHIP).

(b) Designated cabinet staff shall approve or deny authorization of payment for a medical treatment greater than \$500.

(3) Child care services.

(a) The cabinet shall review requests for child care services every six (6) months for a working foster parent.

(b) Designated cabinet staff may approve requests for child care services for a nonworking foster parent if:

1. A medical crisis affects the foster parent; or

2. The child care is appropriate to support the foster home or child.

(c) Designated cabinet staff shall review approved requests for child care services for a nonworking foster parent every three (3) months.

(d) Reimbursements shall not be made simultaneously to the same provider for foster care and child care services.

(e) A foster parent shall not simultaneously be used as a licensed or certified health care or social service provider for a child placed in the foster parent's care by the cabinet.

(4) Training. To the extent funds are available, the cabinet shall provide a reimbursement to an approved foster or adoptive home for ongoing training expenses commensurate with the foster or adoptive parent's training needs, including:

(a) Mileage;

(b) Babysitting; and

(c) Tuition or fees up to the amount of:

1. \$100 per parent per year; or

2. \$200 per parent per year for a:

a. Medically complex foster or adoptive home; or

b. Care plus foster or adoptive home.

(5) Respite care.

(a) Respite care shall be available for a child placed by the cabinet in a foster home.

(b) A foster home shall be eligible for one (1) day of respite care per month per child.

(c) A foster home that cares for a child in the custody of the cabinet and meets criteria established in Sections ~~6~~~~[4]~~ and ~~7~~~~[5]~~ of this administrative regulation shall be eligible for three (3) days of respite care per month per child.

(d) Designated cabinet staff may extend a foster parent's respite care use to fourteen (14) days if designated cabinet staff document that the:

1. Foster parent requires the additional respite care:

a. To stabilize the child's placement in the foster home; or

b. Due to unforeseen circumstances that may occur, such as:

(i) Death in the family;

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- (ii) Surgery; or
- (iii) Illness; or
- 2. Child placed in the foster home requires additional respite care to allow for a period of adjustment.
- (e) The cost of respite care shall not exceed the per diem for the child.
- (f) A respite care provider shall be approved in accordance with Section 19[47] of this administrative regulation.
- (6) Appeals. A foster or adoptive parent may appeal the timeliness of reimbursement in accordance with 922 KAR 1:320.

Section 13.~~[Section 44.]~~ Home Study Requests.

- (1) Upon receipt of a request from another state's Interstate Compact on the Placement of Children Administrator in the interest of a child in the legal custody of that state's public agency, the cabinet shall complete the foster or adoptive home approval process as specified in Section 9[7] of this administrative regulation.
- (2) The cabinet shall share a previously approved home study in accordance with the Kentucky Open Records Act, KRS 61.870-61.884, and 42 U.S.C. 671(a)(23).
- (3) An individual may request an administrative hearing in accordance with 922 KAR 1:320 for failure of the cabinet to act in accordance with subsections (1) and (2) of this section.

Section 14.~~[Section 42.]~~ Foster or Adoptive Home Reevaluation.

- (1) Prior to or during the month of the anniversary date of the initial approval as a foster or adoptive parent, the foster or adoptive parent shall be required to complete annual training requirements as specified in 922 KAR 1:495, if applicable.
- (2)
 - (a) Failure to meet training requirements specified in subsection (1) of this section shall lead to closure unless an exception is granted by the designated cabinet staff for a foster parent caring for a child in the custody of the cabinet and it is determined that it is in the best interest of a child placed in the foster home.
 - (b) If an exception is approved as specified in paragraph (a) of this subsection, a new or additional child shall not be placed in the home until the foster parent has met the training requirement.
 - (3) A cabinet staff member shall conduct a personal, in-home interview with a foster or adoptive parent prior to or during the month of the anniversary date of the third year of the initial approval as a foster or adoptive home. The interviewer shall assess:
 - (a) Any change in the foster or adoptive home;
 - (b) The ability of the foster or adoptive home parent to meet the needs of a child placed in the home; and
 - (c) Continuing compliance with the applicable requirements of ~~[Sections 2 and 3 of]~~ this administrative regulation.
 - (4) The cabinet staff member shall document requirements of subsection (3) of this section to include:
 - (a) A list of persons residing in or frequently in the home since the initial approval or reevaluation;
 - (b) A list of all foster children placed in the home since the initial approval or reevaluation and exit reasons for the children no longer in the home;
 - (c) Use of formal and informal support systems including:
 - 1. Respite;
 - 2. Extended family support; and
 - 3. Friends or community partners;
 - (d) Description of parenting and discipline strategies;
 - (e) Changes in the physical environment including:
 - 1. Address change; and
 - 2. School district change;
 - (f) Discussion of stressors within the home to include:
 - 1. Pregnancy or birth;
 - 2. Physical or mental health conditions;
 - 3. Employment changes;
 - 4. Financial changes;
 - 5. Death, grief, or loss;
 - 6. Childhood trauma; and
 - 7. Divorce or personal relationship changes;
 - (g) Alcohol or drug use and any substance abuse treatment;
 - (h) Functioning of relationships within the household;
 - (i) Assessment of the family's ability to meet the needs of the

- children placed in the home;
- (j) List of foster or adoptive home reviews;
- (k) Areas of concern or actions to be addressed that may exist within the household; and
- (l) Placement recommendations.

Section 15.~~[Section 43.]~~ Foster or Adoptive Home Reviews.

- (1) Upon notification of a factor that may place unusual stress on the foster or adoptive home or create a situation that may place a child at risk, cabinet staff shall:
 - (a) Immediately assess the health and safety risk of the child; and
 - (b) Complete a review of the foster or adoptive home within thirty (30) calendar days.
- (2) Factors that shall result in a review of a foster or adoptive home shall include:
 - (a) Death or disability of a family member;
 - (b) Sudden onset of a health condition that would impair a foster or adoptive parent's ability to care for a child placed in the home by the cabinet;
 - (c) Change in marital status or home address;
 - (d) Sudden, substantial decrease in, or loss of, income;
 - (e) Childbirth;
 - (f) Use of a form of punishment or discipline that includes at least one (1) of the following:
 - 1. Cruel, severe, or humiliating actions;
 - 2. Corporal punishment inflicted in any manner;
 - 3. Denial of food, clothing, or shelter;
 - 4. Penalties for bedwetting or actions related to toilet training;
 - 5. Withholding implementation of the child's treatment plan;
 - 6.~~[5.]~~ Denial of visits, telephone, or mail contacts with family members, unless authorized by a court of competent jurisdiction; or~~and~~
 - 7.~~[6.]~~ Assignment of extremely strenuous exercise or work;
 - (g) A report of abuse, neglect, or dependency that results in a finding that:
 - 1. Is substantiated; or
 - 2. Reveals concern relating to the health, safety, and well-being of the child;
 - (h) Termination of parental rights (including a voluntary action);
 - (i) If the foster or adoptive parent is cited with, charged with, or arrested due to a violation of law other than a minor traffic offense;
 - (j) Other factor identified by cabinet staff that jeopardizes the physical, mental, or emotional well-being of the child; or
 - (k) Failure to meet annual training requirements, if applicable.
- (3) The narrative of the review shall contain:
 - (a) Identifying information;
 - (b) Current composition of the household;
 - (c) Description of the situation that initiated the review;
 - (d) An evaluation of the foster or adoptive home's family functioning to determine if the child's needs are met; and
 - (e) A plan for corrective action that may include a recommendation for closure of the foster or adoptive home.

Section 16.~~[Section 44.]~~ Closure of an Approved Foster or Adoptive Home.

- (1) A foster or adoptive home shall be closed if:
 - (a) Cabinet staff determines that the family does not meet the general requirements~~[, as specified in Sections 2 and 3]~~ of this administrative regulation, for a foster or adoptive home;
 - (b) A situation exists that is not in the best interest of a child;
 - (c) Sexual abuse or exploitation by the foster or adoptive parent or by another resident of the household is substantiated;
 - (d) Substantiated child abuse or neglect by a resident of the household occurs that is serious in nature or warrants removal of a child;
 - (e) A serious physical or mental illness develops that may impair or preclude adequate care of the child by the foster or adoptive parent; or
 - (f) The cabinet has not placed a child in the home within the preceding twelve (12) months, unless a written exception is provided by the service region administrator or designee.
- (2) A foster or adoptive home may be closed according to the

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terms of the contract between the cabinet and the foster or adoptive home.

(3) If it is necessary to close an approved foster or adoptive home, the reason shall be stated by cabinet staff in a personal interview with the family, unless the family refuses or declines the personal interview.

(4) The cabinet shall:

(a) Confirm, in a written notice to the foster or adoptive parent, the decision to close a home;

(b) Deliver the notice to the foster or adoptive home within fourteen (14) calendar days of the interview with a foster or adoptive parent; and

(c) Submit closure information, including the cause for closure pursuant to subsection (1) of this section, in the foster care registry.

(5) The written notice for closure of a foster or adoptive home shall include:

(a) Notice that the cabinet shall not place a child in the home; and

(b) The reason why the foster or adoptive home is being closed.

Section 17.~~[Section 15.]~~ Reapplication.

(1) A former foster or adoptive home parent whose home was closed pursuant to Section 16~~[14]~~(1)(a) through (f) of this administrative regulation may be considered for reapproval if the cause of closure has been resolved.

(2) To reapply, a former foster or adoptive parent shall:

(a) Make a formal inquiry to the cabinet~~[Attend an informational meeting]~~; and

(b) Meet the requirements of:

1. Section 2 or 3 of this administrative regulation; and

2. Section 5 of this administrative regulation~~[Submit the:]~~

~~[1.] [Names of references specified in Section 2(13) of this administrative regulation; and]~~

~~[2.] [Authorization for criminal records release specified in Section 2(17) of this administrative regulation].~~

(3) A reapplying former foster or adoptive parent shall reenroll and complete training requirements, as specified in Section 8~~[6]~~ of this administrative regulation, unless:

(a) The former foster or adoptive parent has previously completed training requirements, as specified in Section 8~~[6]~~(5) of this administrative regulation; and

(b) An exception to reenrollment is provided by designated cabinet staff that have ascertained that the former foster or adoptive parent otherwise meets the necessary skill level.

(4) The foster care registry requirements of Section 8~~[6]~~ of this administrative regulation shall be met.

Section 18.~~[Section 16.]~~ Placement Considerations.

(1) Unless an exception is approved pursuant to subsections (2) or (3) of this section because a placement is in the best interest of the child and specific support services shall be provided, the requirements established by this subsection shall apply to foster homes.

(a) More than six (6) children, including children under the custodial control of the cabinet and the foster parent's own children living in the home, shall not reside in a foster home.

(b) More than two (2) children under age two (2), including children under the custodial control of the cabinet and the foster parent's own children living in the home, shall not reside in a foster home.

(c) A child with medical complexity shall be placed in an approved medically complex home.

(2) To request an exception to the criteria established by subsection (1) of this section, cabinet staff shall submit the DPP-112A, DCBS Placement Exception Request, to designated cabinet staff prior to the proposed placement documenting:

(a) The reason the placement is in the best interest of the child; and

(b) Specific support services to be provided.

(3) The number of foster children residing in a foster family home may exceed the limitation established in subsection (1)(a) of this section with documentation on the DPP-112A in order to allow:

(a) A parenting youth in foster care to remain with the child of

the parenting youth;

(b) Siblings to remain together;

(c) A child with an established meaningful relationship with the family to remain with the family;

(d) A family with special training or skills to provide care to a child who has a severe disability; or

(e) Other circumstances noted in the DPP-112A and approved by the service region administrator or designee.

(4) If an exception to subsection (1) or (2) of this section is necessary for a placement to occur outside of normal business hours:

(a) Cabinet staff shall verbally provide all information contained within the DPP-112A to designated cabinet staff prior to the placement;

(b) A verbal approval from designated cabinet staff shall be required prior to the placement occurring; and

(c) The completed DPP-112A shall be submitted on the first business day following placement.

(5) Cabinet staff shall inform the foster parent of conditions related to the child in accordance with:

(a) KRS 605.090(1)(b); and

(b) KRS 605.090(6).

(6) Cabinet staff shall place a child with higher level needs in an advanced level home or above if a relative or fictive kin placement has not been identified.

(7) A foster or adoptive parent may adopt a child for whom parental rights have been terminated if:

(a) Foster or adoptive parent adoption is determined by cabinet staff to be in the best interest of the child;

(b) The child resides in the foster or adoptive home; and

(c) Criteria in 922 KAR 1:100 are met.

(8) If a foster or adoptive parent expresses interest in adopting a foster child currently placed in the home and an alternative permanent placement is in the child's best interest, cabinet staff shall meet with the foster or adoptive parent prior to selection of an adoptive home to explain:

(a) Why an alternative permanent placement is in the child's best interest; and

(b) The foster or adoptive parent's right to submit a request to the cabinet to reconsider the recommendation.

Section 19.~~[Section 17.]~~ Requirements for Respite Care Providers.

(1) A respite care provider shall:

(a) Be:

1. An approved foster or adoptive home; or

2. Approved in accordance with subsection (2) of this section; and

(b) Receive preparation for placement of a child, including information in accordance with:

1. KRS 605.090(1)(b); and

2. Section 6~~[4]~~(1)(e) through (g) of this administrative regulation, if the child is designated as medically complex.

(2) If a foster or adoptive parent chooses a respite care provider who is not an approved foster or adoptive home, the respite care provider shall:

(a)

1. Be at least twenty-one (21) years of age;

2. Provide proof of the applicant's United States citizenship or legal immigrant status, as described in 8 U.S.C. 1151, 8 U.S.C. 1181, and 42 C.F.R. 435.407;

3. Meet the background check requirements established in 922 KAR 1:490 for the applicant and his or her household; and

4. Meet the requirements of Section 5~~[Meet criteria established in Sections 2(1), (2), (17), (18) and 3]~~ of this administrative regulation if respite care is provided outside the home of the foster or adoptive parent~~[-or]~~

~~[2.] [Meet criteria established in Section 2(1), (2), (17), and (18) of this administrative regulation if respite care is provided inside the home of the foster or adoptive parent]; and~~

(b)

1. If providing respite care for a child described in Section 7~~[5]~~(1)(b) of this administrative regulation, have:

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- a. Child-specific training in the mental health treatment of children or their families; or
 - b. A certificate of completion for twelve (12) hours of care plus training specified in 922 KAR 1:495, Section 6(1); or
 2. If providing respite care for a child with medical complexity or specialized medical complexity:
 - a. Meet training requirements in accordance with 922 KAR 1:495, Section 7;
 - b. Hold a current certificate in first aid;
 - c. Hold a current certificate in infant, child, and adult CPR; and
 - d. Receive child specific training from a health professional or a foster parent who has been trained by a health professional in how to care for the specific medical needs of the child.
- (3) A respite care provider:
- (a) May attend pre-service training as specified in Section 8[6] of this administrative regulation; and
 - (b) Shall comply with Sections 18[46] and 19[47] of this administrative regulation.

Section 20.~~[Section 18.] [Waiver Review Process.]~~

~~[(1)] [The department may waive requirements for a relative or fictive kin seeking approval as a child specific foster home if the removal of those requirements does not jeopardize the health, safety, or welfare of the child being placed.]~~

~~[(2)] [The department shall not grant a waiver to the requirements established in the following sections of this administrative regulation:]~~

~~[(a)] [Section 2, subsections (1)(a) through (7), (10) through (12), (16) through (18); or]~~

~~[(b)] [Section 3, subsections (1) through (5), (6)(b), (7) through (10)(c), (10)(e) through (10)(f), (11) through (18).]~~

~~[(3)] [An applicant may request a waiver of non-safety standards. A representative of the department shall submit a written request that states the:]~~

~~[(a)] [Specific provision(s) for which a waiver is requested; and]~~

~~[(b)] [Justification for the requested waiver.]~~

~~[(4)] [A child specific foster home that seeks approval as a basic foster home or higher level shall complete all prior waived training and meet the requirements established in Sections 2 and 3 of this administrative regulation.]~~

~~[Section 19.]~~ Emergency Preparedness. Each foster home shall submit an emergency preparedness plan to the department that would allow the department to identify, locate, and ensure continuity of services to children who are in the custody of the cabinet.

Section 21.~~[Section 20.]~~ Maintenance of a Foster Care Record.

(1) The cabinet shall maintain a record on each foster home, including medically complex foster homes and care plus foster care homes, if applicable.

(2) A foster home's record shall be maintained in conformity with existing laws and administrative regulations pertaining to confidentiality, pursuant to KRS 199.430(3), 199.802, and 45 C.F.R. Parts 160 and 164.

(3) A foster home may request and receive documentation from their record.

Section 22.~~[Section 21.]~~ Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "DPP-107, Health Information Required for Foster or Adoptive Parents, Applicants, or Adult Household Members", 10/15;

(b) "DPP-108, Health Information Required for Foster or Adoptive Parents or Applicants Regarding Dependent Children", 10/15; and

(c) "DPP-112A, DCBS Placement Exception Request", 11/22.

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

LESA DENNIS, Commissioner
ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: June 20, 2024

FILED WITH LRC: July 1, 2024 at 10:45 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 26, 2024, at 9:00 a.m. using the CHFS Office of Legislative and Regulatory Affairs Zoom meeting room. The Zoom invitation will be emailed to each requestor the week prior to the scheduled hearing. Individuals interested in attending this virtual hearing shall notify this agency in writing by August 19, 2024, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends virtually will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until August 31, 2024. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

CONTACT PERSON: Krista Quarles, Policy Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-7476; fax 502-564-7091; email CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes criteria for public agency foster homes, adoptive homes, and respite care providers caring for foster or adoptive children.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish standards for public agency foster parents, adoptive parents, and respite care providers who care for children in the custody of the cabinet.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 194A.050(1), 199.472(1), and 605.100(1) require the cabinet to promulgate administrative regulations necessary to operate programs to fulfill the responsibilities vested in the cabinet; arrange programs designed to provide for classification, segregation, and specialized treatment of children according to their respective needs; and promulgate administrative regulations to establish the process of determining an applicant's capacity for foster or adoptive parenthood.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing criteria for public agency foster parents, adoptive parents, and respite care providers.

(2) If 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 establishes separate standards for nonfamilial foster or adoptive parent applicants and relative or fictive kin foster or adoptive parent applicants. This will result in relative and fictive kin caregivers having a more streamlined process to becoming foster or adoptive homes. This will also result in a less burdensome process for department staff reviewing and approving applicants. Federal standards have waived non-safety requirements for relative or fictive kin applicants. "Child specific" language is also being deleted as these foster homes will be referred to as relative or fictive kin foster homes, consistent with other amended administrative regulations.

(b) The necessity of the amendment to this administrative regulation: 45 C.F.R. 1355.20 was amended to allow states to establish foster family home licensure or approval standards for relative or fictive kin foster family homes that are different from non-relative or nonfamiliar foster homes. Federal guidance was received and Kentucky submitted a state plan amendment to comply with

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federal rules. This amendment is necessary to comply with the state plan, be consistent with federal law, and streamline the foster home approval process for relative and fictive kin caregivers. This amendment is also necessary to update the administrative regulation for consistency with other regulatory actions that establish the new subsidized permanent custody permanency option.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 194A.050(1) requires the cabinet to promulgate, administer, and enforce programs mandated by federal law or to qualify for the receipt of federal funds. KRS 199.472(1) requires the cabinet to promulgate administrative regulations to establish the process of determining an applicant's capacity for foster or adoptive parenthood.

(d) How the amendment will assist in the effective administration of the statutes: The amendment ensures that cabinet staff are meeting state and federal requirements related to public foster and adoptive homes.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: As of April 7, 2024, there were 2,684 children placed in public (cabinet) foster homes, which was 33% of the children in the cabinet's custody. Of these, 428 children were placed in relative or fictive kin foster homes.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: There will be no new or additional action required on the part of regulated entities as a result of this amendment.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This amendment does not negatively or positively impact foster or adoptive homes.

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

(a) Initially: Staff are already meeting the additional administrative requirements required by this amendment. There are no costs associated with this amendment.

(b) On a continuing basis: Staff are already meeting the additional administrative requirements required by this amendment. There are no costs associated with this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The administration of this program is partially reimbursable with federal Title IV-E dollars of the Social Security Act and otherwise funded by General Funds.

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

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

(9) TIERING: Is tiering applied? (Explain why or why not) Tiering is not applied as this administrative regulation is applied in a like manner statewide.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 16 C.F.R. 1219-1220, 45 C.F.R. Parts 160, 164, 8 U.S.C. 1151, 42 U.S.C. 671

(2) State compliance standards. KRS 194A.050(1), 199.472(1), 605.100(1)

(3) Minimum or uniform standards contained in the federal mandate. 16 C.F.R. 1219-1220, 45 C.F.R. Parts 160, 164, 8 U.S.C. 1151, 42 U.S.C. 671

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those

required by the federal mandate? This administrative regulation does not impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate. This amendment is necessary for compliance with federal law.

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation does not impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate. This amendment is necessary for compliance with federal law.

FISCAL IMPACT STATEMENT

(1) Identify each state statute, federal statute, or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1), 199.472(1), 605.100(1), 16 C.F.R. 1219-1220, 45 C.F.R. Parts 160, 164, 8 U.S.C. 1151, 42 U.S.C. 671.

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: The Cabinet for Health and Family Services, Department for Community Based Services, is impacted by this administrative regulation and administers this program.

(a) Estimate the following for the first year:

Expenditures: No expenditures are expected.

Revenues: This administrative regulation does not generate revenue.

Cost Savings: No cost savings are expected.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? No difference is expected in subsequent years.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): None.

(a) Estimate the following for the first year:

Expenditures: No expenditures are expected. Additional training may be required.

Revenues: This administrative regulation does not generate revenue.

Cost Savings: No cost savings are expected.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? Expenditures, revenues, and cost savings will not differ in subsequent years.

(4) Identify additional regulated entities not listed in questions (2) or (3): Applicants to be public foster or adoptive homes.

(a) Estimate the following for the first year:

Expenditures: Not applicable. This amendment does not require expenditures, it waives non-safety requirements for relative or fictive kin foster or adoptive home applicants.

Revenues: Not applicable.

Cost Savings: Not applicable.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? These are not expected to differ in subsequent years.

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: The amendment waives non-safety requirements for foster or adoptive home applicants that are related or fictive kin to children in the custody of the cabinet. This will result in these caregivers having a more streamlined process to becoming foster or adoptive homes. This is consistent with recent federal standards. There are no costs associated with this amendment.

(b) Methodology and resources used to determine the fiscal impact: There are no costs associated with this amendment.

(6) Explain:

(a) Whether this administrative regulation will have an overall negative or adverse major economic impact to the entities identified in questions (2) - (4). (\$500,000 or more, in aggregate) This administrative regulation will not have an overall negative or adverse major economic impact to entities. It will result in relative or fictive kin foster or adoptive applicants having a more streamlined approval process.

(b) The methodology and resources used to reach this conclusion: There are no costs associated with this amendment.

AMENDED IN-PROCESS EMERGENCY ADMINISTRATIVE REGULATIONS

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

STATE BOARD OF ELECTIONS
(Emergency Amended at ARRS Committee)

31 KAR 2:010E. Preparation of ballots and voting systems prior to election day.

EFFECTIVE: July 9, 2024

Prior Versions:

Emergency Amendment - 50 Ky.R. 2147

RELATES TO: KRS 116.025, 116.065, ~~117.001~~~~117.075~~, 117.085(5), 117.125, 117.145, 117.155, 117.165, 117.175, 117.195, 117.205, 117.255, 117.275, ~~[117.285, 117.375,]~~117.377, 117.379, ~~[117.381,]~~117.383, 117.385, ~~[117.387,]~~117.389, 117.391, 117.393, 118.015, 118.025, 118.215(1), 118.770, 118A.010, 119.005, 424.290

STATUTORY AUTHORITY: KRS 117.015(1)(a), 117.383

NECESSITY, FUNCTION, AND CONFORMITY: KRS 117.015(1)(a) authorizes the State Board of Elections to promulgate administrative regulations necessary to administer the election laws of the state. KRS 117.383(4) requires the State Board of Elections to promulgate ~~rules and~~ administrative regulations to ~~achieve and~~ maintain the maximum degree of correctness, impartiality, and efficiency of the procedures of voting. KRS 117.383(1)(2) requires the State Board of Elections to promulgate ~~rules and~~ administrative regulations to count, tabulate, and record votes. KRS 117.383(2)(3) requires the State Board of Elections to promulgate ~~rules and~~ administrative regulations to establish a method for placing items on any ballot ~~the electronic voting device~~, which shall, as closely as possible, follow the requirements pertaining to ballots ~~ballot labels~~. KRS 117.383(5)(6) requires the State Board of Elections to promulgate ~~rules and~~ administrative regulations to provide for checking the accuracy of the voting system equipment. This administrative regulation establishes the procedures for the county clerk and the county board of elections to follow in preparing the ballots and the voting systems prior to each election.

Section 1. Definitions.

(1) "Accuracy Board" means the county board of elections, or at least two (2) individuals appointed by the county board of elections, assigned with the duty of overseeing the accuracy testing of the voting machines and the voting systems required by 31 KAR 2:020.

(2) "Accuracy test" means the procedures established by 31 KAR 2:020 for checking the accuracy of the voting system equipment required by KRS 117.383(5)(6), and the testing of the automatic tabulating equipment and voting systems required by KRS 117.389.

(3) "Ballot accountability statement" means a form created by the county clerk in accordance with Section 4 of this administrative regulation.

(4) "Ballot template" means a printout created by the program administrator of the voting systems that shows the results of the steps taken by the program administrator to place all candidates, races, and ballot questions on each ballot based on the information provided by the county clerk.

(5) "Certification" means the information provided by the county clerk to the program administrator that includes an accurate listing of all federal, state, county, and local candidates, offices and ballot questions to be placed on the ballot for each voting machine or voting system for each precinct within five (5) days of receiving the certification of candidates by the Secretary of State, pursuant to KRS 118.215(1), or immediately after receiving the Secretary of State's certification pursuant to KRS 118.770.

(6) "Program administrator" means the county clerk or authorized assistant designated to configure the voting machines and voting systems.

(7) "Scan voting system" means a tabulating device that reads paper ballots by electronically detecting voters' marks.

(8) "Voting machine" means hardware, which is a component of the voting system, used or relied upon by a voter in casting and recording his or her votes in a precinct in an election, which has been approved by the State Board of Elections for use in elections in the Commonwealth of Kentucky pursuant to KRS 117.379~~–and 117.381~~.

(9) "Voting system" means a system of components of hardware and software, including the voting machine, used by a voter to cast a ballot and by the election officials to tabulate the votes on election day, which has been approved by the State Board of Elections for use in elections in the Commonwealth of Kentucky pursuant to KRS 117.379~~–and 117.381~~.

(10) "Zero-file" means a computer-based electronic file type listing all electoral contests and questions, displaying precinct-by-precinct vote totals registering as zero, which includes all candidates, offices, and ballot questions in the order under which they have been certified pursuant to KRS 118.215(1) or KRS 118.770, for all mail-in absentee ballots, excused in-person absentee ballots, no-excuse in-person absentee ballots, and election day ballots.

Section 2. Preparation of Each Voting Machine and Voting System.

(1) The county clerk shall designate a program administrator to configure the voting machines and voting systems for each election.

(2)

(a) Within five (5) days of receiving the certification of candidates by the Secretary of State, pursuant to KRS 118.215(1), or immediately after receiving the Secretary of State's certification pursuant to KRS 118.770, the county clerk shall provide a certification to the program administrator that includes an accurate listing of all federal, state, county, and local candidates, offices, and ballot questions.

(b) The program administrator shall place the information in the certification in the ballot template for each voting system and precinct.

(3) The program administrator, if other than the county clerk, shall provide a ballot template for each ballot to the county clerk not less than three (3) days before the deadline for printing ballots established in KRS 117.085(5) and 117.145(1).

(4) The county clerk shall compare the prepared ballots and ballot screens, if applicable, for each voting system with the ballot template and the certification supplied by the county clerk to the program administrator to ascertain that all federal, state, county, and local candidates, offices and ballot questions shall be the same as listed on the certification and shall appear in the correct positions.

(5) Once the county clerk has ascertained that all federal, state, county, and local candidates, offices and ballot questions are the same as listed on the certification and appear in the correct position, the program administrator shall electronically transmit to the State Board of Elections a zero-file in a format designated by the State Board of Elections.

(6) The county clerk shall provide the ballot templates to the county board of elections or designated Accuracy Board prior to the conduct of the accuracy tests required by 31 KAR 2:020.

~~(7)(6)~~ The county board of elections, or designated review board, shall review the ballot template and the certification supplied by the county clerk to the program administrator to ascertain that all federal, state, county, and local candidates, offices and ballot questions shall be the same as listed on the certification and shall appear in the correct positions prior to the conduct of the accuracy tests required by 31 KAR 2:020.

~~(8)(7)~~ The county clerk shall review and verify the audio ballots to be placed on the accessible voting systems by listening to the

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audio ballot through a headset to ensure proper pronunciation of all candidate names and to confirm that all federal, state, county, and local candidates, offices and ballot questions shall be the same as listed on the certification and shall appear in the correct positions.

Section 3. Number of Ballots to be Printed. In addition to the requirements established in KRS 117.145, the county clerk shall provide a sufficient number of printed ballots for each precinct in a county that uses scan voting systems for each election. The number of ballots required to be printed and distributed to each precinct with scan voting systems shall be determined as follows:

(1) For a primary, the number of ballots shall be at least ten (10) percent more than the total number of votes cast in each party's primary and nonpartisan race in the most recent presidential primary election;

(2) For the general election, the number of ballots shall be at least ten (10) percent more than the total number of votes cast in the most recent general election in which votes were cast for the electors for the President of the United States; and

(3) For a special election, the number of ballots shall be a sufficient number as determined by the county clerk considering the number of registered voters in the precinct and the type of special election to be held.

Section 4. Preparation and Delivery of Ballots.

(1) The county clerk shall place into a container the paper ballots, if applicable, for each precinct.

(2) The container shall be secured with a seal and contain a certificate signed by the county clerk recording the total number of ballots in the container and that the ballots were counted and sealed by the county clerk.

(3) Ballots not issued to a precinct or assigned for absentee voting shall be secured and accounted for by the county clerk.

(4) The county clerk shall maintain a record of the number of ballots and serial numbers of the voting systems issued to each precinct.

(5) If using paper ballots for a scan voting system, the county clerk shall create a ballot accountability statement to be provided along with the ballots to each precinct that includes ~~the following~~:

(a) In a primary, an accounting of the total number of ballots for each party primary and nonpartisan race submitted to the precinct to be completed by the county clerk;

(b) In a general election, an accounting of the total number of each type of ballot submitted to the precinct to be completed by the county clerk;

(c) An oath for the county clerk to sign attesting to the accuracy of the information provided by the county clerk on the statement;

(d) An accounting of the total number of ballots used, unused, and spoiled on election day to be completed by the precinct election clerk and signed by all four (4) precinct election officers;

(e) An accounting of the total number of ballots returned to the county clerk at the end of the election day to be completed by the precinct election clerk;

(f) A section that allows for the precinct election clerk to explain any discrepancies; and

(g) An oath for the precinct election officers to sign attesting to the accuracy of the information provided on the statement.

FILED WITH LRC: July 9, 2024

CONTACT PERSON: Taylor Brown, General Counsel, 140 Walnut Street, Frankfort, Kentucky 40601, phone (502) 782-9499, email TaylorA.Brown@ky.gov.

STATE BOARD OF ELECTIONS
(Emergency Amended at ARRS Committee)

31 KAR 3:041E. Electronic Voter Registration System.

EFFECTIVE: July 9, 2024

Prior Versions:

New Emergency Administrative Regulation - 50 Ky.R. 2150

RELATES TO: KRS 116.045, 116.0452, 116.065, 116.155, 118.025

STATUTORY AUTHORITY: KRS 116.045(4)(e), 117.015(1)(a)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 117.015(1) requires the State Board of Elections to supervise the registration of voters within the state. KRS 116.045(4)(e) ~~authorizes~~~~provides that~~ a person ~~to~~~~may~~ register to vote or change party affiliation by methods of registration or reregistration approved by the State Board of Elections. KRS 117.015(1)(a) authorizes the State Board of Elections to promulgate administrative regulations necessary to properly carry out its duties. This administrative regulation approves and establishes procedures for use of an electronic voter registration system to register or reregister to vote or to update voter registration information.

Section 1. Definition. "Applicant" means a person who uses the electronic voter registration system established by the State Board of Elections to register or reregister to vote or to update voter registration information.

Section 2. Use of Electronic Voter Registration System.

(1) The State Board of Elections shall, as funds permit, establish an electronic voter registration system by which persons may register or reregister to vote or update voter registration information.

(2) ~~Pursuant~~~~in addition~~ to ~~the methods set forth in~~ KRS 116.045(4)(e), a person who meets all eligibility requirements may register or reregister to vote or update voter registration information by using the electronic voter registration system ~~as~~ established by the State Board of Elections ~~under~~~~pursuant to~~ this administrative regulation.

Section 3. Contents of Electronic Voter Registration System Application Form. The electronic voter registration system application shall:

(1) Include the electronic equivalent of the Commonwealth of Kentucky Voter Registration Application form prescribed and furnished by the State Board of Elections under KRS 116.155, including a warning relating to the potential penalties applicable to an applicant knowingly filing an application with untrue information and a voter declaration affirmation as required by KRS 116.065;

(2) Require the applicant who has a Kentucky driver's license or Kentucky personal identification card to:

(a) Agree to the use of his or her Kentucky driver's license signature or Kentucky personal identification card signature for voter registration purposes; and

(b) Provide his or her Kentucky driver's license number or Kentucky personal identification card number; ~~and~~[-]

(3) Require the applicant who does not have a Kentucky driver's license or Kentucky personal identification card, to either:

(a) Provide an electronic signature to be used for voter registration purposes; or

(b) Print the registration application, sign it, and return it to the county clerk for the county in which the applicant resides.

Section 4. Processing the Commonwealth of Kentucky Voter Registration Application Submitted Via the Electronic Voter Registration System.

(1) The electronic voter registration system shall not allow an applicant to submit an application unless:

(a) The entire application form, including the voter declaration affirmation as required by KRS 116.065, is completed by the applicant; and

(b) The applicant has either:

1. Agreed to the use of his or her Kentucky driver's license signature or Kentucky personal identification card signature for voter registration purposes and provided his or her Kentucky driver's license number or Kentucky personal identification card number pursuant to Section 3(2) of this administrative regulation; or

2. Provided an electronic signature to be used for voter registration purposes pursuant to Section 3(3)(a) of this administrative regulation.

(2) Immediately upon the applicant's submission of an application that meets the requirements of subsection (1) of this section, the State Board of Elections shall:

(a) If the applicant agreed to the use of his or her Kentucky driver's license signature or Kentucky personal identification card signature for voter registration purposes and provided his or her

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Kentucky driver's license number or Kentucky personal identification card number pursuant to Section 3(2) of this administrative regulation:

1. Check the information submitted by the applicant to ensure that the Kentucky driver's license number or Kentucky personal identification card number submitted by the applicant matches the information maintained by the Transportation Cabinet; and

2. If a match is made:

a. Electronically forward the information provided in the application, along with a digital copy of the applicant's signature obtained from the Transportation Cabinet, to the county clerk for the county in which the applicant resides; and

b. Notify the applicant that the application has been electronically forwarded to the county clerk for the county in which the applicant resides, but that the applicant shall/will not be officially registered to vote or that changes to the applicant's existing registration shall/will not be made until the application is received and processed by the county clerk.

3. If a match cannot be made, notify the applicant that the application cannot be processed and instruct the applicant to print the application, sign it, and mail or hand deliver it to the county clerk for the county in which the applicant resides.

(b) If the applicant provided an electronic signature to be used for voter registration purposes pursuant to Section 3(3)(a) of this administrative regulation:

1. Electronically forward the information provided in the application, along with the applicant's electronic signature, to the county clerk for the county in which the applicant resides; and

2. Notify the applicant that the application has been electronically forwarded to the county clerk for the county in which the applicant resides, but that the applicant shall/will not be officially registered to vote or that changes to the applicant's existing registration shall/will not be made until the application is received and processed by the county clerk.

(3) An electronic voter registration application shall be deemed to have been made and received by the appropriate county clerk as of the date the applicant is informed pursuant to subsection (2) of this section that the application has been electronically forwarded to the county clerk for the county in which the applicant resides.

(4) Except as otherwise specifically provided, an electronic voter registration application electronically forwarded by the State Board of Elections shall be considered an application for registration by mail.

Section 5. Incorporation~~Incorporated~~ by Reference.

(1) "Commonwealth of Kentucky Voter Registration Application," Form SBE 01, 04/2024, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the State Board of Elections, 140 Walnut Street, Frankfort, Kentucky ~~Frankfort, Kentucky~~ 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available on the board's Web site at <https://elect.ky.gov>.

FILED WITH LRC: July 9, 2024

CONTACT PERSON: Taylor Brown, General Counsel, 140 Walnut Street, Frankfort, Kentucky 40601, phone (502) 782-9499, email TaylorA.Brown@ky.gov.

STATE BOARD OF ELECTION (Emergency Amended at ARRS Committee)

31 KAR 4:031E. Reporting.

EFFECTIVE: July 9, 2024

Prior Versions:

New Emergency Administrative Regulation - 50 Ky.R. 2152

RELATES TO: KRS 117.085, 117.086, 117.235, 117.255, 117.265, 117.275, 117.355, 118.025, 118.215, 118.425, 118.770, 119.307

STATUTORY AUTHORITY: KRS 117.015(1)(a), 117.086(5), 117.275(15), 117.355(4), 118.425(4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 117.015(1)(a) authorizes the State Board of Elections to promulgate administrative regulations necessary to implement the provisions of

KRS Chapter 117. KRS 117.355~~(4)~~ requires the State Board of Elections to prescribe the forms for the precinct election sheriff and the county board of elections to report election irregularities and recommendations for improving the election process, to report special ballot and voter assistance usage statistics, and to report other information required by the state board. KRS 117.086(5) requires the State Board of Elections to prescribe a form on which the county board of elections shall report the number of rejected absentee ballots and the reasons for rejection of those ballots. KRS 118.425(4) requires the State Board of Elections to prescribe a form by which the county board of elections shall make out duplicate certificates of the total number of votes received by each of the candidates for office and the total number of votes for an against each of the ballot questions. KRS 117.275(15) requires a secure online connection be available for the transmission of unofficial election results from county boards of election to the State Board of Elections following the tallying of votes. This administrative regulation establishes the procedure and forms for the county clerk, the county board of elections, and the precinct election sheriff to report election and voting data after the election.

Section 1. ~~The following~~ Reporting forms shall be filed and pursuant to in accordance with the referenced statutes:

(1) ~~Pursuant to~~ KRS 117.355(1), the precinct election sheriff shall file the Precinct Election Sheriff's Post-election~~Postelection~~ Report, SBE 53, with the chair of the county board of elections and the local grand jury;

(2) ~~Pursuant to~~ KRS 117.355(2), the county board of elections~~election~~ shall file the County Board of Elections Post-election~~Postelection~~ Report, SBE 54, with the State Board of Elections and the local grand jury;

(3) ~~Pursuant to~~ KRS 117.275(7) and 117.355(2), the county board of elections shall file the County Board of Elections Post-election~~Postelection~~ Statistical Report, SBE 54A, with the State Board of Elections;

(4) ~~Pursuant to~~ KRS 117.355(2), the county board of elections shall file the County Board of Elections Precinct Election Officials Absence Report, SBE 54B, with the State Board of Elections;

(5) ~~Pursuant to~~ KRS 117.275(12) and 117.086(4)(c), the county clerk shall file the County Board of Elections Provisional Ballots Issued to Voters and Counted, SBE 54C, with the State Board of Elections.

(6) ~~Pursuant to~~ KRS 117.086(4)(a)-(b), the county clerk shall file the Absentee Ballot Report, SBE 33A, with the State Board of Elections;

(7) ~~Pursuant to~~ KRS 117.086(5), the county board of elections shall file the Number of Rejected Absentee Ballots and Reasons for Rejected Ballots, SBE 33B; and

(8) ~~Pursuant to~~ KRS 117.275(11)-(12) and 118.425(4), the county board of elections shall file the Certification Official Count and Record of Election Totals, SBE 49, with the Secretary of State.

Section 2. Any form described in Section 1 of this administrative regulation that is capable of being recorded or filled automatically through the State Board of Elections' Voter Registration System may be deemed by the State Board of Elections as being transmitted following the successful capture of all required information by the Voter Registration System.

Section 3.

(1) Pursuant to KRS 117.275(15), the State Board of Elections shall develop and maintain a platform with a secure online connection for the transmission of unofficial election results from county boards of election to the State Board of Elections following the tallying of votes for all primary, and regular elections, as well as special elections for statewide office, the General Assembly, and the United States Congress.

(2) Beginning at 6:00 p.m., prevailing time, on the day of a primary or regular election, as well as a special election for statewide office, the General Assembly, and the United States Congress, county boards of election shall use the secure online platform maintained by the State Board of Elections to transmit their county's unofficial election tally. The unofficial vote tally transmitted shall

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include precinct-by-precinct totals from counts of all mail-in absentee ballots, excused in-person absentee ballots, no-excuse in-person absentee ballots, and election day ballots, and shall include totals for those candidates who have filed a declaration of intent to be a write-in candidate pursuant to KRS 117.265(2). Unofficial vote tallies transmitted using the secure online platform shall be transmitted using a computer-file-type and format selected by the State Board of Elections, which shall be selected following the certification of candidates by the Secretary of State pursuant to KRS 118.215(1), or immediately after receiving the Secretary of State's certification pursuant to KRS 118.770.

(3) The State Board of Elections shall display the tally information received from the county boards of election through the secure online transmittal platform on a secure ~~Web site~~~~[website]~~ freely available to the general public. The display shall list precinct-by-precinct tallies for all candidates and questions, but shall only list a candidate's precinct absentee vote totals as cumulative.

(4) County boards of election or county clerks shall verify with the State Board of Elections that their county's unofficial vote tally has been successfully transmitted to the State Board of Elections no later than six (6) hours after the close of polls. ~~If Should~~ a county's tally ~~is not completed~~~~[be complete]~~ six (6) hours after the close of polls, a representative of the county clerk's office shall update the State Board of Elections by telephone as to the status of the tally transmittal at the end of the sixth hour and then subsequently at the top of each following hour unless the transmittal is completed before ~~that~~~~[such]~~ time.

Section 4. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Precinct Election Sheriff's ~~Post-election~~~~[Postelection]~~ Report", SBE 53, 04/2024;

(b) "County Board of Elections Post-election Report", SBE 54, 04/2024;

(c) "County Board of Elections Post-election Statistical Report", SBE 54A, 04/2024;

(d) "County Board of Elections Precinct Election Officials Absence Report", SBE 54B, 04/2024 [~~September 2002~~];

(e) "County Board of Elections Provisional Ballots Issued to Voters and Counted", SBE 54C, 04/2024;

~~(f)~~ "Absentee Ballot Report", SBE 33A, 04/2024;

~~(g)~~~~(f)~~ "Number of Rejected Absentee Ballots and Reasons for Rejected Ballots", SBE 33B, 04/2024; and

~~(h)~~~~(g)~~ "Certification Official Count and Record of Election Totals", SBE 49, 04/2024.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the State Board of Elections, 140 Walnut Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material may also be obtained on the board's Web site at <https://elect.ky.gov>.

FILED WITH LRC: July 9, 2024

CONTACT PERSON: Taylor Brown, General Counsel, 140 Walnut Street, Frankfort, Kentucky 40601, phone (502) 782-9499, email TaylorA.Brown@ky.gov.

STATE BOARD OF ELECTION
(Emergency Amended at ARRS Committee)

31 KAR 4:220E. Recount procedures.

EFFECTIVE: July 9, 2024

Prior Versions:

New Emergency Administrative Regulation - 50 Ky.R. 2154

RELATES TO: KRS ~~62.020, 117.035, 118.025,~~ 120.095, 120.157, 120.185, 120.260, 120.290

STATUTORY AUTHORITY: KRS 117.015(1)(a)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 117.015(1) ~~requires~~~~[establishes]~~ the State Board of Elections, as ~~an~~~~[the]~~ independent agency of state government, ~~to which shall~~ administer the election laws of the state. KRS 120.095, 120.157, 120.185, 120.260, and 120.290 all authorize the post-election recounting of ballots cast, ~~but~~~~[These same statutes]~~ are all largely without procedures for how ~~the~~~~[such an]~~ event is required to

~~occur~~~~[should take place]~~. This administrative regulation establishes procedures for the recounting of ballots ~~for so that~~ ~~there may be~~ an established standard throughout the Commonwealth.

Section 1. Definition. "Recount" means a post-election retallying of ballots cast in a primary, general, or special election, as authorized under KRS 120.095, 120.157, 120.185, 120.260, or 120.290.

Section 2. Locations. Upon identifying that a recount will be taking place, an affected county board of elections shall identify a suitable location, within the county, where the recount can take place.

(1) A suitable location shall be one ~~(1)~~ where all of the voting equipment and ballot boxes required for the recount can be housed in one ~~(1)~~ location and there is ample space for the personnel required for the task and all authorized observers, who shall have a dedicated area within the location to witness the recount.

(2) If a recount is to occur pursuant to KRS 120.290, the Franklin County Clerk shall assist the Franklin Circuit Court in finding a location for the commencing of the recount ~~if should~~ the Court ~~finds~~~~[find]~~ the courthouse at Frankfort unsuitable for the event.

Section 3. Recount Personnel.

(1) Pursuant to KRS 117.035(5), an affected county board of elections may employ a bipartisan staff sufficient to carry out the duties of the recount. Once a county board identifies that a recount will be taking place, the board shall immediately seek out citizens of the county who may wish to work for the county board on a temporary basis as recount officials.

(2) County boards shall recruit enough citizens of the county to work as recount officials so that the recount may be completed before any statutory deadline.

(a) Citizens hired to work as recount officials shall be registered voters of the county in which they desire to work.

(b) Recount officials shall be paid an hourly wage for their work during the entirety of the recount process. The hourly wage shall be set uniformly for all recount officials by the county board of elections at a rate that is both prevailing in the jurisdiction at the time for the type of work to be done and that is high enough to entice applicants qualified for ~~[such]~~ a short-term, temporary assignment.

(c) Before any recount official shall be allowed to work, the individual shall take the oath found in Section 228 of the Kentucky Constitution, which shall be administered by any officer authorized under KRS 62.020.

Section 4. Procedures as to Election Vendors.

(1) Upon identifying that a recount will be taking place, county clerks shall work with their voting equipment vendors to begin programming, distributing, and setting the voting equipment necessary for the recount.

(2) Election equipment shall be set to isolate the race or question subject to the recount and the straight-party option, if applicable.

Section 5. Initiating the Recount.

(1) Before recount proceedings may begin, on the day fixed for the recount, the county board of elections shall meet to confirm the integrity of the ballots subject to the recount.

(2) The confirmation of the integrity of the ballots shall be reflected in the recorded minutes of the meeting of the county board of elections.

(3) Absent a showing of clear and convincing evidence that the ballots have been purposefully disturbed and tampered with, the integrity of the ballots shall be proven.

Section 6. Securing the Integrity of the Recount.

(1) Before members of the recount teams shall be allowed to handle individual ballots, each member shall present their hands and fingernails to the members of the county board of elections for visual inspection. Before proceeding to handle ballots, county board of elections members shall confirm that each recount official's hands and fingernails are clean enough so as to not transfer any ink, lead, or other markings onto the ballots.

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(2) Only red ink pens, a blank pad of paper, and manilla envelopes large enough to contain multiple ballots shall be allowed in any area in the direct proximity of voting equipment or ballots during the counting of ballots.

(3) The use of cell phones or other electronic devices shall not be permitted within the direct proximity of voting equipment or ballots. Any capturing of photographic or video images of ballots shall be prohibited.

(4) ~~[No]~~ Food or drink shall not be permitted in any area in the direct proximity of voting equipment or ballots without prior authorization from the county board of elections.

Section 7. Before Voting Equipment is Opened.

(1) The county board of elections or the county clerk shall split the recount officials into recount teams of two (2) so that each team contains individuals registered of differing political party affiliations.

(2) Each recount team shall be assigned to only one (1) piece of voting equipment at any one (1) time, ~~and at no~~ piece of voting equipment shall not have more than one (1) recount team operating it at any one (1) time.

(3) Before a piece of voting equipment is opened by a recount team, the information from the voting equipment's Machine Verification Form shall be transposed onto the Form SBE 82, Recount Tabulation Form.

Section 8. Opening the Voting Equipment.

(1) Once a recount team opens a piece of voting equipment, the seal number, beginning counter number, and lifetime counter number shall be checked to match the Machine Verification Form.

(2) Once the ballot box or tub containing the ballots is opened, the seal number shall be recorded on the Form SBE 82, Recount Tabulation Form.

(3) ~~Each~~Every ballot from the ballot box or tub shall be removed and placed on a segregated table next to the voting equipment, and the broken seal shall be placed inside the ballot box or tub. ~~[At no point shall]~~ Ballots from one (1) ballot box or tub shall not be comingled with any other materials, including ballots from another ballot box or tub. ~~[At no time shall]~~ Ballots shall not be left outside of a ballot box or tub unattended.

Section 9. Procedure to Recount Ballots.

(1) ~~Each~~Every ballot removed from a ballot box or tub for a recount shall be scanned back through the piece of voting equipment from which the ballot box or tub was originally associated, one (1) ballot at a time. If a county is in possession of a separate piece of voting equipment designed and regularly used to count larger amounts of ballots, the use of ~~the~~such voting equipment shall be authorized.

(2) Scanned ballots shall be counted by the electronic voting equipment in accordance with 31 KAR 6:030, Section 4(1), and the cumulative totals for each slate of candidates shall be recorded on the Form SBE 82, Recount Tabulation Form ~~[as such]~~.

(3) If a ballot does not scan through the piece of voting equipment on the first attempt, each member of the associated recount team shall attempt to scan the ballot one (1) additional time each. If, after three (3) unsuccessful attempts, a ballot does not scan, it shall be set aside for later adjudication.

(4) Once only those ballots set aside remain, they shall be adjudicated as one (1) of three (3) types: ~~[1]~~

1. An overvote, meaning that upon visual inspection of the ballot, more than one (1) slate of candidates appears to have been selected by the voter; ~~[2]~~

2. An undervote, meaning that upon visual inspection, no slate of candidates appears to have been selected by the voter on the ballot; or ~~[3]~~

3. A damaged ballot, no longer capable of being scanned into the voting equipment because of damage sustained to the physical ballot, but clearly having a selection for only one (1) slate of candidates or that slate's straight-party option.

(5) The number of undervotes, overvotes, and damaged ballots shall be recorded on the Form SBE 82, Recount Tabulation Form ~~[[as such]~~.

(6) The recount officials shall place the cumulative number of

undervotes in a manilla envelope, seal the envelope with tape, label it with the word "undervotes," and then sign it alongside the date and time of their signature. This procedure shall then be followed for envelopes labeled "overvotes" and "damaged ballots." If the cumulative number of undervotes, overvotes, or damaged ballots will not fit inside one (1) manilla envelope, multiple envelopes may be used.

(7) Once the undervotes, overvotes, and damaged ballots are placed in envelopes, the envelopes shall be placed back in the ballot box or tub on top of the ballots already recounted by the electronic voting equipment.

(8) Once a conclusive accounting has been reached for all ballots removed from the ballot box or tub, the voting equipment shall be secured with a seal of a color not previously used in the election, and the serial number of the seal shall be recorded on the Form SBE 82, Recount Tabulation Form.

(9) The Form SBE 82, Recount Tabulation Form shall ~~[then]~~ be signed by the recount team members and all members of the county board of elections.

(10) Once this process is complete for one (1) piece of voting equipment, a recount team may move on to a new piece of voting equipment and begin the process of recounting the ballots found within.

(11)

a. Once all ballots have been counted by the electronic voting equipment and all Form SBE 82, Recount Tabulation Forms have been completed, the county clerk shall scan and email all Form SBE 82, Recount Tabulation Forms to the State Board of Elections.

b. For a recount conducted under KRS 120.157, the State Board of Elections shall examine the statewide Form SBE 82, Recount Tabulation Forms and tally the results submitted.

1. If the tally of results submitted shows that the count of ballots by the electronic voting equipment did not result in a margin of victory of 0.25% or less, the State Board of Elections shall notify each county that their recount is complete.

2. If the tally of results submitted shows that the count of ballots by the electronic voting equipment did result in a margin of victory of 0.25% or less, the State Board of Elections shall tally the total number of overvotes and damaged ballots reported on the submitted Form SBE 82, Recount Tabulation Forms.

3. If the cumulative number of overvotes and damaged ballots is large enough to overcome the machine-established margin of victory, the State Board of Elections shall notify the counties that they are to meet immediately to count the overvotes and damaged ballots.

4. If the cumulative number of overvotes and damaged ballots is not large enough to overcome the machine-established margin of victory, the State Board of Elections shall notify the counties that their recount is complete.

(12) Upon the need for a count of overvotes and damaged ballots, the county board of elections shall meet to remove all manila folders containing overvotes and damaged ballots. Overvotes and damaged ballots shall be adjudicated by the full county board of elections using the procedures described in 31 KAR 6:030, Section 4(2) and (3). Overvotes shall also be subject to the allowances of 31 KAR 6:030, Section 4(4).

(a) Each adjudicated ballot, shall, by majority vote of the county board of elections, result in a vote for either: ~~[1]~~

1. One (1) valid candidate, one (1) valid slate of candidates, or valid answer to a question; ~~[2]~~

2. One (1) valid write-in candidate or slate of candidates; ~~[3]~~

3. No candidate, slate of candidates, or answer to a question.

b. The adjudication of each ballot shall be recorded onto the Form SBE 82, Recount Tabulation Form.

~~[c]~~b. After overvotes and undervotes are adjudicated, they shall be placed, along with the original manila envelope, in a new manila envelope. The county board of elections shall seal the envelope with tape, label it as "overvotes," or "damaged ballots," accordingly, and then sign it alongside the date and time of their signature.

Section 10. Reporting of Recount Totals.

(1) Once every piece of voting equipment has been opened, all ballots have been recounted, and a conclusive recount total for each piece of equipment has been established, the county board of elections shall transfer the totals for each candidate or question from each Form SBE 82, Recount Tabulation Form onto a Form SBE 49, Official Count and Record of Election Totals.

(2) The same totals recorded onto the Form SBE 49, Official Count and Record of Election Totals shall also concurrently be input into an online portal belonging to the Secretary of State ~~if should~~ **such be** available.

(3) The members of the county board of elections shall affix their signatures to the completed Form SBE 49, Official Count and Record of Election Totals, which shall mark the completion of the recount.

(4) Once the Form SBE 49, Official Count and Record of Election Totals is signed, the county board of elections shall fax a copy the document to the office of the Secretary of State, no later than 4:00 p.m., local time, on the day following the completion of the county's recount. Each county clerk shall retain a copy of the completed Form SBE 49, Official Count and Record of Election Totals for their records and mail the original signed copy to the office of the Secretary of State.

Section 11. Reimbursement of Recount Costs. All costs associated with the recount proceedings, including ~~items such as~~ **but not limited to**, personnel expenses and vendor charges, shall be recorded and documented by the county clerk.

Section 12. ~~Incorporation~~ **Incorporated** by Reference.

(1) The following material is incorporated by reference:

(a) "Recount Tabulation Form", Form SBE 82, 04/2024; and

(b) "Official Count and Record of Election Totals", Form SBE 49, 04/2024.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the State Board of Elections, 140 Walnut Street, Frankfort, Kentucky [~~Frankfort, Kentucky~~] 40601, Monday through Friday, 8 a.m. to 4:30 p.m. **This material is also available on the board's Web site at <https://elect.ky.gov>.**

FILED WITH LRC: July 9, 2024

CONTACT PERSON: Taylor Brown, General Counsel, 140 Walnut Street, Frankfort, Kentucky 40601, phone (502) 782-9499, email TaylorA.Brown@ky.gov.

**STATE BOARD OF ELECTION
(Emergency Amended at ARRS Committee)**

31 KAR 5:026E. Ballot standards and election security.

EFFECTIVE: July 9, 2024

Prior Versions:

Emergency Amendment - 50 Ky.R. 2158

RELATES TO: KRS 117.001, 117.025, ~~117.076~~, 117.085, 117.086, 117.0861, 117.087, 117.145, 117.225, 117.228, 117.295(1), 117.365, ~~118.025~~

STATUTORY AUTHORITY: KRS 117.015(1)(a), 117.085, 117.086, 117.087(3)(d), 117.145, 117.228

NECESSITY, FUNCTION, AND CONFORMITY: KRS 117.015(1)(a) authorizes the State Board of Elections to promulgate administrative regulations necessary to properly carry out its duties.

~~KRS 117.085, 117.086, 117.087(3)(d), 117.145, and 117.228~~ **Several Kentucky Revised Statutes in Chapter 117** require the State Board of Elections to promulgate administrative regulations that provide for measures that establish standards for the ballots used during elections, as well as, measures that ensure that votes cast during an election are done so in a free, fair, and secure manner. This administrative regulation provides for those measures.

Section 1. In addition to the requirements for printed ballots established in KRS 117.145, ballots caused to be printed by the county clerk of each county shall meet quality and size standards specific to the voting systems certified by both the State Board of

Elections and the United States Election Assistance Commission.

Section 2. The outer envelope of all mail-in absentee ballots shall bear a barcode or other label that is unique to the individual voter and capable of being read by an electronic optical scanner. The unique barcode or label for each mail-in absentee ballot outer envelope shall be issued by the State Board of Elections. Upon the need to issue a voter a second mail-in absentee ballot pursuant to KRS 117.085(9), the outer envelope of the ~~subsequent~~ second mail-in absentee ballot shall bear a new unique barcode or label.

Section 3.

(1) Upon the time of certification of each candidate and each question to be voted upon, all pre-printed paper ballots shall be secured by the county clerk of each county, under lock and key, in an area under the direct control of the county clerk and approved by the county board of elections.

(2) The possession of all pre-printed ballots shall be accounted for on SBE Form 76, Ballot Reconciliation Statement.

(3) If paper ballots need to be printed at a county clerk's office, an accounting of the printed ballots shall be made on either the SBE Form 76, Ballot Reconciliation Statement, or by the printing equipment.

(4) Upon the transfer of ballots from the area under the direct control of the county clerk to a polling location, the transfer shall be noted on the SBE Form 76, Ballot Reconciliation Statement.

(5) Beginning with the in-person casting of ballots during the period described in KRS 117.076, each voted in-person ballot shall remain in a locked and sealed receptacle, until the conclusion of the period described in KRS 117.295(1).

(6) At the conclusion of each day of voting, an accounting of the number of all voted, unvoted, and spoiled ballots shall be recorded on the SBE Form 76, Ballot Reconciliation Statement.

(7) All ballots and election materials not secured in an area under the direct control of the county clerk after the close of polls shall be secured at the voting location in a secure manner, based upon the advice and recommendations of the county board of elections and the sheriff from the time described in KRS 117.076 until the conclusion of voting on the day of an election.

(8) As mail-in absentee ballots are received by county clerks, they shall have their unique barcode or label scanned.

(9) Upon each mail-in absentee ballot being processed, the unique barcode or label shall be scanned again.

(10) If a mail-in absentee ballot is found to be without the need for a signature cure, or a mail-in absentee ballot has been returned along with a completed SBE Form 77, Discrepant Mail-in Absentee Signature, the ballot shall be recorded into an optical scanner, to be deposited in a locked and sealed receptacle for the period described in KRS 117.295(1).

(11) Any completed SBE Form 76, Ballot Reconciliation Statement shall be turned over to the local Commonwealth's Attorney along with any other materials required under KRS 117.365.

Section 4. A voter who is disabled may request a mail-in absentee ballot via an online accessible ballot portal, which shall conform to web accessible design standards as established by the W3C Web Accessibility Initiative at <https://www.w3.org/WAI/>.

Section 5.

(1) Upon receipt of a valid mail-in ballot request, through the online request portal or other valid request method, the request of the voter shall be noted in the Voter Registration System, and reflected in the electronic pollbooks used by precinct election officers.

(2) If a voter noted to have requested a mail-in absentee ballot appears at a polling location to vote in-person, the precinct election officer shall communicate with the county clerk, who shall make a determination as to whether the requested mail-in absentee ballot has been completed and returned as a cast ballot by the voter.

(3) If the mail-in absentee ballot is found to have been completed and returned as a cast ballot, the voter shall not be permitted to cast an in-person vote.

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(4) If the mail-in absentee ballot is found not to have been completed and returned as a cast ballot and the ballot has been returned to the county clerk no later than seven (7) days prior to the date of the election as required by KRS 117.085(8), the county clerk shall immediately cancel the issued ballot in the Voter Registration System and allow the voter to cast an in-person ballot after the voter completes Form SBE 32, Oath of Voter, copies of which shall be forwarded to the Commonwealth's Attorney.

Section 6.

(1) A voter, or an individual identified by KRS 117.0861(1), may deliver a mail-in absentee ballot to the office of the county clerk in the county where the voter is registered, to a secure ballot drop-box in the county where the voter is registered, or to a secure drop-off receptacle if one (1) is maintained by the county clerk in the county where the voter is registered, rather than mailing the ballot via the United States Postal Service.

(2)

(a) A county choosing to use a receptacle for ballot drop-off other than a drop-box provided by the State Board of Elections, shall formally seek the State Board of Elections' approval of the receptacle before any ballot is allowed to be deposited inside.

(b) A county choosing to utilize a drop-off receptacle shall provide information about the receptacle to the State Board of Elections as required by KRS 117.086(2)(b).

(3) A drop-box or receptacle located outside a County Clerk's Office shall be located, secured, and identified as required by KRS 117.086(2)(c).

(4) A drop-box or receptacle located inside shall be under direct supervision as required by KRS 117.086(2)(d) and shall be clearly marked as for use by voters in the election, so as to differentiate the drop-box or receptacle from any other that may be in use in the area.

(5) Any other non-elections related drop-box in use by a county clerk for any other official business shall clearly indicate that the other drop-box is not for the return of election material.

(6)

(a) The county clerk shall empty the drop box and any receptacle used each business day as required by KRS 117.086(2)(e) and secure the absentee ballots therein in a manner consistent with KRS 117.086(3).

(b) Upon each emptying of a drop-box or receptacle, the individuals collecting absentee ballots pursuant to KRS 117.086(2)(e) shall complete Form SBE 78, Daily Absentee Drop-Box Verification Sheet.

Section 7.

(1) After the receipt of a mail-in absentee ballot by the county clerk, the signature shall be examined in accordance with KRS 117.087(3)(c)2 and 5.

(2) If a signature match cannot be made, notice shall be provided to the voter as required by KRS 117.087(3)(c)5, which shall, at minimum, include the mailing of Form SBE 77, Discrepant Mail-in Absentee Signature.

(3) Upon the county board of elections, central counting board, or the county clerk determining the need for a signature cure, the ballot shall be noted in the Voter Registration System and the county clerk shall, on that same day, input the voter's address and any other required data into the SBE 77 and mail the form to the voter.

Section 8.

~~[(1)] [A voter unable to provide proof of identification as required under KRS 117.225, and as defined under KRS 117.001(15), shall:]~~

~~[(a)] [Meet the requirements of KRS 117.228(1)(c) by executing SBE Form 71, Voter Affirmation Form; and]~~

~~[(b)] [Provide alternative proof of identification as required by KRS 117.228(2).]~~

~~[(2)] [A voter personally known to an election officer may cast a ballot in accordance with KRS 117.228(4) upon the election officer executing SBE Form 72, Election Officer Affirmation Form.]~~

~~[(3)] [Both the SBE 71 and SBE 72 shall be forwarded to the local Commonwealth's Attorney following the election.]~~

[Section 9:] A voter may make application to cast an excused in-person absentee ballot pursuant to KRS 117.076(2) by completing

SBE Form 44E, Excused In-Person Absentee Ballot Application.

~~Section 9.[Section 10.]~~ The status of the tamper-resistant seal and the number on the public counter shall be recorded as required by KRS 117.076(12) before and after each day of in-person absentee voting, on SBE Form 79, Daily Voting Machine Verification Sheet, which cumulatively shall be collected by the County Clerk.

~~Section 10.[Section 11.]~~ Incorporation~~[Incorporated]~~ by Reference.

(1) The following material is incorporated by reference:

(a) "Oath of Voter", Form SBE 32, 04/2022;

(b) "Ballot Reconciliation Statement", Form SBE 76, 04/2022;

(c) "Discrepant Mail-in Absentee Signature", Form SBE 77, 08/2022;

~~[(d)] ["Voter Affirmation Form", Form SBE 71, 04/2022;]~~

~~[(e)] ["Election Officer Affirmation Form", Form SBE 72, 04/2022;]~~

~~[(f)] [(f)]~~ "Excused In-Person Absentee Ballot Application", Form SBE 44E, 04/2022;

~~[(g)] [(g)]~~ "Daily Voting Machine Verification Sheet", Form SBE 79, 03/2023~~[04/2022]~~; and

~~[(h)] [(h)]~~ "Daily Absentee Drop-Box Verification Sheet", Form SBE 78, 04/2022.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the State Board of Elections, 140 Walnut Street, Frankfort, Kentucky~~[-Frankfort, Kentucky]~~ 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

(3) This material may also be obtained on the board's Web site at <https://elect.ky.gov>.

FILED WITH LRC: July 19, 2024

CONTACT PERSON: Taylor Brown, General Counsel, 140 Walnut Street, Frankfort, Kentucky 40601, phone (502) 782-9499, email TaylorA.Brown@ky.gov.

STATE BOARD OF ELECTIONS
(Emergency Amended at ARRS Committee)

31 KAR 5:040E. Questions regarding voter eligibility.

EFFECTIVE: July 9, 2024

Prior Versions:

New Emergency Administrative Regulation - 50 Ky.R. 2161

RELATES TO: KRS 14.302, 61.826, 117.001, 117.015, 117.025, 117.035, 117.225, ~~[117.245,]~~ 117.227, 117.228, 117.245, 118.025

STATUTORY AUTHORITY: KRS 61.826, 117.015

NECESSITY, FUNCTION, AND CONFORMITY: KRS 117.015(1)(a) authorizes the State Board of Elections to promulgate administrative regulations necessary to properly administer the election laws of the state. KRS 117.035(4)(c) requires that county boards of election meet and stay in session on primary, regular election, and special election days to correct clerical errors, to rules on questions regarding voter registration, proof of identification, and the curing of signatures relative to mail-in absentee ballots. KRS 117.025(3)(d) requires the State Board of Elections to select the required format for any voter registration list provided to a county clerk. KRS 117.228 details the procedures for casting a ballot if a voter is unable to provide proof of identification or is otherwise known to an election officer and requires the State Board of Elections to prescribe and furnish forms that voters are required to must complete in these circumstances. This administrative regulation establishes procedures for when a voter's eligibility is questioned and the forms that are to be completed if/when necessary.

Section 1.

(1) A voter unable to provide proof of identification as required under KRS 117.225, and as defined by/under KRS 117.001(15), shall:

(a) Meet the requirements of KRS 117.228(1)(c) by executing SBE Form 71, Voter Affirmation Form; and

(b) Provide alternative proof of identification as required by KRS 117.228(2).

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(2) A voter personally known to an election officer may cast a ballot in accordance with KRS 117.228(4) upon the election officer executing SBE Form 72, Election Officer Affirmation Form.

(3) ~~Both the~~ SBE 71 and SBE 72 shall be forwarded to the local Commonwealth's Attorney following the election.

Section 2.

(1) If an individual presents ~~himself or herself themselves~~ to an election officer to vote and is not found on the signature roster provided to the county under KRS 117.025(3)(b) or (3)(c) and is not a participant in the Safe at Home Program authorized under KRS 14.302, the individual may vote upon the following taking place:

(a) The individual shall provide to the election officer proof of identification as required by KRS 117.225, or the individual shall follow the procedures of KRS 117.228 if ~~he or she is they are~~ unable to provide proof of identification;

(b) The election officer shall contact the county clerk's office and verify that the information provided by the individual establishes that ~~he or she is they are~~ registered to vote at the location where the individual has presented ~~himself or herself themselves~~;

(c) The individual shall complete the Form SBE 32, Oath of Voter;

(d) The individual shall complete the Form SBE 01, Commonwealth of Kentucky Voter Registration Application;

(e) The individual shall sign the Form SBE 25, Supplemental Precinct Signature Roster; ~~and~~

(f) The election officer shall inform the individual that the Form SBE 32, Oath of Voter shall be forwarded to the local Commonwealth's Attorney following the election.

(2) If the election officer is unable to verify through the county clerk's office that the individual is properly registered to vote in the location where the individual has presented ~~himself or herself themselves~~, the election officer shall:

(a) Inform the individual of the location where ~~he or she is they are~~ properly registered vote, if known;

(b) Inform the individual of ~~his or her their~~ ability to request a hearing before the county board of elections; ~~and~~

(c) ~~1.~~ Inform the individual of ~~his or her their~~ ability to cast a provisional ballot for the federal elective office of President, Vice President, United States Senator, and United States House of Representative; and

~~2.~~ If an individual chooses to cast a provisional ballot for an applicable federal elective office, the election officer shall have the individual sign the Form SBE 35, Provisional Ballot Precinct Signature Roster.

(3) All Form SBE 25, Supplemental Precinct Signature Rosters and Form SBE 35, Provisional Ballot Precinct Signature Rosters, ~~if when~~ used for the purposes described in this section, shall be completed digitally through an e-poll book unless there is an emergency condition that renders the e-poll book inoperable, in which case paper forms shall be used. ~~If Should such~~ an emergency condition ~~exists exist~~, the election officer shall record the circumstances of the emergency condition on the paper forms.

Section 3. During the days that voting may occur during any primary, regular election, and special election, including voting by mail-in absentee ballot, a county board of elections may elect to meet the requirements of KRS 117.035(4)(c) via a video teleconference subject to the mandates of KRS 61.826.

(1) ~~If Should~~ a county board of elections ~~elects elect~~ to meet via video teleconference during a day in which voting may occur, the county clerk's office and each voting location in use in the county shall have technology available to every voter so that the voter may appear before the county board at no financial expense to the voter.

(2) If a county board of elections elects not to meet via video teleconference during a day in which voting may occur, a voter desiring to appear before the county board shall be provided with an option so that the voter may appear before the county board via teleconference, provided that the voter can make themselves available via the same teleconferencing technology the county board has chosen to utilize for such hearings.

Section 4. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Commonwealth of Kentucky Voter Registration Application", Form SBE 01, 04/2024;

(b) "Supplemental Precinct Signature Roster", Form SBE 25, ~~09/2020~~ ~~04/2024~~;

(c) "Oath of Voter", Form SBE 32, ~~04/2022~~ ~~04/2024~~;

(d) "Provisional Ballot Precinct Signature Roster", Form SBE 35, ~~09/2020~~ ~~04/2024~~;

(e) "Voter Affirmation Form", Form SBE 71, 04/2022; and

(f) "Election Officer Affirmation Form", Form SBE 72, 04/2022.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the State Board of Elections, 140 Walnut Street, ~~Frankfort, Kentucky~~ Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available on the board's Web site at <https://elect.ky.gov>.

FILED WITH LRC: July 9, 2024

CONTACT PERSON: Taylor Brown, General Counsel, 140 Walnut Street, Frankfort, Kentucky 40601, phone (502) 782-9499, email TaylorA.Brown@ky.gov.

BOARDS AND COMMISSIONS

Board of Licensure for Occupational Therapy
(Emergency Amended at ARRS Committee)

201 KAR 28:240E. Occupational Therapy Licensure Compact.

EFFECTIVE: July 9, 2024

Prior Versions:

New Emergency Administrative Regulation - 50 Ky.R. 2354

RELATES TO: KRS 319A.310

STATUTORY AUTHORITY: KRS 319A.070(1), (3), 319A.310

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319A.310, Section 15.B.1. requires the Board of Licensure for Occupational Therapy to review any rule adopted by the Occupational Therapy Compact Commission pursuant to Section 10 of the Compact within sixty (60) days of adoption for the purpose of filing the rule as an emergency administrative regulation pursuant to KRS 13A.190 and for filing the rule as an accompanying ordinary administrative regulation pursuant to KRS Chapter 13A. This administrative regulation incorporates by reference the rules adopted by the Occupational Therapy Compact Commission.

Section 1. The Board of Licensure for Occupational Therapy shall comply with all rules of the Occupational Therapy Compact, which includes the Occupational Therapy Compact Rules as of March 20, 2024.

Section 2. Incorporation by Reference.

(1) The following material is incorporated by reference: "The Occupational Therapy Compact Rules", March 20, 2024, and as revised.

(a) Chapter ~~1~~ ~~2~~ Rule on Definitions, adopted March 20, 2024; and

(b) Chapter ~~2~~ ~~3~~ Data System Reporting Requirements, adopted March 20, 2024.

(2)

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

(b) This material may also be obtained on the Board of Licensure for Occupational Therapy Web site at <https://bot.ky.gov>/<https://ot.ky.gov>].

(3) This material may also be obtained at:

(a) The Occupational Therapy Compact Commission, 201 Park Washington Court, Falls Church, Virginia 22046; ~~or~~

(b) <https://otcompact.org/ot-compact-commission/governance-documents/>.

FILED WITH LRC: July 9, 2024

CONTACT PERSON: Sara Boswell Janes, Staff Attorney III, Department of Professional Licensing, Office of Legal Services, 500 Mero Street, 2 NC WK#2, phone (502) 782-2709, fax (502) 564-4818, email Sara.Janes@ky.gov.

CABINET FOR HEALTH AND FAMILY SERVICES
Office of the Secretary
(Emergency Amended After Comments)

915 KAR 1:010E. Initial and renewal applications for cannabis business licenses.

EFFECTIVE: July 15, 2024

Prior Versions:

New Emergency Administrative Regulation - 50 Ky.R. 2378

RELATES TO: KRS Chapter 13B, Chapter 218B, 523.100

STATUTORY AUTHORITY: KRS 218B.140

NECESSITY, FUNCTION, AND CONFORMITY: KRS 218B.140 requires the Cabinet for Health and Family Services to promulgate administrative regulations establishing initial application and renewal procedures for cannabis business licenses. This administrative regulation establishes those procedures.

Section 1. Types of Applications for Cannabis Business Licenses.

(1) The cabinet shall accept the following types of applications for cannabis business licenses:

- (a) Initial application; and
- (b) Renewal application.

(2) By submitting an initial or renewal application to the cabinet, an applicant consents to any investigation of the applicant's ability to meet the requirements of KRS Chapter 218B and 915 KAR Chapter 1.

(3) An application for an initial license or renewal license is not complete and shall be rejected by the cabinet unless:

- (a) The payment of the applicable fee provided in Section 2 or Section 4 is submitted with the application; and
- (b) All required information for each section of the application, including attachments and any supplemental information requested by the cabinet, is submitted to the cabinet within the allowable time period.

(4) An application submitted under this administrative regulation shall contain the following statement acknowledged by the applicant: "A false statement made in this application is punishable under the applicable provisions of KRS 523.100."

Section 2. Initial License Application Fees. An applicant for an initial cannabis business license shall pay the applicable application fee by credit card or automated clearing house (ACH) transfer at the time of application submission to the cabinet. The initial application fee is nonrefundable except as indicated below in Section 3(6) of this administrative regulation. The initial license application fees shall be:

- (1) Tier I cultivator: \$3,000;
- (2) Tier II cultivator: \$10,000;
- (3) Tier III cultivator: \$20,000;
- (4) Tier IV cultivator: \$30,000;
- (5) Processor: \$5,000;
- (6) Producer: \$5,000 plus the applicable cultivator tier application fee;
- (7) Dispensary: \$5,000; and
- (8) Safety Compliance Facility: \$3,000.

Section 3. Initial Applications for Cannabis Business Licenses.

(1) An initial license is valid for one (1) year from the date of issuance shown on the license. The cabinet shall publish notice of initial license application availability on the Web site for the Kentucky Medical Cannabis Program, <https://kymedcan.ky.gov>, including the time frame during which initial license applications shall be accepted. This notice shall also state the category and number of cannabis business licenses available for issuance at the close of the application period.

(2) An applicant shall only use the initial license application form prescribed by the cabinet and made available through the Web site for the Kentucky Medical Cannabis Program, <https://kymedcan.ky.gov>.

(3) An applicant shall submit an initial license application to the cabinet in the manner prescribed by the application instructions.

(4) An applicant shall apply for a separate license for each

location where it intends to operate a cannabis business. During an initial license application availability period, an applicant shall only apply for a license in one (1) cannabis business license type (cultivator, processor, producer, dispensary, or safety compliance facility) being offered at that time. An applicant may submit multiple applications for a license within one (1) cannabis business license type so long as the following criteria is met:

(a) Each application contains a separate and distinct physical address where the applicant proposes to conduct cannabis business activities;

(b) Each application contains documentation of sufficient capital in accordance with subsection (5)(q) of this section and the applicant shall not use the same capital for more than one (1) application;

(c) For the four (4) cannabis cultivator tiers, an applicant shall only submit one (1) application per cultivation tier; and

(d) For dispensaries, an applicant shall only submit one (1) application per medicinal cannabis region as identified in 915 KAR 1:020, Section 3 and shown on the map published on the Web site of the Kentucky Medical Cannabis Program, <https://kymedcan.ky.gov>.

(5) The applicant shall submit the following in the initial license application:

(a) The legal name, business type, any trade or doing business as (DBA) name, mailing address, federal tax identification number, Web site (if any), email address, and phone number of the proposed cannabis business and confirmation that the entity is registered with the Kentucky Secretary of State in good standing and authorized to do business in Kentucky;

(b) The type of cannabis business license requested;

(c) Business entity formation documents such as articles of incorporation, articles of organization, or bylaws;

(d) Proposed location of cannabis business activities, including the physical address of the proposed cannabis business and the global positioning system (GPS) coordinates for any proposed cannabis business activities as well as:

1. Documentation such as a contingent agreement for property sale or lease or an existing deed or lease that shows the applicant has the authority to use the proposed location as a cannabis business for, at a minimum, the term of the license; and

2. A site plan for the proposed cannabis business.

(e) The name, address, date of birth, and curricula vitae or resume of each principal officer and board member of the proposed cannabis business as well as any additional information required by the cabinet;

(f) Disclosure of any individual or business entity with an ownership interest of at least ten (10) percent equity or similar interest in the proposed cannabis business and each identified individual or entity's ownership percentage as well as any additional information required by the cabinet;

(g) Disclosure of any parent company or parent individual that has an ownership interest in the proposed cannabis business and each identified individual or entity's ownership percentage as well as any additional information required by the cabinet;

(h) A document showing the ownership organizational structure of the proposed cannabis business;

(i) The name and address of any individual or entity providing financial support to the proposed cannabis business that are not involved in the day-to-day operations beyond providing financial resources as well as any additional information required by the cabinet;

(j) The name and address of any physician or advanced practice registered nurse that has an ownership or investment interest in or compensation agreement with the proposed cannabis business as well as any additional information required by the cabinet;

(k) Disclosure of whether any principal officer or board member of the applicant has been convicted of a felony criminal offense, and if so, a description of each felony offense;

(l) Disclosure of any instances in which a business or not-for-profit entity that any of the applicant's board members managed or served on the board of was convicted, fined, censured, or had a registration or license suspended or revoked in any administrative or judicial proceeding;

(m) If applicable, documentation that the applicant is capable of

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successfully establishing and operating a cannabis business in the commonwealth, including:

1. Demonstrated experience establishing and operating a for-profit or nonprofit organization or other business within Kentucky or any other jurisdiction, and the nature of the business conducted by the organization;

2. Any history relating to receipt of a similar license or other authorization in other jurisdictions, including provisional licenses, suspensions, revocations, or disciplinary actions to include civil monetary fines or warnings; and

3. Any history of response to suspensions, revocations, disciplinary actions, civil monetary fines, or warnings imposed relating to any similar license or other authorization in another jurisdiction, and the plans of correction or other responses made to those actions.

(n) A description of the duties, responsibilities, and roles of each principal officer, board member, employee, and any other individual or entity with a financial interest in the proposed cannabis business who are not involved in the day-to-day operations of the business;

(o) A timeline showing the steps and estimated amount of time the applicant shall take to begin cannabis business activities in the commonwealth;

(p) Financial plan for the proposed cannabis business, including budget and cash flow planning and debt management;

(q) Documentation of sufficient capital available to the applicant, either on deposit or through extension of credit from one (1) or more financial institutions, in the following amounts as applicable:

1. Tier I cultivator: \$50,000;
2. Tier II cultivator: \$200,000;
3. Tier III cultivator: \$500,000;
4. Tier IV cultivator: \$1,000,000;
5. Processor: \$150,000;
6. Producer: \$150,000 plus the applicable cultivator tier amount;
7. Dispensary: \$150,000; or
8. Safety Compliance Facility: \$150,000

(r) A summary of the intended plan of operation that describes, at a minimum, how the applicant's proposed cannabis business operations shall address:

1. Security;
2. Employee qualifications, supervision, and training;
3. Transportation of medicinal cannabis;
4. Storage and labeling of medicinal cannabis;
5. Inventory management;
6. Recordkeeping;
7. Preventing unlawful diversion of medicinal cannabis; and
8. Workforce development and job creation.

(s) The name, mailing address, business title, phone number, and email address of the primary contact for the application as well as the name, address, and email address of any entity or individual who assisted the applicant with preparing the application;

(t) Documentation of any management service agreement in place for the proposed cannabis business;

(u) A notarized signature page signed by the applicant; and

(v) An attestation that:

1. The site of the proposed cannabis business is not within 1,000 feet of an existing elementary or secondary school or a daycare center. For the purpose of this administrative regulation, 1,000 feet shall be measured in a straight line from the nearest property line of an existing elementary school, secondary school, or daycare center to the nearest property line of the applicant's proposed place of business;

2. The applicant can continuously maintain sufficient capital for operations of its proposed cannabis business for, at a minimum, the term of the initial license;

3. The applicant can continuously maintain effective security, surveillance, and accounting control measures to prevent diversion, abuse, and other illegal conduct regarding medicinal cannabis;

4. The applicant shall comply with KRS Chapter 218B and 915 KAR Chapter 1;

5. The applicant consents to the cabinet verifying information provided in the application with any relevant governmental agency or third party;

6. If issued a license, the applicant shall pay the applicable

license fee within fifteen (15) calendar days of notification in a manner prescribed by the cabinet.

7. If issued a license, the applicant shall conduct a criminal background check into the criminal history of each person seeking to be a principal officer, board member, agent, volunteer, or employee of the cannabis business before that person begins work and shall not employ, take on as a volunteer, or have as a board member, principal officer, or agent any person who was convicted of a disqualifying felony offense or is younger than twenty-one (21) years of age;

8. The applicant consents to reasonable inspections, examinations, searches, and seizures as contemplated by KRS Chapter 218B and 915 KAR Chapter 1;

9. The applicant shall obtain and maintain workers' compensation insurance for all employees in the commonwealth and shall pay all required employer contributions to the Kentucky Office of Unemployment Insurance;

10. The applicant shall obtain and maintain commercial general liability insurance for \$1,000,000 per occurrence and \$2,000,000 per aggregate and commercial automobile insurance for any vehicle used to transport medicinal cannabis or medicinal cannabis products;

11. The applicant shall complete all trainings required by the cabinet for the proposed cannabis business's principals, agents, employees, and volunteers;

12. The applicant shall establish any standard operating procedures required by KRS Chapter 218B and 915 KAR Chapter 1 prior to the first date of cannabis business activities in the commonwealth, including those specific to its cannabis business category. The standard operating procedures that apply to cannabis businesses include:

- a. Security;
- b. Recordkeeping;
- c. Employee qualifications, supervision, and training;
- d. Quality Assurance;
- e. Adverse Event Reporting and Recall;
- f. Waste Disposal and Sanitation;
- g. Transportation of medicinal cannabis;
- h. Inventory management, including storage and labeling of medicinal cannabis;
- i. Cash management and anti-fraud procedures; and
- j. Preventing unlawful diversion of medicinal cannabis.

13. For an applicant seeking a safety compliance facility license, one (1) or more of its prospective principal officers or board members shall not be a principal officer or board member of a cultivator, processor, producer, or dispensary applying to operate in the commonwealth;

14. For an applicant seeking a cultivator, processor, producer, or dispensary license, one (1) or more of its prospective principal officers or board members shall not be a principal officer or board member of a safety compliance facility applying to operate in the commonwealth;

15. The applicant consents to sharing medicinal cannabis sales data with law enforcement;

16. The applicant shall use the commonwealth's designated electronic monitoring system and seed to sale tracking system required by KRS 218B.140 in the manner prescribed by the cabinet;

17. The applicant has disclosed all individuals and entities with an ownership interest of at least ten (10) percent equity or similar interest in the proposed cannabis business as well as any parent companies and parent company individuals with an ownership interest in its proposed cannabis business; and

18. The applicant swears and affirms that all information and documentation provided with the initial license application is true and correct.

(6) An initial license application received after the submission time frame stated in the published notice of initial license application availability shall be rejected by the cabinet without further consideration along with the return of the initial application fee.

(7) The cabinet shall acknowledge receipt of an initial application for a cannabis business license within fifteen (15) calendar days of submission by the applicant. The cabinet shall review each application to determine whether the application is complete. The

cabinet shall provide written notice to an applicant when it has determined the application is complete. If the cabinet determines an application is not complete, the cabinet shall provide written notice to the applicant of the identified deficiencies in the application. The applicant shall have ten (10) calendar days from the date of the deficiency notification to cure the identified deficiencies and provide any missing information or documentation to the cabinet in the manner prescribed by the cabinet. If the applicant fails to cure any deficiency within ten (10) calendar days from the date of the deficiency notification, the cabinet shall reject the application as incomplete.

(8) The cabinet shall provide notification to applicants as to whether an application for a license has been approved or denied within forty-five (45) calendar days of receiving an application and determining its complete. Any application denials shall be done in accordance with KRS 218B.090(2) and (4), including providing written notice to the applicant that he or she may file a written request for an administrative hearing on the application within thirty (30) calendar days after the mailing date of the notice. Any hearing resulting from the applicant's written request shall be conducted in accordance with KRS Chapter 13B.

Section 4. License Renewal Fees. An applicant for renewal of a cannabis business license shall pay the applicable annual renewal fee by credit card or ACH transfer at the time of application submission to the cabinet. The annual renewal fee is refundable if the renewal application is denied. The annual renewal fees are:

- (1) Tier I cultivator: \$12,000;
- (2) Tier II cultivator: \$25,000;
- (3) Tier III cultivator: \$50,000;
- (4) Tier IV cultivator: \$100,000;
- (5) Processor: ~~\$25,000~~[\$15,000];
- (6) Producer: ~~\$25,000~~[\$15,000] plus the applicable cultivator tier annual renewal fee;
- (7) Dispensary: ~~\$30,000~~[\$15,000]; and
- (8) Safety Compliance Facility: \$12,000.

Section 5. Renewal Applications for Cannabis Business Licenses.

(1) A renewal license is valid for one (1) year from the date of issuance shown on the license. The requirements that a licensed cannabis business shall meet to receive an initial license are continuing requirements to maintain the license. A cannabis business shall continuously comply with the licensing requirements of KRS Chapter 218B and 915 KAR Chapter 1 during the initial licensure period and any subsequent renewal period.

(2) The cabinet shall notify each licensee at least ninety (90) calendar days prior to the date the license expires to allow the licensee to begin the renewal process if the licensee so chooses.

(3) A licensee shall only use the license renewal application form prescribed by the cabinet and made available through the Web site of the Kentucky Medical Cannabis Program, <https://kymedcan.ky.gov>.

(4) A license renewal application shall be submitted to the cabinet at least sixty (60) calendar days prior to the expiration of the license. The cabinet shall reject a license renewal application if it is not submitted at least sixty (60) calendar days prior to the expiration of the license and shall return the annual renewal fee to the licensee along with written notice of the rejection.

(5) A licensee shall submit a license renewal application to the cabinet in the manner prescribed by the application instructions.

(6) A licensee shall include the following information with a license renewal application:

(a) Information regarding any charge, or any initiated, pending, or concluded investigation or proceeding, during the period of the initial license or prior renewal period, by any governmental or administrative agency, including an investigation or proceeding involving theft, loss, or possible diversion of medicinal cannabis by the licensee or from the licensee's facility;

(b) Information regarding the licensee's ability to continue with licensed activities, including any staffing issues, delays, medicinal cannabis shortages, medicinal cannabis product recalls, location issues, and financial issues that occurred since the license was

issued;

(c) The licensee's history of compliance with KRS Chapter 218B and 915 KAR Chapter 1, including a summary of any noncompliance and corrective action taken during the current and any previous licensing period or a statement indicating that the licensee has not violated KRS Chapter 218B or 915 KAR Chapter 1 as of the date the renewal application is submitted; and

(d) Any additional information required by the cabinet.

(7) The cabinet shall acknowledge receipt of a renewal license application within fifteen (15) calendar days of submission by the applicant. The cabinet shall review each application to determine whether the application is complete. If the cabinet determines an application is not complete, the cabinet shall provide written notice to the applicant of the identified deficiencies in the application. The applicant shall have ten (10) calendar days from the date of the deficiency notification to cure the identified deficiencies and provide any missing information or documentation to the cabinet in the manner prescribed by the cabinet. If the applicant fails to cure any deficiency within ten (10) calendar days from the date of the deficiency notification, the cabinet shall reject the application as incomplete.

(8) If the cabinet determines that a license renewal application is lacking sufficient information upon which to make a renewal determination, the cabinet shall notify the licensee in writing of the factors that require additional information and documentation. The licensee shall have ten (10) calendar days from the date of the notice to provide the requested information and documentation to the cabinet. A licensee's failure to provide the requested information to the cabinet by the deadline shall be grounds for denial of the license renewal application.

(9) The cabinet may conduct an onsite inspection of the licensee's facilities and records to assist with determining continuing compliance with KRS Chapter 218B and 915 KAR Chapter 1.

(10) An existing cannabis business license is immediately invalid upon expiration if the licensee has not filed a license renewal application and paid the required renewal fee in accordance with Section 4 of this administrative regulation. If a licensee properly submits a timely renewal application with applicable renewal fee, the cabinet may extend its existing license from the date the existing license expires until the cabinet can complete its renewal application review and issue a determination.

Section 6. Minimum Performance Standards for License Renewal.

(1) Pursuant to KRS 218B.080(5)(b), the renewal of a cannabis business license shall be contingent upon successful achievement of minimal performance standards established by the cabinet. The minimum performance standards for licensees participating in the Kentucky Medical Cannabis Program are:

(a) The licensee has, and is likely to continue to maintain, effective controls against diversion of medicinal cannabis at its facility;

(b) The licensee has not made false or misleading statements in:

1. A renewal application or any other application submitted to the cabinet;
2. Any document or written communication submitted to the cabinet; or
3. Any verbal communication to the cabinet.

(c) The licensee has a documented history of compliance with the licensee requirements in KRS Chapter 218B and 915 KAR Chapter 1;

(d) The licensee has effectively addressed any identified compliance issues through corrective action;

(e) The licensee has shown it has the ability to continue to comply with all state and local laws and administrative regulations applicable to the activities in which it may engage under the license, if renewed;

(f) The licensee has a documented history of successfully addressing and mitigating any quality or safety issues with its medicinal cannabis or medicinal cannabis products;

(g) The licensee timely completes all reporting required by KRS Chapter 218B and 915 KAR Chapter 1; and

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(h) The licensee participates in surveys distributed by the cabinet and provides full, complete, and timely responses.

(2) The cabinet shall deny a renewal application for a cannabis business license if it determines the licensee has failed to:

(a) Meet one (1) or more of the minimum performance standards established in this section; or

(b) Any additional basis provided in KRS 218B.090.

(3) The cabinet shall provide written notification to a licensee as to whether its renewal application has been approved or denied within forty-five (45) calendar days of receiving an application and determining its complete. Any renewal application denials shall be done in accordance with KRS 218B.090(4), including providing written notice to the applicant that he or she may file a written request for an administrative hearing on the application within thirty (30) calendar days after the mailing date of the notice. Any hearing resulting from the applicant's written request shall be conducted in accordance with KRS Chapter 13B.

Section 7. Duty to Report. During the application process, an applicant for an initial cannabis business license or renewal license shall, upon discovery of any change in facts or circumstances reflected in the initial application or renewal application submitted to the cabinet, notify the cabinet in writing of the change or any newly discovered fact or circumstance that would have been included in the application if known at the time the application was submitted. The notification required under this section shall be sent via electronic mail to kymedcanreporting@ky.gov within twenty-four (24) hours of discovery. Failure to timely notify the cabinet of a change or newly discovered facts or circumstances may result in denial of the application.

SAM FLYNN, Executive Director
ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: July 12, 2024

FILED WITH LRC: July 15, 2024 at 9:50 a.m.

CONTACT PERSON: Krista Quarles, Policy Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-7476; fax 502-564-7091; email CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Oran S. McFarlan, III or Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes initial application and renewal procedures for cannabis business licenses. In response to comments received by the cabinet, the Amended After Comments version of the administrative regulation amends license renewal fees for processor, producer, and dispensary to match the initial license fees established in 915 KAR 1:020E, Section 2(2).

(b) The necessity of this administrative regulation: This administrative regulation is necessary to carry out the requirements of KRS Chapter 218B, specifically KRS 218B.140(1)(c)(3).

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 218B.140 requires the Cabinet for Health and Family Services to promulgate administrative regulations establishing initial application and renewal procedures for cannabis business licenses. This administrative regulation establishes those procedures.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides the procedures for initial and renewal applications for cannabis business licenses.

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

(a) How the amendment will change this existing administrative regulation: Not applicable. This is a new administrative regulation.

(b) The necessity of this amendment to this administrative regulation: Not applicable. This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: Not applicable. This is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: Not applicable. This is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects cannabis businesses that desire to apply for and subsequently renew licenses to conduct cannabis business activities in the commonwealth.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Cannabis businesses that desire to operate in Kentucky must follow the initial and renewal application procedures and requirements identified in this administrative regulation in order to be eligible to receive an initial license or renew an existing license.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The initial license application fees vary by cannabis business category and range from \$3,000 to \$35,000 for each submitted initial application. The annual renewal license fees also vary by cannabis business category and range from \$12,000 to \$125,000 for each submitted renewal application.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The cannabis businesses that receive a license from the Cabinet for Health and Family Services are authorized to conduct cannabis business activities in the commonwealth for the term of the license (i.e., one (1) year from the date of license issuance).

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

(a) Initially: The annual cost estimate to administer all aspects of the Kentucky Medical Cannabis Program is \$9,135,398. A significant portion of those funds will go toward licensing and enforcement of cannabis businesses operating in the commonwealth as well implementation and continued operation of the electronic monitoring system and seed to sale tracking system required by KRS 218B.140.

(b) On a continuing basis: The annual cost estimate to administer all aspects of the Kentucky Medical Cannabis Program is \$9,135,398. A significant portion of those funds will go toward licensing and enforcement of cannabis businesses operating in the commonwealth as well implementation and continued operation of the electronic monitoring system and seed to sale tracking system required by KRS 218B.140.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: State general funds provided by the commonwealth.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: It is anticipated that an increase in funding will be necessary to implement this regulation as additional staff and resources are necessary to administer the cannabis business license application process.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: Yes, this administrative regulation establishes initial license application fees and annual renewal license fees.

(9) TIERING: Is tiering applied? Tiering is not applied. All cannabis businesses will be treated equally.

FISCAL IMPACT STATEMENT

(1) Identify each state statute, federal statute, or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 218B.015, 218B.080, 218B.085, 218B.090, 218B.095, 218B.100, 218B.140, 523.100, Chapter 13B.

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: This administrative regulation is promulgated by the Kentucky Medical Cannabis Program within the Cabinet for Health and Family Services.

(a) Estimate the following for the first year:

Expenditures: The annual cost estimate to administer all aspects of the Kentucky Medical Cannabis Program is \$9,135,398.

Revenues: The commonwealth will receive initial license application fees paid by proposed cannabis businesses during the first

year. The initial license application fees vary by cannabis business category and range from \$3,000 to \$35,000 for each submitted initial application. At this time, it is not known how many proposed cannabis businesses will apply for licenses and pay the attendant fees.

Cost Savings: The cabinet does not anticipate any cost savings in the first year.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? The annual cost estimate to administer all aspects of the Kentucky Medical Cannabis Program is \$9,135,398. The commonwealth will receive annual renewal license fees from licensed cannabis businesses that desire to continue operating in the commonwealth following the expiration of their existing license. The commonwealth may also receive additional initial license application fees if the Cabinet for Health and Family Services determines additional licenses should be issued in a given year based on criteria provided in 915 KAR Chapter 1. The annual renewal license fees vary by cannabis business category and range from \$12,000 to \$125,000 for each submitted renewal application.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): If its application is approved, a proposed cannabis will locate within a city or county in the commonwealth.

(a) Estimate the following for the first year:

Expenditures: Unknown at this time. This response will depend on the number of licensed cannabis businesses located in a respective city or county and any ordinances established by local authorities regulating licensed cannabis businesses in their jurisdiction as allowed by KRS 218B.130

Revenues: Unknown at this time. This response will depend on the number of licensed cannabis businesses located in a respective city or county and any ordinances and fees established by local authorities regulating licensed cannabis businesses in their jurisdiction as allowed by KRS 218B.130.

Cost Savings: The cabinet does not anticipate any cost savings in the first year.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? Unknown at this time. This response will depend on the number of licensed cannabis businesses located in a respective city or county and any ordinances and fees established by local authorities regulating licensed cannabis businesses in their jurisdiction as allowed by KRS 218B.130.

(4) Identify additional regulated entities not listed in questions (2) or (3): Proposed cannabis businesses.

(a) Estimate the following for the first year:

Expenditures: A proposed cannabis business is required to pay the applicable initial license application fee at the time of initial application submission.

Revenues: Once operational, approved applicants will generate revenue through cannabis business activities. At this time, it is unknown how much revenue will be generated by those cannabis businesses.

Cost Savings: The cabinet does not anticipate any cost savings in the first year.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? Cannabis businesses are required to pay the applicable annual renewal license fee at the time of renewal application submission. This renewal license fee is refundable if the renewal application is denied.

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: The annual cost estimate to administer all aspects of the Kentucky Medical Cannabis Program is \$9,135,398. A significant portion of those funds will go toward licensing and enforcement of cannabis businesses operating in the commonwealth as well implementation and continued operation of the electronic monitoring system and seed to sale tracking system required by KRS 218B.140. It is anticipated that an increase in funding will be necessary to administer all of the administrative regulations contained in 915 KAR Chapter 1 related to cannabis businesses.

(b) Methodology and resources used to determine the fiscal impact: As part of its Biennial Budget Request, the Cabinet for Health and Family Services analyzed the cost to administer all aspects of the Kentucky Medical Cannabis Program, including estimated costs for staffing and implementation and ongoing maintenance and operations

costs for the electronic monitoring system and seed to sale tracking system required by KRS 218B.140.

(6) Explain:

(a) Whether this administrative regulation will have an overall negative or adverse major economic impact to the entities identified in questions (2) - (4). (\$500,000 or more, in aggregate) . The annual cost estimate to administer all aspects of the Kentucky Medical Cannabis Program is \$9,135,398. A significant portion of those funds will go toward licensing and enforcement of cannabis businesses operating in the commonwealth as well implementation and continued operation of the electronic monitoring system and seed to sale tracking system required by KRS 218B.140. The Kentucky Medical Cannabis Program will have a major economic impact on the Cabinet for Health and Family Services, and it is anticipated that an increase in funding will be necessary to administer all of the administrative regulations contained in 915 KAR Chapter 1 related to cannabis businesses.

(b) The methodology and resources used to reach this conclusion: As part of its Biennial Budget Request, the Cabinet for Health and Family Services analyzed the cost to administer all aspects of the Kentucky Medical Cannabis Program, including estimated costs for staffing and implementation and ongoing maintenance and operations costs for the electronic monitoring system required by KRS 218B.140.

**CABINET FOR HEALTH AND FAMILY SERVICES
Office of the Secretary
(Emergency Amended After Comments)**

915 KAR 1:020E. Cannabis business licenses.

EFFECTIVE: July 15, 2024

Prior Versions:

New Emergency Administrative Regulation - 50 Ky.R. 2383
RELATES TO: KRS Chapter 13B, Chapter 218B, 304.39-110,
523.100

STATUTORY AUTHORITY: KRS 218B.140

NECESSITY, FUNCTION, AND CONFORMITY: KRS 218B.140 requires the Cabinet for Health and Family Services to promulgate administrative regulations establishing procedures for the issuance, renewal, suspension, and revocation of cannabis business licenses. This administrative regulation establishes those procedures.

Section 1. General Requirements for Cannabis Business Licenses.

(1) The cabinet shall issue a license, by name and address, to a cannabis business only for the specific location identified by the cannabis business during the application and issuance process. A license is only valid for the person or entity named in the license and only for the activity and location specified in the license.

(2) A licensed cannabis business shall conspicuously display its license within the premises of the cannabis business in a manner that is visible to visitors upon initial entry into its facility.

(3) A license shall not be issued to a cannabis business for operation within a personal residence or any other location where the cabinet or its authorized agents or law enforcement have limited access.

(4) A license shall not be issued to a cannabis business for a site or facility located on lands owned by the United States of America or the Commonwealth of Kentucky.

(5) A license is valid for one (1) year from the date of issuance as shown on the license.

Section 2. License Fees for Cannabis Businesses.

(1) A cannabis business shall pay the applicable license fee by credit card or automated clearing house (ACH) transfer to the cabinet within fifteen (15) calendar days of receipt of the invoice from the cabinet. The cabinet shall not issue a license to a cannabis business that fails to timely pay the applicable license fee.

(2) The initial nonrefundable license fees shall be:

- (a) Tier I cultivator: \$12,000;
- (b) Tier II cultivator: \$25,000;
- (c) Tier III cultivator: \$50,000;
- (d) Tier IV cultivator: \$100,000;
- (e) Processor: \$25,000;

- (f) Producer: \$25,000 plus the applicable cultivator tier initial license fee;
 - (g) Dispensary: \$30,000; and
 - (h) Safety compliance facility: \$12,000.
- (3) The annual renewal license fees, which are refundable if the renewal application is denied, shall be:
- (a) Tier I cultivator: \$12,000;
 - (b) Tier II cultivator: \$25,000;
 - (c) Tier III cultivator: \$50,000;
 - (d) Tier IV cultivator: \$100,000;
 - (e) Processor: ~~\$25,000~~~~[\$15,000]~~;
 - (f) Producer: ~~\$25,000~~~~[\$15,000]~~ plus the applicable cultivator tier renewal license fee;
 - (g) Dispensary: ~~\$30,000~~~~[\$15,000]~~; and
 - (h) Safety compliance facility: \$12,000.

Section 3. Initial Licensure of Cannabis Businesses and Use of Lottery.

(1) The cabinet shall publish notice of the number and category of cannabis business licenses available for distribution at the close of an initial license application period and provide the time frame during which initial license applications shall be accepted by the cabinet. This notice shall be published on the Web site of the Kentucky Medical Cannabis Program, <https://kymedcan.ky.gov>.

(2) In order to promote patient access to medicinal cannabis across the commonwealth, the cabinet shall issue dispensary licenses within designated regions. The cabinet shall publish a map clearly identifying the medicinal cannabis regions on the Web site of the Kentucky Medical Cannabis Program. The eleven (11) medicinal cannabis regions in the commonwealth are:

(a) Region 1 (Bluegrass): The geographical region comprised of the counties of Anderson, Bourbon, Boyle, Clark, Fayette, Franklin, Garrard, Harrison, Jessamine, Madison, Mercer, Scott, and Woodford;

(b) Region 2 (Kentuckiana): The geographical region comprised of the counties of Bullitt, Henry, Jefferson, Oldham, Shelby, Spencer, and Trimble;

(c) Region 3 (Northeast): The geographical region comprised of the counties of Bath, Boyd, Carter, Elliott, Fleming, Greenup, Lewis, Mason, Menifee, Montgomery, Morgan, Nicholas, Robertson, and Rowan;

(d) Region 4 (South Central): The geographical region comprised of the counties of Allen, Barren, Butler, Edmonson, Logan, Metcalfe, Monroe, Simpson, and Warren;

(e) Region 5 (Cumberland): The geographical region comprised of the counties of Bell, Casey, Clinton, Cumberland, Harlan, Knox, Laurel, Lincoln, McCreary, Pulaski, Rockcastle, Russell, Wayne, and Whitley;

(f) Region 6 (Mountain): The geographical region comprised of the counties of Breathitt, Clay, Estill, Floyd, Jackson, Johnson, Knott, Lawrence, Lee, Leslie, Letcher, Magoffin, Martin, Owsley, Perry, Pike, Powell, and Wolfe;

(g) Region 7 (Pennyriple): The geographical region comprised of the counties of Caldwell, Christian, Hopkins, Lyon, Muhlenberg, Todd, and Trigg;

(h) Region 8 (West Kentucky): The geographical region comprised of the counties of Ballard, Calloway, Carlisle, Crittenden, Fulton, Graves, Hickman, Livingston, McCracken, and Marshall;

(i) Region 9 (Lincoln Trail): The geographical region comprised of the counties of Adair, Breckinridge, Grayson, Green, Hardin, Hart, Larue, Marion, Meade, Nelson, Taylor, and Washington;

(j) Region 10 (Northern Kentucky): The geographical region comprised of the counties of Boone, Bracken, Campbell, Carroll, Gallatin, Grant, Kenton, Owen, and Pendleton; and

(k) Region 11 (Green River): The geographical region comprised of the counties of Daviess, Hancock, Henderson, McLean, Ohio, Union, and Webster.

(3) The cabinet shall issue at least four (4) dispensary licenses per medicinal cannabis region. For regions containing an urban-county government or a consolidated local government, the cabinet shall issue at least six (6) dispensary licenses, two (2) of which shall be issued to eligible cannabis businesses that physically locate their dispensary in the counties with an urban-county government or a

consolidated local government. For all counties without an urban-county government or a consolidated local government, there shall be no more than one (1) dispensary per county.

(4) A dispensary licensee shall not change its retail location to another location within the same region without prior cabinet approval. A dispensary licensee shall not change its retail location to outside of the region where it was initially licensed.

(5) The licenses for cultivators, processors, producers, and safety compliance facilities are not subject to regional restrictions within the commonwealth, and those licensees shall operate at the physical address identified on their respective licenses.

(6) Applicants for initial cannabis business licenses who comply with all application requirements contained in KRS Chapter 218B and 915 KAR 1:010, and whose applications are deemed complete by the cabinet, shall be eligible to receive the license requested. If the number of eligible applications does not exceed the maximum number of licenses available within a cannabis business category following the close of an initial license application period, the cabinet shall provide written notice to the eligible applicants that a license shall be issued to them upon timely payment of the applicable license fee. When an eligible applicant timely pays the applicable license fee, the cabinet shall issue a copy of the license to the applicant that contains the cannabis business's name, license number, physical location, issue date, and expiration date.

(7) If the number of eligible applications exceeds the maximum number of licenses available within a cannabis business category following the close of an initial license application period, the cabinet shall conduct a lottery to issue the licenses for that cannabis business category. The cabinet shall notify the eligible applicants of their entry into the lottery and publicly announce the date, time, and manner of randomly selecting eligible applicants for the requested license. A lottery to select the licensees in each cannabis business category, as needed, shall be held in a manner that can be observed by the public.

(8) The cabinet may consult or contract with a third-party lottery operator or other public agencies with relevant expertise in conducting lotteries. The entity selected to conduct the lottery shall conduct an independent lottery for each cannabis business category where the number of eligible applicants exceeds the number of available licenses. The cabinet shall assign a number to each eligible applicant in each license lottery and maintain the confidentiality of the list(s) containing the eligible applicants and their assigned numbers until after the random drawings have occurred.

(9) The cabinet shall provide written notice to the eligible applicants selected through the lottery process that a license shall be issued to them upon timely payment of the applicable license fee. When an eligible applicant timely pays the applicable license fee, the cabinet shall issue a copy of the license to the applicant that contains the cannabis business's name, license number, physical location, issue date, and expiration date.

(10) Prior to license issuance, if an eligible applicant selected through the lottery process needs to change their location for cannabis business activities due to a local government prohibiting all cannabis business operations within its territory as authorized by KRS 218B.130 or other circumstances, a provisional license may be issued to the eligible applicant upon timely payment of the applicable license fee.

(a) If a provisional license is issued, the provisional licensee shall have a maximum of 120 calendar days from issuance to request a change of location to an allowable county or city under KRS Chapter 218B and this administrative regulation. If the new location is approved by the program, a new license shall be issued that contains the cannabis business's name, license number, physical location, issue date, and an expiration date which shall be one (1) year from the date of provisional license issuance.

(b) If the provisional licensee fails to request a location change within 120 calendar days from issuance or the request is denied, the cabinet shall revoke their provisional license and the license fee shall not be refunded.

(c) Provisional licenses shall not be sold or transferred to another individual or entity and shall not authorize a

provisional licensee to begin any cannabis business activities.

(11) The cabinet shall provide written notice to eligible applicants that were not selected through the lottery process informing them of the same.

(12)(14) If at the conclusion of the lottery selection process an eligible applicant declines the license or fails to pay its license fee within the required timeframe, the cabinet may conduct supplemental license lotteries as needed until all available cannabis business licenses have been issued and initial license fees paid. For any supplemental lottery for a license within a cannabis business category, eligible applicants who were not previously issued a license through the lottery process for that cannabis business category shall be entered into the supplemental lottery [~~if their selection would comply with any applicable geographic restrictions contained in this administrative regulation~~].

Section 4. Requirements for Licensees Prior to First Day of Cannabis Business Activities.

(1) Prior to its first day of cannabis business activities in the commonwealth, a licensee shall provide written confirmation to the cabinet that:

(a) The licensee has complied and will continue to comply with all applicable requirements of KRS Chapter 218B, including KRS 218B.095 and 915 KAR Chapter 1, and shall make available all records and documentation verifying such compliance upon the request of the cabinet;

(b) The licensee has submitted its complete physical address and the global positioning system (GPS) coordinates for any cannabis business activities to the cabinet and confirmed its business is not located within 1,000 feet of an existing elementary or secondary school or a daycare center. For the purpose of this administrative regulation, 1,000 feet shall be measured in a straight line from the nearest property line of an existing elementary school, secondary school, or daycare center to the nearest property line of the licensee's place of business. The cabinet shall have an opportunity to inspect the location prior to the first day of cannabis business activities at that location in order to identify any deficiencies for correction;

(c) The licensee has conducted and shall continue to conduct criminal background checks of each person seeking to be a principal officer, board member, agent, volunteer, or employee of the cannabis business before that person begins work and shall not employ, take on as a volunteer, or have as a board member, principal officer, or agent any person who was convicted of a disqualifying felony offense or is younger than twenty-one (21) years of age. The licensee shall maintain records of these background checks and provide same to the cabinet during subsequent inspections or upon request;

(d) The licensee has obtained and shall maintain workers compensation insurance for all employees in the commonwealth and shall pay all required employer contributions to the Kentucky Office of Unemployment Insurance;

(e) The licensee has obtained and shall maintain, at a minimum, commercial general liability insurance for \$1,000,000 per occurrence and \$2,000,000 per aggregate and commercial automobile insurance as required by Kentucky law, specifically KRS 304.39-110, for any vehicle used to transport medicinal cannabis or medicinal cannabis products;

(f) The licensee has established written standard operating procedures required by KRS Chapter 218B and 915 KAR Chapter 1, including those specific to its cannabis business category, and shall provide written or electronic copies of the procedures to the cabinet during inspections or upon request. The standard operating procedures that apply to cannabis businesses include:

1. Security;
2. Recordkeeping;
3. Employee qualifications, supervision, and training;
4. Quality assurance;
5. Adverse event reporting and recall;
6. Waste disposal and sanitation;
7. Transportation of medicinal cannabis;
8. Inventory management, including storage and labeling of medicinal cannabis;

9. Cash management and anti-fraud procedures;

10. Odor mitigation and control;

11. Preventing unlawful diversion of medicinal cannabis; and **12.[14.]** Incident reporting procedures to notify the cabinet;

(g) The licensee continues to maintain sufficient capital for operations of its cannabis business for, at a minimum, the term of the license;

(h) The licensee has implemented appropriate security measures to deter and prevent theft of medicinal cannabis and unauthorized entrance into areas containing medicinal cannabis;

(i) The licensee has and shall continue to display its license at all times in a conspicuous location within the premises of the cannabis business in a manner that is visible to visitors upon initial entry into its facility;

(j) The licensee's principals, agents, employees, and volunteers have completed all trainings required by the cabinet to be completed prior to its first day of cannabis business activities in the commonwealth;

(k) The licensee understands how to properly use the commonwealth's designated electronic monitoring system and seed to sale tracking system for medicinal cannabis and shall use those systems as required throughout the entirety of its licensure period;

(l) The licensee has implemented appropriate odor mitigation procedures or technics to ensure the capture of any potential fugitive odors emitted by the facility;

(m) The licensee consents to reasonable inspections, examinations, searches, and seizures; and

(n)(m) The licensee swears and affirms that all information and documentation provided to the cabinet is true and correct and that any false statement made to the cabinet by the licensee is punishable under the applicable provisions of KRS 523.100.

(2) A licensee shall also provide the cabinet with thirty (30) calendar days advance notice of its intended first day of cannabis business activities in the commonwealth and allow the cabinet an opportunity to inspect the licensee's site and facility prior to the first day of cannabis business activities. The licensee shall promptly correct any deficiencies identified by the cabinet during this inspection and shall not commence operations until deficiencies are corrected and approved by the cabinet. If the licensee fails to provide the notice required under this section or fails to correct identified deficiencies, the cabinet may take one (1) or more of the actions described in Section 12 of this administrative regulation.

(3) Once a cultivator or producer has received approval from the cabinet to commence operations, the cultivator or producer shall:

(a) Bring a start-up inventory of medicinal cannabis seeds, seedlings, **tissue cultures, clones,** and plants into its facility;

(b) Submit a written request to the cabinet via electronic mail to kymedcanreporting@ky.gov requesting that the cabinet open a window in the state's designated seed to sale tracking system for the cultivator or producer to enter its start-up inventory of medicinal cannabis seeds, seedlings, **tissue cultures, clones,** and plants into the system. This written request shall include the number and strain of all medicinal cannabis seeds, seedlings, **tissue cultures, clones,** and plants brought into the facility;

(c) Have fourteen (14) calendar days from receipt of the cabinet's approval of the cultivator or producer's written request in which to enter its start-up inventory into the state's designated seed to sale tracking system. A cultivator or producer shall enter its start-up inventory into the state's designated seed to sale tracking system as follows:

1. Seeds shall be entered into the system as a package;
2. Seedlings, **tissue cultures, and clones[and plants]** shall be entered into the system as a batch; and

(d) Notify the cabinet in writing via electronic mail to kymedcanreporting@ky.gov when all its start-up inventory has been fully and accurately entered into the state's designated seed to sale tracking system and confirm the number and strain of medicinal cannabis seeds, seedlings, **tissue cultures, clones,** and plants brought into the facility.

(4) Following acquisition of its start-up inventory, a cultivator or producer may submit a written request to the cabinet via electronic mail to kymedcanreporting@ky.gov requesting that the cabinet open a window in the state's designated seed to sale tracking system for

the cultivator or producer to enter new medicinal cannabis seeds, seedlings, tissue cultures, clones, or plants into the system. This written request shall:

(a) State the proposed date to bring new inventory into the facility; and

(b) Provide the number and strain of all new medicinal cannabis seeds, seedlings, tissue cultures, clones, and plants that the cultivator or producer requests to bring into the facility.

(5) Upon receipt of the cabinet's approval of a written request made pursuant to subsection (4) of this section, the cultivator or producer shall have seven (7) calendar days to enter its new inventory into the state's designated seed to sale tracking system. A cultivator or producer shall enter its new inventory into the state's designated seed to sale tracking system as described in subsection (3)(c) of this section. A cultivator or producer shall notify the cabinet in writing via electronic mail to kymedcanreporting@ky.gov when all new inventory has been fully and accurately entered into the state's designated seed to sale tracking system and confirm the number and strain of medicinal cannabis seeds, seedlings, tissue cultures, clones, and plants brought into the facility.

Section 5. Requirements for Licensees During Licensure Period.

(1) A licensee shall only hold licenses in one (1) cannabis business category at any given time, except as provided in Section 10(4) of this administrative regulation. A licensee may hold multiple licenses in the same cannabis business category as long as each license contains a separate and distinct physical address where the cannabis business conducts licensed cannabis activities and the licensee is otherwise in compliance with the requirements of KRS Chapter 218B and 915 KAR Chapter 1, including any geographic restrictions contained in this administrative regulation.

(2) Duty to report.

(a) During the licensure period, a licensee shall notify the cabinet in writing of any change in facts or circumstances reflected in the initial license application, supplemental written confirmations, or any license renewal application submitted to the cabinet, or any newly discovered fact or circumstance which would have been included in the application or information provided to the cabinet if known at the time the information was submitted. This duty to report includes:

1. Notifying the cabinet of any physical change, alteration, or modification to a licensed facility that materially or substantially alters the facility or its usage, including an increase or decrease in the total square footage of the facility;

2. Significant electrical modifications that require inspection by local authorities; and

3. Sealing off, creation of, or relocation of a common entryway, doorway, passage, or other means of ingress or egress when the common entryway, doorway, or passage alters or changes limited access areas.

(b) During the licensure period, a licensee shall notify the cabinet following knowledge or discovery of the following events:

1. Inventory discrepancies;

2. Diversion, theft, or loss of any medicinal cannabis or medicinal cannabis product;

3. Unauthorized destruction of medicinal cannabis;

4. Any criminal proceeding involving the licensee's owners, principal officers, board members, employees, volunteers, financial backers, or agents arising out of actions taken on the licensee's premises or while using licensee property;

5. Security alarm activation or other event that requires response by law enforcement or security personnel;

6. Any loss, unauthorized dissemination, or unauthorized alteration of records related to medicinal cannabis, cardholders, employees, volunteers, or agents;

7. Accidents involving transport vehicles that occur while the licensee is transporting or delivering medicinal cannabis;

8. Any act involving cultivating, processing, producing, testing, transporting, or dispensing medicinal cannabis by any person that may create a health or safety risk to cardholders or the general public;

9. A dispensary declines the sale of medicinal cannabis to a cardholder; and

10. A dispensary desires to prohibit a cardholder from entering its premises.

(c) The notifications required under this subsection shall be:

1. Provided on a form prescribed by the cabinet and available on the Web site of the Kentucky Medical Cannabis Program, <https://kymedcan.ky.gov>, that includes time and date of the event, individuals involved, and a detailed description of the event; and

2. Sent via electronic mail to kymedcanreporting@ky.gov or through the cannabis business licensing portal within twenty-four (24) hours of discovery or knowledge of the event.

(d) If the licensee fails to provide the notice required under this section, the cabinet may take one (1) or more of the actions described in Section 12 of this administrative regulation.

(e) In the event a local government prohibits all cannabis business operations within its territory in accordance with KRS 218B.130, a licensee located within the affected territory shall notify the cabinet in writing via electronic mail to kymedcanreporting@ky.gov within twenty-four (24) hours of notification or discovery of this prohibition, including all information known regarding the prohibition, and may make a written request to the cabinet to change its cannabis business location in accordance with Section 9 of this administrative regulation.

(3) Inspection and investigation.

(a) The cabinet may conduct announced or unannounced inspections or investigations to determine the licensee's compliance with KRS Chapter 218B and 915 KAR Chapter 1. These investigations and inspections may occur during regular working hours and at other reasonable times in order to inspect the licensee's place of business, question privately any such principal officer, board member, agent, employee, or employee's representative, and investigate such facts, conditions, practices, or other matters deemed appropriate to determine whether the licensee is operating in compliance with KRS Chapter 218B and 915 KAR Chapter 1. If a licensee refuses such entry onto its premises, the cabinet may apply to the circuit court in the county in which the licensee is located for an order to enforce the right of entry.

(b) Following completion of an inspection or investigation, the cabinet shall have the authority to confiscate, possess, transport, and destroy any medicinal cannabis that has been deemed noncompliant with the standards established by KRS Chapter 218B and 915 KAR Chapter 1.

(c) The cabinet's authorized representatives shall also have the authority to:

1. Administer oaths;

2. Examine witnesses under oath;

3. Take depositions;

4. Certify to official acts;

5. Review records and accounts;

6. Take photographs;

7. Secure any other evidence deemed necessary to evaluate compliance with KRS Chapter 218B and 915 KAR Chapter 1; and

8. Issue subpoenas to compel the attendance of witnesses and parties and the production of books, accounts, correspondence, memoranda, and other records considered necessary and relevant to the matter under investigation by the cabinet.

(d) When a witness or party fails to comply with a subpoena issued by the cabinet, the circuit court in the county in which the witness or party is located may compel obedience by proceedings for contempt as in the case of disobedience of a subpoena or order issued from such court or a refusal to testify therein, and may adjudge such person guilty of contempt of court and punish him or her as provided by law in other contempt cases. In any proceeding brought under this paragraph, a circuit court may modify or set aside the subpoena.

(e) An investigation or inspection may include:

1. Inspection of a licensee's site, facility, vehicles, equipment, books, records, papers, documents, data, and other physical or electronic information;

2. Interviews of licensee's principal officers, board members, agents, employees, volunteers, or employee representatives;

3. Interviews of licensee's former principal officers, board members, agents, employees, volunteers, or employee representatives; and

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4. Inspection of equipment, instruments, tools, machinery, and vehicles that are used to grow, process, package, transport, and test medicinal cannabis.

(f) The cabinet and its authorized agents shall have free access to review and, if necessary, make copies of books, records, papers, documents, data, or other physical or electronic information that relates to the business of the licensee, including financial data, sales data, shipping data, pricing data, and employee data.

(g) Failure of a licensee to provide the cabinet and its authorized agents immediate access to any part of a licensee's site or facility, requested material, physical or electronic information, or individual as part of an inspection or investigation may result in the imposition of a civil monetary fine, suspension, or revocation of its license, or an immediate cessation of operations pursuant to a cease-and-desist order issued by the cabinet if continued operations would present a risk to the health, safety, or welfare of cardholders or the public.

(h) The cabinet and its authorized agents shall have access to any area within a licensee's site or facility, including any area being used to store medicinal cannabis, and are authorized to collect samples and test samples for testing.

(4) Training.

(a) Every principal, agent, employee, and volunteer of a licensee who has direct contact with cardholders, or physically handles cannabis seeds, seedlings, tissue cultures, clones, mature cannabis plants, medicinal cannabis, or medicinal cannabis products, shall complete applicable training required by the cabinet, which may include trainings for cultivating, processing, testing, and retail sale of medicinal cannabis and usage of the commonwealth's designated electronic monitoring system and seed to sale tracking system required by KRS 218B.140. The cabinet shall provide written notice to licensees of the availability of any required training and the frequency to complete the training.

(b) The cabinet shall publish a Guide to Worker Safety and Health in the Kentucky Medical Cannabis Industry on the Web site of the Kentucky Medical Cannabis Program, <https://kymedcan.ky.gov>. Licensees shall maintain a physical copy of the Guide to Worker Safety and Health in the Kentucky Medical Cannabis Industry in their facility in a manner that is readily accessible to its employees or agents and ensure that employees receive annual training on the contents of the guide.

(c) A licensee shall train its principals, agents, employees, and volunteers on its established standard operating procedures within thirty (30) days of starting employment and once every calendar year thereafter.

(d) A licensee shall retain any training participation records of its principals, agents, employees, and volunteers and make them available for inspection by the cabinet upon request for a period of five (5) years.

(5) Insurance requirements.

(a) A licensee shall obtain and maintain commercial general liability insurance for, at a minimum, \$1,000,000 per occurrence and \$2,000,000 per aggregate.

(b) A licensee shall obtain and maintain commercial automobile insurance as required by Kentucky law, specifically KRS 304.39-110, for any vehicle used to transport medicinal cannabis or medicinal cannabis products.

(c) A licensee shall obtain and maintain workers' compensation insurance coverage for employees in the commonwealth and shall pay all required employer contributions to the Kentucky Office of Unemployment Insurance.

(d) The insurance requirements contained in this section shall begin prior to the licensee's first day of cannabis business activities in the commonwealth and continue for as long as the licensee is operating under a license issued by the cabinet.

(6) Reports.

(a) The cabinet may require ongoing reporting of operational and financial information from the licensee in a form and manner prescribed by the cabinet.

(b) The cabinet shall require any reports necessary to carry out its responsibilities under KRS Chapter 218B and 915 KAR Chapter 1.

Section 6. Failure to be Operational.

(1) If a licensee has not met the timeline estimates provided in its initial license application to begin cannabis business activities in the commonwealth, the licensee shall notify the cabinet via electronic mail to kymedcanreporting@ky.gov within two (2) calendar days of determining a need to adjust its timeline. In its written notice to the cabinet, the licensee shall identify any operational deficiencies and provide an explanation for failing to adhere to its timeline estimates.

(2) Within seven (7) calendar days of providing the written notice required under this section, the licensee shall submit a corrective action plan to the cabinet that sets forth the licensee's updated timeline and a date certain for correcting the identified operational deficiencies.

(3) If the licensee fails to comply with its corrective action plan, the cabinet may impose penalties or sanctions as outlined in Section 12 of this administrative regulation.

Section 7. Closure of a Licensed Cannabis Business Location.

(1) A licensee shall notify the cabinet via electronic mail to kymedcanreporting@ky.gov immediately, but in no event fewer than thirty (30) calendar days prior to the projected date of closure, upon making a determination that it intends to close a cannabis business location.

(2) A licensee shall not accept or purchase seeds, seedlings, tissue cultures, clones, medicinal cannabis plants, medicinal cannabis, medicinal cannabis products, medicinal cannabis accessories, equipment, or medicinal devices or instruments for the closing location as of the date of closure notice submitted to the cabinet.

(3) The notice shall be accompanied by the licensee's written plan for closing its cannabis business location that includes:

(a) The projected date of closure;

(b) How the licensee intends to notify, prior to the projected date for closure, any person or entity to which the licensee provides medicinal cannabis or medicinal cannabis services from the closing location;

(c) How the licensee intends to dispose of seeds, seedlings, tissue cultures, clones, medicinal cannabis plants, medicinal cannabis, medicinal cannabis products, or other plant matter projected to still be at the closing location at the time of the projected closure; and

(d) How the licensee intends to dispose of equipment, devices, instruments, or medicinal cannabis accessories at the closing location.

(4) A licensee shall not remove or destroy any seeds, seedlings, tissue cultures, clones, medicinal cannabis plants, medicinal cannabis, other plant matter, medicinal cannabis products, equipment, medicinal cannabis accessories, or medicinal devices or instruments until the cabinet has approved its plan for closing the location and shall comply with all applicable requirements regarding disposal of medicinal cannabis contained in 915 KAR Chapter 1.

(5) The cabinet may enter and inspect the cannabis business location and facilities following receipt of the licensee's closure plan to determine whether to approve the closure plan. If the cabinet denies the closure plan, it shall notify the licensee in writing and require the licensee to submit a revised closure plan within seven (7) calendar days of the date of the denial notice. The cabinet shall review and consider the revised closing plan and issue a determination within seven (7) calendar days of receipt.

(6) If the cabinet approves the licensee's closure plan, the licensee shall surrender its license for the closing location to the cabinet on or before the date for closure provided in the plan.

Section 8. Request for Approval of a Change in Cannabis Business Ownership.

(1) If there is an impending change in ownership of a licensee from the ownership listed in the initial license application, the licensee shall submit a written request for approval of a change in ownership to the cabinet via electronic mail to kymedcanreporting@ky.gov. The cabinet shall consider the requirements for ownership of a cannabis business contained in KRS Chapter 218B and 915 KAR Chapter 1 as well as any other

factors that the cabinet deems relevant in making its determination on the request. The cabinet shall review the request and notify the licensee in writing whether the request is approved or denied.

(2) For each new individual or entity that is part of the proposed change in ownership, the licensee shall include in its request the information required of owners in the initial license application. The licensee shall also provide the cabinet with the names of all outgoing individuals or entities previously listed as owners.

(3) If the cabinet determines that a request for approval of a change in ownership is lacking sufficient information upon which to make a determination, the cabinet shall notify the licensee in writing of the areas that require additional information and documentation. The licensee shall have fifteen (15) calendar days from the mailing date of the notice to provide the requested information and documentation to the cabinet. A licensee's failure to provide the required information and documentation to the cabinet by the deadline shall be grounds for the denial of the requested change in ownership.

Section 9. Request for Approval of a Change in Cannabis Business Location.

(1) A licensee desiring to change the location of a site or facility shall submit a written request for approval of a change in location to the cabinet via electronic mail to kymedcanreporting@ky.gov. A change in location of a site or facility shall not occur unless the cabinet approves the change in writing. The cabinet shall consider the location requirements for a cannabis business contained in KRS Chapter 218B and 915 KAR Chapter 1 in making its determination on the request, and any other factors that the cabinet deems relevant. The cabinet shall review the request and notify the licensee in writing whether the request is approved or denied.

(2) A written request for approval of a change in location shall include the reason(s) for requesting the change and other information about the proposed new location, including:

(a) The proposed new physical address of the cannabis business and the GPS coordinates for any proposed cultivation, processing, producing, testing, or dispensing activities;

(b) Evidence that the licensee has the authority to use the proposed site as a cannabis business;

(c) Confirmation that the proposed location is not within 1,000 feet of an existing elementary or secondary school or a daycare center at the time the request is made; and

(d) A site plan for the cannabis business.

(3) If the cabinet in its discretion approves the request, the cabinet shall issue an amended license to the licensee reflecting the new physical address of the cannabis business. The expiration date of the amended license shall be the same as the expiration date of the previous license.

(4) Within ninety (90) calendar days of the issuance by the cabinet of an amended license under this section, the licensee shall change the location of its operation to the new location designated in the new license. Simultaneously, the licensee shall cease to operate at the former location and surrender its existing license to the cabinet. The following conditions shall apply:

(a) At no time may a licensee operate or exercise any of the privileges granted under the license in both locations;

(b) The cabinet may extend the ninety (90) day deadline for relocation for up to an additional ninety (90) calendar days;

(c) The licensee shall notify the cabinet via electronic mail to kymedcanreporting@ky.gov at least fifteen (15) calendar days prior to beginning cannabis business activities at the new location; and

(d) The cabinet may conduct an inspection to determine the appropriateness of the new location, and upon notification from the cabinet, the licensee shall immediately correct any deficiencies identified by the cabinet during this inspection and shall not commence operations at the new location until the deficiencies have been corrected and approved by the cabinet.

(5) For dispensary licenses, the cabinet shall not approve a change of location that is outside the boundaries of the medicinal cannabis region for which the license was issued or that otherwise is not in compliance with the location restrictions contained in Section 3(3) of this administrative regulation.

Section 10. Request to Sell Cannabis Business License.

(1) A licensee desiring to sell its cannabis business license shall submit a written request for approval of the sale to the cabinet via electronic mail to kymedcanreporting@ky.gov. The sale of a cannabis business license shall not occur unless the cabinet approves the sale in writing. The cabinet shall review the request and notify the licensee in writing whether the proposed sale is approved or denied. The cabinet shall consider the initial license application requirements for a cannabis business contained in KRS Chapter 218B and 915 KAR 1:010, and any other factors that the cabinet deems relevant in making its determination on the request.

(2) A written request to approve a license sale shall include the sale price, the reason(s) for requesting the sale, and information about the proposed purchaser, including:

(a) All information and documentation required to be submitted by a cannabis business as part of the initial license application process in order to show the proposed purchaser would be eligible for entry into a license lottery conducted according to this administrative regulation;

(b) Signed attestations from the proposed purchaser that are required as part of the initial license application process;

(c) A transition plan for transferring the license from the licensee to the proposed purchaser; and

(d) A notarized affidavit from the proposed purchaser swearing and affirming that all information and documentation provided to the cabinet along with the request is true and correct, and an acknowledgement that any false statement made to the cabinet as part of the proposed sale process is punishable under the applicable provisions of KRS 523.100.

(3) The cabinet shall approve a licensee's sale of a license if the proposed purchaser and any new location or facilities meet the requirements of KRS Chapter 218B and 915 KAR Chapter 1.

(4) The cabinet shall deny a licensee's sale of a license to any proposed purchaser who currently holds a license in a different cannabis business category than the one offered for sale (such as the proposed purchaser seeks to purchase a dispensary license while currently licensed as a tier I cultivator), except that a cultivator may sell its license to another licensed cultivator in the same or different cultivator tier (such as the proposed purchaser may purchase a tier II cultivator license while currently licensed as a tier I cultivator). Cultivators may hold licenses in more than one (1) cultivator tier at any given time as long as each license contains a separate and distinct physical address where cultivator conducts licensed cannabis activities and the licensee is otherwise in compliance with the requirements of KRS Chapter 218B and 915 KAR Chapter 1.

Section 11. Issuance of Additional Cannabis Business Licenses.

(1) Beginning January 1, 2025, the cabinet shall, on a quarterly basis, review the need for issuance of new licenses in each cannabis business category.

(2) In making its determination whether to issue new licenses, the cabinet may consider:

(a) The population of the commonwealth;

(b) The number of active cardholders;

(c) Changes to the list of qualifying medical conditions for medicinal cannabis;

(d) Market supply and demand;

(e) Geographic distribution of dispensaries and other cannabis businesses;

(f) Workforce development opportunities; and

(g) Any other factors that the cabinet deems relevant to its analysis.

(3) If the cabinet determines there exists a need for additional cannabis business licenses in the commonwealth, the cabinet shall issue a notice documenting the basis for this determination, including a list of the factors it considered to arrive at that determination.

(4) The cabinet shall publish on the Web site of the Kentucky Medical Cannabis Program, <https://kymedcan.ky.gov>, the notice required by this Section as well as a notice of initial license application availability. This notice shall provide the timeframe during which initial license applications shall be accepted by the

cabinet and the category and number of cannabis business licenses available for distribution at the close of the application period. Applicants for new cannabis business licenses shall adhere to the requirements of 915 KAR 1:010 regarding initial license applications and follow the initial license application instructions. The process for issuing new licenses shall comply with the requirements of this administrative regulation.

Section 12. Penalties and Sanctions.

(1) In addition to any other penalty imposed by law for violations of KRS Chapter 218B and 915 KAR Chapter 1, the cabinet may take one (1) or more of the following actions:

(a) Suspend or revoke a license if any of the following occur:

1. The licensee or any of its agents commit multiple violations or a serious violation of the requirements of KRS Chapter 218B and 915 KAR Chapter 1;

2. The licensee or any of its agents fail to maintain effective control against diversion of medicinal cannabis from its facility or under its control;

3. The licensee or any of its agents violate a provision of other state or local laws regarding the operation of its cannabis business;

4. The licensee or any of its agents engage in conduct, or an event occurs, that would have disqualified the cannabis business from being issued a license or having its license renewed; or

5. The licensee submitted false or misleading information on any application submitted to the cabinet.

(b) Impose a civil fine of not more than \$10,000 for each violation and an additional fine of not more than \$1,000 for each day of the continuing violation. In determining the amount of each fine, the cabinet shall take the following into consideration:

1. The seriousness of the violation;

2. The potential harm resulting from the violation to cardholders or the general public;

3. The willfulness of the violation;

4. Previous violations, if any, by the licensee being assessed;

5. The economic benefit to the licensee being assessed for failing to comply with the requirements of KRS Chapter 218B, 915 KAR Chapter 1, or an order issued by the cabinet; and

6. The economic deterrent to the licensee.

(c) Issue a cease-and-desist order to immediately stop or restrict the operations of a licensee to protect the public's health, safety, and welfare. The following applies to issuing a cease-and-desist order:

1. An order may include a requirement that a licensee cease or restrict some or all of its operations. In addition, the order may prohibit the use of some or all of the medicinal cannabis grown, processed, or to be sold by the licensee;

2. An order may be issued by an authorized agent of the cabinet immediately upon the completion of an inspection or investigation if the agent observes or suspects an operational failure or determines that the conditions will likely create a diversion of medicinal cannabis, contamination of medicinal cannabis, or a risk to cardholders or the general public;

3. An order may be issued by an authorized agent of the cabinet in circumstances where a licensee fails to provide timely notice of closure of a cannabis business location in accordance with Section 7 of this administrative regulation and the cabinet suspects the imminent closure of the cannabis business shall likely create a diversion of medicinal cannabis or a risk to cardholders or the general public;

4. An order may include:

a. An immediate evacuation of the site and facility, and the sealing of the entrances to the facility;

b. A quarantine of some or all of the medicinal cannabis found at the facility; and

c. The suspension of the sale or shipment of some or all of the medicinal cannabis found at the facility.

(d) Issue a written warning if the cabinet determines that either:

1. The public interest shall be adequately served under the circumstances by the issuance of the warning; or

2. The violation does not threaten the safety or health of cardholders or the general public, and the licensee shall take immediate action to remedy the violation.

(e) Require a licensee develop and adhere to a corrective action

plan approved by the cabinet. The cabinet shall monitor compliance with the corrective action plan. Failure to comply with the corrective action plan may result in the cabinet taking additional action under the applicable provisions of this section as it deems appropriate.

(2) A person who aids, abets, counsels, induces, procures, or causes another person to violate KRS Chapter 218B or 915 KAR Chapter 1, or an order issued by cabinet, shall be subject to the civil penalties provided for under this section.

(3) Before the cabinet may revoke or suspend a license, the cabinet shall provide the licensee with written notice specifying the nature of the alleged violation(s) and allow the licensee an opportunity to appear and be heard pursuant to KRS Chapter 13B. Any resulting hearing shall be conducted in compliance with the requirements of KRS Chapter 13B.

(4) The cabinet shall provide a licensee with written notice of imposition of a civil fine, order of restitution, cease-and-desist order, written warning, or corrective action plan via certified mail to the address on the license. The licensee may, within thirty (30) calendar days after the date of the mailing of the cabinet's notice, file a written request for an administrative hearing regarding the action taken. The hearing shall be conducted in compliance with the requirements of KRS Chapter 13B.

Section 13. Technical Advisories.

(1) The cabinet may issue technical advisories by memorandum to assist licensees in complying with the KRS Chapter 218B and 915 KAR Chapter 1.

(2) Technical advisories shall not have the force of law or regulation, but shall provide guidance on the cabinet's interpretation of, and how a licensee may maintain compliance with, KRS Chapter 218B and 915 KAR Chapter 1.

(3) Notice of the availability of a technical advisory shall be published on the Web site of the Kentucky Medical Cannabis Program, <https://kymedcan.ky.gov>.

Section 14. Minimal Performance Standards for Biennial Accreditation.

(1) As part of the license renewal process, licensees shall meet the minimum performance standards established in 915 KAR 1:010, Section 6 in order to be approved for a renewal license.

(2) If a licensee successfully meets the minimum performance standards established in 915 KAR 1:010, Section 6 over a two (2) year period, the cabinet shall recognize the licensee as an accredited cannabis business in the commonwealth.

(3) The recognition provided under this section shall expire two (2) years after the date of issuance, and shall be renewed if the licensee continues to:

(a) Operate in the commonwealth as of the expiration date; and

(b) Meet the minimum performance standards established in 915 KAR 1:010, Section 6.

SAM FLYNN, Executive Director

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: July 12, 2024

FILED WITH LRC: July 15, 2024 at 9:50 a.m.

CONTACT PERSON: Krista Quarles, Policy Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-7476; fax 502-564-7091; email CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Oran S. McFarlan, III or Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes procedures for the issuance, renewal, suspension, and revocation of cannabis business licenses. In response to comments received by the cabinet, the Amended After Comments version of the administrative regulation amends certain renewal license fees to match initial license fees, adds provisional licensing for eligible applicants selected through the lottery process, clarifies eligibility for any supplemental lottery, requires licensees to address odor mitigation and control, adds tissue cultures and clones where applicable, and allows licensees to submit required reports

through the cannabis business licensing portal.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to carry out the requirements of KRS Chapter 218B, specifically KRS 218B.140.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 218B.140 requires the Cabinet for Health and Family Services to promulgate administrative regulations establishing procedures for the issuance, renewal, suspension, and revocation of cannabis business licenses. This administrative regulation establishes those procedures.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides the procedures for the issuance, renewal, suspension, and revocation of cannabis business licenses.

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

(a) How the amendment will change this existing administrative regulation: Not applicable. This is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: Not applicable. This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: Not applicable. This is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: Not applicable. This is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects cannabis businesses that have applied for and subsequently receive licenses to conduct cannabis business activities in the commonwealth.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The requirements to receive a cannabis business license and remain in good standing throughout the licensure period are provided in this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The initial license fees vary by cannabis business category and range from \$12,000 to \$125,000 for each licensed location. The annual renewal license fees also vary by cannabis business category and range from \$12,000 to \$125,000 for each licensed location.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The cannabis businesses that receive a license from the Cabinet for Health and Family Services are authorized to conduct cannabis business activities in the commonwealth for the term of the license, which is one (1) year from the date of license issuance. (5) Provide an estimate of how much it will cost to implement this administrative regulation:

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

(a) Initially: The annual cost estimate to administer all aspects of the Kentucky Medical Cannabis Program is \$9,135,398. A significant portion of those funds will go toward licensing and enforcement of cannabis businesses operating in the commonwealth as well implementation and continued operation of the electronic monitoring system and seed to sale tracking system required by KRS 218B.140.

(b) On a continuing basis: The annual cost estimate to administer all aspects of the Kentucky Medical Cannabis Program is \$9,135,398. A significant portion of those funds will go toward licensing and enforcement of cannabis businesses operating in the commonwealth as well implementation and continued operation of the electronic monitoring system and seed to sale tracking system required by KRS 218B.140.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation:

State general funds provided by the commonwealth.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: It is anticipated that an increase in funding will be necessary to implement this regulation as additional staff and resources are necessary to administer and enforce licensure of cannabis businesses.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: Yes, this administrative regulation establishes initial license fees and annual renewal license fees for cannabis businesses to operate in Kentucky.

(9) TIERING: Is tiering applied? Tiering is not applied. Cannabis businesses will be treated equally.

FISCAL IMPACT STATEMENT

(1) Identify each state statute, federal statute, or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 218B.015, 218B.080, 218B.085, 218B.090, 218B.095, 218B.100, 218B.105, 218B.110, 218B.115, 218B.120, 218B.125, 218B.140, 304.39-110, 523.100, KRS Chapter 13B.

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: This administrative regulation is promulgated by the Kentucky Medical Cannabis Program within the Cabinet for Health and Family Services.

(a) Estimate the following for the first year:

Expenditures: The annual cost estimate to administer all aspects of the Kentucky Medical Cannabis Program is \$9,135,398.

Revenues: The commonwealth will receive initial license fees paid by proposed cannabis businesses during the first year. The initial license fees vary by cannabis business category and range from \$12,000 to \$125,000 for each licensed location.

Cost Savings: The cabinet does not anticipate any cost savings in the first year.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? The annual cost estimate to administer all aspects of the Kentucky Medical Cannabis Program is \$9,135,398. The commonwealth will receive annual renewal license fees from licensed cannabis businesses that desire to continue operating in the commonwealth following the expiration of their existing license. The annual renewal license fees vary by cannabis business category and range from \$12,000 to \$125,000 for each submitted renewal application. The annual renewal license fees are refundable if the renewal application is denied. The commonwealth may also receive additional initial license fees if the Cabinet for Health and Family Services determines additional licenses should be issued in a given year based on criteria provided in 915 KAR Chapter 1.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): If its application is approved, a proposed cannabis business will locate within a city or county in the commonwealth.

(a) Estimate the following for the first year:

Expenditures: Unknown at this time. This response will depend on the number of licensed cannabis businesses located in a respective city or county and any ordinances established by local authorities regulating licensed cannabis businesses in their jurisdiction as allowed by KRS 218B.130

Revenues: Unknown at this time. This response will depend on the number of licensed cannabis businesses located in a respective city or county and any ordinances and fees established by local authorities regulating licensed cannabis businesses in their jurisdiction as allowed by KRS 218B.130.

Cost Savings: The cabinet does not anticipate any cost savings in the first year.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? Unknown at this time. This response will depend on the number of licensed cannabis businesses located in a respective city or county and any ordinances and fees established by local authorities regulating licensed cannabis businesses in their jurisdiction as allowed by KRS 218B.130.

(4) Identify additional regulated entities not listed in questions (2) or (3): Licensed cannabis businesses.

(a) Estimate the following for the first year:

Expenditures: The initial license fees vary by cannabis business category and range from \$12,000 to \$125,000 for each licensed location.

Revenues: Once operational, licensees will generate revenue through cannabis business activities. At this time, it is unknown how much revenue will be generated by those licensed cannabis businesses.

Cost Savings: The cabinet does not anticipate any cost savings in the first year.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? Cannabis businesses are required to pay the applicable annual renewal license fee at the time of renewal application submission. The annual renewal license fees vary by cannabis business category and range from \$12,000 to \$125,000 for each submitted renewal application. This renewal license fee is refundable if the renewal application is denied.

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: The annual cost estimate to administer all aspects of the Kentucky Medical Cannabis Program is \$9,135,398. A significant portion of those funds will go toward licensing and enforcement of cannabis businesses operating in the commonwealth as well implementation and continued operation of the electronic monitoring system and seed to sale tracking system required by KRS 218B.140. It is anticipated that an increase in funding will be necessary to administer all of the administrative regulations contained in 915 KAR Chapter 1 related to cannabis businesses.

(b) Methodology and resources used to determine the fiscal impact: As part of its Biennial Budget Request, the Cabinet for Health and Family Services analyzed the cost to administer all aspects of the Kentucky Medical Cannabis Program, including estimated costs for staffing and implementation and ongoing maintenance and operations costs for the electronic monitoring system and seed to sale tracking system required by KRS 218B.140.

(6) Explain:

(a) Whether this administrative regulation will have an overall negative or adverse major economic impact to the entities identified in questions (2) - (4). (\$500,000 or more, in aggregate) The annual cost estimate to administer all aspects of the Kentucky Medical Cannabis Program is \$9,135,398. A significant portion of those funds will go toward licensing and enforcement of cannabis businesses operating in the commonwealth as well implementation and continued operation of the electronic monitoring system and seed to sale tracking system required by KRS 218B.140. The Kentucky Medical Cannabis Program will have a major economic impact on the Cabinet for Health and Family Services, and it is anticipated that an increase in funding will be necessary to administer all of the administrative regulations contained in 915 KAR Chapter 1 related to cannabis businesses.

(b) The methodology and resources used to reach this conclusion: As part of its Biennial Budget Request, the Cabinet for Health and Family Services analyzed the cost to administer all aspects of the Kentucky Medical Cannabis Program, including estimated costs for staffing and implementation and ongoing maintenance and operations costs for the electronic monitoring system required by KRS 218B.140.

ADMINISTRATIVE REGULATIONS AS AMENDED BY PROMULGATING AGENCY
AND REVIEWING SUBCOMMITTEE

ARRS = Administrative Regulation Review Subcommittee
IJC = Interim Joint Committee

STATE BOARD OF ELECTIONS
(As Amended at ARRS, July 9, 2024)

31 KAR 3:041. Electronic Voter Registration System.

RELATES TO: KRS 116.045, 116.0452, 116.065, 116.155,
118.025

STATUTORY AUTHORITY: KRS 116.045(4)(e), 117.015(1)(a)
NECESSITY, FUNCTION, AND CONFORMITY: KRS
117.015(1) requires the State Board of Elections to supervise the
registration of voters within the state. KRS 116.045(4)(e)
~~authorizes provides that~~ a person ~~to may~~ register to vote or
change party affiliation by methods of registration or reregistration
approved by the State Board of Elections. KRS 117.015(1)(a)
authorizes the State Board of Elections to promulgate administrative
regulations necessary to properly carry out its duties. This
administrative regulation approves and establishes procedures for
use of an electronic voter registration system to register or reregister
to vote or to update voter registration information.

Section 1. Definition. "Applicant" means a person who uses the
electronic voter registration system established by the State Board
of Elections to register or reregister to vote or to update voter
registration information.

Section 2. Use of Electronic Voter Registration System.

(1) The State Board of Elections shall, as funds permit, establish
an electronic voter registration system by which persons may
register or reregister to vote or update voter registration information.

(2) ~~Pursuant In addition~~ to ~~the methods set forth in~~ KRS
116.045(4)(e), a person who meets all eligibility requirements may
register or reregister to vote or update voter registration information
by using the electronic voter registration system ~~as~~ established by
the State Board of Elections ~~under pursuant to~~ this administrative
regulation.

Section 3. Contents of Electronic Voter Registration System
Application Form. The electronic voter registration system
application shall:

(1) Include the electronic equivalent of the Commonwealth of
Kentucky Voter Registration Application form prescribed and
furnished by the State Board of Elections under KRS 116.155,
including a warning relating to the potential penalties applicable to
an applicant knowingly filing an application with untrue information
and a voter declaration affirmation as required by KRS 116.065;

(2) Require the applicant who has a Kentucky driver's license or
Kentucky personal identification card to:

(a) Agree to the use of his or her Kentucky driver's license
signature or Kentucky personal identification card signature for voter
registration purposes; and

(b) Provide his or her Kentucky driver's license number or
Kentucky personal identification card number; ~~and~~;

(3) Require the applicant who does not have a Kentucky driver's
license or Kentucky personal identification card, to either:

(a) Provide an electronic signature to be used for voter
registration purposes; or

(b) Print the registration application, sign it, and return it to the
county clerk for the county in which the applicant resides.

Section 4. Processing the Commonwealth of Kentucky Voter
Registration Application Submitted Via the Electronic Voter
Registration System.

(1) The electronic voter registration system shall not allow an
applicant to submit an application unless:

(a) The entire application form, including the voter declaration
affirmation as required by KRS 116.065, is completed by the
applicant; and

(b) The applicant has either:

1. Agreed to the use of his or her Kentucky driver's license
signature or Kentucky personal identification card signature for voter
registration purposes and provided his or her Kentucky driver's
license number or Kentucky personal identification card number
pursuant to Section 3(2) of this administrative regulation; or

2. Provided an electronic signature to be used for voter
registration purposes pursuant to Section 3(3)(a) of this
administrative regulation.

(2) Immediately upon the applicant's submission of an
application that meets the requirements of subsection (1) of this
section, the State Board of Elections shall:

(a) If the applicant agreed to the use of his or her Kentucky
driver's license signature or Kentucky personal identification card
signature for voter registration purposes and provided his or her
Kentucky driver's license number or Kentucky personal identification
card number pursuant to Section 3(2) of this administrative
regulation:

1. Check the information submitted by the applicant to ensure
that the Kentucky driver's license number or Kentucky personal
identification card number submitted by the applicant matches the
information maintained by the Transportation Cabinet; and

2. If a match is made:

a. Electronically forward the information provided in the
application, along with a digital copy of the applicant's signature
obtained from the Transportation Cabinet, to the county clerk for the
county in which the applicant resides; and

b. Notify the applicant that the application has been
electronically forwarded to the county clerk for the county in which
the applicant resides, but that the applicant ~~shall will~~ not be
officially registered to vote or that changes to the applicant's existing
registration ~~shall will~~ not be made until the application is received
and processed by the county clerk.

3. If a match cannot be made, notify the applicant that the
application cannot be processed and instruct the applicant to print
the application, sign it, and mail or hand deliver it to the county clerk
for the county in which the applicant resides.

(b) If the applicant provided an electronic signature to be used
for voter registration purposes pursuant to Section 3(3)(a) of this
administrative regulation:

1. Electronically forward the information provided in the
application, along with the applicant's electronic signature, to the
county clerk for the county in which the applicant resides; and

2. Notify the applicant that the application has been
electronically forwarded to the county clerk for the county in which
the applicant resides, but that the applicant ~~shall will~~ not be
officially registered to vote or that changes to the applicant's existing
registration ~~shall will~~ not be made until the application is received
and processed by the county clerk.

(3) An electronic voter registration application shall be deemed
to have been made and received by the appropriate county clerk as
of the date the applicant is informed pursuant to subsection (2) of
this section that the application has been electronically forwarded to
the county clerk for the county in which the applicant resides.

(4) Except as otherwise specifically provided, an electronic voter
registration application electronically forwarded by the State Board of
Elections shall be considered an application for registration by mail.

Section 5. Incorporation Incorporated by Reference.

(1) "Commonwealth of Kentucky Voter Registration
Application," Form SBE 01, 04/2024, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject
to applicable copyright law, at the State Board of Elections, 140
Walnut Street, Frankfort, Kentucky [~~Frankfort, Kentucky~~] 40601,
Monday through Friday, 8 a.m. to 4:30 p.m. This material is also
available on the board's Web site at <https://elect.ky.gov>.

FILED WITH LRC: July 9, 2024
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**STATE BOARD OF ELECTIONS
(As Amended at ARRS, July 9, 2024)**

**31 KAR 2:010. Preparation of ballots and voting systems
prior to election day.**

RELATES TO: KRS 116.025, 116.065, ~~117.001~~~~117.075~~,
117.085(5), 117.125, 117.145, 117.155, 117.165, 117.175, 117.195,
117.205, 117.255, 117.275, ~~117.285~~, ~~117.375~~, 117.377, 117.379,
~~117.381~~, 117.383, 117.385, ~~117.387~~, 117.389, 117.391, 117.393,
118.015, 118.025, 118.215(1), 118.770, 118A.010, 119.005,
424.290

STATUTORY AUTHORITY: KRS 117.015(1)(a), 117.383
NECESSITY, FUNCTION, AND CONFORMITY: KRS
117.015(1)(a) authorizes the State Board of Elections to promulgate
administrative regulations necessary to administer the election laws
of the state. KRS 117.383(4) requires the State Board of Elections
to promulgate~~rules and~~ administrative regulations to [~~achieve~~
~~and~~]maintain the maximum degree of correctness, impartiality, and
efficiency of the procedures of voting. KRS 117.383(1)(2) requires
the State Board of Elections to promulgate~~rules and~~
administrative regulations to count, tabulate, and record votes. KRS
117.383(2)(3) requires the State Board of Elections to promulgate~~rules and~~
administrative regulations to establish a method for
placing items on any ballot~~the electronic voting device~~, which shall,
as closely as possible, follow the requirements pertaining to
ballots~~ballot labels~~. KRS 117.383(5)(6) requires the State Board
of Elections to promulgate~~rules and~~ administrative regulations to
provide for checking the accuracy of the voting
system equipment. This administrative regulation establishes the
procedures for the county clerk and the county board of elections to
follow in preparing the ballots and the voting systems prior to each
election.

Section 1. Definitions.

(1) "Accuracy Board" means the county board of elections, or at
least two (2) individuals appointed by the county board of elections,
assigned with the duty of overseeing the accuracy testing of the
voting machines and the voting systems required by 31 KAR 2:020.

(2) "Accuracy test" means the procedures established by 31
KAR 2:020 for checking the accuracy of the voting
system equipment required by KRS 117.383(5)(6), and the
testing of the automatic tabulating equipment and voting systems
required by KRS 117.389.

(3) "Ballot accountability statement" means a form created by
the county clerk in accordance with Section 4 of this administrative
regulation.

(4) "Ballot template" means a printout created by the program
administrator of the voting systems that shows the results of the
steps taken by the program administrator to place all candidates,
races, and ballot questions on each ballot based on the information
provided by the county clerk.

(5) "Certification" means the information provided by the county
clerk to the program administrator that includes an accurate listing
of all federal, state, county, and local candidates, offices and ballot
questions to be placed on the ballot for each voting machine or
voting system for each precinct within five (5) days of receiving the
certification of candidates by the Secretary of State, pursuant to KRS
118.215(1), or immediately after receiving the Secretary of State's
certification pursuant to KRS 118.770.

(6) "Program administrator" means the county clerk or
authorized assistant designated to configure the voting machines
and voting systems.

(7) "Scan voting system" means a tabulating device that reads
paper ballots by electronically detecting voters' marks.

(8) "Voting machine" means hardware, which is a component of
the voting system, used or relied upon by a voter in casting and
recording his or her votes in a precinct in an election, which has been

approved by the State Board of Elections for use in elections in the
Commonwealth of Kentucky pursuant to KRS 117.379~~and~~
~~117.381~~.

(9) "Voting system" means a system of components of hardware
and software, including the voting machine, used by a voter to cast
a ballot and by the election officials to tabulate the votes on election
day, which has been approved by the State Board of Elections for
use in elections in the Commonwealth of Kentucky pursuant to KRS
117.379~~and 117.381~~.

(10) "Zero-file" means a computer-based electronic file type
listing all electoral contests and questions, displaying precinct-by-
precinct vote totals registering as zero, which includes all
candidates, offices, and ballot questions in the order under which
they have been certified pursuant to KRS 118.215(1) or KRS
118.770, for all mail-in absentee ballots, excused in-person
absentee ballots, no-excuse in-person absentee ballots, and
election day ballots.

Section 2. Preparation of Each Voting Machine and Voting
System.

(1) The county clerk shall designate a program administrator to
configure the voting machines and voting systems for each election.

(2)

(a) Within five (5) days of receiving the certification of candidates
by the Secretary of State, pursuant to KRS 118.215(1), or
immediately after receiving the Secretary of State's certification
pursuant to KRS 118.770, the county clerk shall provide a
certification to the program administrator that includes an accurate
listing of all federal, state, county, and local candidates, offices, and
ballot questions.

(b) The program administrator shall place the information in the
certification in the ballot template for each voting system and
precinct.

(3) The program administrator, if other than the county clerk,
shall provide a ballot template for each ballot to the county clerk not
less than three (3) days before the deadline for printing ballots
established in KRS 117.085(5) and 117.145(1).

(4) The county clerk shall compare the prepared ballots and
ballot screens, if applicable, for each voting system with the ballot
template and the certification supplied by the county clerk to the
program administrator to ascertain that all federal, state, county, and
local candidates, offices and ballot questions shall be the same as
listed on the certification and shall appear in the correct positions.

(5) Once the county clerk has ascertained that all federal, state,
county, and local candidates, offices and ballot questions are the
same as listed on the certification and appear in the correct position,
the program administrator shall electronically transmit to the State
Board of Elections a zero-file in a format designated by the State
Board of Elections.

(6) The county clerk shall provide the ballot templates to the
county board of elections or designated Accuracy Board prior to the
conduct of the accuracy tests required by 31 KAR 2:020.

(7)(6) The county board of elections, or designated review
board, shall review the ballot template and the certification supplied
by the county clerk to the program administrator to ascertain that all
federal, state, county, and local candidates, offices and ballot
questions shall be the same as listed on the certification and shall
appear in the correct positions prior to the conduct of the accuracy
tests required by 31 KAR 2:020.

(8)(7) The county clerk shall review and verify the audio ballots
to be placed on the accessible voting systems by listening to the
audio ballot through a headset to ensure proper pronunciation of all
candidate names and to confirm that all federal, state, county, and
local candidates, offices and ballot questions shall be the same as
listed on the certification and shall appear in the correct positions.

Section 3. Number of Ballots to be Printed. In addition to the
requirements established in KRS 117.145, the county clerk shall
provide a sufficient number of printed ballots for each precinct in a
county that uses scan voting systems for each election. The number
of ballots required to be printed and distributed to each precinct with
scan voting systems shall be determined as follows:

(1) For a primary, the number of ballots shall be at least ten (10)
percent more than the total number of votes cast in each party's

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primary and nonpartisan race in the most recent presidential primary election;

(2) For the general election, the number of ballots shall be at least ten (10) percent more than the total number of votes cast in the most recent general election in which votes were cast for the electors for the President of the United States; and

(3) For a special election, the number of ballots shall be a sufficient number as determined by the county clerk considering the number of registered voters in the precinct and the type of special election to be held.

Section 4. Preparation and Delivery of Ballots.

(1) The county clerk shall place into a container the paper ballots, if applicable, for each precinct.

(2) The container shall be secured with a seal and contain a certificate signed by the county clerk recording the total number of ballots in the container and that the ballots were counted and sealed by the county clerk.

(3) Ballots not issued to a precinct or assigned for absentee voting shall be secured and accounted for by the county clerk.

(4) The county clerk shall maintain a record of the number of ballots and serial numbers of the voting systems issued to each precinct.

(5) If using paper ballots for a scan voting system, the county clerk shall create a ballot accountability statement to be provided along with the ballots to each precinct that includes ~~the following~~:

(a) In a primary, an accounting of the total number of ballots for each party primary and nonpartisan race submitted to the precinct to be completed by the county clerk;

(b) In a general election, an accounting of the total number of each type of ballot submitted to the precinct to be completed by the county clerk;

(c) An oath for the county clerk to sign attesting to the accuracy of the information provided by the county clerk on the statement;

(d) An accounting of the total number of ballots used, unused, and spoiled on election day to be completed by the precinct election clerk and signed by all four (4) precinct election officers;

(e) An accounting of the total number of ballots returned to the county clerk at the end of the election day to be completed by the precinct election clerk;

(f) A section that allows for the precinct election clerk to explain any discrepancies; and

(g) An oath for the precinct election officers to sign attesting to the accuracy of the information provided on the statement.

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STATE BOARD OF ELECTION (As Amended at ARRS, July 9, 2024)

31 KAR 4:031. Reporting.

RELATES TO: KRS 117.085, 117.086, 117.235, 117.255, 117.265, 117.275, 117.355, 118.025, 118.215, 118.425, 118.770, 119.307

STATUTORY AUTHORITY: KRS 117.015(1)(a), 117.086(5), 117.275(15), 117.355(4), 118.425(4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 117.015(1)(a) authorizes the State Board of Elections to promulgate administrative regulations necessary to implement the provisions of KRS Chapter 117. KRS 117.355(4) requires the State Board of Elections to prescribe the forms for the precinct election sheriff and the county board of elections to report election irregularities and recommendations for improving the election process, to report special ballot and voter assistance usage statistics, and to report other information required by the state board. KRS 117.086(5) requires the State Board of Elections to prescribe a form on which the county board of elections shall report the number of rejected absentee ballots and the reasons for rejection of those ballots. KRS 118.425(4) requires the State Board of Elections to prescribe a form

by which the county board of elections shall make out duplicate certificates of the total number of votes received by each of the candidates for office and the total number of votes for an against each of the ballot questions. KRS 117.275(15) requires a secure online connection be available for the transmission of unofficial election results from county boards of election to the State Board of Elections following the tallying of votes. This administrative regulation establishes the procedure and forms for the county clerk, the county board of elections, and the precinct election sheriff to report election and voting data after the election.

Section 1. ~~The following~~ Reporting forms shall be filed and pursuant to in accordance with the referenced statutes:

(1) ~~Pursuant to~~ KRS 117.355(1), the precinct election sheriff shall file the Precinct Election Sheriff's ~~Post-election~~ Postelection Report, SBE 53, with the chair of the county board of elections and the local grand jury;

(2) ~~Pursuant to~~ KRS 117.355(2), the county board of ~~elections~~ election shall file the County Board of Elections ~~Post-election~~ Postelection Report, SBE 54, with the State Board of Elections and the local grand jury;

(3) ~~Pursuant to~~ KRS 117.275(7) and 117.355(2), the county board of elections shall file the County Board of Elections ~~Post-election~~ Postelection Statistical Report, SBE 54A, with the State Board of Elections;

(4) ~~Pursuant to~~ KRS 117.355(2), the county board of elections shall file the County Board of Elections Precinct Election Officials Absence Report, SBE 54B, with the State Board of Elections;

(5) ~~Pursuant to~~ KRS 117.275(12) and 117.086(4)(c), the county clerk shall file the County Board of Elections Provisional Ballots Issued to Voters and Counted, SBE 54C, with the State Board of Elections.

(6) ~~Pursuant to~~ KRS 117.086(4)(a)-(b), the county clerk shall file the Absentee Ballot Report, SBE 33A, with the State Board of Elections;

(7) ~~Pursuant to~~ KRS 117.086(5), the county board of elections shall file the Number of Rejected Absentee Ballots and Reasons for Rejected Ballots, SBE 33B; and

(8) ~~Pursuant to~~ KRS 117.275(11)-(12) and 118.425(4), the county board of elections shall file the Certification Official Count and Record of Election Totals, SBE 49, with the Secretary of State.

Section 2. Any form described in Section 1 of this administrative regulation that is capable of being recorded or filled automatically through the State Board of Elections' Voter Registration System may be deemed by the State Board of Elections as being transmitted following the successful capture of all required information by the Voter Registration System.

Section 3.

(1) Pursuant to KRS 117.275(15), the State Board of Elections shall develop and maintain a platform with a secure online connection for the transmission of unofficial election results from county boards of election to the State Board of Elections following the tallying of votes for all primary, and regular elections, as well as special elections for statewide office, the General Assembly, and the United States Congress.

(2) Beginning at 6:00 p.m., prevailing time, on the day of a primary or regular election, as well as a special election for statewide office, the General Assembly, and the United States Congress, county boards of election shall use the secure online platform maintained by the State Board of Elections to transmit their county's unofficial election tally. The unofficial vote tally transmitted shall include precinct-by-precinct totals from counts of all mail-in absentee ballots, excused in-person absentee ballots, no-excuse in-person absentee ballots, and election day ballots, and shall include totals for those candidates who have filed a declaration of intent to be a write-in candidate pursuant to KRS 117.265(2). Unofficial vote tallies transmitted using the secure online platform shall be transmitted using a computer-file-type and format selected by the State Board of Elections, which shall be selected following the certification of candidates by the Secretary of State pursuant to KRS 118.215(1), or immediately after receiving the Secretary of State's certification pursuant to KRS 118.770.

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(3) The State Board of Elections shall display the tally information received from the county boards of election through the secure online transmittal platform on a secure ~~Web site~~website freely available to the general public. The display shall list precinct-by-precinct tallies for all candidates and questions, but shall only list a candidate's precinct absentee vote totals as cumulative.

(4) County boards of election or county clerks shall verify with the State Board of Elections that their county's unofficial vote tally has been successfully transmitted to the State Board of Elections no later than six (6) hours after the close of polls. ~~If Should~~ a county's tally ~~is not completed~~be complete six (6) hours after the close of polls, a representative of the county clerk's office shall update the State Board of Elections by telephone as to the status of the tally transmittal at the end of the sixth hour and then subsequently at the top of each following hour unless the transmittal is completed before ~~that~~such time.

Section 4. Incorporation by Reference.

(1) The following material is incorporated by reference:

- (a) "Precinct Election Sheriff's ~~Post-election~~Postelection Report", SBE 53, 04/2024;
- (b) "County Board of Elections Post-election Report", SBE 54, 04/2024;
- (c) "County Board of Elections Post-election Statistical Report", SBE 54A, 04/2024;
- (d) "County Board of Elections Precinct Election Officials Absence Report", SBE 54B, 04/2024 [~~September 2002~~];
- (e) "County Board of Elections Provisional Ballots Issued to Voters and Counted", SBE 54C, 04/2024;
- (f) "Absentee Ballot Report", SBE 33A, 04/2024;
- (g)(ff) "Number of Rejected Absentee Ballots and Reasons for Rejected Ballots", SBE 33B, 04/2024; and
- (h)(gg) "Certification Official Count and Record of Election Totals", SBE 49, 04/2024.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the State Board of Elections, 140 Walnut Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material may also be obtained on the board's Web site at <https://elect.ky.gov>.

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STATE BOARD OF ELECTION
(As Amended at ARRS, July 9, 2024)

31 KAR 4:220. Recount procedures.

RELATES TO: KRS 62.020, 117.035, 118.025, 120.095, 120.157, 120.185, 120.260, 120.290

STATUTORY AUTHORITY: KRS 117.015(1)(a)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 117.015(1) ~~requires~~establishes the State Board of Elections, as ~~an~~the independent agency of state government, ~~to which shall~~ administer the election laws of the state. KRS 120.095, 120.157, 120.185, 120.260, and 120.290 all authorize the post-election recounting of ballots cast, ~~but~~These same statutes are all largely without procedures for how ~~the~~such an event ~~is required to occur~~should take place. This administrative regulation establishes procedures for the recounting of ballots ~~for so that there may be~~ an established standard throughout the Commonwealth.

Section 1. Definition. "Recount" means a post-election retallying of ballots cast in a primary, general, or special election, as authorized under KRS 120.095, 120.157, 120.185, 120.260, or 120.290.

Section 2. Locations. Upon identifying that a recount will be taking place, an affected county board of elections shall identify a suitable location, within the county, where the recount can take

place.

(1) A suitable location shall be one ~~(1)~~ where all of the voting equipment and ballot boxes required for the recount can be housed in one ~~(1)~~ location and there is ample space for the personnel required for the task and all authorized observers, who shall have a dedicated area within the location to witness the recount.

(2) If a recount is to occur pursuant to KRS 120.290, the Franklin County Clerk shall assist the Franklin Circuit Court in finding a location for the commencing of the recount ~~if should~~ the Court ~~finds~~find the courthouse at Frankfort unsuitable for the event.

Section 3. Recount Personnel.

(1) Pursuant to KRS 117.035(5), an affected county board of elections may employ a bipartisan staff sufficient to carry out the duties of the recount. Once a county board identifies that a recount will be taking place, the board shall immediately seek out citizens of the county who may wish to work for the county board on a temporary basis as recount officials.

(2) County boards shall recruit enough citizens of the county to work as recount officials so that the recount may be completed before any statutory deadline.

(a) Citizens hired to work as recount officials shall be registered voters of the county in which they desire to work.

(b) Recount officials shall be paid an hourly wage for their work during the entirety of the recount process. The hourly wage shall be set uniformly for all recount officials by the county board of elections at a rate that is both prevailing in the jurisdiction at the time for the type of work to be done and that is high enough to entice applicants qualified for ~~such~~a short-term, temporary assignment.

(c) Before any recount official shall be allowed to work, the individual shall take the oath found in Section 228 of the Kentucky Constitution, which shall be administered by any officer authorized under KRS 62.020.

Section 4. Procedures as to Election Vendors.

(1) Upon identifying that a recount will be taking place, county clerks shall work with their voting equipment vendors to begin programming, distributing, and setting the voting equipment necessary for the recount.

(2) Election equipment shall be set to isolate the race or question subject to the recount and the straight-party option, if applicable.

Section 5. Initiating the Recount.

(1) Before recount proceedings may begin, on the day fixed for the recount, the county board of elections shall meet to confirm the integrity of the ballots subject to the recount.

(2) The confirmation of the integrity of the ballots shall be reflected in the recorded minutes of the meeting of the county board of elections.

(3) Absent a showing of clear and convincing evidence that the ballots have been purposefully disturbed and tampered with, the integrity of the ballots shall be proven.

Section 6. Securing the Integrity of the Recount.

(1) Before members of the recount teams shall be allowed to handle individual ballots, each member shall present their hands and fingernails to the members of the county board of elections for visual inspection. Before proceeding to handle ballots, county board of elections members shall confirm that each recount official's hands and fingernails are clean enough so as to not transfer any ink, lead, or other markings onto the ballots.

(2) Only red ink pens, a blank pad of paper, and manilla envelopes large enough to contain multiple ballots shall be allowed in any area in the direct proximity of voting equipment or ballots during the counting of ballots.

(3) The use of cell phones or other electronic devices shall not be permitted within the direct proximity of voting equipment or ballots. Any capturing of photographic or video images of ballots shall be prohibited.

(4) ~~No~~ Food or drink shall ~~not~~ be permitted in any area in the direct proximity of voting equipment or ballots without prior authorization from the county board of elections.

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Section 7. Before Voting Equipment is Opened.

(1) The county board of elections or the county clerk shall split the recount officials into recount teams of two (2) so that each team contains individuals registered of differing political party affiliations.

(2) Each recount team shall be assigned to only one (1) piece of voting equipment at any one (1) time, and ~~a[n]o~~ piece of voting equipment shall not have more than one (1) recount team operating it at any one (1) time.

(3) Before a piece of voting equipment is opened by a recount team, the information from the voting equipment's Machine Verification Form shall be transposed onto the Form SBE 82, Recount Tabulation Form.

Section 8. Opening the Voting Equipment.

(1) Once a recount team opens a piece of voting equipment, the seal number, beginning counter number, and lifetime counter number shall be checked to match the Machine Verification Form.

(2) Once the ballot box or tub containing the ballots is opened, the seal number shall be recorded on the Form SBE 82, Recount Tabulation Form.

(3) ~~Each~~Every ballot from the ballot box or tub shall be removed and placed on a segregated table next to the voting equipment, and the broken seal shall be placed inside the ballot box or tub. ~~At no point shall~~ Ballots from one (1) ballot box or tub shall not be comingled with any other materials, including ballots from another ballot box or tub. ~~At no time shall~~ Ballots shall not be left outside of a ballot box or tub unattended.

Section 9. Procedure to Recount Ballots.

(1) ~~Each~~Every ballot removed from a ballot box or tub for a recount shall be scanned back through the piece of voting equipment from which the ballot box or tub was originally associated, one (1) ballot at a time. If a county is in possession of a separate piece of voting equipment designed and regularly used to count larger amounts of ballots, the use of ~~the~~such voting equipment shall be authorized.

(2) Scanned ballots shall be counted by the electronic voting equipment in accordance with 31 KAR 6:030, Section 4(1), and the cumulative totals for each slate of candidates shall be recorded on the Form SBE 82, Recount Tabulation Form~~as such~~.

(3) If a ballot does not scan through the piece of voting equipment on the first attempt, each member of the associated recount team shall attempt to scan the ballot one (1) additional time each. If, after three (3) unsuccessful attempts, a ballot does not scan, it shall be set aside for later adjudication.

(4) Once only those ballots set aside remain, they shall be adjudicated as one (1) of three (3) types:~~1~~

~~(a)~~ 1. An overvote, meaning that upon visual inspection of the ballot, more than one (1) slate of candidates appears to have been selected by the voter;~~2~~

~~(b)~~ 2. An undervote, meaning that upon visual inspection, no slate of candidates appears to have been selected by the voter on the ballot; or~~3~~

~~(c)~~ 3. A damaged ballot, no longer capable of being scanned into the voting equipment because of damage sustained to the physical ballot, but clearly having a selection for only one (1) slate of candidates or that slate's straight-party option.

(5) The number of undervotes, overvotes, and damaged ballots shall be recorded on the Form SBE 82, Recount Tabulation Form~~as such~~.

(6) The recount officials shall place the cumulative number of undervotes in a manilla envelope, seal the envelope with tape, label it with the word "undervotes," and then sign it alongside the date and time of their signature. This procedure shall then be followed for envelopes labeled "overvotes" and "damaged ballots." If the cumulative number of undervotes, overvotes, or damaged ballots will not fit inside one (1) manilla envelope, multiple envelopes may be used.

(7) Once the undervotes, overvotes, and damaged ballots are placed in envelopes, the envelopes shall be placed back in the ballot box or tub on top of the ballots already recounted by the electronic voting equipment.

(8) Once a conclusive accounting has been reached for all ballots removed from the ballot box or tub, the voting equipment

shall be secured with a seal of a color not previously used in the election, and the serial number of the seal shall be recorded on the Form SBE 82, Recount Tabulation Form.

(9) The Form SBE 82, Recount Tabulation Form shall ~~then~~ be signed by the recount team members and all members of the county board of elections.

(10) Once this process is complete for one (1) piece of voting equipment, a recount team may move on to a new piece of voting equipment and begin the process of recounting the ballots found within.

(11)

(a) Once all ballots have been counted by the electronic voting equipment and all Form SBE 82, Recount Tabulation Forms have been completed, the county clerk shall scan and email all Form SBE 82, Recount Tabulation Forms to the State Board of Elections.

(b) For a recount conducted under KRS 120.157, the State Board of Elections shall examine the statewide Form SBE 82, Recount Tabulation Forms and tally the results submitted.

1. If the tally of results submitted shows that the count of ballots by the electronic voting equipment did not result in a margin of victory of 0.25% or less, the State Board of Elections shall notify each county that their recount is complete.

2. If the tally of results submitted shows that the count of ballots by the electronic voting equipment did result in a margin of victory of 0.25% or less, the State Board of Elections shall tally the total number of overvotes and damaged ballots reported on the submitted Form SBE 82, Recount Tabulation Forms.

3. If the cumulative number of overvotes and damaged ballots is large enough to overcome the machine-established margin of victory, the State Board of Elections shall notify the counties that they are to meet immediately to count the overvotes and damaged ballots.

4. If the cumulative number of overvotes and damaged ballots is not large enough to overcome the machine-established margin of victory, the State Board of Elections shall notify the counties that their recount is complete.

(12) Upon the need for a count of overvotes and damaged ballots, the county board of elections shall meet to remove all manila folders containing overvotes and damaged ballots. Overvotes and damaged ballots shall be adjudicated by the full county board of elections using the procedures described in 31 KAR 6:030, Section 4(2) and (3). Overvotes shall also be subject to the allowances of 31 KAR 6:030, Section 4(4).

(a) Each adjudicated ballot, shall, by majority vote of the county board of elections, result in a vote for either:~~1~~

1. One (1) valid candidate, one (1) valid slate of candidates, or valid answer to a question;~~2~~

2. One (1) valid write-in candidate or slate of candidates;3 or~~3~~

3. No candidate, slate of candidates, or answer to a question.

~~(b)~~ (b) The adjudication of each ballot shall be recorded onto the Form SBE 82, Recount Tabulation Form.

~~(c)~~(b) After overvotes and undervotes are adjudicated, they shall be placed, along with the original manila envelope, in a new manila envelope. The county board of elections shall seal the envelope with tape, label it as "overvotes," or "damaged ballots," accordingly, and then sign it alongside the date and time of their signature.

Section 10. Reporting of Recount Totals.

(1) Once every piece of voting equipment has been opened, all ballots have been recounted, and a conclusive recount total for each piece of equipment has been established, the county board of elections shall transfer the totals for each candidate or question from each Form SBE 82, Recount Tabulation Form onto a Form SBE 49, Official Count and Record of Election Totals.

(2) The same totals recorded onto the Form SBE 49, Official Count and Record of Election Totals shall also concurrently be input into an online portal belonging to the Secretary of State ~~if should~~ such be available.

(3) The members of the county board of elections shall affix their signatures to the completed Form SBE 49, Official Count and Record of Election Totals, which shall mark the completion of the

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recount.

(4) Once the Form SBE 49, Official Count and Record of Election Totals is signed, the county board of elections shall fax a copy the document to the office of the Secretary of State, no later than 4:00 p.m., local time, on the day following the completion of the county's recount. Each county clerk shall retain a copy of the completed Form SBE 49, Official Count and Record of Election Totals for their records and mail the original signed copy to the office of the Secretary of State.

Section 11. Reimbursement of Recount Costs. All costs associated with the recount proceedings, including items such as [but not limited to], personnel expenses and vendor charges, shall be recorded and documented by the county clerk.

Section 12. Incorporation~~[Incorporated]~~ by Reference.

(1) The following material is incorporated by reference:

(a) "Recount Tabulation Form", Form SBE 82, 04/2024; and

(b) "Official Count and Record of Election Totals", Form SBE 49, 04/2024.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the State Board of Elections, 140 Walnut Street, Frankfort, Kentucky [~~Frankfort, Kentucky~~]40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available on the board's Web site at <https://elect.ky.gov>.

FILED WITH LRC: July 9, 2024

CONTACT PERSON: Taylor Brown, General Counsel, 140 Walnut Street, Frankfort, Kentucky 40601, phone (502) 782-9499, email TaylorA.Brown@ky.gov.

STATE BOARD OF ELECTION (As Amended at ARRS, July 9, 2024)

31 KAR 5:026. Ballot standards and election security.

RELATES TO: KRS 117.001, 117.025, 117.076, 117.085, 117.086, 117.0861, 117.087, 117.145, 117.225, 117.228, 117.295(1), 117.365, 118.025

STATUTORY AUTHORITY: KRS 117.015(1)(a), 117.085, 117.086, 117.087(3)(d), 117.145, 117.228

NECESSITY, FUNCTION, AND CONFORMITY: KRS 117.015(1)(a) authorizes the State Board of Elections to promulgate administrative regulations necessary to properly carry out its duties. KRS 117.085, 117.086, 117.087(3)(d), 117.145, and 117.228 ~~Several Kentucky Revised Statutes in Chapter 117~~ require the State Board of Elections to promulgate administrative regulations that provide for measures that establish standards for the ballots used during elections, as well as, measures that ensure that votes cast during an election are done so in a free, fair, and secure manner. This administrative regulation provides for those measures.

Section 1. In addition to the requirements for printed ballots established in KRS 117.145, ballots caused to be printed by the county clerk of each county shall meet quality and size standards specific to the voting systems certified by both the State Board of Elections and the United States Election Assistance Commission.

Section 2. The outer envelope of all mail-in absentee ballots shall bear a barcode or other label that is unique to the individual voter and capable of being read by an electronic optical scanner. The unique barcode or label for each mail-in absentee ballot outer envelope shall be issued by the State Board of Elections. Upon the need to issue a voter a second mail-in absentee ballot pursuant to KRS 117.085(9), the outer envelope of the [subsequent] second mail-in absentee ballot shall bear a new unique barcode or label.

Section 3.

(1) Upon the time of certification of each candidate and each question to be voted upon, all pre-printed paper ballots shall be secured by the county clerk of each county, under lock and key, in an area under the direct control of the county clerk and approved by

the county board of elections.

(2) The possession of all pre-printed ballots shall be accounted for on SBE Form 76, Ballot Reconciliation Statement.

(3) If paper ballots need to be printed at a county clerk's office, an accounting of the printed ballots shall be made on either the SBE Form 76, Ballot Reconciliation Statement, or by the printing equipment.

(4) Upon the transfer of ballots from the area under the direct control of the county clerk to a polling location, the transfer shall be noted on the SBE Form 76, Ballot Reconciliation Statement.

(5) Beginning with the in-person casting of ballots during the period described in KRS 117.076, each voted in-person ballot shall remain in a locked and sealed receptacle, until the conclusion of the period described in KRS 117.295(1).

(6) At the conclusion of each day of voting, an accounting of the number of all voted, unvoted, and spoiled ballots shall be recorded on the SBE Form 76, Ballot Reconciliation Statement.

(7) All ballots and election materials not secured in an area under the direct control of the county clerk after the close of polls shall be secured at the voting location in a secure manner, based upon the advice and recommendations of the county board of elections and the sheriff from the time described in KRS 117.076 until the conclusion of voting on the day of an election.

(8) As mail-in absentee ballots are received by county clerks, they shall have their unique barcode or label scanned.

(9) Upon each mail-in absentee ballot being processed, the unique barcode or label shall be scanned again.

(10) If a mail-in absentee ballot is found to be without the need for a signature cure, or a mail-in absentee ballot has been returned along with a completed SBE Form 77, Discrepant Mail-in Absentee Signature, the ballot shall be recorded into an optical scanner, to be deposited in a locked and sealed receptacle for the period described in KRS 117.295(1).

(11) Any completed SBE Form 76, Ballot Reconciliation Statement shall be turned over to the local Commonwealth's Attorney along with any other materials required under KRS 117.365.

Section 4. A voter who is disabled may request a mail-in absentee ballot via an online accessible ballot portal, which shall conform to web accessible design standards as established by the W3C Web Accessibility Initiative at <https://www.w3.org/WAI/>.

Section 5.

(1) Upon receipt of a valid mail-in ballot request, through the online request portal or other valid request method, the request of the voter shall be noted in the Voter Registration System, and reflected in the electronic pollbooks used by precinct election officers.

(2) If a voter noted to have requested a mail-in absentee ballot appears at a polling location to vote in-person, the precinct election officer shall communicate with the county clerk, who shall make a determination as to whether the requested mail-in absentee ballot has been completed and returned as a cast ballot by the voter.

(3) If the mail-in absentee ballot is found to have been completed and returned as a cast ballot, the voter shall not be permitted to cast an in-person vote.

(4) If the mail-in absentee ballot is found not to have been completed and returned as a cast ballot and the ballot has been returned to the county clerk no later than seven (7) days prior to the date of the election as required by KRS 117.085(8), the county clerk shall immediately cancel the issued ballot in the Voter Registration System and allow the voter to cast an in-person ballot after the voter completes Form SBE 32, Oath of Voter, copies of which shall be forwarded to the Commonwealth's Attorney.

Section 6.

(1) A voter, or an individual identified by KRS 117.0861(1), may deliver a mail-in absentee ballot to the office of the county clerk in the county where the voter is registered, to a secure ballot drop-box in the county where the voter is registered, or to a secure drop-off receptacle if one (1) is maintained by the county clerk in the county where the voter is registered, rather than mailing the ballot via the United States Postal Service.

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(2)(a) A county choosing to use a receptacle for ballot drop-off other than a drop-box provided by the State Board of Elections, shall formally seek the State Board of Elections' approval of the receptacle before any ballot is allowed to be deposited inside.

(b) A county choosing to utilize a drop-off receptacle shall provide information about the receptacle to the State Board of Elections as required by KRS 117.086(2)(b).

(3) A drop-box or receptacle located outside a County Clerk's Office shall be located, secured, and identified as required by KRS 117.086(2)(c).

(4) A drop-box or receptacle located inside shall be under direct supervision as required by KRS 117.086(2)(d) and shall be clearly marked as for use by voters in the election, so as to differentiate the drop-box or receptacle from any other that may be in use in the area.

(5) Any other non-elections related drop-box in use by a county clerk for any other official business shall clearly indicate that the other drop-box is not for the return of election material.

(6)

(a) The county clerk shall empty the drop box and any receptacle used each business day as required by KRS 117.086(2)(e) and secure the absentee ballots therein in a manner consistent with KRS 117.086(3).

(b) Upon each emptying of a drop-box or receptacle, the individuals collecting absentee ballots pursuant to KRS 117.086(2)(e) shall complete Form SBE 78, Daily Absentee Drop-Box Verification Sheet.

Section 7.

(1) After the receipt of a mail-in absentee ballot by the county clerk, the signature shall be examined in accordance with KRS 117.087(3)(c)2 and 5.

(2) If a signature match cannot be made, notice shall be provided to the voter as required by KRS 117.087(3)(c)5, which shall, at minimum, include the mailing of Form SBE 77, Discrepant Mail-in Absentee Signature.

(3) Upon the county board of elections, central counting board, or the county clerk determining the need for a signature cure, the ballot shall be noted in the Voter Registration System and the county clerk shall, on that same day, input the voter's address and any other required data into the SBE 77 and mail the form to the voter.

Section 8.

~~[(1)] [A voter unable to provide proof of identification as required under KRS 117.225, and as defined under KRS 117.001(15), shall:]~~

~~[(a)] [Meet the requirements of KRS 117.228(1)(c) by executing SBE Form 71, Voter Affirmation Form; and]~~

~~[(b)] [Provide alternative proof of identification as required by KRS 117.228(2).]~~

~~[(2)] [A voter personally known to an election officer may cast a ballot in accordance with KRS 117.228(4) upon the election officer executing SBE Form 72, Election Officer Affirmation Form.]~~

~~[(3)] [Both the SBE 71 and SBE 72 shall be forwarded to the local Commonwealth's Attorney following the election.]~~

~~[Section 9.]~~ A voter may make application to cast an excused in-person absentee ballot pursuant to KRS 117.076(2) by completing SBE Form 44E, Excused In-Person Absentee Ballot Application.

~~Section 9.~~ ~~[Section 10.]~~ The status of the tamper-resistant seal and the number on the public counter shall be recorded as required by KRS 117.076(12) before and after each day of in-person absentee voting, on SBE Form 79, Daily Voting Machine Verification Sheet, which cumulatively shall be collected by the County Clerk.

~~Section 10.~~ ~~[Section 11.]~~ ~~Incorporation~~ ~~[Incorporated]~~ by Reference.

(1) The following material is incorporated by reference:

(a) "Oath of Voter", Form SBE 32, 04/2022;

(b) "Ballot Reconciliation Statement", Form SBE 76, 04/2022;

(c) "Discrepant Mail-in Absentee Signature", Form SBE 77, 08/2022;

~~[(d)] ["Voter Affirmation Form", Form SBE 71, 04/2022;]~~

~~[(e)] ["Election Officer Affirmation Form", Form SBE 72, 04/2022;]~~

~~[(d)]~~ ~~[(f)]~~ "Excused In-Person Absentee Ballot Application", Form SBE 44E, 04/2022;

~~[(e)]~~ ~~[(g)]~~ "Daily Voting Machine Verification Sheet", Form SBE 79, ~~03/2023~~ ~~04/2022~~; and

~~[(f)]~~ ~~[(h)]~~ "Daily Absentee Drop-Box Verification Sheet", Form SBE 78, 04/2022.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the State Board of Elections, 140 Walnut Street, Frankfort, Kentucky ~~[-Frankfort, Kentucky]~~ 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

(3) This material may also be obtained on the board's Web site at <https://elect.ky.gov>.

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CONTACT PERSON: Taylor Brown, General Counsel, 140 Walnut Street, Frankfort, Kentucky 40601, phone (502) 782-9499, email TaylorA.Brown@ky.gov.

STATE BOARD OF ELECTION
(As Amended at ARRS, July 9, 2024)

31 KAR 5:040. Questions regarding voter eligibility.

RELATES TO: KRS 14.302, 61.826, 117.001, 117.015, 117.025, 117.035, 117.225, ~~[117.245,]~~ 117.227, 117.228, 117.245, 118.025

STATUTORY AUTHORITY: KRS 61.826, 117.015

NECESSITY, FUNCTION, AND CONFORMITY: KRS 117.015(1)(a) authorizes the State Board of Elections to promulgate administrative regulations necessary to properly administer the election laws of the state. KRS 117.035(4)(c) requires that county boards of election meet and stay in session on primary, regular election, and special election days to correct clerical errors, to rules on questions regarding voter registration, proof of identification, and the curing of signatures relative to mail-in absentee ballots. KRS 117.025(3)(d) requires the State Board of Elections to select the required format for any voter registration list provided to a county clerk. KRS 117.228 details the procedures for casting a ballot if a voter is unable to provide proof of identification or is otherwise known to an election officer and requires the State Board of Elections to prescribe and furnish forms that voters are required to ~~[must]~~ complete in these circumstances. This administrative regulation establishes procedures for when a voter's eligibility is questioned and the forms that are to be completed if when necessary.

Section 1.

(1) A voter unable to provide proof of identification as required under KRS 117.225, and as defined by ~~under~~ KRS 117.001(15), shall:

(a) Meet the requirements of KRS 117.228(1)(c) by executing SBE Form 71, Voter Affirmation Form; and

(b) Provide alternative proof of identification as required by KRS 117.228(2).

(2) A voter personally known to an election officer may cast a ballot in accordance with KRS 117.228(4) upon the election officer executing SBE Form 72, Election Officer Affirmation Form.

(3) ~~Both the~~ SBE 71 and SBE 72 shall be forwarded to the local Commonwealth's Attorney following the election.

Section 2.

(1) If an individual presents himself or herself ~~themselves~~ to an election officer to vote and is not found on the signature roster provided to the county under KRS 117.025(3)(b) or (3)(c) and is not a participant in the Safe at Home Program authorized under KRS 14.302, the individual may vote upon the following taking place:

(a) The individual shall provide to the election officer proof of identification as required by KRS 117.225, or the individual shall follow the procedures of KRS 117.228 if he or she is ~~they are~~ unable to provide proof of identification;

(b) The election officer shall contact the county clerk's office and verify that the information provided by the individual establishes that he or she is ~~they are~~ registered to vote at the location where the

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individual has presented himself or herself ~~themselves~~;

(c) The individual shall complete the Form SBE 32, Oath of Voter;

(d) The individual shall complete the Form SBE 01, Commonwealth of Kentucky Voter Registration Application;

(e) The individual shall sign the Form SBE 25, Supplemental Precinct Signature Roster; and

(f) The election officer shall inform the individual that the Form SBE 32, Oath of Voter shall be forwarded to the local Commonwealth's Attorney following the election.

(2) If the election officer is unable to verify through the county clerk's office that the individual is properly registered to vote in the location where the individual has presented himself or herself ~~themselves~~, the election officer shall:

(a) Inform the individual of the location where he or she is ~~they are~~ properly registered vote, if known;

(b) Inform the individual of his or her ~~their~~ ability to request a hearing before the county board of elections; and

(c)

1. Inform the individual of his or her ~~their~~ ability to cast a provisional ballot for the federal elective office of President, Vice President, United States Senator, and United States House of Representative; and

2. If an individual chooses to cast a provisional ballot for an applicable federal elective office, the election officer shall have the individual sign the Form SBE 35, Provisional Ballot Precinct Signature Roster.

(3) All Form SBE 25, Supplemental Precinct Signature Rosters and Form SBE 35, Provisional Ballot Precinct Signature Rosters, if when used for the purposes described in this section, shall be completed digitally through an e-poll book unless there is an emergency condition that renders the e-poll book inoperable, in which case paper forms shall be used. If Should such an emergency condition exists ~~exist~~, the election officer shall record the circumstances of the emergency condition on the paper forms.

Section 3. During the days that voting may occur during any primary, regular election, and special election, including voting by mail-in absentee ballot, a county board of elections may elect to meet the requirements of KRS 117.035(4)(c) via a video teleconference subject to the mandates of KRS 61.826.

(1) If Should a county board of elections elects ~~elect~~ to meet via video teleconference during a day in which voting may occur, the county clerk's office and each voting location in use in the county shall have technology available to every voter so that the voter may appear before the county board at no financial expense to the voter.

(2) If a county board of elections elects not to meet via video teleconference during a day in which voting may occur, a voter desiring to appear before the county board shall be provided with an option so that the voter may appear before the county board via teleconference, provided that the voter can make themselves available via the same teleconferencing technology the county board has chosen to utilize for such hearings.

Section 4. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Commonwealth of Kentucky Voter Registration Application", Form SBE 01, 04/2024;

(b) "Supplemental Precinct Signature Roster", Form SBE 25, 09/2020 ~~04/2024~~;

(c) "Oath of Voter", Form SBE 32, 04/2022 ~~04/2024~~;

(d) "Provisional Ballot Precinct Signature Roster", Form SBE 35, 09/2020 ~~04/2024~~;

(e) "Voter Affirmation Form", Form SBE 71, 04/2022; and

(f) "Election Officer Affirmation Form", Form SBE 72, 04/2022.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the State Board of Elections, 140 Walnut Street, ~~Frankfort, Kentucky~~ Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available on the board's Web site at <https://elect.ky.gov>.

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CONTACT PERSON: Taylor Brown, General Counsel, 140 Walnut Street, Frankfort, Kentucky 40601, phone (502) 782-9499,

email TaylorA.Brown@ky.gov.

OFFICE OF THE ATTORNEY GENERAL
Department of Criminal Investigations
(As Amended at ARRS, July 9, 2024)

40 KAR 10:010. Uniform procedure and timeline for conducting independent election inquiries.

RELATES TO: KRS [~~15.243,~~]15.180, 15.242, 15.243, 16.013, 117.001, 117.035, 117.076, 117.165, 118.015, 119.005, 424.130

STATUTORY AUTHORITY: KRS 15.243

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15.243(3)(b) requires ~~authorizes~~ the Attorney General to promulgate administrative regulations in accordance with KRS Chapter 13A to establish a uniform procedure and timeline for his or her agents to follow when conducting independent election inquiries. This administrative regulation establishes election inquiry requirements including the data and forms that shall be requested from each county that is chosen for a random independent election inquiry pursuant to KRS 15.243(3)(a).

Section 1. Definitions.

(1) "Agent" means an Investigator with the Department of Criminal Investigations, Office of Attorney General.

(2) "Ballot" or "official ballot" is defined by KRS 117.001(3).

(3) "Ballot box" is defined by KRS 117.001(4).

(4) "County" means the county clerk's office that has been randomly chosen for an independent inquiry pursuant to KRS 15.243(3)(a).

(5) "Election" or "elections" is defined by KRS 117.001(6).

(6) "Election officer" ~~is~~ is defined by KRS 118.015(5).

(7) "Federal provisional voter" is defined by KRS 117.001(9).

(8) "Independent Inquiry" means an audit of specified data and forms from the subject county clerk's office as well as interviews with associated personnel and citizens in order to ensure the integrity of election procedures within that county for the applicable election.

(9) "Office" means the Office of Attorney General.

(10) "Voter" is defined by KRS 116.013.

Section 2. Uniform procedure for conducting a post-election independent inquiry includes the following:

(1) Notification to the county of randomly drawn post-election independent inquiry;

(2) Notification to county officials, workers, and voters of status of county as randomly drawn for independent inquiry;

(3) Request to the county and the election officers of that county for copies of designated county election documents and data;

(4) If a request of county election documents and data would yield a potentially large number of documents, a random sample size of the said materials may be requested by the office in lieu of all documents; and

(5) If circumstances dictate, and at discretion of the office:

(a) The County Board of Elections ("CBE") may be requested to conduct a recount of a chosen precinct; and

(b) The agent may request any other materials, documents, data, or interviews bearing upon any issues that may or may not arise during an independent inquiry.

Section 3. Uniform Timeline for Conducting a Post-election Independent Inquiry.

(1) The office shall conduct a random public drawing of no fewer than twelve (12) Kentucky counties within twenty (20) days following each primary or regular election pursuant to KRS 15.243(3)(a).

(2) Letters of notification to each county of the randomly selected Kentucky counties shall be mailed out within ten (10) working days from the random drawing date.

(3) The agent shall make the request in writing to the county.

(4) The county shall provide all requested materials, papers, forms, interviews, and documents to the agent no later than twenty (20) days after the request.

(5) If the county requires more than twenty (20) days to provide all requested materials, papers, forms, interviews, and documents

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to the office, the county shall notify the office in writing of the need for more time in which to fulfill the request. The county shall state the reason for the needed extra time within the request.

(6) The office shall have a reasonable time in which to complete a thorough and complete independent inquiry for each randomly selected county, but ~~the said~~ time shall not exceed 120 working days.

(7) If an independent inquiry exceeds 120 working days, excluding weekends and holidays, then the office shall indicate in its investigation file the specific reasons for which more than 120 working days was required for a full and complete investigative inquiry.

(8) The original 120 working day investigative timeframe absent any extensions of time, shall be separate and apart from time to present the independent inquiries to the grand juries in each respective county as required by KRS 15.243(3)(c).

Section 4. Required materials, papers, forms, interviews, and documents includes ~~items such as~~~~but is not limited to~~ the following:

(1) Copy of the county's voluntary election planning report previously submitted to the State Board of Elections ("SBE") including confirmation or proof of SBE approval;

(2) Details of the election plan's implementations;

(3) All necessary modifications made to the election plan made after its approval by SBE;

(4) Copy of SBE form 74, ~~["titled –"]~~ Petition to Consolidate ~~Precincts~~~~Precinct~~ and Precinct Election Officers, ~~as incorporated by reference in 31 KAR 4:196~~;

(5) Confirmation and proof of advertising and posting of absentee voting information per KRS 117.076(4) pursuant to KRS 424.130;

(6) Confirmation of advertising and posting for the CBE to examine election equipment per KRS 117.165 pursuant to KRS 424.130(1)(d);

(7) Contact information for all CBE members for each randomly drawn county;

(8) SBE form 31, ~~["the –"]~~ Voter Assistance Form, ~~as incorporated by reference in 31 KAR 4:131~~ for each randomly drawn county;

(9) SBE form 33A, ~~["List of Voters Issued –"]~~ Absentee ~~Ballot Report, as incorporated by reference in 31 KAR 4:031~~~~["Ballots –"]~~ for each randomly drawn county;

(10) SBE form 33B, ~~Number of~~ ~~["Rejected Absentee Ballots and Reasons for Rejected Ballots, as incorporated by reference in 31 KAR 4:031"]~~ for each randomly drawn county;

(11) List and address of all voting centers or precinct locations for each randomly drawn county;

(12) An accounting of the total number of voters checked in and the total number of ballots cast, which shall include:

(a) Supplemental rosters;

(b) In-person excused absentee ballots;

(c) In-person machine absentee ballots;

(d) Early day voting ballots;

(e) Election day ballots; and

(f) Federal provisional voter ballots, if applicable, from all early voting days as well as election day;

(13) A ~~copy of all SBE 44A forms, and/or a~~ list of all voters who have been issued a mail-in absentee ballot ~~under SBE 44A,~~ with any applications for ~~the~~~~such~~ ballot to be produced to the office at the discretion of the agent;

(14) The total number of all mail-in absentee ballot applications received, ballots thereafter printed, ballots sent to voters, ballots returned to the county via United States Post Office (USPS) or by ~~ballot box~~~~drop-box~~, and all ballots rejected by county;

(15) An absentee ballot grand total report;

(16) ~~["Oath of Voter"]~~ forms (SBE 32), ~~as incorporated by reference in 31 KAR 5:026 and 5:040~~;

(17) ~~["Precinct Election Sheriff's Post-election~~~~Postelection~~ Report"] (SBE 53 form), ~~as incorporated by reference in 31 KAR 4:031~~;

(18) ~~County Board of Elections Post-election~~~~["Precinct Election Sheriff's"]~~~~["Postelection"]~~ Statistical Report~~[""]~~ (SBE 54A

form), ~~as incorporated by reference in 31 KAR 4:031~~;

(19) The ~~["County Board of Elections Post-election~~~~Postelection~~ Report"] (SBE 54 form), ~~as incorporated by reference in 31 KAR 4:031~~;

(20) The CBE Elections Totals Report;

(21) Copies of the CBE annual meeting minutes;

(22) Voter registration and election turnout statistics;

(23) The county clerk grand jury report; and

(24) Any other materials, papers, forms, interviews, and documents as requested by the office shall be forwarded to the agent.

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CONTACT PERSON: Denise Durbin, Office of the Attorney General, 1840 Simon Kenton Way, Ste. 5300, Covington, Kentucky 41011; 502-764-2870; denise.durbin@ky.gov.

FINANCE AND ADMINISTRATION CABINET Kentucky Public Pensions Authority (As Amended at ARRS, July 9, 2024)

105 KAR 1:001. Definitions for 105 KAR Chapter 1.

RELATES TO: KRS 16.505-16.652, 61.510-61.705, 78.510-78.852

STATUTORY AUTHORITY: KRS 61.505(1)(g)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 61.505(1)(g) authorizes the Kentucky Public Pension Authority on behalf of the Kentucky Retirement Systems and the County Employees Retirement System to promulgate administrative regulations that are consistent with the provisions of KRS 16.505 ~~through~~~~to~~ 16.652, ~~61.505~~ 61.510 ~~through~~~~to~~ 61.705, and 78.510 ~~through~~~~to~~ 78.852. This administrative regulation establishes definitions for ~~terms used in~~ 105 KAR Chapter 1.

Section 1. Definitions. The following definitions shall apply to 105 KAR Chapter 1 unless otherwise required by context or otherwise defined in a specific administrative regulation:

(1) "AAC" means:

(a) Prior to April 1, 2021, the Administrative Appeals Committee of the Board of Trustees of the Kentucky Retirement Systems; ~~and~~;

(b) Beginning April 1, 2021, the separate or joint Administrative Appeals Committees of the Board of Trustees of the Kentucky Retirement Systems and the Board of Trustees of the County Employees Retirement System in accordance with KRS 61.645(16) and 78.782(16).

(2) "Accumulated account balance" is defined by KRS 16.505(40), 61.510(41), and 78.510(38).

(3) "Accumulated contributions" is defined by KRS 16.505(7), 61.510(12), and 78.510(12).

(4) "Accumulated employer credit" is defined by KRS 16.505(39), 61.510(40), and 78.510(37).

(5) "Act in line of duty" or "in line of duty" is defined by KRS 16.505(19) and 78.510(48).

(6) "Active member" means a member who is participating in the systems.

(7) "Actuarial equivalent" is defined by KRS 16.505(13), 61.510(17), and 78.510(17).

(8) "Agency" means:

(a) Prior to April 1, 2021, the Kentucky Retirement Systems, which administered the State Police Retirement System, the Kentucky Employees Retirement System, and the County Employees Retirement System; and

(b) Beginning April 1, 2021, the Kentucky Public Pensions Authority, which is authorized to carry out the day-to-day administrative needs of the Kentucky Retirement Systems (comprised of the State Police Retirement System and the County Employees Retirement System) and the County Employees Retirement System.

(9) "Agency reporting official" is defined by KRS 78.510(20).

(10) "Alternate payee" is defined by KRS 16.505(38), 61.510(39), and 78.510(36).

(11) "Authorized leave of absence" is defined by KRS

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16.505(14).

(12) "Beneficiary" is defined by KRS 16.505(25), 61.510(26), and 78.510(25).

(13) "Boards" means the Board of Trustees of the Kentucky Retirement Systems and the Board of Trustees of the County Employees Retirement System.

(14) "Bona fide promotion or career advancement" means ~~is defined by KRS 61.598(1) and 78.545(22);~~

(a) The definition provided in KRS 61.598(1) and 78.545(22); and

(b) Any increases in creditable compensation for all employees in a specified class due to an increase in rate of pay authorized or funded by the legislative or administrative body of the employer, or due to an increase in rate of pay mandated in a collective bargaining agreement approved by the legislative body of the employer.

(15) "Career threshold" is defined by KRS 61.702(4)(e).9.a. and 78.5536(4)(e)9.a.

(16) "County" is defined by KRS 78.510(3).

(17) "Creditable compensation" is defined by KRS 16.505(8), 61.510(13), and 78.510(13).

(18) "Current rate of pay" is defined by KRS 16.505(24), 61.510(25), and 78.510(24).

(19) "Current service" is defined by KRS 16.505(4), 61.510(10), and 78.510(10).

(20) "DAC" means:

(a) Prior to April 1, 2021, the Disability Appeals Committee of the Board of Trustees of the Kentucky Retirement Systems; and

(b) Beginning April 1, 2021, the separate or joint Disability Appeals Committees of the Board of Trustees of the Kentucky Retirement Systems and the Board of Trustees of the County Employees Retirement System in accordance with KRS 61.665(4) and 78.545(11).

(21) "Department" is defined by KRS 61.510(3).

(22) "Dependent child" is defined by KRS 16.505(17) and 78.510(49).

(23) "Disability retirement date" is defined by KRS 16.505(16), 61.590(5)(b), and 78.510(51).

(24) "Duty-related injury" is defined by KRS 61.621(2) and 78.545(20).

(25) "Early retirement date" is defined by KRS 16.505(20), 61.590(5)(c), and 78.545(4).

(26) "Employee" is defined by KRS 61.510(5) and 78.510(6).

(27) "Employer" is defined by KRS 16.505(3), 61.510(6), and 78.510(7).

(28) "Employer's effective cessation date" is defined by KRS 61.522(1)(c) and 78.535(1)(c).

(29) "End of day" means:

(a) 11:59 p.m. Eastern Time, on the date referenced; and

(b) If the date referenced falls on a Saturday, Sunday, a public holiday listed in KRS 2.110, a day on which the retirement office is actually and legally closed, or any other state or federal holiday that disrupts mail service, then the time period shall be met if the application, documentation, form, notice, or other requested or required information is filed or submitted no later than 11:59 p.m. Eastern Time on the next business day following the weekend, holiday, or date of closure.

(30) "Examiner" means the medical examiners as established provided in KRS 61.665 and 78.545(11).

(31) "File" means a form or document has been received at the retirement office by mail, fax, secure email, in-person delivery, or via Self-Service on the Web site maintained by the agency (if available).

(32) "Final compensation" is defined by KRS 16.505(9), 61.510(14), and 78.510(14).

(33) "Final rate of pay" is defined by KRS 16.505(10), 61.510(15), and 78.510(15).

(34) "Fiscal year" is defined by KRS 16.505(32), 61.510(19), and 78.510(19).

(35) "Full-time student" means a person enrolled in:

(a) [Enrolled in] A postsecondary program of study that meets the full-time student requirements of the institution in which he or she is enrolled;

(b) [Enrolled in] A continuing education or training program that

meets the full-time requirements of the program or institution in which he or she is enrolled; or

(c) [Enrolled in] High school or a GED program that meets the full-time student requirements of the program or institution in which he or she is enrolled.

(36) [(35)] "Gainful employment" means work in any capacity that is, or ~~can~~ may be, performed with regularity and is, or may be, usually done for pay, whether or not pay is received, including seasonal, volunteer, part-time, and on-call work.

(37) [(36)] "Grandfathered service" is defined by KRS 61.552(9)(b) and 78.545(7).

(38) [(37)] "Hazardous disability" is defined by KRS 16.505(23) and 78.510(47).

(39) [(38)] "Hazardous position" means a regular full-time officer as defined by 16.505(22), or a "hazardous position" as defined by 61.592(1)(a), 78.510(42), and 78.5520(1).

(40) "Hazardous service" means the number of years and months of employment as an employee in a hazardous position.

(41) [(39)] "Hospital and medical insurance plan" is defined by KRS 61.702(1)(a) and 78.5536(1)(a).

(42) [(40)] "In line of duty" or "act in line of duty" is defined by KRS 16.505(19) and 78.510(48).

(43) [(41)] "Inactive member" means a member who is not participating in the system.

(44) [(42)] "Increment" is defined by KRS 61.510(29) and 78.510(44).

(45) [(43)] "Instructional staff" is defined by KRS 61.510(48).

(46) [(44)] "Invalid," if used in reference to a form, means that the form does not meet the requirements to be valid, and ~~will~~ shall not be processed by the agency.

(47) [(45)] "Last day of paid employment" is defined by KRS 16.505(30), 61.510(32), and 78.510(45).

(48) [(46)] "Level percentage of payroll amortization method" is defined by KRS 61.510(28) and 78.510(43).

(49) [(47)] "Medical information" as used in KRS 61.610, 61.615, 61.665, 78.5526 and 78.5528:

(a) Means reports of examinations or treatments; medical signs that are anatomical, physiological, or psychological abnormalities that can be observed; psychiatric signs that are medically demonstrable phenomena indicating specific abnormalities of behavior, affect, thought, memory, orientation, or contact with reality; or laboratory findings that are anatomical, physiological, or psychological phenomena that can be shown by medically acceptable laboratory diagnostic techniques, including chemical tests, electrocardiograms, electroencephalograms, X-rays, and psychological tests; and

(b) Does not mean written statements from medical providers alone unless accompanied by supporting contemporaneous records as established in paragraph (a) of this subsection.

(50) [(48)] "Member" is defined by KRS 16.505(21), 61.510(8), and 78.510(8).

(51) [(49)] "Membership date" is defined by KRS 16.505(35), 61.510(36), and 78.510(33).

(52) [(50)] "Month" is defined by KRS 16.505(34), 61.510(35), and 78.510(32).

(53) [(51)] "Monthly average pay" is defined by KRS 16.505(41), 61.510(45), and 78.510(52).

(54) [(52)] "Monthly contribution rate" means the maximum contribution the systems will pay toward the premium of a retired member based on the amount.

(a) [~~The amount~~] Determined by the boards as established provided in KRS 61.702(1)(b), 61.702(4)(b) ~~through~~ [(d), 78.5536(1)(b), and 78.5536(4)(b) ~~through~~ [(d) for a retired member who began participating in the systems on or before June 30, 2003; or

(b) [~~The amount~~] Per month earned by the retired member based on years of service as established provided in KRS 61.702(4)(e) and 78.5536(4)(e) for a retired member who began participating in the systems on or after July 1, 2003. ~~is defined by KRS 61.702(1)(b) and 78.5536(1)(b)].~~

(55) [(53)] "Nominal fee" is defined by KRS 61.510(43) and 78.510(40).

(56) [(54)] "Non-core services independent contractor" is defined

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by KRS 61.5991(9).

~~(57)~~~~(55)~~ "Nonhazardous position" is defined by KRS 61.510(44) and 78.510(41).

~~(58)~~ "Nonparticipating position" means any position of employment with a participating employer other than a regular full-time position or a regular full-time officer position.

~~(59)~~~~(56)~~ "Normal retirement age" means the age at which the member meets the requirements for his or her normal retirement date.

~~(60)~~~~(57)~~ "Normal retirement date" is defined by KRS 16.505(15), 61.510(18), 61.590(5)(a), and 78.510(18).

~~(61)~~~~(58)~~ "Objective medical evidence" is defined by KRS 16.505(31), 61.510(33), and 78.510(46).

~~(62)~~~~(59)~~ "Officers and employees of the General Assembly" is defined by KRS 61.510(20).

~~(63)~~~~(60)~~ "Optional allowance" is defined by KRS 16.505(18).

~~(64)~~~~(61)~~ "Participant" is defined by KRS 16.505(36), 61.510(37), and 78.510(34).

~~(65)~~~~(62)~~ "Participating" is defined by KRS 16.505(33), 61.510(34), and 78.510(31).

~~(66)~~~~(63)~~ "Participating employer" means any employer that participates in one (1) of the systems operated by the agency.

~~(67)~~ "Participating position" means a regular full-time position, a regular full-time officer position, or other positions that meet the requirements of KRS 61.680(6)(a) and 78.545.

~~(68)~~~~(64)~~ "Participation date" means the earlier of "membership date" as defined in this section or the date on which the member began participating in another state-administered retirement system if the member has not retired or taken a refund from the other state-administered retirement system.

~~(69)~~~~(65)~~ "Past service" is defined by KRS 61.552(5)(a) and 78.545(7).

~~(70)~~~~(66)~~ "Person" means a natural person.

~~(71)~~~~(67)~~ "Premium" means the monthly dollar cost required to provide hospital and medical insurance plan coverage for a recipient, a recipient's spouse, or a disabled or dependent child.

~~(72)~~~~(68)~~ "Prior service" is defined by KRS 16.505(5), 61.510(11), and 78.510(11).

~~(73)~~~~(69)~~ "Provide," if used in reference to a form or other document, means the agency makes a form or document available on its Web site (if appropriate) or by mail, fax, secure email, or via Self-Service on the Web site maintained by the agency (if available).

~~(74)~~~~(70)~~ "Qualified domestic relations order" is defined by KRS 16.505(37), 61.510(38), and 78.510(35).

~~(75)~~~~(71)~~ "Recipient" is defined by KRS 16.505(26), 61.510(27), and 78.510(26).

~~(76)~~~~(72)~~ "Reemployment" means the retired member's first date of employment with a participating employer following his or her most recent retirement date.

~~(77)~~~~(73)~~ "Regular full-time officers" is defined by KRS 16.505(22).

~~(78)~~~~(74)~~ "Regular full-time position" is defined by KRS 61.510(21) and 78.510(21).

~~(79)~~~~(75)~~ "Retired member" is defined by KRS 16.505(11), 61.510(24), and 78.510(23).

~~(80)~~~~(76)~~ "Retirement allowance" is defined by KRS 16.505(12), 61.510(16), and 78.510(16).

~~(81)~~ "Retirement date" means a member's effective retirement date as **established described** in KRS 61.590(5) and 78.545(4).

~~(82)~~~~(77)~~ "Retirement office" is defined by KRS 16.505(28), 61.510(31), and 78.510(29).

~~(83)~~~~(78)~~ "School board" is defined by KRS 78.510(4).

~~(84)~~~~(79)~~ "School term or year" is defined by KRS 78.510(28).

~~(85)~~ "Self-Service Web site" means the secure Member Self-Service or Retiree Self-Service agency Web site.

~~(86)~~~~(80)~~ "Service" is defined by KRS 16.505(6), 61.510(9), and 78.510(9).

~~(87)~~~~(81)~~ "State" means the Commonwealth of Kentucky.

~~(88)~~ "State-administered retirement system" means the retirement systems with reciprocity as **established described** in KRS 61.680.

~~(89)~~ "Submit" means the required form, documentation, report, or payment has been received by the retirement office via mail, fax,

electronic mail, the Self-Service Web site, the Employer Self-Service Web site, or other mode specifically detailed in an administrative regulation.

~~(90)~~~~(82)~~ "Systems" means the State Police Retirement System (KRS 16.505 ~~through to~~ 16.652), the Kentucky Employees Retirement System (KRS 61.510 ~~through to~~ 61.705), and the County Employees Retirement System (KRS 78.510 ~~through to~~ 78.852).

~~(91)~~~~(83)~~ "Total and permanent disability" is defined by KRS 16.582(1)(a) and 78.5524(1)(a)1.

~~(92)~~~~(84)~~ "Valid," if used in reference to a form, means that all required sections of a form are **completed filled out**, the form has been fully executed by the required person or the person's legal representative, and all supporting documentation required by the form is included with the form.

~~(93)~~~~(85)~~ "Volunteer" is defined by KRS 61.510(42) and 78.510(39).

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**FINANCE AND ADMINISTRATION CABINET
Kentucky Public Pensions Authority
County Employees Retirement System
(As Amended at ARRS, July 9, 2024)**

105 KAR 1:120. Participation of County Employees Retirement System employers[agencies].

RELATES TO: KRS 78.510–78.990[78.510(3), 78.530, 78.532, 78.535, 78.780], 26 U.S.C. 414(d), 29 U.S.C. 1002(32)

STATUTORY AUTHORITY: KRS [61.645(9)(e),–]78.510(3), 78.782[78.780]

NECESSITY, FUNCTION, AND CONFORMITY: KRS [61.645(9)(g) 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 78.510(3) authorizes the Board of Trustees of the County Employees Retirement System[board] to determine the eligibility of a prospective employer[an agency] to participate in the County Employees Retirement System (CERS)[,– or CERS]. KRS 78.782[78.780] authorizes the Board of Trustees of the County Employees Retirement System to promulgate administrative regulations not inconsistent with the provisions of KRS 78.510 ~~through to~~ 78.852 that are necessary or proper to carry out the provisions of KRS 78.510 ~~through to~~ 78.852.[board to govern and control CERS in the same manner in which it administers the Kentucky Employee Retirement System.] This administrative regulation establishes the procedures and requirements for employer participation in CERS.

Section 1. Definitions.

(1) ["Alternate plan" means the plan under which an employer purchases service credit for its employees by paying an actuarial cost of the service in a lump sum or by annual installments.]

[(2)] "Board" is defined by KRS 78.510(2).

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

(3) "Merged employer" means one (1) or more participating employers that have merged with one (1) or more participating or non-participating employers into a new single entity or operating under the name of one (1) of the participating or non-participating employers that are part of the merger.

(4) "New or separate employer" means a **participating employer that**

(a) [**A participating employer that**]Forms, becomes, or is bought out by a non-participating employer; or

(b) [**A participating employer that**]Dissolves or becomes an

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inactive employer, and another distinct entity is formed and assumes responsibility for a portion or all of the business.

(5) "Non-participating employer" means ***an entity that***

(a) ~~[An entity that] Does not participate in the system; or~~

(b) ~~[An entity that] Applied for participation in the system and:~~

1. Is pending a determination of participation;

2. Withdrew its application; or

3. Was denied or failed to complete the requirements to be approved for participation.

(6) "Split or separated employer" means a participating employer that divides into two (2) or more distinct entities.

(7)(3) "System" ["CERS" or "system"] is defined by KRS 78.510(1).

Section 2. Participation in the System. For a prospective employer to participate in the system, the prospective employer shall:

(1) Meet [An agency may participate in CERS if the board determines that the agency:]

[(a)] [Meets] the definition of county in KRS 78.510(3);

(2)(b) Be [is] qualified to establish and maintain a governmental plan as defined in 26 U.S.C. 414(d) and 29 U.S.C. 1002(32);

(3)(e) Have an irrevocable contract with the Kentucky Personnel Cabinet for health insurance coverage for its employees in accordance with KRS 78.530(1)(b); [Satisfactorily completes the trial period established in subsection (2) of this section;]

[(d)] [Submits all forms and documents necessary for participation in CERS by day fifteen (15) of the month prior to the effective date of participation; and]

(4)(e) Comply [Complies] with:

(a) [1-] KRS 78.510 through 78.852[78.990]; and

(b) [2-] KAR Title 105; [105 KAR 1:020 through 105 KAR 1:360.]

(5) Complete the requirements of Sections 3 through [–]5 of this administrative regulation; and

(6) Receive board approval in accordance with Section 6 of this administrative regulation.

Section 3. Determining Prospective Employer's Qualification to Participate.

(1) A prospective employer shall submit a resolution or ordinance by its controlling board authorizing participation in the system as ***established in provided by*** KRS 78.530(1) within twelve (12) months of the date the resolution or ordinance was passed.

(2) No later than the end-of-day ninety (90) calendar days from the date the resolution or ordinance indicated in subsection (1) of this section is submitted, the prospective employer shall submit:

(a) Its Articles of Incorporation, bylaws, ordinance, or other document establishing or creating the prospective employer;

(b) Its current fiscal year budget;

(c) Its health insurance contract as described in Section ***2(3)(2)(e)*** of this administrative regulation;

(d) A valid Form 2010, Election or Rejection of Participation, completed by all current employees;

(e) A valid Form 7075, Employer Contact Information;

(f) A valid Form 7250, Verification of Payments Outside Regular Wages;

(g) A valid Form 7280, Employer Certification ~~for of~~ Installment Purchase of Service;

(h) A valid Form 7851, Data Use ***and Reporting*** Agreement;

(i) A valid Form 7071, Employer Self Service Employer Administrator Account Creation Request; and

(j) If requested by the agency, a letter from the U.S. Internal Revenue Service or U.S. Department of Labor that states the entity sufficiently meets the governmental requirements to participate in a qualified governmental retirement plan.

(3)

(a) Once the requirements of subsections (1) ***and*** [–](2) of this section are received by the agency, the agency shall review the documentation and determine if the prospective employer meets the requirements for participation in the system.

(b) If a prospective employer meets the requirements for participation in the system, the agency shall initiate a trial period of participation for the prospective employer in accordance with

Section 4 of this administrative regulation.

Section 4. Trial Period.

(1)(2) The prospective employer [Prior to board approval of an agency that has elected to participate in CERS, the agency] shall serve a three (3) month trial period, which shall begin on the first day of the month following the completion to the requirements as ***established provided*** in Sections 2 ***and*** [–]3 of this administrative regulation.

(2) During the trial period, the prospective employer [– during which it] shall:

(a) Submit all reports required by KRS 78.625 in accordance with 105 KAR 1:140;

(b) Remit applicable employer, employee, and health insurance contributions in accordance with 105 KAR 1:140; and

(c) Require employee participation in accordance with KRS 78.530, 78.531, 78.535, and 78.540.

[(a)] [Report contributions; and]

[(b)] [Comply with the provisions of applicable statutes and administrative regulations governing:]

[1-] [Employee participation; and]

[2-] [Reporting of contributions.]

Section 5. Submission to the Board. Once the requirements of Sections 2 ***and*** [–]4 of this administrative regulation are complete, the agency shall provide the board ***with*** the prospective employer's:

(1) Trial period results;

(2) Current fiscal year's budget; and

(3) Resolution or ordinance authorizing participation in the system.

Section 6. Board Review.

(1) The prospective employer shall obtain authorization to participate from the board as ***established in provided by*** KRS 78.510(3).

(2)(3) The board may deny participation if it determines that a prospective employer [–]

[(a)] [An agency] has failed to comply with the provisions of Sections 2 ***through*** [–]4 of this administrative regulation, [subsection (4) of this section;] or if the prospective employer's

[(b)] [Its] participation will have:

(a) [1-] An adverse impact on the tax qualification of the system [CERS], pursuant to 26 U.S.C. 414(d) or any other applicable federal law ***or and administrative*** regulation; or

(b) [2-] A significant adverse impact on the actuarial soundness of the system [CERS].

(3)

(a) [(4)] If the board denies a prospective employer's [an agency's] request to participate in the system, [CERS,] it shall refund to the prospective employer [agency] and its employees the contributions paid by them to the system [CERS] during the prospective employer's [agency's] trial period.

(b) If the board approves the prospective employer's request to participate in the system, the [Section 3-] [The] effective date of participation shall be the first day of the trial period as ***established indicated*** in Section 4 of this administrative regulation. [–]

[(1)] [The month during which the order required by KRS 78.530(1) is adopted; or]

[(2)] [Any month subsequent to the month during which the order required by KRS 78.530(1) was adopted.]

Section 7. [Section 4-] Alternate Participation Plan.

(1) If a prospective employer [an agency] wishes to participate under the alternate participation plan pursuant to KRS 78.530(3), it shall request the board [Kentucky Retirement Systems] to conduct an actuarial study to determine the cost of purchasing past service for eligible employees prior to adoption of a resolution or ordinance by its controlling board authorizing participation in the system [an order to participate].

(2) [Section 5-] [An agency shall designate a person to be responsible for compliance with applicable statutes and the reporting requirements established in:]

[(1)] [105 KAR 1:130;]

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- [(2)] [105 KAR 1:140;]
- [(3)] [105 KAR 1:150;]
- [(4)] [105 KAR 1:160;]
- [(5)] [105 KAR 1:170;]
- [(6)] [105 KAR 1:210; and]

[(7)] [105 KAR 1:250;][Section 6:] The annual installment to amortize the cost of the employees' service under the alternate participation plan shall not be less than ten (10) percent of the total annual payroll for nonhazardous employees and fifteen (15) percent of the total annual payroll for hazardous employees included in the alternate participation plan. The payment shall be due each year on the first day of the month in which participation began.

Section 8. Continued Participation. Pursuant to KRS 78.530(2), once an employer begins participating in the system, the employer shall continue to participate ~~if as long as~~ it remains qualified unless:

- (1) The board requires the employer to involuntarily cease participation in accordance with KRS 78.535(2)(b); or
- (2) A voluntary cessation is allowed pursuant to KRS 78.535(2)(a).

Section 9. Split, Separated, or New Entity.

(1) Prior to beginning the formal process and not less than six (6) months prior to the effective date of splitting, separating, or becoming a new entity, a participating employer shall submit a written notification of its intended split, separation, or formation of a new entity. The written notification shall be submitted on the participating employer's official letterhead.

(2) Once the agency is notified of the split, separation, or formation of a new entity, or becomes aware through any means, the agency shall determine whether:

- (a) A new or separate employer has been created; or
- (b) Split or separated employers have been created.

(3)

(a) A split, separated, or new employer shall participate in the system if, by the end of day fifteen (15) calendar days from the date of the split, separation, or formation of a new entity, all the requirements ~~established/prescribed~~ in Section 3(2) of this administrative regulation are submitted.

(b) The participation date shall be:

1. The first day of the month following the date all the required documentation was received, if received by the 15th day of the month; or

2. The first day of the month following the month after the date all the required documentation was received, if received after the 15th day of the month.

(c) The split, separated, or new employer shall comply with KRS 78.510 through 78.852 and KAR Title 105 as of the participation date.

(d) If the split, separated, or new employer fails to complete the requirements of paragraph (a) of this subsection, then the split, separated, or new employer shall only participate if it takes all steps to participate in the system in accordance with KRS 78.530 and this administrative regulation.

(4) If there is a lapse in participation between the date the employer split, separated, or became a new entity and when it began participating, an employee who worked during the lapsed time may purchase service credit for that time by paying a delayed contribution payment if he or she elected to participate on a valid Form 2010, Election or Rejection of Participation, at the time the split, separated, or new entity began participating. The service shall not be included:

(a) In the member's total service for purposes of determining benefits under KRS 78.5536; or

(b) Toward retirement eligibility for members with a participation date on or after August 1, 2004, in accordance with KRS 61.552(10)(c), and 78.545.

Section 10. Merged Employer.

(1) Prior to beginning the formal process and not less than six (6) months prior to the effective date of merging, a participating employer shall submit a written notification of its intended merger. The written notification shall be submitted on the participating employer's official letterhead.

(2) Once the agency is notified of the merger, or becomes aware by other means, the agency shall determine whether two (2) or more participating employers, or one (1) or more participating employer and one (1) or more non-participating employer have become a merged employer.

(3) Once the merger is complete, the merged employer shall comply with KRS 78.510 through 78.852 and KAR Title 105.

Section 11. Inactive Employers.

(1)

(a)

1. If an employer becomes an inactive employer, the employer shall submit a written notification on its official letterhead stating that the employer is an inactive employer.

2. Each year by the end of day on the last day of the month of the fiscal year, an inactive employer shall submit a written notification on its official letterhead stating that it remains an inactive employer, or stating that the employer is no longer an inactive employer as applicable.

(b) If an employer ceases to become an inactive employer, the employer shall:

1. Submit a written notification on its official letterhead stating that the employer is no longer an inactive employer by the end of day thirty (30) calendar days from having a participating employee; and

2. Begin reporting a participating employee the month after he or she becomes a participating employee.

(c) The agency shall determine whether **or not** a participating employer is an inactive employer.

(2) Employers shall comply with KRS 78.510 through 78.852 and KAR Title 105, regardless of the employer's status as an inactive employer.

(3) The agency shall periodically audit inactive employers to determine if they remain inactive employers.

Section 12. Incorporation by Reference.

(1) The following forms are incorporated by reference:

(a) Form 2010, "Election or Rejection of Participation", ~~updated~~ |March 2024;

(b) Form 7071, "Employer Self Service Employer Administrator Account Creation Request", ~~updated~~ |March 2024;

(c) Form 7075, "Employer Contact Information", ~~updated~~ |March 2024;

(d) Form 7250, "Verification of Payments Outside Regular Wages", ~~updated~~ |March 2024;

(e) Form 7280, "Employer Certification ~~for of~~ Installment Purchase of Service", ~~updated~~ |March 2024; and

(f) Form 7851, "Data Use **and Reporting** Agreement", ~~updated~~ |January 2024.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Public Pensions Authority, 1260 Louisville Road, Frankfort, Kentucky 40601, Monday through Friday, from 8 a.m. to 4:30 p.m. This material is also available on the Kentucky Public Pensions Authority's Web site at kyret.ky.gov.

FILED WITH LRC: July 9, 2024

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**FINANCE AND ADMINISTRATION CABINET
Kentucky Public Pensions Authority
(As Amended at ARRS, July 9, 2024)**

105 KAR 1:190. Qualified domestic relations orders.

RELATES TO: KRS 16.505[16.505(36), (37), (38)], ~~16.576, 16.645(5)~~, 16.568, **16.576**, 16.577, 16.578, 16.582, 16.583, **16.645(5)**, 61.505, 61.510[61.510(37), (38), (39)], 61.542, 61.559, 61.580, 61.583, 61.590, 61.595, 61.597, 61.600, 61.605, 61.610, 61.615, 61.621, 61.625, 61.635, 61.637, 61.640, 61.661, 61.663,

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61.690, 61.691, 78.510[78.510(34), (35), (36)], 78.545[78.545(26)], ~~78.640, 78.652,~~ 78.5510, 78.5512, 78.5514, 78.5516, 78.5518, 78.5522, 78.5524, 78.5526, 78.5528, 78.5532, 78.5540, ~~78.640, 78.652,~~ 205.712, 26 U.S.C. 414(p)

STATUTORY AUTHORITY: KRS 16.645, 61.505(1)(g)[61.645(9)(e)], 61.690, 78.545

NECESSITY, FUNCTION, AND CONFORMITY: KRS 61.505(1)(g) authorizes the Kentucky Public Pensions Authority to promulgate administrative regulations on behalf of the Kentucky Retirement Systems and the County Employees Retirement System that are consistent with KRS 16.505 ~~through~~ 16.652, 61.510 ~~through~~ 61.705, and 78.510 ~~through~~ 78.852. KRS 16.645, 61.690(3)(b), and 78.545 require the Kentucky Retirement Systems and the County Employees Retirement System[61.690 requires the retirement systems] to promulgate an administrative regulation establishing the requirements, procedures, and forms necessary to administer qualified domestic relations orders (QDROs). This administrative regulation establishes the requirements, procedures, and forms necessary to administer QDROs.

Section 1. Definitions.

(1) "Basic retirement allowance" means the basic payment option as defined by KRS 61.542(5)(f) and 78.545.["Alternate payee" is defined by KRS 16.505(38), 61.510(39), and 78.510(36).]

(2) "Benefit" means the retirement allowance as defined by KRS 16.505(12), 61.510(16), and 78.510(16).["Qualified domestic relations order" is defined by KRS 16.505(37), 61.510(38), and 78.510(35).]

(3) "Date of divorce" means the date the decree of dissolution of marriage is entered by a court of competent jurisdiction.["Participant" is defined by KRS 16.505(36), 61.510(37), and 78.510(34).]

(4) "Effective retirement date" means the first date upon which a member's early, normal, or disability retirement benefits began or will begin.

(5) "Marital service" means the amount of service earned and purchased during the marriage.

(6) "Unreduced retirement benefit" means the full retirement allowance for which a participant is entitled in accordance with KRS 16.576, 16.577, 16.583, 61.559, 61.595, 61.597, 78.5510, 78.5512, 78.5514, and 78.5516.

Section 2. Information Requests.

(1) If information is necessary for the Court to calculate the amount due to the alternate payee for the purposes of a QDRO, the participant shall complete, sign, and file a valid Form 6433, Authorization for Release of Information and Request for Information for Qualified Domestic Relations Order, to obtain the needed information.

(2) In response to a filed valid Form 6433, if the participant has not yet retired, the agency shall provide as of the date of the divorce indicated on the QDRO, or if the date of divorce is not provided the last date contributions were reported, the participant's:

(a) Accumulated account balance during the marriage in each of the systems in which the participant has marital service;

(b) Total number of months of service credit earned and purchased in each of the systems in which the participant has service;

(c) The number of months of service credit earned and purchased during the marriage in each of the systems in which the participant has marital service;

(d) The hypothetical monthly retirement allowance pursuant to KRS 16.576, 16.577, 16.583, 61.559, 61.595, 61.597, 78.5510, 78.5512, 78.5514, and 78.5516 the participant would receive beginning on the date the participant is eligible for an unreduced retirement benefit, and broken down by each of the systems in which the participant has marital service. The hypothetical monthly retirement allowance shall be based on:

1. The participant's final compensation and service credit; or
2. The participant's accumulated account balance;

(e) The hypothetical partial lump sum payment option without survivor rights with a one (1) time lump-sum payment equal to twelve (12) monthly retirement allowances and the reduced ongoing monthly retirement allowance pursuant to KRS 61.635(12) and 78.545 that the participant would receive beginning on the date the

participant is eligible for an unreduced retirement benefit, and broken down by each of the systems in which the participant has marital service. The hypothetical partial lump sum payment option and reduced ongoing monthly retirement allowance shall be based on:

1. The participant's final compensation and service credit; or
2. The participant's accumulate account balance; and

(f) The hypothetical actuarial equivalent refund payment or accumulated account balance refund payment the participant would receive, broken down by each of the systems in which the participant has marital service, when the participant is eligible for an unreduced retirement benefit based on:

1. The final compensation and service credit; or
2. The participant's accumulated account balance.

(3) In response to a filed valid Form 6433, if the participant retired prior to the effective date of the divorce indicated on the QDRO, the agency shall provide the participant's:

(a) Current monthly retirement benefit in each of the systems from which the participant is receiving a monthly retirement benefit;

(b) Total number of months of service credit earned and purchased during the marriage in each of the systems from which the participant is receiving a monthly retirement benefit; and

(c) Total number of months of service credit in each of the systems from which the participant is receiving a monthly retirement benefit.

(4)

(a) The alternate payee may request and obtain the information necessary for the court to calculate the amount due to the alternate payee for purposes of the QDRO by completing and filing a valid Form 6433, Authorization for Release of Information and Request for Information for Qualified Domestic Relations Orders, and an attached court issued subpoena or order compelling the release of the requested information.

(b) The agency shall respond to a valid Form 6433 filed in accordance with this subsection in the same manner as ~~established~~ ~~indicated~~ in ~~subsection~~ ~~subsections~~ (2) or (3) of this section as applicable.

(5)

(a) If information other than the information supplied by the agency in accordance with subsections (2) through (3) of this section is required:

1. The participant shall file an additional signed request for information in writing;

2. The alternate payee shall file an additional signed request for information in writing, and an attached court issued subpoena or order compelling the release of the requested information; or

3. Legal counsel shall file an additional signed request for information in writing, and documentation that he or she represents the participant or alternate payee, as applicable. An alternate payee's legal counsel shall also file a court issued subpoena or order compelling the release of the requested information.

(b) Requests for information, other than the information supplied by the agency in accordance with subsections (2) through (4) of this section, shall be answered pursuant to KRS 61.661 and 78.545.

Section 3. QDROs Prior to July 14, 2000. The provisions of this section shall only apply to QDROs that were approved[by the retirement systems] for enforcement by the agency prior to July 14, 2000. After the participant notifies the agency[retirement system] of his or her[the participant's] requested effective retirement date, the agency[retirement systems] shall administer a valid QDRO approved by the agency that was entered prior to the participant's effective retirement date as ~~established in subsections (1) through (5) of this section.~~ ~~follows:~~

(1) The agency[retirement systems] shall provide[send] the participant and the alternate payee, information regarding the amount of the benefits payable pursuant to the QDRO.

(2) The amount of the benefits payable pursuant to a valid QDRO[approved for enforcement by the retirement systems prior to July 14, 2000,] shall be determined[calculated] as ~~established in paragraphs (a) through (f) of this subsection.~~ ~~follows:~~

(a) The percentage of benefit due to the alternate payee shall be computed based on the following ~~calculation.~~ ~~table:~~

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$$\% \text{ allocated to Alternate Payee pursuant to QDRO} \times \frac{\text{marital service per QDRO}}{\text{Participant's total service credit}} = \text{Percentage of benefit due to the alternate payee}$$

~~[The alternate payee shall receive the amount computed by multiplying the basic option amount due the participant by the percentage allocated to the alternate payee by the terms of the QDRO multiplied by a fraction, the numerator of which shall be the period of service specified in the QDRO and the denominator of which shall be the participant's total service credit. The participant shall be paid all amounts in excess of the amounts paid to the alternate payee.]~~

(b) If a lump sum payment equal to the balance of the participant's accumulated account balance is to be made, the percentage due to the alternate payee as calculated by paragraph (a) of this subsection ~~[determined by this calculation]~~ shall be multiplied by the ~~[balance of the]~~ participant's accumulated account balance and the result paid to the alternate payee. The participant shall be paid all amounts in excess of the amounts paid the alternate payee.

(c) If a monthly payment is to be made ~~[benefit is paid]~~, the percentage due to the alternate payee, as calculated by paragraph (a) of this subsection, ~~[options made available to the alternate payee]~~ shall be multiplied by the participant's basic retirement allowance and the result shall be paid monthly to the alternate payee ~~[derived from the participant's basic option]. The participant shall be paid all amounts in excess of the amounts paid to the alternate payee.~~

(d) Service credit added for disability retirement benefits under KRS 16.582, 61.600, 61.605, 78.5522, or 78.5524 ~~[16.582]~~ shall not be included in determining the amount payable to the alternate payee. Service credit purchased during the period of marriage shall be included in the calculation under this paragraph.

(e) The payment options offered to the alternate payee:]

1. Shall be based on the alternate payee's life expectancy;:]

2. Shall include only ~~[The alternate payee shall be offered]~~ the payment options established described in KRS 61.635 and 78.545, which do not provide lifetime benefits to a beneficiary; and:]

3. If the participant is eligible, shall include the ten (10) year certain option as established in provided by KRS 16.576(4).

(f) ~~[If the alternate payee predeceases the participant after the participant's retirement, a lump sum, determined actuarially, of the payments remaining to the alternate payee, if any, shall be paid to the alternate payee's estate.]~~

(g) The alternate payee of a QDRO approved for enforcement by the agency ~~[retirement systems]~~ prior to July 14, 2000, shall receive increases given recipients under KRS 61.691 and 78.5518.

(3)

(a) If the participant dies prior to his or her effective retirement date and prior to the death of the alternate payee, the participant's account shall be divided in accordance with the QDRO between the alternate payee and the participant's beneficiary.

1. ~~[(4)]~~ If the death benefit is a refund of the participant's accumulated account balance ~~[contributions and interest]~~, the alternate payee shall only be offered a lump sum payment representing a portion of the participant's accumulated account balance calculated in accordance with subsection (2) ~~(b)~~ of this section.

2. ~~[(5)]~~ If the death benefit is calculated under KRS 16.578, ~~[or]~~ 61.640, or 78.5532, the alternate payee shall be allowed to choose a lifetime annuity, a sixty (60) month certain payment, a 120 month payment, or an actuarial equivalent refund ~~[lump sum payment]~~.

(b)

1. ~~[(6)]~~ If a participant with a pre-retirement QDRO dies after his or her effective retirement date and prior to the death of the alternate payee, there shall be no change to the alternate payee's benefits.

2. If a participant with a post-retirement QDRO dies prior to the death of the alternate payee, the QDRO on file shall be void and no further payment shall be made to the alternate payee.

(4)

(a) If the alternate payee predeceases the participant after the participant's effective retirement date, a lump sum, determined actuarially, of the payments remaining to the alternate payee, if any, shall be paid to the alternate payee's estate.

~~(b) If the alternate payee predeceases the participant prior to the participant's effective~~ ~~[dies prior to the participant's death,]~~ retirement date~~], or withdrawal of account, the QDRO on file shall be void and payment shall not be made to the alternate payee or his or her estate.~~

~~(5) [(7)]~~ When benefits become payable to the alternate payee, the agency ~~[retirement system]~~ shall establish a separate account for the alternate payee, which shall consist of the alternate payee's pro rata share determined pursuant to subsection (2) of this section ~~[of the participant's contributions, service, and benefit]~~. Once the alternate payee's account has been established, the alternate payee shall not be entitled to further benefits acquired by the participant.

Section 4. ~~[Section 3.]~~ QDROs On or After July 15, 2010.

~~(1) This section and Sections 5~~ ~~[Section 4]~~ through Section 20 ~~[All sections]~~ of this administrative regulation ~~[, except for Section 2,]~~ shall only apply to QDROs approved for enforcement by the agency ~~[retirement systems]~~ on or after July 15, 2010.

(2) A QDRO may apply to any of the ~~[retirement]~~ systems ~~[administered by the Kentucky Retirement Systems as established by KRS Chapters 16, 61, and 78] in which the participant has marital service~~ ~~[is a member during the period of the marriage]~~ that is the subject of the QDRO and from which the participant will receive retirement benefits, except for the excess benefit plans ~~[retirement systems]~~ established by KRS 16.568, 61.663, and 78.652.

(3) A valid QDRO shall be complete and contain all ~~[the following]~~ information:]

~~[(a)]~~ ~~[The participant's name;]~~

~~[(b)]~~ ~~[The participant's mailing address;]~~

~~[(c)]~~ ~~[The participant's Kentucky Retirement Systems member identification number or the participant's Social Security number;]~~

~~[(d)]~~ ~~[The alternate payee's name;]~~

~~[(e)]~~ ~~[The alternate payee's mailing address;]~~

~~[(f)]~~ ~~[The system or systems to which the QDRO applies;]~~

~~[(g)]~~ ~~[The amount or percentage to be paid to the alternate payee;]~~

~~[(h)]~~ ~~[When payments under the QDRO are to end;]~~

~~[(i)]~~ ~~[How the cost of living increase provided in KRS 61.691 is to be administered, if administration is not otherwise provided for by KRS 61.690; and]~~

~~[(j)]~~ ~~[All information] required on the form that applies to the subject matter of the order:~~

~~[(a)]~~ ~~[1-] Form 6434, Pre-Retirement Qualified Domestic Relations Order for Division of Marital Property, for a QDRO concerning the division of marital property that is completed pre-retirement;~~

~~[(b)]~~ ~~[2-] Form 6435, Post-Retirement Qualified Domestic Relations Order for Division of Marital Property, for a QDRO concerning the division of marital property that is completed post-retirement;~~

~~[(c)]~~ ~~[3-] Form 6436, Qualified Domestic Relations Order for Child Support, for a QDRO concerning the order of child support;~~

~~[(d)]~~ ~~[4-] Form 6437, Qualified Domestic Relations Order for Child Support by an Administrative Agency, for a QDRO concerning child support when completed by an Administrative Agency with the statutory authority to complete it; or~~

~~[(e)]~~ ~~[5-] Form 6438, Qualified Domestic Relations Order for Alimony/Maintenance, for a QDRO concerning alimony or maintenance.~~

~~[Section 4.]~~

~~[(1)]~~ ~~[The participant shall sign and submit a Form 6433, Authorization for Release of Information and Request for Information for Qualified Domestic Relations Order to obtain the information necessary for the Court to calculate the amount due to the alternate payee for purposes of the QDRO. The participant shall provide the retirement systems with the following information:]~~

~~[(a)]~~ ~~[The participant's and the alternate payee's Social Security numbers;]~~

~~[(b)]~~ ~~[The participant's and the alternate payee's dates of birth;]~~

~~[(c)]~~ ~~[Date of marriage;]~~

~~[(d)]~~ ~~[Date of divorce;]~~

~~[(e)]~~ ~~[The participant's and the alternate payee's mailing addresses; and]~~

~~[(f)]~~ ~~[The addresses of the participant's and the alternate payee's~~

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legal counsel, if any.]

[(2)] [If the participant has not yet retired, the retirement systems shall provide as of the date of the divorce, the participant's:]

[(a)] [Accumulated contributions and interest contributed and earned during the marriage in each system in which the participant has marital service;]

[(b)] [Total number of months of service credit earned and purchased as of the effective date of the divorce or upon the request in each system in which the participant has service;]

[(c)] [The number of months of service credit earned and purchased during the marriage in each system in which the participant has marital service;]

[(d)] [The hypothetical monthly retirement benefit pursuant to KRS 61.595 the participant would receive when the participant is eligible for an unreduced retirement benefit based on the final compensation and service credit as of the effective date of the divorce or upon the request in each system in which the participant has marital service; and]

[(e)] [The hypothetical actuarial refund payment option or lump-sum refund payment the participant would receive when the participant is eligible for an unreduced benefit based on the final compensation and service credit as of the effective date of the divorce or upon the request in each system in which the participant has marital service.]

[(3)] [The retirement systems shall use the participant's final compensation as of the date of the divorce or upon the request and the service credit accrued by the participant during the marriage or upon the request when calculating the participant's projected basic monthly retirement allowance and the projected actuarial refund or lump-sum refund payment.]

[(4)] [If the participant retired prior to the effective date of the divorce, the retirement systems shall provide the participant's:]

[(a)] [Current monthly retirement benefit in each system from which the participant is receiving a monthly retirement benefit;]

[(b)] [Total number of months of service credit earned and purchased during the marriage in each system from which the participant is receiving a monthly retirement benefit; and]

[(c)] [Total number of months of service credit in each system from which the participant is receiving a monthly retirement benefit.]

[(5)] [The alternate payee may request and obtain the information necessary for the court to calculate the amount due to the alternate payee for purposes of the QDRO by submitting a Form 6433, Authorization for Release of Information and Request for Information for Qualified Domestic Relations Orders, and an attached court issued subpoena or order compelling the release of the requested information.]

[(6)] [If information other than the information supplied by the retirement systems in accordance with subsections (2) through (4) of this section is required:]

[(a)] [The participant shall submit to the systems an additional signed request for information in writing; or]

[(b)] [The alternate payee shall submit to the systems an additional request and an attached court issued subpoena or order compelling the release of the requested information.]

[(c)] [Requests for information other than the information supplied by the retirement systems in accordance with subsections (2) through (4) of this section shall be answered pursuant to KRS 61.664.]

Section 5. Pre-retirement QDROs for the Division of Marital Property.

(1) Only a QDRO for the purpose of the division of marital property shall be filed prior to a participant's effective retirement date.

(2) A QDRO issued for purpose of the division of the participant's retirement account, pursuant to a divorce entered prior to the participant's effective retirement date, shall be filed prior to retirement on a valid Form 6434, Pre-Retirement Qualified Domestic Relations Order for Division of Marital Property. A Form 6434 entered or initially filed after the participant's retirement date shall be in compliance with Section 6 of this administrative regulation.

(3) The effective date of the Form 6434, Pre-Retirement Qualified Domestic Relations Order for Division of Marital Property,

shall be the participant's effective retirement date as established provided in KRS 61.590 and 78.545, or if the Form 6434 is approved following the participant's effective retirement date, the month following the month the Form 6434 was approved for enforcement by the agency.

(a) If the participant receives a lump-sum payment representing monthly retirement benefits paid retroactively to the participant's effective retirement date, the alternate payee shall receive a portion of the lump sum payment as included provided on the Form 6434.

(b) If the participant is not receiving a retirement benefit, then the alternate payee shall not receive a retirement benefit.

(4)

(a) A Form 6434, Pre-Retirement Qualified Domestic Relations Order for Division of Marital Property, filed on or after July 1, 2024 shall include specify the amount to be paid to the alternate payee. The court shall use one (1) of the following methods to calculate the amount to be paid to the alternate payee:

1. A dollar amount;
2. A percentage of the participant's marital service; or
3. An alternative percentage of the participant's retirement payment option or accumulated account balance refund.

(b) If the court determines specifies a dollar amount to be paid to the alternate payee, then the court shall complete all fields to indicate:

1. A monthly dollar amount if the participant elects a monthly retirement allowance;
2. A one (1) time lump-sum dollar amount if the participant elects the actuarial equivalent refund payment option pursuant to KRS 61.635(11) and 78.545;
3. A lump-sum dollar amount from participant's refund of his or her accumulated account balance if the participant elects to terminate his membership pursuant to KRS 61.625 and 78.545; and
4. A one (1) time lump-sum payment and a monthly dollar amount if the participant elects a partial lump-sum payment option pursuant to KRS 61.635(12) and 78.545.

(c)

1. If the court determines specifies that a percentage of the participant's marital service be paid to the alternate payee, the percentage shall be determined based on the following calculation table:

$$\left[\frac{\text{Months of marital service in which participant was a contributing member of the system affected by the QDRO}}{\text{Participant's total service credit used to calculate the retirement payment option}} \right] \times 100 \div 2 = \text{Percentage of benefit due to the alternate payee}$$

2. The agency shall determine the marital service based on the marital period as determined provided by the court in the QDRO;

3. The participant's total service credit shall be determined by the agency prior to the participant's filing of a request for a refund of the accumulated account balance, and shall be the total number of months of service credit used to calculate the participant's retirement payment options or the total number of months of service credit the participant had at the time of the request for refund of the accumulated account balance; and

4. To determine the amount due to the alternate payee, the above percentage calculated in subparagraph 1. of this paragraph shall be applied to the following as appropriate:

- a. The participant's basic monthly retirement allowance pursuant to KRS 16.576, 16.577, 16.583, 61.559, 61.595, 61.597, 78.5510, 78.5512, 78.5514, and 78.5516;
- b. The participant's actuarial equivalent refund;
- c. The participant's refund of his or her accumulated account balance; or

d. The one (1) time lump-sum payment, and to either the reduced monthly retirement allowance payment with no survivor rights option elected by the participant pursuant to KRS 61.635(12)(a) and 78.545, or if the participant elected a payment option with survivor rights pursuant to KRS 61.635(12)(b) and 78.545, the correlating reduced monthly retirement allowance payment without survivor rights.

(d)

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1. If the court determines[specifies] that an alternative percentage of the participant's retirement payment option or accumulated account balance refund be paid to the alternate payee, the payment to the alternate payee shall not exceed the participant's:

- a. Retirement allowance amount elected at retirement;
- b. Actuarial equivalent refund pursuant to KRS 61.635(11) and 78.545; or
- c. Refund of his or her accumulated account balance pursuant to KRS 61.625 and 78.545.

2. To determine the amount due to the alternate payee, the percentage indicated on the QDRO shall be applied to the following as appropriate:

- a. The participant's basic monthly retirement allowance pursuant to KRS 16.576, 16.577, 16.583, 61.559, 61.595, 61.597, 78.5510, 78.5512, 78.5514, and 78.5516;
- b. The participant's actuarial equivalent refund;
- c. The participant's refund of his or her accumulated account balance; or
- d. The one (1) time lump-sum payment, and to either the reduced monthly retirement allowance payment with no survivor rights option elected by the participant pursuant to KRS 61.635(12)(a) and 78.545, or if the participant elected a payment option with survivor rights pursuant to KRS 61.635(12)(b) and 78.545, the correlating reduced monthly retirement allowance payment without survivor rights.

(5)

(a) If a Form 6434, Pre-Retirement Qualified Domestic Relations Order for Division of Marital Property, is filed prior to July 1, 2024 and the participant elects to receive a partial lump sum payment option pursuant to KRS 61.635(12) and 78.545, the alternate payee:

- 1. Shall receive a dollar amount or percentage applied to the participant's basic monthly retirement allowance; and
- 2. Shall not receive a portion of the partial lump-sum payable to the participant.

(b) A Form 6434 filed prior to July 1, 2024 shall include/specify the amount to be paid to the alternate payee. The court shall use one (1) of the following methods to calculate the amount to be paid to the alternate payee:

- 1. A dollar amount;
- 2. A percentage of the participant's marital service; or
- 3. An alternative percentage of the participant's retirement payment option or accumulated account balance refund.

(c) If the court determines[specifies] a dollar amount to be paid to the alternate payee, then the court shall complete all fields to indicate:

- 1. A monthly dollar amount if the participant elects a monthly retirement allowance, including the reduced monthly retirement allowance payable under a partial lump-sum option pursuant to KRS 61.635(12) and 78.545;
- 2. A one (1) time lump-sum dollar amount if the participant elects the actuarial equivalent refund payment option pursuant to KRS 61.635(11) and 78.545; and
- 3. A lump-sum dollar amount from the participant's refund of his or her accumulated account balance if the participant elects to terminate his or her membership pursuant to KRS 61.625 and 78.545.

(d)

1. If the court determines[specifies] that a percentage of the participant's marital service be paid to the alternate payee, the percentage shall be determined based on the following calculation.[table:]

$$\left[\begin{array}{l} \text{Months of marital service in which participant was a} \\ \text{contributing member of the system affected by the QDRO} \\ \hline \text{Participant's total service credit used to} \\ \text{calculate the retirement payment option} \end{array} \right] \times 100 \div 2 = \begin{array}{l} \text{Percentage of} \\ \text{benefit due to the} \\ \text{alternate payee} \end{array}$$

2. The agency shall determine the marital service based on the marital period as determined/provided by the court in the QDRO;

3. The participant's total service credit shall be determined by

the agency prior to the participant's filing of a request for a refund of the accumulated account balance, and shall be the total number of months of service credit used to calculate the participant's retirement payment options or the total number of months of service credit the participant had at the time of the request for refund of the accumulated account balance; and

4. To determine the amount due to the alternate payee, the above percentage shall be applied to the following as appropriate:

- a. The participant's basic monthly retirement allowance pursuant to KRS 16.576, 16.577, 16.583, 61.559, 61.595, 61.597, 78.5510, 78.5512, 78.5514, and 78.5516;
- b. The participant's actuarial equivalent refund; or
- c. The participant's refund of his or her accumulated account balance.

(e)

1. If the court determines[specifies] that an alternative percentage of the participant's retirement payment option or accumulated account balance refund be paid to the alternate payee, the payment to the alternate payee shall not exceed the participant's:

- a. Retirement allowance amount elected at retirement;
- b. Actuarial equivalent refund pursuant to KRS 61.635(11) and 78.545; or
- c. Refund of his or her accumulated account balance pursuant to KRS 61.625 and 78.545.

2. To determine the amount due to the alternate payee, the percentage indicated on the QDRO shall be applied to the following as appropriate:

- a. The participant's basic monthly retirement allowance pursuant to KRS 16.576, 16.577, 16.583, 61.559, 61.595, 61.597, 78.5510, 78.5512, 78.5514, and 78.5516;
- b. The participant's actuarial equivalent refund; or
- c. The participant's refund of his or her accumulated account balance.

Section 6. Post Retirement QDRO for the Division of Marital Property.

(1) A QDRO issued for purposes of division of the participant's retirement account pursuant to a divorce decree entered after the participant's effective retirement date, or initially filed following the participant's effective retirement date, shall be filed on a valid Form 6435, Post-Retirement Qualified Domestic Relations Order for Division of Marital Property.

(2) The Form 6435, Post-Retirement Qualified Domestic Relations Order for Division of Marital Property, shall include/specify the amount to be paid to the alternate payee. The court shall use one (1) of the following methods to calculate the amount to be paid to the alternate payee:

- (a) A monthly dollar amount;
- (b)

1. A percentage of the participant's selected monthly retirement benefit attributable to the marital service, which shall be determined based on the following calculation.[table:]

$$\left[\begin{array}{l} \text{Months of marital service in which participant was a} \\ \text{contributing member of the system affected by the QDRO} \\ \hline \text{Participant's total service credit used to} \\ \text{calculate the retirement payment option} \end{array} \right] \times 100 \div 2 = \begin{array}{l} \text{Percentage of} \\ \text{benefit due to the} \\ \text{alternate payee} \end{array}$$

2. The agency shall determine the marital service based on the marital period as determined/provided by the court in the QDRO; or

(c) An alternative percentage of the participant's selected monthly retirement benefit in the system or systems affected by the QDRO.

Section 7. Child Support QDROs.

(1) A QDRO issued for purposes of payment of child support shall be filed on:

- (a) A valid Form 6436, Qualified Domestic Relations Order for Child Support entered by a court of competent jurisdiction; or

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(b) A valid Form 6437, Qualified Domestic Relations Order for Child Support by an Administrative Agency, completed by an administrative agency with statutory authority to issue an order for child support in accordance with the laws governing child support.

(2) The QDRO shall **include[specify]** the monthly dollar amount of child support to be paid.

(3) The agency shall remit the payment for child support to the centralized registry established pursuant to KRS 205.712 and defined **by[in]** 921 KAR 1:001, Section 1(5).

(a) The payment for child support shall be made payable to "Kentucky Child Support Enforcement."[,]

(b) The participant's name and Social Security number shall be noted on the payment.

(4) The agency shall only accept a Form 6436, Qualified Domestic Relations Order for Child Support, or a Form 6437, Qualified Domestic Relations Order for Child Support by an Administrative Agency, if the participant is retired and is receiving a monthly retirement benefit.

Section 8. Alimony or Maintenance QDROs.

(1) A QDRO issued for purposes of payment of alimony or maintenance pursuant to KRS 403.200 shall be filed on a valid Form 6438, Qualified Domestic Relations Order for Alimony/Maintenance completed by a court of competent jurisdiction in accordance with the laws governing alimony or maintenance.

(2) The QDRO shall **include[specify]** the monthly dollar amount or percentage of the participant's monthly retirement allowance to be paid to the alternate payee for alimony or maintenance.

(3) The agency shall only accept a Form 6438, Qualified Domestic Relations Order for Alimony/Maintenance if the participant is retired and is receiving a monthly retirement allowance.

Section 9. Filing a QDRO.

(1) A QDRO shall be on the form incorporated by reference in this administrative regulation that applies to the subject matter of the order.

(a) [(2)] A QDRO shall be signed by the judge of a court with jurisdiction over the case, and entered and certified by the Clerk of the Court, except as **established[provided]** in paragraph (b) of this subsection.

(b) The Form 6437, Qualified Domestic Relations Order for Payment of Child Support by an Administrative Agency, shall be signed[er] by the head of the administrative agency, or his or her[their] designee, with statutory authority to issue a QDRO.

(2) A valid copy of the QDRO that meets the requirements of subsection (1) of this section shall be filed.

(3)

(a) ~~No one shall file [A QDRO shall be entered and certified by the Clerk of the Court or by the head of the administrative agency, or their designee, with statutory authority to issue a QDRO.]~~

[(4)] ~~[The participant, alternate payee, or their legal counsel shall submit a copy of the entered and certified QDRO to the retirement systems.]~~

[(5)]

[(a)] ~~[The participant, alternate payee, or their legal counsel shall not submit] a QDRO that is before an appellate court and is not final.~~

(b) The **agency[retirement systems]** shall not have responsibility or liability for payments made pursuant to a QDRO **filed[submitted]** in violation of this subsection that was altered or dissolved by an order of an appellate court of competent jurisdiction.

(4) [(6)] A fee of fifty (50) dollars shall be submitted by [The participant, alternate payee, or their legal counsel shall submit a] certified check or money order in the amount of fifty (50) dollars made payable to the Kentucky State Treasurer as a nonrefundable processing fee with a **filed[the]** QDRO, **except as established[provided]** in paragraph (b) or (c) of this subsection. The **agency[retirement systems]** shall not review the QDRO to **approve for enforcement** unless the fee is submitted with the QDRO.

(a) ~~[A QDRO shall provide who shall pay the fee, including if the fee is to be divided between the participant and the alternate payee.]~~ Only one (1) certified check or money order shall be submitted in payment of the fee.

(b) There shall not be a fee required for [submission of] a Form 6436, Qualified Domestic Relations Order for Child Support, or a

Form 6437, Qualified Domestic Relations Order for Child Support by an Administrative Agency.

(c) If the dissolution of marriage action was filed in forma pauperis, then the **agency[retirement systems]** shall waive the filing fee. A copy of the order allowing the dissolution of marriage action to be filed in forma pauperis shall be **filed[submitted to the retirement systems]** with the **valid** entered and certified QDRO.

(5)

(a) [(7)] If the **agency[retirement systems]** determines that the QDRO does not comply with KRS 16.645, 61.690, 78.545, 26 U.S.C. 414(p), or this administrative regulation, the participant, alternate payee, or their legal counsel shall have **until the end of day ninety (90) calendar days** from the date the **agency[s]retirement systems] notification of the deficiency was **provided[mailed]**, as **detailed[provided]** in Section 11(4)[Section 6(4)]** of this administrative regulation, to **file[submit]** a corrected QDRO **without an additional fee.**

(b) If a corrected **valid** QDRO is not **filed[submitted]** by the end of **day[within]** ninety (90) **calendar days** from [of] the date of notification, then ~~the participant, alternate payee, or their legal counsel shall be required to submit] an additional nonrefundable fifty (50) dollar fee with **any new or corrected[a]** QDRO **filed[submitted]** after the ninety (90) **calendar days** shall be required.~~

(c) If the participant requests and receives a refund of his or her accumulated account balance during the ninety (90) calendar day period **established[described]** in this subsection, and a corrected QDRO is filed after the participant has received a refund of his or her accumulated account balance, then the QDRO shall not be valid and enforceable by the agency.

Section 10. Deposit of Fees. All fees collected pursuant to this administrative regulation shall be deposited in the Retirement Allowance Account established in KRS 61.580 and 78.640.

Section 11. [Section 6.] Determining if a QDRO is Approved for Enforcement.

(1) The **agency[retirement systems]** shall determine if the QDRO is complete and qualifies as a **valid** QDRO pursuant to KRS 16.645, 61.690, 78.545, 26 U.S.C. 414(p), and this administrative regulation.

(a) A QDRO shall not be effective until the **agency[retirement systems]** has determined that it complies with KRS 16.645, 61.690, 78.545, 26 U.S.C. 414(p), and this administrative regulation, and **approves[has approved]** the QDRO for enforcement.

(b) ~~[The retirement systems shall provide notification of its determination within ninety (90) days of the submission of the QDRO during the time period from July 15, 2010 until July 14, 2011.]~~

[(c)] The **agency[retirement systems]** shall provide notification of its determination **by the end of day[within]** forty-five (45) **calendar days** from the date [of the submission of] the QDRO **is filed on or after** July 15, 2011.

(2) The **agency[retirement systems]** shall **provide notification** to [notify] the participant; the participant's legal counsel, if known; the alternate payee; and alternate payee's legal counsel, if known, that the QDRO has been approved for enforcement.

(a) If the participant has not yet retired, the **agency[retirement systems]** shall place an **otherwise valid and approved[the]** QDRO on file until the participant files a notification of retirement or an application for a **refund of his or her accumulated account balance.**

(b) If the participant has retired, the **agency[retirement systems]** shall begin to enforce the QDRO the month after it is approved for enforcement by the **agency[retirement systems].**

(3)

(a) Except as provided in paragraph (c) of this subsection, **the[The]** alternate payee shall **complete and file a valid[submit a completed]** Form 6130, Authorization for Deposit of Retirement Payment, or if he or she does not have an account with a financial institution, a **valid** Form 6135, Payment of Retirement Payment by Check, prior to receiving payment under a QDRO.

(b) If the alternate payee has not **filed a valid[submitted a completed]** Form 6130, [Authorization for Deposit of Retirement Payment,] or a **valid** Form 6135, [Payment of Retirement Payment by Check,] by the last day of the month before the first payment under the QDRO is due to be paid to the alternate payee, the **agency[retirement systems]** shall **segregate[:]**

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(a) ~~Segregate~~ and hold the alternate payee's payments[;]
(b) ~~Hold the segregated amount~~ for a period of no more than eighteen (18) calendar months, with the period beginning on the first day of the month following the date the first payment was required by the QDRO approved for enforcement by the agency[retirement systems;]. The agency shall:

1. ~~(c)~~ Pay the segregated amount to the alternate payee, if a valid Form 6130, ~~Authorization for Deposit of Retirement Payment,~~ or a valid Form 6135, ~~Payment of Retirement Payment by Check,~~ is filed~~[submitted]~~ within the eighteen (18) calendar month hold period;

2. ~~(d)~~ Pay the segregated amount to the participant, if a valid Form 6130, ~~Authorization for Deposit of Retirement Payment,~~ or a valid Form 6135, ~~Payment of Retirement Payment by Check,~~ is not filed~~[submitted]~~ within the eighteen (18) calendar month hold period; or

3. ~~(e)~~ Apply the QDRO prospectively only, if after the eighteen (18) calendar month hold period expires a valid Form 6130, ~~Authorization for Deposit of Retirement Payment,~~ or a valid Form 6135, ~~Payment of Retirement Payment by Check,~~ is filed~~[submitted]~~.

(c) An alternate payee listed on a valid Form 6436, Qualified Domestic Relations Order for Child Support, or a valid Form 6437, Qualified Domestic Relations Order for Child Support by an Administrative Agency shall not file a Form 6130 or a Form 6135.

(4)

(a) If the agency[retirement systems] determines that the QDRO does not comply with KRS 16.645, 61.690, 78.545, 26 U.S.C. 414(p), or this administrative regulation, the agency[retirement systems] shall provide written notification to~~[notify]~~ the participant, the participant's legal counsel, if known, the alternate payee, and alternate payee's legal counsel, if known, including~~[detailing]~~~~[that]~~:

1. ~~(a)~~ That the agency[retirement systems] has determined the QDRO does not comply with KRS 16.645, 61.690, 78.545, 26 U.S.C. 414(p), or this administrative regulation;

2. ~~(b)~~ The reason for the determination that the QDRO does not comply with KRS 16.645, 61.690, 78.545, 26 U.S.C. 414(p), or this administrative regulation; and

3. ~~(c)~~ The changes necessary to make the QDRO in compliance with KRS 16.645, 61.690, 78.545, 26 U.S.C. 414(p), and this administrative regulation.

(b) If the sole deficiency is that the QDRO is not entered or certified, the agency shall segregate and hold any payments due the alternate payee pursuant to the QDRO for up to eighteen (18) calendar months, with the period beginning the first day of the month after the date the QDRO was found to be noncompliant in accordance with this subsection.

1. If within the eighteen (18) calendar month hold period, the entered and certified QDRO is filed, the agency shall pay the segregated amount to the alternate payee; or

2. When the eighteen (18) calendar month hold period ends, if the entered and certified QDRO is not on file, the agency shall pay the segregated amount to the participant.

3. If an entered and certified QDRO is filed after the eighteen (18) calendar month hold period expires, the QDRO shall only be applied prospectively.

Section 12. Multiple QDROs.

(1) If there are multiple QDROs on file for a participant's account, the QDROs shall be administered in the following order:

(a) QDROs for the Division of Marital Property;

(b) QDROs for Child Support; **and**

(c) QDROs for Alimony/Maintenance.

(2) If multiple QDROs for the Division of Marital Property are on file, they shall be administered in the order of approval by the agency.

(3) If multiple QDROs for Child Support are on file, they shall be administered in the order of approval by the agency.

(4) If multiple QDROs for Alimony/Maintenance are on file, they shall be administered in the order of approval by the agency.

(5) The agency shall not administer a QDRO if enforcement of the QDRO would result in the total amount of payments due to the alternate payees to exceed the participant's monthly retirement

benefit under the multiple QDROs approved for enforcement by the agency. The agency shall notify the participant and alternate payees if a QDRO cannot be administered due to the exhaustion of the participant's monthly retirement benefit.

Section 13. Multiple Retirement Accounts. For participants who retired and subsequently reemployed with an employer in a regular full-time position prior to September 1, 2008, new QDROs affecting the participant's retirement account shall be administered as established in subsections (1) and (2) of this section.~~[follows:]~~

(1) A valid Form 6434, Pre-Retirement Qualified Domestic Relations Order for Division of Marital Property, that is filed and approved for enforcement by the agency shall be applied to any retirement account of the participant from which the participant has not retired.

(2) Any of the following valid QDROs that are filed and approved for enforcement by the agency shall be applied to any retirement account of the participant from which the participant has retired:

(a) Form 6435, Post-Retirement Qualified Domestic Relations Order for Division of Marital Property;

(b) Form 6436 Qualified Domestic Relations Order for Child Support;

(c) Form 6437, Qualified Domestic Relations Order for Child Support by an Administrative Agency; or

(d) Form 6438, Qualified Domestic Relations Order for Alimony/Maintenance.

Section 14.~~[Section 7.]~~ Amending or terminating QDRO's.

(1) If a QDRO approved for enforcement ~~by the agency~~~~[and on file at the retirement systems]~~ is amended or terminated, the participant, alternate payee, or their legal counsel shall file:~~[submit]~~

(a) The~~[the]~~ amended entered and certified valid QDRO as established~~[provided]~~ in Section 9 of this administrative regulation; or

(b) The~~[an]~~ entered and certified order from a court of competent jurisdiction terminating the QDRO~~[to the retirement systems as provided in Section 5 of this administrative regulation]~~.

(2) Except as established~~[provided]~~ in paragraph (a) or (b) of this subsection, a fee~~[The participant, alternate payee, or their legal counsel shall submit a certified check or money order in the amount]~~ of twenty-five (25) dollars shall be submitted by certified check or money order made payable to the Kentucky State Treasurer as a nonrefundable processing fee for the amended QDRO or order terminating the QDRO. The agency[retirement systems] shall not review the amended QDRO or order terminating the QDRO unless the fee is submitted with the amended QDRO or order terminating the QDRO.

(a) If the dissolution of marriage action was filed in forma pauperis, then the agency[retirement systems] shall waive the filing fee. A copy of the order allowing the dissolution of marriage action to be filed in forma pauperis shall be filed~~[submitted to the retirement systems]~~ with the entered and certified valid QDRO.

(b) There shall not be a fee required for~~[submission of]~~ a Form 6436, Qualified Domestic Relations Order for Child Support, or a Form 6437, Qualified Domestic Relations Order for Child Support by an Administrative Agency.

(3) The agency[retirement systems] shall review the amended QDRO using the same procedures established~~[found]~~ in Section 11~~[Section 6]~~ of this administrative regulation.

(4) If the agency[retirement systems] determines that the amended QDRO does not comply with KRS 16.645, 61.690, 78.545, 26 U.S.C. 414(p), and this administrative regulation, or that the order terminating the QDRO is insufficient, the participant, alternate payee, or their legal counsel shall have until the end of day ninety (90) calendar days from the date of the agency's[retirement systems'] notification of the deficiency, as established~~[prescribed]~~ in Section 11(4) of this administrative regulation, was provided~~[mailed as provided in Section 6(4) of this administrative regulation]~~ to file~~[submit]~~ a corrected amended valid QDRO or a corrected order terminating the QDRO. If a corrected amended valid QDRO or a corrected order terminating the QDRO is not filed~~[by the end of day]~~~~[submitted within]~~ ninety (90) calendar days from~~[of]~~ the date of notification, then~~[the participant, alternate payee, or their legal counsel shall be required to submit]~~ an additional

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nonrefundable twenty-five (25) dollar fee shall be submitted with an amended valid QDRO or order terminating the QDRO that is filed[submitted] after the ninety (90) calendar day period[days].

(5) An amended valid QDRO or an order terminating a QDRO approved by the agency[retirement systems] shall only be administered prospectively.

[Section 8.] [All fees collected pursuant to this administrative regulation shall be deposited in the Retirement Allowance Account established in KRS 61.580.]

[Section 9.]

[(1)] [A QDRO issued for purposes of division of the participant's retirement account pursuant to a divorce entered prior to the participant's effective retirement date shall be submitted on the Form 6434, Pre-Retirement Qualified Domestic Relations Order for Division of Marital Property, unless the QDRO is initially submitted following the participant's retirement date.]

[(2)] [The effective date of the Form 6434, Pre-Retirement Qualified Domestic Relations Order for Division of Marital Property, shall be the participant's effective retirement date as provided in KRS 61.590 or, if the Form 6434 is approved following the participant's effective retirement date, the month following the month the Form 6434 was approved for enforcement by the retirement systems. If the participant receives a lump sum payment representing monthly retirement benefits paid retroactively to the participant's effective retirement date, the alternate payee shall receive a portion of the lump sum payment as provided in the Form 6434, Pre-Retirement Qualified Domestic Relations Order for Division of Marital Property. If the participant is not receiving a retirement benefit, then the alternate payee shall not receive a retirement benefit.]

[Section 10.] [The Form 6434, Pre-Retirement Qualified Domestic Relations Order for Division of Marital Property, shall specify the amount to be paid to the alternate payee. The court shall use one (1) of the following methods to calculate the amount to be paid to the alternate payee:]

[(1)] [A monthly dollar amount if the participant elects a monthly retirement benefit or a one (1) time lump sum dollar amount if the participant selects the actuarial refund payment option pursuant to KRS 61.635(11) at the participant's retirement, or a lump sum dollar amount from participant's refund of contributions and interest if the participant elects to terminate his membership pursuant to KRS 61.625;]

[(2)] [A percentage equal to one-half of the participant's basic monthly retirement benefit attributable to any service credit earned or purchased during the marriage pursuant to KRS 61.595 or 16.576, actuarial refund pursuant to KRS 61.635(11), or lump sum payment pursuant to KRS 61.625, which shall be determined as follows:]

[(a)] [The numerator of the fraction shall be the number of months during which the participant was both a contributing member of the retirement systems affected by the QDRO and married to the alternate payee, including service purchased during the marriage. The retirement systems shall utilize the marital period as provided by the court in the QDRO;]

[(b)] [The denominator of the fraction, which shall be determined by the retirement system as of the participant's effective retirement date or the participant's termination date prior to the participant's filing of a request for a refund of contributions and interest, shall be the total number of months of service credit used to calculate the participant's retirement payment options or the total number of months of service credit the participant had at the time of the request for refund of contributions and interest; and]

[(c)] [The resulting fraction shall be converted to a percentage, which shall be divided by two (2) to determine the percentage of the benefit due to the alternate payee; or]

[(3)] [An alternative percentage of the participant's basic monthly retirement benefit pursuant to KRS 61.595 or 16.576, actuarial refund pursuant to KRS 61.635(11), or lump sum payment pursuant to KRS 61.625, in the system or systems affected by the QDRO.]

Section 15.[Section 14.] Disability Retirement Benefits for Members Participating Prior to August 1, 2004.

(1) The provisions of this section shall only apply to participants who were participating prior to August 1, 2004.

(2) If a participant with[who was participating prior to August 1, 2004, and who has] a QDRO on file[at the retirement systems] is awarded disability retirement benefits pursuant to KRS 16.582, 61.600,[or] 61.621, 78.545, 78.5522, or 78.5524, the alternate payee's portion of the participant's disability retirement benefit shall be calculated as **established in paragraph (a) or (b) of this subsection.**[follows:]

(a) If the QDRO ordered that the alternate payee be paid a specific dollar amount from the participant's retirement benefit as **established provided** in Section 5(5)(a), Section 7, or Section 8[Section 10(4)] of this administrative regulation, the agency[retirement system] shall pay the specific dollar amount regardless of any enhancement of the participant's retirement benefit.[; or]

(b) If the QDRO ordered that the alternate payee be paid a percentage of the participant's retirement benefit as **established provided** in Section 5(5)(b) **and** [;](c) or Section 8[Section 10(2) and (3)] of this administrative regulation, the agency[retirement systems] shall not use the service credit added to the participant's account pursuant to KRS 16.582(5)(a),[or] 61.605(1), 78.5522(6), or 78.5524(5) **for when** calculating the amount the alternate payee is due under the QDRO on file at the agency[retirement systems].

[(2)]

[(a)] If the participant's disability retirement benefits are discontinued pursuant to KRS 61.610,[and] 61.615, 78.5526, and 78.5528, then:

(a) If [and] the participant **does not begin receiving**[is not eligible to receive] early retirement benefits, the alternate payee's payment shall be discontinued.[;]

(b) If [the participant's disability retirement benefits are discontinued pursuant to KRS 61.610 and 61.615 and] the participant's benefit is changed to the participant's early retirement benefit, the alternate payee shall receive payment from the early retirement benefit pursuant to the QDRO.[;]

(c) If the participant's disability retirement benefits are reinstated pursuant to KRS 61.615 and 78.5528, the alternate payee's payment shall be reinstated.[;]

(d) If the participant later begins receiving early retirement benefits[while his disability retirement benefits are discontinued], the alternate payee shall receive payment from the early retirement benefit pursuant to the QDRO; **or**.]

(e) **If the participant later begins receiving retirement benefits at normal retirement age, the alternate payee shall receive payment pursuant to subsection (2)(a) and [;](b) of this section.**

Section 16.[Section 12.] Disability Retirement Benefits for Members Participating on or after August 1, 2004.

(1) The provisions of this section shall only apply to participants whose participation began on or after August 1, 2004.

(2) If a participant[whose participation began on or after August 1, 2004, and] who has a QDRO on file[at the retirement systems] is awarded disability retirement benefits pursuant to KRS 16.582, 61.600,[or] 61.621, 78.545, 78.5522, or 78.5524 the alternate payee's portion of the participant's disability retirement benefit shall be calculated as **established in paragraph (a) or (b) of this subsection.**[follows:]

(a) If the QDRO ordered that the alternate payee be paid a specific dollar amount from the participant's retirement benefit as **established provided** in Section 5(5)(a), Section 7, or Section 8[Section 10(4)] of this administrative regulation, the agency[retirement system] shall pay the specific dollar amount regardless of any enhancement of the participant's retirement benefit.[; or]

(b) If the QDRO ordered that the alternate payee be paid a percentage of the participant's retirement benefit as provided in Section 5(5)(b) **and** [;](c) or Section 8[Section 10(2) and (3)] of this administrative regulation, the agency[retirement systems] shall use the participant's benefit pursuant to KRS 16.582(5)(b) **and** (c),[or]

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61.605(2), 78.5522(6)(b) and (c), or 78.5524(5)(b) and (c) ~~for when~~ calculating the amount the alternate payee is due under the QDRO on file ~~at the retirement systems~~.

~~(3)(2)~~

~~(a)~~ If the participant's disability retirement benefits are discontinued pursuant to KRS 61.610, ~~and~~ 61.615, 78.5526, and 78.5528, then:

~~(a)~~ If ~~and~~ the participant ~~does not begin receiving~~ ~~[is not eligible to receive]~~ early retirement benefits, the alternate payee's payment shall be discontinued. ~~;~~

~~(b)~~ If ~~[the participant's disability retirement benefits are discontinued pursuant to KRS 61.610 and 61.615 and]~~ the participant's benefit is changed to the participant's early retirement benefit, the alternate payee shall receive payment from the early retirement benefit pursuant to the QDRO. ~~;~~

~~(c)~~ If the participant's disability retirement benefits are reinstated pursuant to KRS 61.615 and 78.5528, the alternate payee's payment shall be reinstated. ~~;~~

~~(d)~~ If the participant later begins receiving early retirement benefits ~~[while his disability retirement benefits are discontinued]~~, the alternate payee shall receive payment from the early retirement benefit pursuant to the QDRO. ~~or~~.

~~(e)~~ If the participant later begins receiving retirement benefits at normal retirement age, the alternate payee shall receive payment pursuant to subsection (2)(a) ~~and~~ ~~;~~(b) of this section.

~~[Section 13.] [A QDRO issued for purposes of division of the participant's retirement account pursuant to a divorce decree entered after the participant's effective retirement date, or initially submitted to the retirement system following the participant's effective retirement date, shall be submitted on the Form 6435, Post-Retirement Qualified Domestic Relations Order for Division of Marital Property.]~~

~~[Section 14.] [(1)] [The Form 6435, Post-Retirement Qualified Domestic Relations Order for Division of Marital Property, shall specify the amount to be paid to the alternate payee.]~~

~~[(2)] [The court shall use one (1) of the following methods to calculate the amount to be paid to the alternate payee:]~~

~~[(a)] [As a monthly dollar amount;]~~

~~[(b)] [As a percentage of the participant's selected monthly retirement benefit, which shall be determined as follows:]~~

~~[1.] [The numerator of the fraction shall be the number of months during which the participant was both a contributing member of the retirement systems affected by the QDRO and married to the alternate payee, including service purchased during the marriage. The retirement systems shall utilize the marital period as provided by the court in the QDRO;]~~

~~[2.] [The denominator of the fraction, shall be the total number of months of service credit used to calculate the participant's retirement payment option; and]~~

~~[3.] [The resulting fraction shall be converted to a percentage, which shall be divided by two (2) to determine the percentage of the benefit due to the alternate payee; or]~~

~~[(c)] [An alternative percentage of the participant's selected monthly retirement benefit in the system or systems affected by the QDRO.]~~

~~[Section 15.] [(1)] [If the retirement systems determines that the Form 6435, Post-Retirement Qualified Domestic Relations Order for Division of Marital Property, does not comply with KRS 61.690, 26 U.S.C. 414(p), or this administrative regulation, the retirement systems shall:]~~

~~[(a)] [Segregate and hold the amount that would have been payable to the alternate payee if the Form 6435, Post-Retirement Qualified Domestic Relations Order for Division of Marital Property, had been in compliance with KRS 61.690, 26 U.S.C. 414(p), and this administrative regulation;]~~

~~[(b)] [Hold the segregated amount for a period of no more than the eighteen (18) month hold period. The eighteen (18) month hold period begins on the date the first payment would be required by the Form 6435, Post-Retirement Qualified Domestic Relations Order for Division of Marital Property, that the retirement systems determined was not in compliance with KRS 61.690, 26 U.S.C. 414(p), and this~~

~~administrative regulation;]~~

~~[(c)] [If a Form 6435, Post-Retirement Qualified Domestic Relations Order for Division of Marital Property, is submitted and determined to be in compliance with KRS 61.690, 26 U.S.C. 414(p), and this administrative regulation within the eighteen (18) month hold period, pay the segregated amount to the alternate payee;]~~

~~[(d)] [If no subsequent Form 6435, Post-Retirement Qualified Domestic Relations Order for Division of Marital Property, is submitted and determined to be in compliance with KRS 61.690, 26 U.S.C. 414(p), and this administrative regulation within the eighteen (18) month hold period, pay the segregated amount to the participant; or]~~

~~[(e)] [If after the eighteen (18) month hold period a subsequent Form 6435, Post-Retirement Qualified Domestic Relations Order, is submitted and determined to be in compliance with KRS 61.690, 26 U.S.C. 414(p), and this administrative regulation, the Form 6435, Post-Retirement Qualified Domestic Relations Order shall only be applied prospectively.]~~

~~[(2)] [The effective date of the first payment to the alternate payee shall be the month following the month the Form 6435, Post-Retirement Qualified Domestic Relations Order for Division of Marital Property, is approved for enforcement by the retirement systems;]~~

~~[Section 16.] [(1)] [A QDRO issued for purposes of payment of child support shall be submitted on the Form 6436, Qualified Domestic Relations Order for Child Support, or the Form 6437, Qualified Domestic Relations Order for Child Support by an Administrative Agency.]~~

~~[(2)] [The monthly dollar amount of child support to be paid by the participant shall be determined by a court of competent jurisdiction or an administrative agency with statutory authority to issue an order for child support in accordance with the laws governing child support.]~~

~~[(3)] [The retirement systems shall remit the payment for child support to the centralized registry established pursuant to KRS 205.712 and defined in 921 KAR 1:001, Section 1(5).]~~

~~[(a)] [The payment for child support shall be made payable to "Kentucky Child Support Enforcement".]~~

~~[(b)] [The participant's name and Social Security number shall be noted on the payment.]~~

~~[(4)] [An alternate payee listed on the Form 6436, Qualified Domestic Relations Order for Child Support, or the Form 6437, Qualified Domestic Relations Order for Child Support by an Administrative Agency shall not be required to submit a Form 6130, Authorization for Deposit of Retirement Payment or a Form 6135, Payment of Retirement Payment by Check.]~~

~~[(5)] [The retirement systems shall not accept a Form 6436, Qualified Domestic Relations Order for Child Support, or a Form 6437, Qualified Domestic Relations Order for Child Support by an Administrative Agency, if the participant has not retired and is not receiving a monthly retirement benefit.]~~

~~[Section 17.] [(1)] [A QDRO issued for purposes of payment of alimony or maintenance pursuant to KRS 403.200 shall be submitted on the Form 6438, Qualified Domestic Relations Order for Alimony/Maintenance.]~~

~~[(2)] [The amount of alimony or maintenance to be paid by the participant shall be determined by a court of competent jurisdiction in accordance with the laws governing alimony or maintenance.]~~

~~[(3)] [The retirement systems shall not accept a Form 6438, Qualified Domestic Relations Order for Alimony/Maintenance if the participant has not retired and is not receiving a monthly retirement benefit.]~~

~~Section 17. [Section 18.] Events That End or Amend a QDRO for Division of Marital Property, Alimony, or Maintenance.~~

~~(1) The participant, the alternate payee, or legal counsel for either party shall be responsible for notifying the agency [retirement systems in writing] of an event that causes payments to the alternate payee under a QDRO for Division of Marital Property or a QDRO for Alimony/Maintenance to end in accordance with KRS 16.645, 61.690(7), and 78.545.~~

~~(2) In the event of the participant or alternate payees' death, the~~

QDRO on file shall be void and payment shall not be made to the alternate payee or his or her estate.

(3)(2) The agency[retirement systems] shall segregate and hold any payments due the alternate payee[pending submission of proof of the event that causes payments to the alternate payee to end is provided by the participant] beginning the month after the agency's[retirement systems'] receipt of the[participant's written] notification until one (1) of the following occurs:[-]

(a)(3) The participant, alternate payee, or either party's legal counsel files[-] shall submit a copy of the alternate payee's marriage certificate, the alternate payee's death certificate, or other reliable documentation as proof of the event that causes payments to the alternate payee[the participant's alimony or maintenance] to end; or[-]

(b) The agency independently verifies the event that causes payments to the alternate payee to end.

(4) As applicable, the[The] participant, alternate payee, or either party's legal counsel shall file[submit] a copy of the alternate payee's marriage certificate or[-] the alternate payee's or participant's death certificate, or other reliable documentation as determined by the agency[as proof of the event that causes payment to the alternate payee[the participant's payments pursuant to the division of marital property] to end.

(5) If a[The participant shall not be required to submit written notification if the] QDRO includes[specifies] the number of months of payments, payment to the alternate payee shall cease after the designated number of months expire, and a notice of the exhaustion of payments shall not be required.

(6) If proof is not filed or obtained by the end of day[submitted within] ninety (90) calendar days from[of] the[written] notification to the agency[retirement systems], the payments being held shall be released to the alternate payee.

(7) The agency[retirement systems] shall not be liable for any payments made to the alternate payee if the participant failed to provide proper notification and documentation of the event that causes payments to the alternate payee to end.

Section 18.[Section 19:] Event That Ends or Amends a QDRO for Child Support.

(1) The participant shall be responsible for notifying the agency[retirement systems in writing] of an event that causes payments to the alternate payee under a QDRO for Child Support to be amended or to end.

(2)

(a) [If an alternate payee is being paid child support pursuant to a Form 6436, Qualified Domestic Relations Order for Child Support, or the Form 6437, Qualified Domestic Relations Order for Child Support by an Administrative Agency, the participant shall submit an entered and certified order from a court of competent jurisdiction or an administrative agency with statutory authority to order child support providing that payments under the Form 6436, Qualified Domestic Relations Order for Child Support, or the Form 6437, Qualified Domestic Relations Order for Child Support by an Administrative Agency, shall end or be amended.]

[(b)]

[4-] The agency[retirement systems] shall segregate and hold the payments due to the alternate payee under a valid QDRO for child support[Form 6436, Qualified Domestic Relations Order for Child Support, or the Form 6437, Qualified Domestic Relations Order for Child Support by an Administrative Agency,] if one (1) of the following is filed:

1. An[the participant submits an] order changing the custody of the child to someone other than the alternate payee;[-]
2. A[a] copy of the child's marriage certificate;[-]
3. A[a] letter from the child's high school indicating the child's graduation date, if the child is age of eighteen (18) or older;[-]
4. The[the] child's birth certificate indicating the child is age eighteen (18) or older;[-]

5. An[an] order of emancipation of the minor child;[-] or

6. The[the] child's death certificate.

(b)[2-] If the QDRO for child support is for the support of more than one (1) child, the agency[retirement systems] shall not segregate or hold payments due to the alternate payee.

(c) If the participant does not file documentation to amend or terminate[submit an entered and certified order amending or terminating] the QDRO for child support in accordance with Section 14 of this administrative regulation by the end-of-day[from a court of competent jurisdiction or an administrative agency with statutory authority to order child support within] ninety (90) calendar days from[of] the participant's submission as established[provided] in paragraph (a)[(b)] of this subsection, the payments being held shall be released to the alternate payee.

(3) The agency[retirement systems] shall not be liable for any payments made to the alternate payee if the participant failed to provide proper notification, documentation of the event, the amended QDRO, or the court order that causes payments to the alternate payee to end or be amended.

[Section 20.] [(4)] [If there are multiple QDROs on file for a participant's account, the QDROs shall be administered in the following order:]

[(a)] [QDROs for the Division of Marital Property;]

[(b)] [QDROs for Child Support;]

[(c)] [QDROs for Alimony/Maintenance-]

[(2)] [If multiple QDROs for the Division of Marital Property are on file, they shall be administered in the order of approval by the retirement systems.]

[(3)] [If multiple QDROs for Child Support are on file, they shall be administered in the order of approval by the retirement systems.]

[(4)] [If multiple QDROs for Alimony/Maintenance are on file, they shall be administered in the order of approval by the retirement systems-]

[(5)] [If a QDRO for Child Support is submitted subsequent to the participant's retirement and subsequent to the administration of the QDROs on file at the time of the participant's retirement it shall be given priority over any QDROs for Alimony/Maintenance being administered.]

[(6)]

[(a)] [The retirement systems shall not administer a QDRO if enforcement of the QDRO would result in the total amount of payments due to the alternate payees to exceed the participant's monthly retirement benefit under the multiple QDROs approved for enforcement by the retirement systems. The retirement systems shall notify the participant and alternate payees if a QDRO cannot be administered due to the exhaustion of the participant's monthly retirement benefit.]

[(b)] [The retirement systems shall recalculate the amounts due under the QDROs being administered by the retirement systems on a participant's account after the effective date of any cost of living increase provided pursuant to KRS 61.694-]

[Section 21.] [The alternate payee shall be responsible for notifying the retirement systems in writing of any change in mailing address. The retirement systems shall contact the alternate payee at the last known mailing address on file to notify the alternate payee when a benefit subject to the QDRO becomes payable. The retirement systems shall not have a duty or obligation to search for or locate an alternate payee.]

[Section 22.] [A QDRO shall not provide that the alternate payee be eligible to enroll in the health insurance plan administered by the retirement systems.]

Section 19.[Section 23:] Correction or Change[Correction/ change] to Retirement Benefits.

(1) If the participant's retirement benefit is corrected pursuant to KRS 61.685 and 78.545, the alternate payee's payment shall also be corrected.

(a)[(2)] If the alternate payee was overpaid because of the error that is being corrected pursuant to KRS 61.685 and 78.545, the agency[retirement systems] shall withhold the amount of the overpayment from the alternate payee's payment.

(b)[(3)] If the alternate payee was underpaid because of the error that is being corrected pursuant to KRS 61.685 and 78.545, the agency[retirement systems] shall pay the alternate payee a lump sum payment of the additional funds due from the participant's payment.

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(2) After the effective date of any cost-of-living increase established provided pursuant to KRS 61.691 and 78.5518, the agency shall recalculate the amounts due under a QDRO being administered by the agency.

(3) Payment to the alternate payee shall not change as a result of a change in the participant's retirement benefits as established provided in KRS 61.542(5)(b) and 78.545.

Section 20. Alternate Payee's Contact Information. The alternate payee shall be responsible for notifying the agency in writing of any change in mailing address. The agency shall contact the alternate payee at the last known mailing address on file to notify the alternate payee if when a benefit under subject to the QDRO becomes payable. The agency shall not have a duty or obligation to search for or locate an alternate payee.

Section 21. Hospital and Medical Insurance. Eligibility for a hospital or medical insurance plan administered by the agency shall not be established or required by a QDRO. A QDRO shall not provide that the alternate payee be eligible to enroll in the hospital and medical insurance plan administered by the agency.

Section 22. [Section 24:] Agency Subpoena or As a Party to a Domestic Relations Action.

(1) Any person or party who attempts to make the agency retirement systems a party to a domestic relations action regarding a QDRO, or who requests a subpoena be issued for the personal appearance of a representative of the agency retirement systems to appear at a deposition or in a court or administrative proceeding regarding a QDRO, shall reimburse the agency retirement systems for the travel expenses and services of the agency retirement systems representative, or representatives, and the agency retirement systems legal counsel, as an administrative fee including:

(a) The Internal Revenue Service standard mileage rate;

(b) Parking and tolls;

(c) Meals if the agency retirement systems personnel are required to travel and be away from the retirement office from 6:30 a.m. to 9 a.m., 11 a.m. to 2 p.m., or 5 p.m. to 9 p.m.;

(d) The wages earned by the agency retirement systems employees during the time period they are away from the retirement office calculated by multiplying the hourly rate of each employee by the number of hours each employee was away from the office;

(e) The agency retirement systems costs and legal fees; and

(f) Lodging expenses, if necessary.

(2) The agency retirement systems shall send an estimated amount owed for expenses to the person or party requesting the subpoena.

(a) The person or party shall remit payment via a certified check or money order for the estimated expenses made payable to the Kentucky State Treasurer before the date of appearance ordered in the subpoena.

(b) The agency retirement systems shall send an invoice for any additional expenses owed by the party or issue a refund for any amount over the cost of the expenses.

Section 23. [Section 25:] Agency Liability. Neither the agency retirement systems nor its trustees nor its employees shall have any liability for making or withholding payments in accordance with the provisions of this administrative regulation.

Section 24. [Section 26:] Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) [Form 6015, "Estimate of a Monthly Retirement Allowance", April 2024];

(b) Form 6434, "Pre-Retirement Qualified Domestic Relations Order for Division of Marital Property", July/March 2024[April 2024];

(c) [Form 6435, "Post-Retirement Qualified Domestic Relations Order for Division of Marital Property", July/March 2024[April 2024];

(d) [Form 6436, "Qualified Domestic Relations Order for Child Support", July/March 2024[April 2024];

(e) [Form 6437, "Qualified Domestic Relations Order for

Child Support by an Administrative Agency", July/March 2024[April 2024];

(f) [Form 6438, "Qualified Domestic Relations Order for Alimony/Maintenance", July/March 2024[April 2024];

(g) [Form 6130, "Authorization for Deposit of Retirement Payment", June 2023[April 2024];

(h) [Form 6135, "Payment of Retirement Payment by Check", June 2023[April 2024]; and

(i) [Form 6433, "Authorization for Release of Information and Request for Information for Qualified Domestic Relations Orders", March 2024[April 2024].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Public Pensions Authority[Kentucky Retirement Systems, Perimeter Park West], 1260 Louisville Road, Frankfort, Kentucky 40601, Monday through Friday, from 8 a.m. to 4:30 p.m. This material is also available on the agency's Web site at kyret.ky.gov.

FILED WITH LRC: July 9, 2024

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FINANCE AND ADMINISTRATION CABINET Kentucky Public Pensions Authority (As Amended at ARRS, July 9, 2024)

105 KAR 1:411. Hospital and medical insurance for retired members and Kentucky Retirement Systems Insurance Fund Trust.

RELATES TO: KRS 16.505, 16.576(4), 61.505(1)(g), 61.510, 61.701, 61.702, 78.510, 78.5536, 304.17A-005, 26 U.S.C. 105-106[105(b), 106], 115, 213(d), 223, 18031, 18041, 42 U.S.C. 300bb-8(3), 300e, 1395y(b), Pub.L. 111-148

STATUTORY AUTHORITY: KRS 61.505(1)(g), 61.702, 78.5536
NECESSITY, FUNCTION, AND CONFORMITY: KRS 61.505(1)(g) authorizes the Kentucky Public Pensions Authority to promulgate administrative regulations on behalf of the Kentucky Retirement Systems and the County Employees Retirement System that are consistent with KRS 16.505 through to 16.652, 61.505, 61.510 through to 61.705, and 78.510 through to 78.852. KRS 61.702 and 78.5536 provide for the systems operated by the Kentucky Public Pensions Authority to offer hospital and medical insurance coverage to recipients (including retired members and some beneficiaries of deceased members), their spouses, and their disabled or dependent children, and require the promulgation of administrative regulations concerning requirements for medical insurance reimbursement programs. This administrative regulation establishes procedures for the administration of the hospital and medical insurance benefits provided by the Kentucky Retirement Systems and the County Employees Retirement System, as well as establishes eligibility requirements, necessary documentation for proof of insurance, deadlines for filing for reimbursement, and forms.

Section 1. Definitions.

(1) ["Agency" means:]

(a) [Prior to April 1, 2021, the Kentucky Retirement Systems, which administered the State Police Retirement System, the Kentucky Employees Retirement System, and the County Employees Retirement System; and]

(b) [Beginning April 1, 2021, the Kentucky Public Pensions Authority, which is authorized to carry out the day-to-day administrative needs of the Kentucky Retirement Systems (comprised of the State Police Retirement System and the Kentucky Employees Retirement System) and the County Employees Retirement System.]

(2) ["Boards" means the Board of Trustees of the Kentucky Retirement Systems and the Board of Trustees of the County Employees Retirement System.]

(3) ["Complete" means all required sections of a form are filled out, the form has been fully executed by the recipient or the

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recipient's legal representative, and all supporting documentation required by the form is included with the form.]

~~[(4)] ["Dependent child" is defined by KRS 16.505(17) and 78.510(49).]~~

~~[(5)] "Eligible spouse and dependent children" means spouses and dependent children who are eligible to receive all or a portion of their premiums paid for by the boards in accordance with KRS 61.702 and 78.5536.~~

~~[(6)] ["File" means a form or document has been received at the retirement office by mail, fax, secure email, in-person delivery, or via Self Service on the Web site maintained by the agency (if available).]~~

~~(2) [(7)] **"Hospital and medical insurance plan" means:**~~

~~**(a) A basic health benefit plan as defined by KRS 304.17A-005(4);**~~

~~**(b) A provider-sponsored integrated health delivery network as defined by KRS 304.17A-005(39);**~~

~~**(c) A self-insured health plan as defined by KRS 304.17A-005(43);**~~

~~**(d) A health maintenance organization contract that meets the requirements of 42 U.S.C. 300e;**~~

~~**(e) Other health benefit plan as defined by KRS 304.17A-005(22);**~~

~~**(f) A health savings account as permitted by 26 U.S.C. sec. 223;**~~

~~**(g) A health reimbursement arrangement or a similar account as permitted by 26 U.S.C. sec. 105 or 106; or**~~

~~**(h) A hospital and medical insurance premium reimbursement program where members purchase individual health insurance coverage through a health insurance exchange established under 42 U.S.C. sec. 18031 or 18041.**~~

~~(3) "MEM" means:~~

~~(a) A Medicare eligible member who is retired and reemployed:~~

~~1. With a participating employer that offers the member a hospital and medical insurance benefit; or~~

~~2. By a participating employer that is prevented from offering a hospital and medical benefit to the member as a condition of reemployment under KRS 70.293, 95.022, or 164.952; and~~

~~(b) A Medicare eligible member who is retired and whose spouse meets the following criteria:~~

~~1. The spouse is also a member;~~

~~2. The spouse is reemployed with a participating employer that offers the spouse a hospital and medical insurance benefit, or by a participating employer that is prevented from offering a hospital and medical benefit to the spouse as a condition of reemployment under KRS 70.293, 95.022, or 164.952; and~~

~~3. The spouse's hospital and medical insurance plan coverage is provided by the retired member's benefits pursuant to KRS 61.702(2) and 78.5536(2).~~

~~[(4) [(3)] "Months of service" is defined by KRS 61.702(1)(c) and 78.5536(1)(c).]~~

~~[(8)] ["Member" is defined by KRS 16.505(21), 61.510(8), and 78.510(8).]~~

~~[(9)] ["Monthly contribution rate" means:]~~

~~[(a)] [The amount determined by the boards as the maximum contribution the systems will pay toward the premium of a retired member who began participating in the systems on or before June 30, 2003; or]~~

~~[(b)] [For a retired member who began participating in the system on or after July 1, 2003, the amount per month earned by the retired member based on years of service as provided in KRS 61.702(4)(e) and 78.5536(4)(e).]~~

~~[(5) [(4)] [(10)] "Premium" means the monthly dollar cost required to provide hospital and medical insurance plan coverage for a recipient, a recipient's spouse, or a disabled or dependent child.~~

~~[(11)] ["Provide", if used in reference to a form or other document, means the agency makes a form or document available on its Web site (if appropriate) or, upon request by a recipient or other person, by mail, fax, secure email, or via Self Service on the Web site maintained by the agency (if available).]~~

~~[(6) [(5)] [(12)] "Qualifying event" means a change in life circumstances that:~~

~~(a) Meets the agency's requirement for a member to alter an existing hospital and medical insurance plan, or sign up for a new~~

~~one outside of new or open enrollment if the alteration is consistent with the change; and~~

~~(b) Is included on the list of qualifying events provided annually to the members by the agency.~~

~~[(13)] ["Recipient" is defined by KRS 16.505(26), 61.510(27), and 78.510(26).]~~

~~[(14)] ["Retired member" is defined by KRS 16.505(11), 61.510(24), and 78.510(23).]~~

~~[(15)] ["Retirement allowance" is defined by KRS 16.505(12), 61.510(16), and 78.510(16).]~~

~~[(16)] ["Retirement office" is defined by KRS 16.505(28), 61.510(31), and 78.510(29).]~~

~~[(17)] ["Systems" means the State Police Retirement System, the Kentucky Employees Retirement System, and the County Employees Retirement System.]~~

~~[(7) [(6)] [(18)] "Wellness" or "wellbeing promise" means an annual health assessment or screening that, if completed by the due date established by the Kentucky Employees' Health Plan [timely], provides a discounted insurance rate for the following fiscal year's health insurance plan premium.~~

Section 2. Trust Fund.

(1) Pursuant to KRS 61.701, fund assets shall be dedicated for use toward health benefits, as **established [provided]** in KRS 61.702 and 78.5536, and as permitted under 26 U.S.C. 105 and 106 of the United States Internal Revenue Code, to retired recipients and employees of employers participating in the systems. Certain dependents or beneficiaries shall be included, such as qualified beneficiaries as **established [described]** in 42 U.S.C. 300bb-8(3) of the United States Public Health Service Act.

(2) The boards may adopt a trust agreement and take all action authorized by KRS 61.701(6).

Section 3. Contribution Rates.

(1)

(a) The boards shall adopt monthly contribution rates **for [as follows]**:

1. Medicare eligible coverage;
2. Non-Medicare eligible coverage; and
3. MEM coverage.

(b) The boards may choose to adopt a monthly contribution rate for MEM coverage that is separate from the monthly contribution rate the boards adopt for Medicare and non-Medicare eligible coverage, or may choose to adopt a monthly contribution rate that is the same for Non-Medicare eligible coverage and MEM coverage.

(2) The boards shall adopt a contribution plan for each monthly contribution rate in subsection (1) of this section.

~~[(3)] [The boards may adopt separate contribution rates for:]~~

~~[(a)] [Tobacco and non-tobacco users; and]~~

~~[(b)] [Wellness or wellbeing promise completion and incomplection.]~~

Section 4. Payments by the Boards.

(1)

(a) The monthly contribution rate paid by the boards towards premiums for a recipient or eligible spouse or dependent child shall not exceed the monthly contribution rate to which the recipient is entitled under KRS 61.702 and 78.5536.

(b) **The actual amount the systems will pay toward a retired member's hospital and medical insurance plan premium, or his or her eligible spouse and dependent children's hospital and medical insurance plan premium, shall be [is] dependent on the membership date of the member.**

1. Except as **established [provided]** in subparagraph 3. of this paragraph, if the membership date is prior to July 1, 2003, the systems **shall [will]** pay a percentage of the contribution rate toward the hospital and medical insurance plan premiums in accordance with KRS 61.702(4)(b) **through [-(d) and 78.5536(b) through [-(d).**

2. Except as **established [provided]** in subparagraph 3. of this paragraph, if the membership date is on or after July 1, 2003, the systems **shall [will]** pay a dollar amount of the contribution rate toward hospital and medical insurance plan premiums in accordance with KRS 61.702(4)(e) and 78.5536(4)(e).

3. For a member with a hire date that began July 1, 2003 through

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July 31, 2004, his or her hire date shall be used to determine if the hospital and medical insurance plan premiums are paid as a percentage of the single premium contribution rate as ~~established, prescribed~~ in subparagraph 1. of this paragraph, or as a dollar amount of the contribution rate as ~~established, prescribed~~ in subparagraph 2. of this paragraph.

(2) For a retired member who retired based on reciprocity with any other state-administered retirement system, the boards shall not pay more than a portion of the single monthly contribution rate for the hospital and medical insurance plan chosen by the retired member based on the retired member's service credit with the systems.

(3)

(a) A retired member who is not Medicare eligible or is a MEM may cross-reference health insurance coverage with a spouse enrolled in the same hospital and medical insurance plan.

(b) A retired member ~~established, identified~~ in paragraph (a) of this subsection who has hazardous service and a membership date prior to July 1, 2003 may be able to use any unused portion of the monthly contribution rate the retired member is entitled to receive toward the premium cost attributable to the spouse, if the spouse's portion of the premium is not fully paid by the boards pursuant to KRS 61.702 and 78.5536.

(4) Pursuant to KRS 61.702(4)(d), 61.702(4)(e)5., 78.5536(4)(d), and 78.5536(4)(e)5., funds from the insurance trust fund or the 401(h) accounts provided for in KRS 61.702(3)(b) and 78.5536(3)(b) shall be used to pay ~~the determined~~[a] percentage of the monthly contribution rate for family coverage for eligible spouses and dependent children[~~as defined in KRS 16.505(17) and 78.510(49)~~].

(5)

(a) Members not eligible for Medicare who began participation in the system on or after July 1, 2003 and have accrued an additional full year of service as a participating employee beyond his or her career threshold may receive an additional five (5) dollar contribution toward monthly hospital and medical insurance premiums in accordance with KRS 61.702(4)(e)6.b. and 78.5536(4)(e)6.b.

(b)

1. If a member who is eligible for an additional five (5) dollar contribution pursuant to paragraph (a) of this subsection has service in multiple systems operated by the agency, each system in which the member participates that meets the requirements of KRS 61.702(4)(e)6.b.iii. and 78.5536(4)(e)6.b.iii shall pay a portion of the additional five (5) dollar contribution based on the percentage of the member's service in each system.

2. If a member who is eligible for an additional five (5) dollar contribution pursuant to paragraph (a) of this subsection has service in multiple systems operated by the agency, and not all of the systems in which the member participates meet the requirements of KRS 61.702(4)(e)6.b.iii. and 78.5536(4)(e)6.b.iii, only those systems that meet the requirements of KRS 61.702(4)(e)6.b.iii. and 78.5536(4)(e)6.b.iii shall pay a portion of the additional five (5) dollar contribution based on the percentage of the member's service in each system.

Section 5. Premiums Paid by Recipient.

(1) A recipient may be charged one (1) or more of the following monthly fees related to his or her hospital and medical insurance coverage:

(a) Tobacco user fee; and

(b) Wellness or wellbeing promise incompleteness fee.

(2) Any premium amount or fee that is not paid or payable by the insurance trust fund established under KRS 61.701 or a 401(h) account in accordance KRS 61.702 and 78.5536 shall be deducted from the monthly retirement allowance of the recipient.

(3)[(2)]

(a) If the amount of a premium or fee is not fully paid by the insurance trust fund established under KRS 61.701, a 401(h) account, and the recipient's monthly retirement allowance, then the recipient shall pay the balance of the premium monthly by electronic transfer of funds by completing and filing a valid[complete] Form 6131, Bank Draft Authorization for Direct Pay Accounts[~~at the retirement office~~].

(b) If a valid[complete] Form 6131, Bank Draft Authorization for Direct Pay Accounts, is required and is not filed[~~at the retirement office~~], then the recipient, the recipient's spouse, and any disabled or dependent children shall not be enrolled in a hospital and medical insurance plan established pursuant to KRS 61.702 and 78.5536.

(c)

1. If the electronic transfer of funds based on a valid[complete] Form 6131, Bank Draft Authorization for Direct Pay Accounts, [~~on file at the retirement office~~] fails, then the agency shall provide an invoice to the recipient.

2. If a recipient fails to remit the balance of the premium or fee by the date provided on the invoice, then the enrollment of the recipient, the recipient's spouse, and any disabled or dependent children in the hospital and medical insurance plan shall be cancelled the month after the last month the recipient paid the premium.

(d) If the hospital and medical insurance plan coverage of a recipient, the recipient's spouse, or any disabled or dependent children is cancelled pursuant to this subsection, the recipient shall not be eligible to enroll in a hospital and medical insurance plan established pursuant to KRS 61.702 and 78.5536 until the next open enrollment period for hospital and medical insurance plan coverage.

Section 6. Eligibility to Participate in Hospital and Medical Insurance Plans.

(1) A person shall not be eligible to participate in the hospital and medical insurance plans established pursuant to KRS 61.702 and 78.5536 until the person is a recipient of a monthly retirement allowance, except as established, provided in KRS 16.576(4).

(2) A person who retires under disability retirement shall not be eligible to participate in the hospital and medical insurance plans established pursuant to KRS 61.702 and 78.5536 until the month the person receives his or her first monthly retirement allowance payment.

(3) A recipient's spouse, disabled child, or dependent child shall not be eligible to participate in the hospital and medical insurance plans established pursuant to KRS 61.702 and 78.5536 unless the recipient is participating in the hospital and medical insurance plans established pursuant to KRS 61.702 and 78.5536.

(4) An alternate payee shall not be eligible for participation in the hospital and medical insurance plans established pursuant to KRS 61.702 and 78.5536.

Section 7. Participation in a Hospital and Medical Insurance Plan.

(1) A recipient, spouse, or disabled or dependent child who is Medicare eligible, except individuals established, identified in subsection (2) of this section, shall participate in the hospital and medical insurance plan established for Medicare eligible recipients pursuant to KRS 61.702 and 78.5536.

(2) MEMs, and spouses of MEMs and disabled or dependent children of MEMs who are Medicare eligible, shall participate in the group hospital and medical insurance plan established for MEMs pursuant to KRS 61.702(2)(b)3.b. and 78.5536(2)(b)3.b.[.]

(3) A recipient, spouse, or disabled or dependent child who is not Medicare eligible shall participate in a non-Medicare eligible group hospital and medical insurance plan established pursuant to KRS 61.702 and 78.5536.

(4) If a recipient, spouse, or disabled or dependent child is eligible for Medicare but the other persons enrolled in a group hospital and medical insurance plan are not, then the recipient, spouse, or disabled or dependent child who is not eligible for Medicare may continue to participate in the non-Medicare eligible group hospital and medical insurance plan established pursuant to KRS 61.702 and 78.5536.

(5) Members established, identified in subsections (1) through (4) of this section may waive enrollment in the hospital and medical insurance plan by filing:

(a) A completed KPPA Health Plans for Medicare Eligible Persons form, for Medicare eligible recipients; or

(b) A completed Retiree Health Insurance Enrollment/Change Form, for MEMs and non-Medicare eligible recipients.

(6) Members established, identified in subsections (1) through (4) of this section who do not enroll in or waive the hospital and

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medical insurance plan shall be automatically enrolled in an appropriate default plan in accordance with Section 9 of this administrative regulation.

Section 8. Required Forms.

(1) If the boards use the group hospital and medical insurance provided by the Kentucky Department of Employee Insurance to provide health insurance coverage for its non-Medicare eligible recipients, spouses, disabled or dependent children, and MEMs, then the agency shall provide these recipients and MEMs with the Retiree Health Insurance Enrollment/Change Form, required for enrollment, waiver, or changes to the group hospital and medical insurance plan.

(2) On behalf of the boards, the agency shall arrange hospital and medical insurance coverage for Medicare eligible recipients, spouses, and disabled or dependent children, except MEMs. The agency shall provide these recipients with the KPPA Health Plans for Medicare Eligible Persons form, required for enrollment, waiver, or changes to the hospital and medical insurance plans.

(3) The agency shall provide the Form 6256, Designation of Spouse and/or Dependent Child for Health Insurance Contributions, for recipients to complete to receive health insurance contributions toward an eligible spouse and dependent children who are between the ages of eighteen (18) and twenty-two (22).

Section 9. Default Plans.

(1) The boards shall adopt a default plan for new retired members upon initial enrollment, and for recipients who do not file a complete insurance enrollment form during annual open enrollment, if required.

(2) The boards shall adopt a default plan for retired members and recipients who are Medicare eligible, and a default plan for retired members and recipients who are non-Medicare eligible and recipients who are subject to 42 U.S.C. 1395y.

Section 10. Initial and Annual Enrollment and Qualifying Events.

(1)

(a) The recipient shall complete and file valid[complete] insurance enrollment forms as established[described] in Section 8 of this administrative regulation[~~at the retirement office~~] by the last day of the month the initial retirement allowance is paid.

(b) If the recipient fails to file the valid[complete] insurance enrollment forms as required by paragraph (a) of this subsection, the retired member shall be automatically enrolled in the appropriate default plan adopted by the boards as established[described] in Section 9 of this administrative regulation.

(c) If the recipient established[identified] in paragraph (a) of this subsection files the valid[complete] insurance enrollment forms as established[described] in Section 8 of this administrative regulation by the last day of the month in which he or she receives his or her initial retirement allowance payment, the retired member shall be enrolled in the selection indicated on the form effective the first day of the following month.

(2) If a recipient has a qualifying event, the recipient shall complete and file the valid[complete] insurance enrollment forms as established[described] in Section 8(1) or (2) of this administrative regulation[~~at the retirement office~~] within the time period established[prescribed] by state and federal law and the health insurance plan documents.

(3)

(a) If enrollment is mandatory:

1. The recipient shall complete and file the valid[complete] insurance enrollment forms as established[described] in Section 8 of this administrative regulation[~~at the retirement office~~] by the last day of the month of the annual open enrollment period; or[-]

2. If the recipient fails to file the complete insurance enrollment forms as required by subparagraph 1. of this paragraph, the recipient shall be automatically enrolled in the default plan adopted by the boards as established[described] in Section 9 of this administrative regulation.

(b) If enrollment is not mandatory:

1. The recipient may complete and file the valid[complete] insurance enrollment forms as established[described] in Section 8 of this administrative regulation[~~at the retirement office~~] by the last

day of the month of the annual open enrollment period; or[-]

2. If the recipient does not file the valid[complete] insurance enrollment forms as required by subparagraph 1. of this paragraph, the recipient, and the recipient's spouse and disabled or dependent children as applicable, shall remain on the same plan with the same level of coverage as the previous plan year.

(4)

(a)

1. In order to receive health insurance contributions toward an eligible spouse or a dependent child who is between the ages of eighteen (18) and twenty-two (22), the recipient shall complete and file a valid[complete] Form 6256, Designation of Spouse and/or Dependent Child for Health Insurance Contributions, by the end-of-day on November 30th of the calendar year prior to the calendar year in which coverage is effective, regardless of whether enrollment is mandatory or not mandatory.

2. If a qualifying event results in a new eligible spouse or dependent child, in order to receive health insurance contributions toward the eligible spouse or a dependent child who is between the ages of eighteen (18) and twenty-two (22), the recipient shall complete and file a valid[complete] Form 6256, Designation of Spouse and/or Dependent Child for Health Insurance Contributions, and:

a. To add a spouse, the recipient shall file a copy of the marriage certificate; and

b. To add a dependent child, the recipient shall file a copy of the child's birth certificate or a court order establishing legal or natural parenthood.

(b)

1. If the recipient does not file a valid[complete] Form 6256, Designation of Spouse and/or Dependent Child for Health Insurance Contributions, in accordance with paragraph (a) of this subsection, health insurance contributions shall not be paid toward the premiums for an eligible spouse or dependent children unless a complete Form 6256 is filed[~~at the retirement office~~] in the calendar year in which coverage is in effect.

2. If the recipient files a valid[complete] Form 6256, Designation of Spouse and/or Dependent Child for Health Insurance Contributions, between December 1 and December 31 of the calendar year prior to the calendar year in which coverage is effective, then health insurance contributions may be paid for an eligible spouse or a dependent child who is between the ages of eighteen (18) and twenty-two (22) as of January of the calendar year in which coverage is effective. If the health insurance contributions are not paid for an eligible spouse or a dependent child as of January of the calendar year in which coverage is effective, then health insurance contributions shall be paid starting in February of the calendar year in which coverage is effective and the recipient shall also be reimbursed for the January health insurance contributions for the eligible spouse or dependent child.

3. If the recipient files a valid[complete] Form 6256, Designation of Spouse and/or Dependent Child for Health Insurance Contributions, prior to December 31 of the calendar year in which coverage is in effect, health insurance contributions shall be paid toward premiums for an eligible spouse or a dependent child who is between the ages of eighteen (18) and twenty-two (22) in any month in the calendar year in which coverage is effective after the valid Form 6256 is filed[~~at the retirement office~~]. If a valid[complete] Form 6256 is filed[~~at the retirement office~~] prior to December 31 of the calendar year in which coverage is in effect, the recipient shall also be reimbursed for up to three (3) months of health insurance contributions for the eligible spouse and dependent children.

Section 11. Changes in Spouse and Disabled or Dependent Child Eligibility.

(1) Recipients, spouses, and disabled or dependent children shall notify the agency of any change that may affect the eligibility of the spouse, disabled child, or dependent child to enroll in a hospital and medical insurance plan offered by the agency or the eligibility of the spouse or dependent child to have all or a portion of their premiums paid for by the boards in accordance with KRS 61.702 and 78.5536.

(2)

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(a) The recipient shall repay any premiums that were paid by the boards after the spouse or dependent child ceased to be eligible to have all or portion of their premiums paid in accordance with KRS 61.702 and 78.5536.

(b) If the agency is unable to recover from the recipient the full amount of premiums paid in accordance with paragraph (a) of this subsection, the agency may withhold any remaining amount from the recipient's monthly retirement allowance payment.

(c) If the agency is not able to recover the full amount of the premiums paid in accordance with paragraphs (a) and (b) of this subsection, the agency may recover any remaining amount from the spouse or dependent child.

Section 12. Medical Insurance Reimbursement Plan for Recipients Living Outside of Kentucky.

(1) A recipient may participate in the medical insurance reimbursement plan pursuant to KRS 61.702(6) and 78.5536(6) if the recipient lives in an area outside of the coverage of the group hospital and medical insurance plans offered by the agency.

(2) The medical insurance reimbursement plan shall be available in any month the recipient:

(a) Resides outside of Kentucky;

(b) Is not eligible for the same level of hospital and medical benefits as recipients who resided inside of Kentucky with the same Medicare status; and

(c) Has paid hospital and medical insurance plan premiums capable of being reimbursed.

(3) Recipients eligible to participate in the medical insurance reimbursement plan shall be reimbursed up to the applicable monthly contribution rate for premiums paid for hospital and medical coverage less any premiums paid by the recipient's employer.

(4)

(a) In order to receive the applicable reimbursement, an eligible recipient shall complete and file a valid Form 6240, Application for Out of State Reimbursement for Medical Insurance, and as applicable a valid Form 6256, Designation of Spouse and/or Dependent Child for Health Insurance Contributions, [~~at the retirement office~~] with one (1) or more of the following as proof of coverage and payment of premiums for hospital and medical insurance that covers the entire time period for the requested reimbursement:

1. A valid Form 6241, Employer Certification of Health Insurance for Health Insurance Reimbursement Plan, completed by the employer;

2. A valid Form 6242, Insurance Agency/Company Certification of Health Insurance for Health Insurance Reimbursement Plan, completed by the insurance agency or company;

3. A signed statement from the employer listing individuals covered, dates of hospital and medical insurance coverage, amount of premiums deducted from wages, and the cost of the single coverage; or

4. A signed statement or invoice from the insurance company listing individuals covered, the dates and cost of single hospital and medical insurance coverage, along with proof of payment such as a receipt or bank statement clearly indicating payment for the statement or invoice provided.

(b)

1. If any provided documentation is deemed insufficient by the agency, the agency may request additional proof of medical and hospital insurance coverage or payment.

2. The agency may verify the recipient's eligibility for reimbursement for hospital and medical insurance by requesting verification of coverage and payments directly from the insurance company indicated on the Form 6240, Application for Out of State Reimbursement for Medical Insurance.

(5) An eligible recipient may file for reimbursement quarterly each calendar year in accordance with subsection (4) of this section.

(6) If the eligible recipient files for reimbursement in accordance with subsection (4) of this section, the eligible recipient shall be reimbursed on the following schedule:

(a) In February, if all documentation is filed [~~at the retirement office~~] by January 20;

(b) In May, if all documentation is filed [~~at the retirement office~~]

by April 20;

(c) In August, if all documentation is filed [~~at the retirement office~~] by July 20; or

(d) In November, if all documentation is filed [~~at the retirement office~~] by October 20.

(7) The agency shall not reimburse an eligible recipient for premiums for a calendar year in which the eligible recipient failed to file a request for reimbursement in accordance with subsection (4) of this section by March 20 of the following calendar year.

(8)

(a) If a recipient receives a payment from the agency that does not qualify as a premium reimbursement, the recipient shall return the payment to the agency at the retirement office.

(b) If the recipient fails to return the payment, the agency may withhold the payment from the recipient's monthly retirement allowance payment.

Section 13. Dollar Contribution Medical Insurance Reimbursement Plan for Recipients Hired on or after July 1, 2003.

(1)

(a) Except as **established provided** in paragraph (b) of this subsection, beginning January 1, 2003, a recipient with a hire date on or after July 1, 2003 may participate in the hospital and medical insurance dollar contribution reimbursement plan pursuant to KRS 61.702(6) and 78.5536(6), if the recipient chooses to purchase a hospital and medical insurance plan not provided by the systems.

(b) A recipient who retired with reciprocity with another state-administered retirement system in accordance with KRS 61.680 and 78.545 shall not be eligible for the hospital and medical insurance dollar contribution reimbursement plan **established provided** by KRS 61.702(6) and 78.6636(6) if the recipient elects to receive hospital and medical insurance coverage through another state-administered retirement system. The systems shall pay a pro rata share of the recipient's premium for hospital and medical insurance coverage in accordance with KRS 6.577, 21.427, and 105 KAR 1:020.

(2)

(a) Recipients eligible to participate in the dollar contribution medical insurance reimbursement plan shall be reimbursed up to the applicable monthly contribution rate for premiums paid for the cost of single hospital and medical insurance coverage [~~less any premiums paid by the recipient's employer~~].

(b)

1. The reimbursement **established detailed** in this subsection shall be retroactive to January 1, 2023.

2. A recipient who previously received reimbursement that was reduced based on premiums paid by the recipient's employer or who was denied reimbursement solely based on premiums paid by the recipient's employer shall be reimbursed for an amount equal to the difference between what is owed to the recipient under this subsection and what was previously paid to the recipient.

(3)

(a) In order to receive the applicable reimbursement, an eligible recipient shall complete and file a valid Form 6280, Application for Dollar Contribution Reimbursement for Medical Insurance, [~~at the retirement office~~] with one (1) or more of the following as proof of payment of premiums for hospital and medical insurance coverage that covers the entire time period for the requested reimbursement:

1. A valid Form 6281, Employer Certification of Health Insurance for Dollar Contribution Reimbursement Plan, completed by the employer;

2. A valid Form 6282, Insurance Agency/Company Certification of Health Insurance for Dollar Contribution Reimbursement Plan, completed by the insurance agency or company;

3. A signed statement from the employer or state-administered retirement system listing individuals covered, dates of hospital and medical insurance coverage, amount of premiums deducted from wages, and the cost of the single coverage; or

4. A signed statement or invoice from the insurance company listing the individuals covered, dates, and cost of single hospital and medical insurance coverage, [~~]~~ along with proof of payment such as a receipt or bank statement clearly indicating payment for the statement or invoice provided.

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GENERAL GOVERNMENT CABINET
Office of Homeland Security
Kentucky 911 Services Board
(As Amended at ARRS, July 9, 2024)

(b)

1. If any provided documentation is deemed insufficient by the agency, the agency may request additional proof of medical and hospital insurance coverage or payment.

2. The agency may verify the recipient's eligibility for reimbursement for hospital and medical insurance by requesting verification of coverage and payments directly from the insurance company indicated on the Form 6280, Application for Dollar Contribution Reimbursement for Medical Insurance.

(4) An eligible recipient may file for reimbursement in accordance with subsection (3) of this section, quarterly each calendar year.

(5) If the eligible recipient files a request for reimbursement in accordance with subsection (3) of this section, the eligible recipient shall be reimbursed ~~[on the following schedule]:~~

(a) In February, if all documentation is filed ~~[at the retirement office]~~ by January 20;

(b) In May, if all documentation is filed ~~[at the retirement office]~~ by April 20;

(c) In August, if all documentation is filed ~~[at the retirement office]~~ by July 20; or

(d) In November, if all documentation is filed ~~[at the retirement office]~~ by October 20.

(6) The agency shall not reimburse an eligible recipient for premiums for a calendar year in which the eligible recipient failed to file a request for reimbursement in accordance with subsection (3) of this section by March 20 of the following calendar year.

(7)

(a) If a recipient receives a payment from the agency that does not qualify as a premium reimbursement, the recipient shall return the payment to the agency at the retirement office.

(b) If the recipient fails to return the payment, the agency may withhold the payment from the recipient's monthly retirement allowance payment.

Section 14. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) Form 6131, "Bank Draft Authorization for Direct Pay Accounts", April 2021;

(b) "KPPA Health Plans for Medicare Eligible Persons", September 2022;

(c) "Retiree Health Insurance Enrollment/Change Form", September 2022;

(d) Form 6240, "Application for Out of State Reimbursement for Medical Insurance," September 2022;

(e) Form 6241, "Employer Certification of Health Insurance for Health Insurance Reimbursement Plan", September 2022;

(f) Form 6242, "Insurance Agency/Company Certification of Health Insurance for Health Insurance Reimbursement Plan", September 2022;

(g) Form 6256, "Designation of Spouse and/or Dependent Child for Health Insurance Contributions", September 2022;

(h) Form 6280, "Application for Dollar Contribution Reimbursement for Medical Insurance", September 2023[2022];

(i) Form 6281, "Employer Certification of Health Insurance for Dollar Contribution Reimbursement Plan", June 2024[September 2022]; and

(j) Form 6282, "Insurance Agency/Company Certification of Health Insurance for Dollar Contribution Reimbursement Plan", September 2022.

(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., or on the agency's Web site at kyret.ky.gov.

FILED WITH LRC: July 9, 2024

CONTACT PERSON: Jessica Beaubien, Policy Specialist, Kentucky Public Pensions Authority, 1260 Louisville Road, Frankfort, Kentucky 40601, phone (502) 696-8800 ext. 8570, fax (502) 696-8615, email Legal.Non-Advocacy@kyret.ky.gov.

202 KAR 6:090. Allowable expenditures by public safety answering points (PSAPs) using the commercial mobile radio service emergency telecommunications (CMRS) fund. [Permitted uses by PSAPs for CMRS funds].

RELATES TO: KRS 65.7621, 65.7627, 65.7629(3)-(9), (13), 65.7631, 65.7635, 65.7639, 65.7643, 47 C.F.R. 1, 9, 12, 20, 22, 25, 64, 9 U.S.C. 1-16, 47 U.S.C. 153(27), 332(d), FCC Order Docket #94-102, 1996[~~], Kari's Law, and Section 506 of Ray Baum's Act, 2020~~]

STATUTORY AUTHORITY: KRS 65.7633(2)(c)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 65.7633(2)(c) requires the Kentucky 911 Services Board to promulgate administrative regulations to establish guidelines to be followed by the board in reviewing, evaluating, and approving or disapproving disbursements from the CMRS fund and requests for disbursements under KRS 65.7631 ~~(3) through (4) and~~ (5). KRS 65.7631(5) ~~requires that disbursed funds shall be used~~ **restricts the use of funds disbursed** solely for the purposes of answering, routing, and properly disposing of CMRS 911 calls, training PSAP staff, public education, and complying with the wireless E911 service requirements established by the FCC. This administrative regulation establishes requirements to be followed by the board in its review and evaluation of **CMRS fund** disbursement requests by local 911 centers.

Section 1. Definitions.

(1) "AVL" means automatic vehicle location systems used to track emergency responder vehicles.

(2) "CAD" means computer aided dispatch systems used by 911 personnel to allocate and track emergency responder resources during a 911 call.

(3) "ECC" means an emergency call center.

(4)[(3)] "EMS" means emergency medical system, which includes paramedics, emergency medical technicians, and other personnel and equipment used to respond to medical emergencies.

(5)[(4)] "GIS" means Geographic Information Systems used to create, maintain, and manage graphic location data for use by PSAPs or services routing emergency calls to PSAPs.

(6)[(5)] "LINK/NCIC" means the Law Enforcement Information Network of Kentucky and the National Crime Information Center, two (2) systems commonly used by law enforcement and emergency communications personnel for short messaging between agencies and to request vehicle, driver, and criminal history checks.

(7)[(6)] "MSAG" means Master Street Address Guide, the database used by 911 centers to determine an emergency call's initial location.

(8) "Paging" means a **hardware or software** ~~hardware/software~~ service **originating in the PSAP** that:

(a) Notifies first responders in the field ~~originating in the PSAP; and~~

(b) Reflects hardware, software ~~hardware/software~~ **or interface that connects with the CAD to notify first responders in the field.** [;]

(9) "PSAP" **is defined by KRS 65.7621(23)** ~~means a public safety answering point, certified 911 call center, a facility that has been designated to receive 911 calls and routes them to emergency service personnel~~

(10) "VoIP" means voice over internet protocol.

Section 2. [Allocation of CMRS Funds.]

[(1)] [Wireless-only costs. CMRS funds may be expended for costs that are solely for the provision of enhanced 911 service involving calls from wireless consumers.]

[(2)] [Wireline and wireless-shared costs. Costs for personnel, equipment, or facilities that are necessarily shared by calls to 911 from wireline and wireless users shall be prorated based on the percentage of call traffic attributed to calls from wireless users.]

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CMRS funds may be used only for the wireless prorated portion.]

[~~(3) [Multifunction personnel, equipment, or facility shared costs. Expenses for personnel, equipment, or facilities that serve multiple functions or purposes shall be prorated. Only those costs for the prorated wireless portion directly involved in the delivery of 911 service shall be allowed.]~~

[~~Section 3.] Allowed 911 Center Operational Expenditures.~~

(1) Personnel costs. Costs related to employees as established in paragraphs (a) and (b) of this subsection, to the extent the employees~~[for the following employees, to the extent their]~~ duties are directly attributable to delivery of 911 service, shall be allowed.~~;~~

(a) Positions allowed shall include:~~;~~

1. Director;
2. Supervisor;
3. Dispatcher;
4. Call-taker;
5. Technical staff;
6. Support staff; and
7. Other staff involved in the provision of 911 service.

(b) Associated costs allowed shall include:~~[Costs allowed.]~~

1. Salaries;
2. Fringe benefits;
3. MSAG coordination;
4. Uniforms; and
5. Addressing or database~~[Addressing/database]~~ development and management.

(2) Facility costs. Facility costs for the following expenses, to the extent expenses are~~[it is]~~ directly attributable to delivery of 911 service, shall be allowed:

(a) Capital improvements for construction, remodeling, or expansion;

- (b) Lease or rental payments;
- (c) Utilities;
- (d) Heating and air conditioning;
- (e) Fire suppression systems;
- (f) Security systems;
- (g) Cleaning and maintenance;
- (h) Emergency power and uninterruptible power equipment;
- (i) Insurance;
- (j) Office supplies;
- (k) Printing and copying services; and
- (l) Furniture.

(3) Training and memberships. Training and memberships in professional associations shall be allowed to the extent the training and memberships~~[they]~~ are directly attributable to the enhancement of knowledge, skills, and abilities of 911 personnel in the provision of 911 service, including:

- (a) Vendor provided training;
- (b) Conferences;
- (c) Necessary travel and lodging;
- (d) On-the-job training; and
- (e) Memberships in 911 related associations, such as the Association of Public Communications Officials, or the National Emergency Number Association.

(4) Hardware, software, and peripheral equipment. Costs for the following equipment shall be allowed to the extent the equipment's~~[their]~~ function is directly attributable to the provision of 911 service, whether on the premises or remotely located:

- (a) 911 controllers, telephone equipment, or software;
- (b) 911 trunks or administrative lines for the PSAP;
- (c) Remote 911 hardware or modems;
- (d) Automatic call distribution (ACD) systems or other call management facilities and software;
- (e) Call-time stamping or other clock functions;
- (f) Computer workstations;
- (g) Telephone device for the deaf equipment;
- (h) Voice and data recording systems;
- (i) Radio systems, including consoles~~[and infrastructure]~~;
- (j) CAD;GIS or mapping~~[GIS/mapping]~~ software, equipment, and services~~;~~ paging~~;~~ paging peripherals~~;~~ and field communication equipment between first responders allowing

connectivity to CAD to provide emergency communication to first responders in the field~~;~~ mobile data~~;~~ or LINK/NCIC~~;~~ or AVL systems~~;~~

(k) Associated databases;

(l) Network connectivity;

(m) Software licenses;~~[and]~~

(n) Maintenance or service agreements for equipment or software listed in paragraphs (a) through ~~(p)~~~~[(m)]~~ of this subsection~~;~~

(o) Text or~~[and/or]~~ video to and from a PSAP/ECC; and

(p) VoIP.

(5) Vehicle costs. Vehicle costs for the following, either as reimbursement to an employee for the use of a private vehicle or direct costs for a vehicle assigned to the agency, shall be allowed to the extent the vehicle~~[their]~~ use is directly attributable to the provision of 911 service:

(a) MSAG and address development and maintenance;

(b) GIS verification and testing; and

(c) Public education.

(6) Professional services. Costs for the following professional services shall be allowed to the extent the services~~[they]~~ are directly attributable to the provision of 911 related service:

- (a) Legal;
 - (b) Architectural;
 - (c) Auditing;~~[and]~~
 - (d) Consultation; and
 - (e) GIS.
- (7) Public education. Costs for public education regarding the proper use of 911 shall be allowed.

~~Section 3.]~~Section 4.] Not Allowed 911 Center Operational Expenditures.

(1) Personnel costs. Personnel costs for the following personnel shall not be allowed, except if directly functioning as 911 center staff:

- (a) Law enforcement;
- (b) EMS personnel;
- (c) Fire personnel;
- (d) Emergency management staff; and
- (e) Shared support or technical staff.

(2) Facility costs. Facility costs for the following purposes and facilities shall not be allowed, except for that portion used for 911 operations~~;~~

- (a) Capital and furnishing costs for facilities whose primary purpose is other than 911 operations;
- (b) Facilities primarily intended for use by police, fire, EMS, or other emergency management personnel; and
- (c) Facilities providing general offices for county or municipal government operations.

(3) Training and memberships.

(a) Costs for training for staff not directly involved in the delivery of 911 services or courses with~~[whose]~~ content ~~[is]~~ not intended to increase of the knowledge, skills, and abilities of 911 personnel in regard to delivery of 911 service shall not be allowed.

(b) Costs for memberships in organizations or associations with the primary purpose being~~[whose primary purpose is]~~ other than public safety communications or 911 issues shall not be allowed.

(4) Hardware, software, and peripheral equipment. The following hardware, software, or peripheral equipment costs, unless directly attributable to the delivery of 911 service, shall not be allowed:

- (a) Law enforcement, fire, EMS, or jail record management systems;
- (b) Word processing, databases, and other general computer applications;
- (c) GIS applications providing data layers not needed for the location of emergency calls, or other general mapping and location services for government operations;
- (d) Court information systems;
- (e) Field equipment used outside of the 911 center by emergency responders or other government personnel for radio, paging, mobile data, LINK/NCIC, CAD, or AVL systems;

(f) Connectivity for an application listed in paragraphs (a) through~~[to]~~ (e) of this subsection;

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(g) A maintenance or service agreement for an application listed in paragraphs (a) ~~through (e)~~ (e) of this subsection; and

(h) Software license for an application listed in paragraphs (a) ~~through (e)~~ (e) of this subsection.

(5) Vehicle costs. The cost of an emergency response or other government vehicle not directly attributable to the delivery of 911 service shall not be allowed.

(6) Professional services. Costs for professional services not directly attributable to the delivery of 911 service shall not be allowed.

(7) Public education. Costs for public education not directly attributable to the delivery of 911 service shall not be allowed.

(8) Radio infrastructure costs shall not be allowed.

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TOURISM, ARTS AND HERITAGE CABINET
Department of Fish and Wildlife Resources
(As Amended at ARRS, July 9, 2024)

301 KAR 1:152. Harvest and sale of invasive[Asian] carp.

RELATES TO: KRS Chapter 13B, 150.010, 150.170, 150.175, 150.445, 150.450(2), (3), 150.990

STATUTORY AUTHORITY: KRS 150.025(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the Department of Fish and Wildlife Resources[department] to promulgate administrative regulations to establish seasons for the taking of fish and wildlife, to regulate creel limits and methods of take, to regulate the buying, selling, or transporting of fish and wildlife, and to make these requirements apply to a limited area. This administrative regulation establishes the requirements for the harvest and sale of invasive[Asian] carp beyond the requirements of 301 KAR 1:155.

Section 1. Invasive Carp and Scaled Rough Fish Harvest Program.

(1) To participate in the program, a commercial fisher shall:

(a) Contact the department and request to be included in the program;

(b) Possess a valid Kentucky commercial fishing license;

(c) Contact the department at 270-226-4192 and provide the information established in subparagraphs 1. through 5. of this paragraph prior to fishing:

1. The participant's name;

2. The fish buyer's name;

3. Date fishing is to occur;

4. Restricted water body to be fished; and

5. Ramp, marina, or dock where a boat[boat(s)] will be launched;

(d) Harvest a weight ratio of at least sixty-five (65) percent invasive carp to thirty-five (35) percent scaled rough fish over a one (1) month period, except that a commercial fisher whose license fee has been waived as established in subsection (2)(c) of this section shall only harvest invasive carp and not retain any scaled rough fish or by-catch;

(e) Only fish on dates and at locations provided to the department;

(f) Notify the department prior to changing any information as established in subsection (1)(c)2. through 5. of this section;

(g) Only use gill or trammel nets:

1. With a minimum bar mesh of three (3) inches;

2. That are always tended by a program participant if/when set less than three (3) feet below the surface of the water;

3. That are not left unattended by a program participant for more than six (6) hours if/when set at least three (3) feet below the surface of the water from April 1 through September 20; and

4. That are not left unattended by a program participant for more than eight (8) hours if/when set at least three (3) feet below the surface of the water from October 1 through March 31;

(h) Visibly mark each end of net sets or gangs of nets with floating buoys;

(i) Harvest, possess, and transport fish claimed under this program separately than fish harvested by any other method;

(j) Complete a Daily Harvest and Release Summary Card after each day's fishing and submit all cards to the department at the end of each month;

(k) Be allowed to sell all harvested invasive carp and scaled rough fish as established in subsection (1) of this section;

(l) Immediately release all by-catch; and

(m) Report all harvest on a Monthly Report of Commercial Fish Harvest in Kentucky, as established in 301 KAR 1:155.

(2) The department shall:

(a) Maintain a list of program participants and their contact information, which shall be:

1. Provided to known fish buyers; and

2. Updated at least weekly;

(b) Maintain a list of all restricted water fishing requests as established in subsection (1) of this section; and

(c) Waive the commercial fishing license fees, as established in 301 KAR 5:022, for a program participant who only harvests invasive carp in restricted or unrestricted waters.

(3) The department shall not approve a fishing request if:

(a) Higher than normal by-catch is likely to occur at that location and time; or

(b) Excessive user conflicts would occur.

Section 2. Experimental Commercial Fishing Methods Program.

(1) The following waterbodies, including restricted waters, shall be open to experimentation to target invasive carp under this program upon department approval:

(a) Cumberland River downstream of Lake Barkley;

(b) Tennessee River downstream of Kentucky Lake;

(c) Green River from 200 yards downstream of Green River Lock and Dam 4 to the confluence with the Ohio River;

(d) Kentucky Lake;

(e) Lake Barkley;

(f) Mississippi River from the mouth of the Ohio River downstream to the Kentucky-Tennessee state line; and

(g) Ohio River downstream of Newburg Lock and Dam.

(2) The commercial fishing gear tag requirements as established in 301 KAR 1:146 shall be waived if/when department personnel are present during experimentation.

(3) The commercial fishing gear tag requirements as established in 301 KAR 1:146 shall must be followed if/when department personnel are not present during experimentation.

(4) Any commercial gear not conforming to those established in 301 KAR 1:146 shall be reviewed by the department for commercial gear tagging feasibility and need.

(5) Any live fish holding net left overnight on the water shall have a commercial fishing gear tag attached and be marked with equipment issued by the department.

(6) Tier I requirements.

(a) A commercial fisher shall apply for Tier I of the program by submitting a completed Application for Experimental Commercial Fishing Methods Program Permit provided by the department.

(b) Participation in Tier I of the program shall be limited to three (3) program participants at any one (1) time.

(c) In addition to meeting the qualification requirements established in paragraph (e) of this subsection, selection of the top three (3) applicants shall be based on the scoring criteria established in subparagraphs 1. through 4. of this paragraph:

1. The fisher's experience as a commercial fisher, as well as the fisher's experience fishing for invasive carp;

2. The years of experience the fisher has with the gear and methods proposed and the past results of using the proposed gear and/or methods;

3. The status of the fisher's gear, including if:

a. They currently possess all the gear required for their proposed method;

b. They do not currently possess all the gear, but they attest they will possess all the/such gear prior to their admission in the program; or

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c. They have access to the gear; and

4. How their proposal shall help the department to achieve its mission of reducing the number of invasive carp in Kentucky waters.

(d) If at any time the number of program participants falls below three (3), all applications submitted prior to the vacancy will be reviewed as established in paragraph (c) of this subsection for selection of a new program participant.

(e) To qualify for Tier I of the program, a commercial fisher shall:

1. Have a minimum of three (3) years commercial fishing experience with at least two (2) years holding a valid commercial fishing license;

2. Have a boat and **motor that meet (motor(s) which meets)** the following requirements:

a. Minimum boat length of twenty-two (22) feet, and space for essential crew and one (1) department-appointed observer, along with storage capacity for harvested fish;

b. Outboard motor with a minimum of seventy-five (75) horsepower;

c. Required safety equipment and personal flotation devices (PFD);

d. Fishing electronics, including traditional and side-imaging sonar, and water temperature; and

e. Valid boat registration;

3. Have a towing vehicle capable of boat transportation to and from designated removal sites and hauling of harvests for sale or disposal;

4. Have the necessary Kentucky Department of Transportation identification permits, insurance cards, and federal transportation tags for commercial transport of fish; and

5. Allow a department staff member to be present for all commercial fishing methods experimentation.

(f) A Tier I participant shall:

1. Fish under a paid commercial license that allows the harvest and sale of rough fish other than invasive carp;

2. Possess a valid Experimental Commercial Fishing Methods Program Permit;

3. Be present for all commercial fishing methods experimentation;

4. Coordinate with the department to request a fishing date and location at least five (5) days in advance of fishing;

5. Allow department staff onboard vessels to observe and record fish harvesting efforts;

6. Cease any experimentation considered by the department to:

a. Be unsafe;

b. Interfere with other recreational users;

c. Be detrimental to non-target species; or

d. Be unsuccessful for significant invasive carp harvest;

7. Be responsible for the removal and lawful disposal of all invasive carp species caught from waters during fishing efforts;

8. Indicate on sales receipts that fish were harvested by an experimental **gear and method (gear/method)** authorized under this program and identify the permit holder;

9. Be eligible for the department's Kentucky and Barkley Lake Invasive Carp Subsidy Program;

10. Submit itemized invoices, by date, to the department each month, including pounds harvested of each species;

11. Complete a Daily Harvest and Release Summary Card after each day's fishing and submit all cards to the department at the end of each month;

12. Report all harvest on a Monthly Report of Commercial Fish Harvest in Kentucky, as established in 301 KAR 1:155; and

13. Meet with department personnel quarterly to review the actions taken under this program.

(7) Tier II requirements.

(a) A commercial fisher shall apply for Tier II of the program by submitting a completed Application for Experimental Commercial Fishing Methods Program Permit provided by the department.

(b) Along with meeting the requirements established in subsection (6)(e)1. through 5. of this section, Tier II applicants **shall must** also meet the requirements established in subparagraphs 1. through 6. of this paragraph:

1. Shown proficiency in use of the experimental **gear and method (gear/method)** by either:

a. Participating for at least six (6) months in Tier I of the program, with **the gear and method (gear/method)** fished a minimum of twenty (20) times; or

b. Previously utilizing **the experimental gear and method (gear/method)** through a department Memorandum of Agreement and have been released from department observation of experimental fishing activities;

2. **Have previously been responsive to all department communications and requirements during Tier I activities including:**

a. **Fishing date scheduling and scheduling changes;**

b. **Reporting requirements; and**

c. **Department staff onboard observations (Maintained satisfactory communication with department staff during Tier I activities);**

3. Harvested at least 200,000 pounds of invasive carps through Tier I of the program within the previous year;

4. Harvested a weight ratio of at least eighty (80) percent invasive carp to twenty (20) percent scaled rough fish over the most recent ten (10) fishing days under Tier I of the program;

5. By-catch, in the form of sportfish, **shall must** have represented five (5) percent or less by number of the fish caught, based upon the **department (Department)** observer's visual estimate, over the most recent ten (10) fishing days under Tier I of the program; and

6. By-catch **shall must** have been in a condition where survival could be expected upon release.

(c) A Tier II participant shall:

1. Follow the requirements established in subsection (6)(f) of this section, except requests for a fishing date and location shall be made at least twenty-four (24) hours in advance of fishing;

2. Harvest a weight ratio of at least eighty (80) percent invasive carp to twenty (20) percent scaled rough fish over each one (1) month period;

3. By-catch, in the form of sportfish, **shall must** be maintained at five (5) percent or less by number of the fish caught, based upon the fisher's or a department observer's visual estimate; and

4. Keep daily records and report the following to department staff on a monthly basis:

a. Pounds of fish harvested by species;

b. Number of personnel assisting with the effort;

c. Names of licensed commercial fishers that fish were transferred to for the purpose of transport and sale, [if any];

d. Name of processor or fish market receiving fish;

e. Number of hours experimental gear was fished;

f. Number of times gear was deployed; and

g. Other pertinent information associated with the gear, **for example**, [mesh size, gear depth, gear length, **and** approximate depth of water gear was used in]; [Definitions:]

[(1)] ["Asian carp" means:]

[(a)] [Bighead carp;]

[(b)] [Black carp;]

[(c)] [Grass carp; or]

[(d)] [Silver carp;]

[(2)] ["By-catch" means any fish that is not an Asian carp or scaled rough fish.]

[(3)] ["Program" means Asian Carp and Scaled Rough Fish Harvest Program.]

[(4)] ["Program participant" means a commercial fisherman who is:]

[(a)] [Enrolled in the Asian-Carp and Scaled-Rough-Fish Harvest Program; and]

[(b)] [Fishing in restricted water.]

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

[(a)] [Commercial fishing is prohibited;]

[(b)] [Commercial fishing with gill or trammel nets is prohibited; or]

[(c)] [Commercial fishing with gill or trammel nets of restricted net mesh size is prohibited.]

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

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301 KAR 1:155.]

[(7)] ["Unlicensed helper" means a person without a commercial fishing license who is assisting a program participant.]

[Section 2.] [Program Participant Qualifications. A commercial fisherman shall:]

[(1)] [Contact the department and request to be included in the program; and]

[(2)] [Possess a valid Kentucky commercial fishing license.]

[Section 3.] [Program Participant Requirements. A program participant shall:]

[(1)] [Call the department at 270-226-4192 at least twenty-four (24) hours prior to the requested fishing date and provide the information established in paragraphs (a) through (f) of this subsection:]

[(a)] [The participant's name;]

[(b)] [The fish buyer's name;]

[(c)] [Date requested;]

[(d)] [Restricted water body to be fished;]

[(e)] [The location in the restricted water body to be fished, listed as river miles or embayment; and]

[(f)] [The name or location of the boat ramp that will be used;]

[(2)] [Harvest a weight ratio of at least sixty-five (65) percent Asian carp to thirty five (35) percent scaled rough fish over a one (1) month period, except that a commercial fisherman whose license fee has been waived as established in Section 4 of this administrative regulation shall only harvest Asian carp and not retain any scaled rough fish or by catch;]

[(3)] [Only fish:]

[(a)] [On dates approved by the department; and]

[(b)] [At a location approved by the department;]

[(4)] [Notify the department and receive approval prior to changing the:]

[(a)] [Fishing location in the restricted water body; or]

[(b)] [Boat ramp being used;]

[(5)] [Only use gill or trammel nets:]

[(a)] [With a minimum bar mesh size of three (3) inches;]

[(b)] [That are always tended by a program participant when set less than three (3) feet below the surface of the water;]

[(c)] [That are not left unattended by a program participant for more than six (6) hours when set at least three (3) feet below the surface of the water from April 1 through September 30; and]

[(d)] [That are not left unattended by a program participant for more than eight (8) hours when set at least three (3) feet below the surface of the water from October 1 through March 31;]

[(6)] [Visibly mark each end of net sets or gangs of nets with floating buoys;]

[(7)] [Harvest, possess, and transport fish claimed under this program separately than fish harvested by any other method;]

[(8)] [Complete a Daily Harvest and Release Summary Card after each day's fishing and submit all cards to the department at the end of each month;]

[(9)] [Be allowed to sell all harvested Asian carp and scaled rough fish as established in Section 2 and 3 of this administrative regulation;]

[(10)] [Immediately release all by catch; and]

[(11)] [Report all harvest on a Monthly Report of Commercial Fish Harvest form, as established in 301 KAR 1:155.]

[Section 4.] [Commercial Fishing License Fee Waiver. The commercial fishing license fees, as established in 301 KAR 3:022, shall be waived for a program participant who only harvests Asian carp in restricted or unrestricted waters.]

[Section 5.] [Department Program Requirements:]

[(1)] [The department shall:]

[(a)] [Maintain a list of program participants and their contact information, which shall be:]

[1.] [Provided to known fish buyers; and]

[2.] [Updated at least weekly; and]

[(b)] [Review all restricted water fishing requests as established in Section 3 of this administrative regulation.]

[(2)] [The department shall approve a qualified fishing request

by assigning a fishing location and boat ramp to a program participant.]

[(3)] [The department shall not approve a fishing request for reasons established in paragraphs (a) and (b) of this subsection:]

[(a)] [Higher than normal by-catch is likely to occur at that location and time; or]

[(b)] [Excessive user conflicts would occur.]

Section 3.[Section 6.] Unlicensed Helpers.

(1) A [program-]participant in the Invasive Carp and Scaled Rough Fish Harvest Program shall not utilize more than two (2) unlicensed helpers while actively fishing.

(2) A participant in Tier I or Tier II of the Experimental Commercial Fishing Methods Program may use more than two (2) unlicensed helpers while actively fishing but **shall must** follow the reporting requirements as established in Section 2(7)(b)4.b. of this administrative regulation.

(3) A participant in either program [participant-]shall ensure that an unlicensed helper complies with all boating safety requirements established in KRS Chapter 235.

(4)[(3)] An unlicensed helper in either program shall:

(a) Be accompanied by a licensed program participant while using commercial fishing gear; and

(b) Be permitted to transport invasive[Asian] carp in the absence of a program participant with a Fish Transportation Permit as established in 301 KAR 1:125.

(5)[(4)] A program participant whose commercial fishing license has been suspended or revoked in Kentucky or in another state shall not:

(a) Be listed as a helper by a licensed Kentucky commercial **fisher**[fisherman] or another [program-]participant in either program; or

(b) Assist a licensed Kentucky commercial **fisher**[fisherman] or another[program] participant in either program in harvesting or transporting fish.

Section 4.[Section 7.] Program Suspension, Revocation, and Disqualification.

(1) A [program-]participant in either program whose commercial fishing license becomes revoked or suspended as established in 301 KAR 1:155 shall be disqualified from participating in those programs[the Asian Carp and Scaled Rough Fish Harvest Program] while that license is revoked or suspended.

(2) A participant in the Invasive Carp and Scaled Rough Fish Harvest Program [participant-]shall be suspended from the program:

(a) For a three (3) month period beginning on the first day of the next month if the minimum requirements established in Section 1(1)(d)[3(2)] are not met; and

(b) For a period of one (1) year beginning on the first day of the next month if the requirements are not met a second time.

(3) A participant in Tier I of the Experimental Commercial Fishing Methods Program shall be suspended from the program:

(a) For a three (3) month period beginning on the first day of the next month if the minimum requirements established in Section 2(6)(f) are not met; and

(b) For a period of one (1) year beginning on the first day of the next month if the requirements are not met a second time.

(4) A participant in Tier II of the Experimental Commercial Fishing Methods Program shall be suspended from the program:

(a) For a three (3) month period beginning on the first day of the next month if the minimum requirements established in Section 2(7)(c) are not met; and

(b) For a period of one (1) year beginning on the first day of the next month if the requirements are not met a second time.

(5) Falsification of any information listed in an application shall result in disqualification from consideration for selection and revocation of any experimental methods permit that may have been issued to the applicant.

(6) Any participant who is disqualified, revoked, or suspended from participation in either[the] program may appeal the decision in accordance with KRS Chapter 13B.

(7)[(4)] To appeal the disqualification, revocation, or suspension, the participant shall provide a written request for a KRS Chapter 13B hearing, postmarked or delivered in person to the department no

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later than thirty (30) days after notification of the disqualification or suspension.

Section 5.~~[Section 8.]~~ Non-commercial Invasive~~[Asian]~~ Carp Harvest and Sale. Any person possessing a valid Kentucky sport fishing license:

- (1) May harvest invasive~~[Asian]~~ carp using legal fishing methods as established in 301 KAR 1:201; and
- (2) May sell harvested invasive~~[Asian]~~ carp.

Section 6.~~[Section 9.]~~ Incorporation by Reference.

(1) The following material is incorporated by reference:

- (a) "Daily Harvest and Release Summary Card", 2011 Edition; ~~and [is incorporated by reference.]~~
- (b) "Application for Experimental Commercial Fishing Methods Program Permit", 2024 Edition.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Fish and Wildlife Resources, #1 Sportsman's Lane, Frankfort, Kentucky, Monday through Friday, 8:00 a.m. to 4:30 p.m. or may be obtained at <https://fw.ky.gov/Fish/Pages/Commercial-Fishing.aspx>.

FILED WITH LRC: July 9, 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, July 9, 2024)

301 KAR 5:022. License, tag, and permit fees.

RELATES TO: KRS 150.025, 150.180, 150.183, 150.240, 150.275, 150.280, 150.290, 150.450, 150.485, 150.520, 150.525, 150.600, 150.603, 150.660, 150.720

STATUTORY AUTHORITY: KRS 150.175, 150.195(4)(f), 150.225, 150.620

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.175 authorizes the types of licenses, permits, and tags. KRS 150.195(4)(f) requires the Department of Fish and Wildlife Resources to promulgate an administrative regulation establishing the license and permit terms and the expiration date of licenses and permits. KRS 150.225 requires the department to promulgate administrative regulations establishing reasonable license fees relating to hunting, fishing, and trapping. KRS 150.620 authorizes the department to charge reasonable fees for the use of lands and waters it has acquired for wildlife management and public recreation. This administrative regulation establishes fees and terms for licenses, permits, and tags.

Section 1. Licenses, tags, and permits listed in this section shall be valid from March 1 through the last day of February the following year, except the senior lifetime sportsman's license shall be valid for the life of the license holder while the license holder maintains Kentucky residency.

(1) Sport fishing licenses:

- (a) Statewide annual fishing license (resident): twenty-three (23) dollars;
- (b) Statewide annual fishing license (nonresident): fifty-five (55) dollars;
- (c) Joint married couple statewide fishing license (resident): forty-two (42) dollars;
- (d) Statewide three (3) year fishing license (resident): fifty-five (55) dollars; and
- (e) Trout permit: ten (10) dollars.

(2) Commercial fishing licenses:

- (a) Commercial fishing license (resident), plus ten (10) resident commercial gear tags: \$150;
- (b) Commercial fishing license (nonresident), plus ten (10) nonresident commercial gear tags: \$600; and
- (c) Commercial fishing license for Asian carp and scaled rough

fish (nonresident), plus ten (10) nonresident gear tags: \$150.

- (3) Commercial fishing gear tags (shall not be sold singly):
 - (a) Commercial fishing gear tags (resident) block of ten (10) tags: fifteen (15) dollars;
 - (b) Commercial fishing gear tags (nonresident) block of ten (10) tags: \$100; and
 - (c) Commercial fishing gear tags for Asian carp and scaled rough fish (nonresident), block of ten (10) tags: fifteen (15) dollars.
- (4) Hunting licenses:
 - (a) Statewide hunting license (resident): twenty-seven (27) dollars;
 - (b) Statewide hunting license (nonresident): ~~\$160~~[\$150];
 - (c) Statewide youth hunting license (resident): six (6) dollars;
 - (d) Statewide youth hunting license (nonresident): ten (10) dollars;
 - (e) Shooting preserve hunting license: five (5) dollars; and
 - (f) Migratory ~~[game]~~bird and waterfowl permit: fifteen (15) dollars.
- (5) Combination hunting and fishing license (resident): forty-two (42) dollars.
- (6) Sportsman's licenses:
 - (a) Sportsman's license (resident), which includes a resident hunting and fishing license, spring turkey permit, fall turkey permit, trout permit, state migratory ~~[game]~~bird and waterfowl permit, and statewide deer permit: ninety-five (95) dollars;
 - (b) Youth sportsman's license (resident), which may be issued to a person before he or she has reached his or her sixteenth birthday and for which the privileges remain valid through the end of the applicable license year, and which includes a statewide [youth] hunting license, a statewide [youth] deer permit, a spring [and two (2) youth] turkey permit [permits:], fall turkey permit, migratory game bird and waterfowl permit, statewide annual fishing license, and a Ballard WMA waterfowl hunt permit valid for all days the license holder lawfully waterfowl hunts at Ballard WMA: thirty (30) dollars;
 - (c) Senior sportsman's licenses, which include a resident hunting and fishing license, spring turkey permit, fall turkey permit, trout permit, state migratory ~~[-shore and upland game]~~ bird ~~[:]~~and waterfowl permit, and statewide deer permit. Senior licenses shall not be valid unless the holder carries proof of their Kentucky residency and proof of age on the holder's person while performing an act authorized by the license:
 1. Annual senior sportsman's license (resident): twelve (12) dollars; and
 2. Senior lifetime sportsman's license (resident): \$180;
 - (d) Disabled sportsman's license (resident), which includes a resident hunting and fishing license, spring turkey permit, fall turkey permit, trout permit, state migratory ~~[-shore and upland game]~~ bird, waterfowl permit, and statewide deer permit: twelve (12) dollars.
- (7) Trapping licenses:
 - (a) Trapping license (resident): twenty (20) dollars;
 - (b) Trapping license (resident landowner – tenant): ten (10) dollars;
 - (c) Trapping license (nonresident): \$130; and
 - (d) Youth trapping license (resident): five (5) dollars.
- (8) Game permits:
 - (a) Bear permit (resident): thirty (30) dollars;
 - (b) Youth bear permit (resident): ten (10) dollars;
 - (c) Bear chase permit (resident): thirty (30) dollars;
 - (d) Youth bear chase permit (resident): ten (10) dollars;
 - (e) Combination bear permit (resident), which includes a bear permit and a bear chase permit: fifty (50) dollars;
 - (f) Bear permit (nonresident): \$250;
 - (g) Youth bear permit (nonresident): \$100;
 - (h) Bear chase permit (nonresident): fifty (50) dollars;
 - (i) Youth bear chase permit (nonresident): fifteen (15) dollars;
 - (j) Quota cow elk permit (resident): sixty (60) dollars;
 - (k) Quota cow elk permit (nonresident): \$400;
 - (l) Quota bull elk permit (resident): \$100;
 - (m) Quota bull elk permit (nonresident): \$550;
 - (n) Quota either sex archery and crossbow elk permit (resident): \$100;
 - (o) Quota either sex archery and crossbow elk permit (nonresident): \$550.

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- (p) Out-of-zone elk permit (resident): thirty (30) dollars;
- (q) Out-of-zone elk permit (nonresident): \$400;
- (r) Statewide deer permit (resident): thirty-five (35) dollars;
- (s) Statewide deer permit (nonresident): ~~\$235~~[\$185];
- (t) Statewide youth deer permit (resident), valid for taking four (4) deer: ten (10) dollars;
- (u) Statewide youth deer permit (nonresident), valid for taking four (4) deer: fifteen (15) dollars;
- (v) Additional deer permit: fifteen (15) dollars;
- (w) Spring turkey permit (resident): thirty (30) dollars;
- (x) Spring turkey permit (nonresident): ~~\$110~~[~~eighty-five (85)~~ dollars];
- (y) Fall turkey permit (resident): thirty (30) dollars;
- (z) Fall turkey permit (nonresident): ~~\$110~~[~~eighty-five (85)~~ dollars];
- (aa) Youth turkey permit (resident), valid for taking one (1) wild turkey during spring or fall seasons: ten (10) dollars;
- (bb) Youth turkey permit (nonresident), valid for taking one (1) wild turkey during spring or fall seasons: fifteen (15) dollars;
- (cc) Quota youth elk permit (resident): thirty (30) dollars; and
- (dd) Quota youth elk permit (nonresident): \$200.
- (9) Peabody WMA user[individual] permit: fifteen (15) dollars.
- (10) Land Between the Lakes hunting permit: as stated at landbetweentheakes.us.
- (11) Conservation permit: five (5) dollars.
- (12) Bobcat hunting permit: Free.
- (13) Commercial guide licenses:
 - (a) Commercial guide license (resident): \$150; and
 - (b) Commercial guide license (nonresident): \$400.
- (14) Experimental commercial fishing methods program permits:
 - (a) Tier I experimental commercial fishing methods program permit (resident): \$800;
 - (b) Tier I experimental commercial fishing methods program permit (nonresident): \$1,600;
 - (c) Tier II experimental commercial fishing methods program permit (resident): \$1,200; and
 - (d) Tier II experimental commercial fishing methods program permit (nonresident): \$2,400.

Section 2. Licenses, tags, and permits listed in this section shall be valid for the calendar year issued.

- (1) Live fish and bait dealer's licenses:
 - (a) Live fish and bait dealer's license (resident): fifty (50) dollars; and
 - (b) Live fish and bait dealer's license (nonresident): \$150.
- (2) Commercial taxidermist license: \$150.
- (3) Shooting area permit: \$150.
- (4) Dog training area permit: fifty (50) dollars.
- (5) Collecting permits:
 - (a) Educational wildlife collecting permit: twenty-five (25) dollars; and
 - (b) Scientific wildlife collecting permit: \$100.
- (6) Nuisance wildlife control operator's permit: \$100.
- (7) Pay lake license:
 - (a) Pay lakes obtaining all fish from private hatcheries only:
 - 1. Lakes with two (2) acres or less: \$250; and
 - 2. Each additional acre or part of an acre: Fifty (50) dollars; and
 - (b) Pay lakes obtaining all or a portion of catfish from public waters:
 - 1. Lakes with two (2) acres or less: \$600; and
 - 2. Each additional acre or part of an acre: fifty (50) dollars.
- (8) Commercial captive wildlife permit: \$150.
- (9) Commercial fish propagation permit: fifty (50) dollars.
- (10) Wildlife rehabilitator's permit: twenty-five (25) dollars.
- (11) Annual wildlife transportation permit: \$250.
- (12) Peabody Wildlife Management Area annual event permit: \$250.
- [~~(13) Fish transportation permit: twenty-five (25) dollars.~~]

Section 3. Licenses, tags, and permits listed in this section shall be valid for three (3) years from the date of issue.

- (1) Falconry permit: seventy-five (75) dollars.
- (2) Noncommercial captive wildlife permit: seventy-five (75) dollars.

Section 4. Licenses, tags, and permits listed in this section shall be valid for the date or dates specified on each.

- (1) Short-term licenses:
 - (a) One (1) day fishing license (resident): seven (7) dollars;
 - (b) One (1) day fishing license (nonresident): fifteen (15) dollars;
 - (c) Seven (7) day fishing license (nonresident): thirty-five (35) dollars;
 - (d) One (1) day hunting license (resident) (not valid for deer, elk, bear, or turkey hunting): seven (7) dollars;
 - (e) One (1) day hunting license (nonresident) (not valid for deer, elk, bear, or turkey hunting): twenty-five (25) dollars; and
 - (f) Seven (7) day hunting license (nonresident) (not valid for deer, elk, bear, or turkey hunting): sixty-five (65) dollars.
- (2) Individual wildlife transportation permit: twenty-five (25) dollars.
- (3) Special resident commercial fishing permit: \$600.
- (4) Special nonresident commercial fishing permit: \$900.
- (5) Commercial waterfowl shooting area permit: \$150.
- (6) Shoot-to-retrieve field trial permits:
 - (a) Per trial (maximum four (4) days): seventy-five (75) dollars; and
 - (b) Single day: twenty-five (25) dollars.
- (7) Boat dock permit: \$100 per ten (10) year permit period beginning January 1, 2008, except that the fee shall be pro-rated for the number of years remaining in the ten (10) year period.
- (8) Shoreline use permit: Valid for a fifteen (15) year permit period beginning January 1, 2010, pro-rated to the nearest five (5) year interval remaining in the fifteen (15) year period, and containing three (3) tiers, including:
 - (a) Tier I: \$100;
 - (b) Tier II: \$200; and
 - (c) Tier III: \$300.
- (9) Peabody individual event permit: twenty-five (25) dollars.
- (10) Commercial roe-bearing fish buyer's permit:
 - (a) Commercial roe-bearing fish buyer's permit (resident): \$500; and
 - (b) Commercial roe-bearing fish buyer's permit (nonresident): \$1,000.
- (11) Commercial roe-bearing fish harvester's permit:
 - (a) Commercial roe-bearing fish harvester's permit (resident): \$500; and
 - (b) Commercial roe-bearing fish harvester's permit (nonresident): \$1,500.
- (12) Otter Creek Outdoor Recreation Area:
 - (a) Daily Entry Permit: three (3) dollars, with children under twelve (12) free; and
 - (b) Daily Special Activities Permit: seven (7) dollars.
- (13) Commercial foxhound training enclosure permit: \$150.
- (14) Fish transportation permit: twenty-five (25) dollars.

Section 5. Licenses, tags, and permits listed in this section shall be valid on a per-unit basis as specified.

- (1) Ballard WMA waterfowl hunt permit (per person, per day; youths under age sixteen (16) exempted): fifteen (15) dollars.
- (2) Pheasant hunt permit (per person, per day): twenty-five (25) dollars.
- (3) Horse stall rental (per space, per day): two (2) dollars.
- (4) Dog kennel rental (per dog, per day): fifty (50) cents.
- (5) Captive cervid permit (per facility, per year): \$150.
- (6) Noncommercial captive cervid permit (per facility, per three (3) years): seventy-five (75) dollars.

Section 6. The following licenses listed in this section shall be valid from April 1 through March 31 of the following year:

- (1) Fur processor's license (resident): \$150;
- (2) Fur buyer's license (resident): fifty (50) dollars; and
- (3) Fur buyer's license (nonresident): \$300.

Section 7. The following Otter Creek Outdoor Recreation Area permits shall be valid from July 1 through June 30 of the following year:

- (1) Annual Entry Permit: thirty (30) dollars, with children under twelve (12) free; and
- (2) Annual Special Activities Permit: seventy (70) dollars.

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Section 8. The following non-refundable application fees listed in this section shall be valid for the application to hunt in a department administered quota hunt or for a chance to be drawn for permits as specified.

(1) Pheasant quota hunt application fee: three (3) dollars.

(2) Antlered elk firearms quota hunt application fee: ten (10) dollars.

(3) Antlerless elk firearms quota hunt application fee: ten (10) dollars.

(4) Either-sex elk archery and crossbow quota hunt application fee: ten (10) dollars.

(5) Youth quota elk hunt application fee: ten (10) dollars.

(6) Deer quota hunt application fee: three (3) dollars.

(7) Waterfowl quota hunt application fee: three (3) dollars.

(8) Sandhill crane quota hunt application fee: three (3) dollars.

(9) Elk hunt sweepstakes and premium combination big game permit application fee:

(a) Five (5) dollars for residents and ten (10) dollars for one (1) application;

(b) Ten (10) dollars for residents and twenty (20) dollars for nonresidents per bundle of three (3) applications; and

(c) Twenty-five (25) dollars for residents and fifty (50) dollars for nonresidents per bundle of ten (10) applications.

(10) Standard combination big game permit application fee:

(a) Three (3) dollars for residents and six (6) dollars for nonresidents for one (1) application;

(b) Eight (8) dollars for residents and sixteen (16) dollars for nonresidents per bundle of three (3) applications; and

(c) Twenty (20) dollars for residents and forty (40) dollars for nonresidents per bundle of ten (10) applications.

FILED WITH LRC: July 9, 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.

**JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(As Amended at ARRS, July 9, 2024)**

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

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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.

(6) Each female prisoner shall be issued an appropriate number of undergarments.

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

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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).

FILED WITH LRC: July 9, 2024

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.

**EDUCATION AND LABOR CABINET
Board of Education
Department of Education
(As Amended at ARRS, July 9, 2024)**

704 KAR 3:550. Minimum qualifications for paraprofessionals.

RELATES TO: KRS 161.044, 161.011, 20 U.S.C. 6319(c)[, ~~KRS 161.044, 161.011~~]

STATUTORY AUTHORITY: KRS 161.044

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.044 requires the Kentucky Board of Education to promulgate administrative regulations governing the qualifications of teachers' aides in the common schools. The Every Student Succeeds Act of 2015, 20 U.S.C. secs. 6319(c), outlines the minimum requirements for paraprofessionals in schools receiving Title I funds. This administrative regulation establishes the minimum qualifications for teachers' aides and paraprofessionals in the common schools.

Section 1. Definitions.

(1) "Classified employee" is defined by ~~means the same as in~~ KRS 161.011.

(2) "Paraprofessional" means a classified employee, regardless of school district-assigned job title, who performs instructional support duties which may include:

(a) Providing one-on-one tutoring if [~~such~~] tutoring is scheduled at a time when a student would not otherwise receive instruction from a teacher;

(b) Assisting with classroom management;

(c) Providing instructional assistance in a computer laboratory;

(d) Providing instructional support in a library or media center;

(e) Acting as a translator; or

(f) Providing instructional support services under the direct supervision of a teacher.

Section 2. Minimum Qualifications for a Paraprofessional.

(1) To qualify for a position as a paraprofessional in the common schools, an individual shall possess knowledge of basic subjects taught in the common schools, including arithmetic, grammar, spelling, language, and reading.

(2) Possession of the knowledge required in subsection ~~[one]~~(1) of this section shall be demonstrated by the successful

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completion of a high school diploma or a high school equivalency diploma.

Section 3. Minimum Qualifications for Paraprofessionals in Title I Schools.

(1) To qualify for a position as a paraprofessional in a school that receives funding under Title I of the Elementary and Secondary Education Act of 1965, or its successor, an individual shall meet the requirements of Section 2 of this administrative regulation, and shall possess:

- (a) Two (2) years of study at an institution of higher education;
- (b) An associate's degree; or
- (c) A passing score on the state assessment required by Section 5 of this administrative regulation.

(2) Paraprofessionals who only serve as translators or who only conduct parental involvement activities are exempt from the requirements of this section.

Section 4. Local Education Agency Flexibility.

(1) Local education agencies may add required qualifications in addition to those set forth in this administrative regulation for paraprofessional roles.

(2) Local education agencies shall adopt and implement policies to ensure that any classified employee who[that] meets the definition of a paraprofessional in Section 1 of this administrative regulation meets the minimum qualification requirements of this administrative regulation regardless of locally created job titles.

Section 5. Criteria for the Statewide Paraprofessional Assessment. The Kentucky Department of Education shall make available a standardized paraprofessional assessment that evaluates an individual's knowledge of:

- (1) Correct oral and written usage of English;
- (2) Child guidance principles and practices;
- (3) Classroom procedures and conduct;
- (4) Basic instructional techniques;
- (5) School and classroom rules, policies, and procedures;
- (6) Safe practices in classroom activities;
- (7) Reading and writing communication skills;
- (8) Interpersonal skills using tact, patience, and courtesy; and
- (9) Record-keeping techniques.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(5).

FILED WITH LRC: July 9, 2024

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

**EDUCATION AND LABOR CABINET
Board of Education
Department of Education
(As Amended at ARRS, July 9, 2024)**

704 KAR 7:140. Authentic high school diploma to an honorably discharged veteran of World War II, the[and] Korean conflict, or Vietnam War[Veterans diplomas].

RELATES TO: KRS 158.140(5)(4)

STATUTORY AUTHORITY: KRS 158.140(5)(b)(4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 158.140(5)(b)(4) requires the Kentucky Board of Education to promulgate an administrative regulation establishing the guidelines for use by local boards of education when awarding an authentic[a] high school diploma to an honorably discharged veteran who was enrolled in, but [did not complete], high school prior to being inducted into the United States Armed Forces during World War II, [as defined in KRS 40.010, or] the Korean conflict, or the Vietnam War [as defined in KRS 40.040]. This administrative regulation establishes the requirements for awarding an authentic[a] high

school diploma to honorably discharged veterans of[these] World War II, the[and] Korean conflict, and the Vietnam War by local boards of education[veterans].

Section 1. Definitions.

(1) "Korean conflict" is defined by KRS 40.010(18).~~[.]~~

(2) "Vietnam War" is defined by KRS 158.140(5)(a)3.~~;~~ **and**

(3) "World War II" is defined by KRS 40.010(17).

Section 2. ~~[Documentation Needed to Determine Eligibility.]~~

(1) An honorably discharged veteran of World War II, ~~or [the] Korean conflict, the Vietnam War,~~ or a member of the veteran's family, shall submit[provide] a discharge certificate showing the period of service, ~~[and] type of discharge,~~ and the name of the high school and district of enrollment at the time of induction into the United States Armed Forces to the Kentucky Department of Veterans' Affairs, 1111 Louisville Road, Suite B, Frankfort, Kentucky 40601.

~~(2)[Section 2.] [Guidelines for Local Boards of Education to Award Diplomas.]~~

~~(4)]~~ The Kentucky Department of Veterans' Affairs shall forward the verified documentation to the local board of education in which the veteran was enrolled prior to being inducted into the United States Armed Forces.

~~(3)[(2)]~~ Upon receipt of documentation, ~~[]from the Kentucky Department of Veterans' Affairs,~~ the[a] local board of education shall verify the veteran was enrolled in, but did not complete, high school prior to induction and meets the requirements of KRS 158.140 prior to issuing the authentic high school diploma. If the high school or district has since been consolidated or reconfigured since the veteran's enrollment, the current local board of education with jurisdiction shall provide the verification and issue the authentic high school diploma.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(5).

FILED WITH LRC: July 9, 2024

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

**EDUCATION AND LABOR CABINET
Kentucky Board of Education
Department of Education
(As Amended at ARRS, July 9, 2024)**

780 KAR 3:030. Appointments.

RELATES TO: KRS 156.808

STATUTORY AUTHORITY: 156.808

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.808(3)(e) and (f) require the Kentucky Board of Education[executive director] to promulgate comprehensive administrative regulations for the selection of employees and type of appointments for certified and equivalent personnel employed by the Department of Education, Office of Career and Technical Education. This administrative regulation establishes the requirements governing selection and appointments of certified and equivalent personnel.

Section 1. Notice of Classes, Minimum Qualifications, and Vacancies.

(1) An official list of classes, minimum qualifications, and vacancies developed by the Department of Education[Division of Human Resources Management] shall be posted to the official Personnel Cabinet Web site[of all classifications and minimum qualifications shall be posted in each area business office and each division office for public review].

(2)

(a) All vacancies shall be posted online[in all facilities on a

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statewide basis] for a minimum of five (5)~~ten (10)~~ days.

(b) The vacancy posting shall ~~be on a Kentucky Tech School System Vacancy Posting Notice form and shall~~ contain the title, minimum qualifications, and other pertinent information about the vacancy.

Section 2. Establishment and Abolishment of Positions. The appointing authority ~~[or his designee]~~ shall establish and abolish positions, transfer certified and equivalent employees between positions, and change titles and compensation of existing offices of certified and equivalent employees consistent with the provisions of KRS 156.808~~[12.060 and the classifications and compensation plan of the certified and equivalent personnel system].~~

Section 3. ~~[Filing]~~ Applications.

(1) Each application shall be submitted on an Application for Employment from the official Personnel Cabinet Web site.

(2) The application shall be signed and the truth of the statements therein certified by a signature under penalty of removal for falsification and any criminal penalties that apply.

(3) The appointing authority~~[executive director]~~ shall authorize individuals to verify work experience and educational attainment of an applicant for a position in the certified and equivalent personnel system.

(4) The application shall be consistent with the state and federal equal employment opportunity requirements~~[guidelines].~~

Section 4. Minimum Qualifications for Filing. A position shall be filled by an applicant who meets the standards or requirements prescribed by the appointing authority~~[executive director]~~ with regard to education and experience and any other factors as may be held to relate to the ability of the candidate to perform with reasonable efficiency the duties of the position.

Section 5. Selection of Employees. The Department of Education~~[Division of Human Resources Management]~~ shall only consider those~~[maintain a central referral list which shall be compiled and submitted to area business for inclusion in the consideration of]~~ qualified applicants who~~[that]~~ have applied to the posted position in consideration for employment.

Section 6.

(1) Except as provided in subsection (4) of this section, the appointing authority ~~[or his designee]~~ shall fill a position~~[an appointment]~~ through the consideration of a list of recommendations submitted by a designated interview committee composed of no less than three (3) or more than seven (7) members, or from supervisory recommendations~~[, or peer recommendations].~~

(2) The procedure for determining the composition of the designated interview committee shall be determined by the appointing authority~~[or his designee].~~

(3) The committee shall make recommendations to the designated Office of Career and Technical Education official as determined by the appointing authority.

(4) If deemed in the best interest of the Commonwealth, the appointing authority shall not utilize an interview committee.

~~[Section 7.] [Incorporation by Reference.]~~

~~[(1)] [The following material is incorporated by reference:]~~

~~[(a)] [Kentucky Tech School System Vacancy Posting Notice, August 2006; and]~~

~~[(b)] [Application for Employment, December 2005.]~~

~~[(2)] [This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Workforce Development, Office of Career and Technical Education, Division of Human Resources Management, 500 Mero Street, 4th Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.]~~

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(5).

FILED WITH LRC: July 9, 2024

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

EDUCATION AND LABOR CABINET
Kentucky Board of Education
Department of Education
(As Amended at ARRS, July 9, 2024)

780 KAR 3:035. Employee evaluations.

RELATES TO: KRS 156.808(3)(j), 156.828

STATUTORY AUTHORITY: KRS 156.070, 156.808(3)(j), 156.828(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.808(3)(j) requires the Kentucky Board of Education~~[executive director]~~ to promulgate comprehensive~~[comprehensive]~~ administrative regulations, personnel policies and procedures for all~~[for the]~~ certified and equivalent staff in the Office of Career and Technical Education, governing employee evaluations. KRS 156.828(1) requires the commissioner of education~~[executive director]~~ to adopt written evaluation procedures for all certified and equivalent employees. This administrative regulation establishes the requirements for employee evaluations for certified and equivalent employees working in the Office of Career and Technical Education.

Section 1. General Provisions.

(1) Evaluations of certified and equivalent employees~~[school administrators]~~ shall be conducted in accordance with the "Kentucky Tech Certified Evaluation Plan"~~[Performance Evaluation Criteria and Procedures for School Administrators]~~, revised annually~~[7/2008]~~, ~~[published]~~ by the associate commissioner of the Office of Career and Technical Education.~~[.]~~ and

~~[(2)] [Evaluations of instructors shall be conducted in accordance with the Teacher Standards for Evaluation – Formative, published by the Office of Career and Technical Education.]~~

~~[(3)] [Evaluations of certified, and equivalent employees of the Office of Career and Technical Education [or central office staff] shall be conducted in accordance with KRS 156.828 and the requirements of the Kentucky framework for personnel evaluations as set forth in 704 KAR 3:370 [the "Performance Evaluation Criteria and Procedures for Other Certified, Equivalent and Central Office Staff", revised 11/93, published by the Office of Career and Technical Education].~~

~~[Section 2.] [Incorporation by Reference.]~~

~~[(1)] [The following material is incorporated by reference:]~~

~~[(a)] [School Administrator Standards for Evaluation – Formative, revised July 2008;]~~

~~[(b)] [Teacher Standards for Evaluation – Formative, revised July 2007; and]~~

~~[(c)] ["Performance Evaluation Criteria and Procedures for Other Certified, Equivalent and Central Office Staff", revised 11/93.]~~

~~[(2)] [This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Human Resources Management, Education and Labor Cabinet, 500 Mero Street, 4th Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.]~~

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(5).

FILED WITH LRC: July 9, 2024

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

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EDUCATION AND LABOR CABINET
Kentucky Board of Education
Department of Education
(As Amended at ARRS, July 9, 2024)

780 KAR 3:100. Employee actions.

RELATES TO: KRS 156.808, 156.830

STATUTORY AUTHORITY: KRS 156.070, 156.808(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.808(1) requires the Kentucky Board of Education~~[Executive Director for the Office of Career and Technical Education]~~ to promulgate administrative regulations establishing personnel policies and procedures for all ~~[full-time and part-time unclassified employees,]~~ certified and equivalent staff, including administrative, teaching, and supervisory staff in the Office of Career and Technical Education central office and state-operated area technology centers~~[vocational facilities]~~. This administrative regulation establishes the method for determining an employee's work station and the requirements governing employee actions.

Section 1. Definition. "Work station"~~[Work station]~~ means an employee's physical location where duties are to be performed and shall include the:

(1)(a) Official work station of an employee assigned to a position~~[an office;]~~ by the appointing authority; and

(b) Street address where the work station~~[office]~~ is located; or

(2)

~~[(a)]~~ One (1) or more alternate work stations assigned by the appointing authority~~[Official Work station of an employee assigned to an office; and]~~

~~[(b)]~~ [Street address to which the employee is assigned upon appointment to the employee's position].

Section 2. Employee Work Stations.

(1) The work station of an employee shall be established by the~~[Each employee shall be assigned to a work station by the appointing authority]~~ or designee.

(2) The position~~[A work station]~~ may be changed by the appointing authority to better meet the needs of the agency.

(3)

(a) An employee may be temporarily assigned to a different work station in a different county for a period of up to sixty (60) calendar days.

(b) The employee shall be reimbursed for travel expenses, in accordance with 200 KAR 2:006, and the appointing authority ~~[or designee]~~ shall notify the employee in writing prior to the effective date of the action.

(4)

(a) An appointing authority ~~[or designee]~~ may assign an employee to work in a different work station~~[site]~~ within the county of employment.

(b) Reassignment within a county shall not be an appealable action.

Section 3. Promotion. An employee in the certified and equivalent personnel system may be promoted to a position of greater scope of discretion and responsibility or to the unclassified system in the Office of Career and Technical Education.

Section 4. Demotion.

(1) An appointing authority may~~[or designee shall]~~ demote an employee who makes a written request for voluntary demotion~~[454B]~~.

(2) The written request shall:

(a) Be on a completed form prescribed by the Kentucky Department of Education~~[Voluntary Transfer or Voluntary Demotion Form]~~; and

(b) Include:

1. A statement of the reason for the request;

2. The effective date of the requested demotion;

3. Identifying information concerning the position demoted from and to; and

4. A waiver of the right of appeal concerning the demotion.

(3) A copy of the request shall be placed in the employee's official file.

Section 5. Transfer.

(1) An employee in the certified and equivalent personnel system may be transferred from one (1) position~~[office]~~ to another and from one (1) county~~[district]~~ to another.

(2)

(a) The transfer shall be on a voluntary or involuntary basis.

(b) Unless an employee requests a transfer in writing, the transfer shall be deemed to have been made on an involuntary basis.

(c) The appointing authority or designee shall establish a reasonable basis for selecting an employee for involuntary transfer.

(3)

(a) If the transfer is on an involuntary basis, the employee shall receive written notice of the transfer prior to the effective date of the transfer.

(b) Following notification of an involuntary transfer, an employee shall report for work at the work station to which the employee was transferred on the effective date of the transfer.

(c) The notice shall be in writing, and shall:

1. State:

a. The effective date of the transfer;

b. The reason for the employee's selection for transfer;

c. The new work station; and

d. The employee's obligation to report to the new work station;

2. Advise the employee that the employee may appeal the transfer to the Kentucky Technical Education Personnel Board within thirty (30) days of receipt of the notice excluding the day that notification was received; and

3. Advise the employee of the provisions of subsection (4) of this section.

(d) Upon employee notification, copies of the notice shall be forwarded to the associate commissioner~~[Executive Director]~~ of the Office of Career and Technical Education.

(4) If an involuntary transfer is to a position with a work station in a different county, the following provisions shall apply:

(a) The employee shall receive the notice specified in subsection (3) of this section at least thirty (30) days prior to the effective date of the transfer; and

(b) The appointing authority or designee shall pay the employee's moving and travel expenses following transfer for thirty (30) days following the effective date of transfer in accordance with 200 KAR 2:006.

(5)

(a) If an employee with status requests a transfer in writing, the appointing authority or designee may make a voluntary transfer.

(b) The written request shall:

1. Be on a completed form prescribed by the Kentucky Department of Education~~[Voluntary Transfer or Voluntary Demotion-154B Form]~~; and

2. Include:

a. A statement of the reason for the request;

b. The effective date of the requested transfer;

c. Identifying information concerning the position transferred from and to; and

d. A waiver of the right to appeal concerning the transfer.

(c) A copy of this request shall be forwarded to the associate commissioner~~[Executive Director]~~ of the Office of Career and Technical Education.

Section 6. Reemployment.

(1) Reemployment in the certified and equivalent personnel system shall occur in accordance with KRS 156.830 for laid-off employees~~[454B.080]~~.

(2) A laid-off~~laid-off~~ former employee on a reemployment list shall meet all qualifications [in order] to be considered for a position.

Section 7. Resignations and Retirements.

(1) An employee who desires to terminate service with the state shall submit a written resignation or notice of retirement to the appointing authority~~[or designee]~~.

(2)(a) A resignation or notice of retirement shall be submitted at

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least thirty (30) calendar days before the final working day.

(b) A copy of an employee's resignation shall be attached to the advice effecting the separation and shall be filed in the employee's service record in the department.

(3) Failure of an employee to give thirty (30) calendar days' notice upon resignation or notice of retirement may result in forfeiture of accrued annual leave.

(4) A part-time hourly employee who has not worked for six (6) months shall be deemed to have resigned.

Section 8. Temporary Overlap. The appointing authority [or designee] may place an employee in a position currently occupied by another employee for a period not to exceed ninety (90)[sixty (60)] calendar days for training purposes.

Section 9. Retirement. If an employee voluntarily retires, the employee shall be considered separated without prejudice.

[Section 10.] [Incorporation by Reference.]

[(1)] [~~Voluntary Transfer or Voluntary Demotion 151B", form 07/24/2008, Personnel Cabinet, is incorporated by reference.~~]

[(2)] [~~This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Education and Labor Cabinet, 500 Mero Street, 3rd Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. through 4:30 p.m.]~~]

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(5).

FILED WITH LRC: July 9, 2024

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

EDUCATION AND LABOR CABINET
Kentucky Board of Education
Department of Education
(As Amended at ARRS, July 9, 2024)

780 KAR 3:130. Employee grievances.

RELATES TO: KRS 156.808(3)(t), 156.820

STATUTORY AUTHORITY: KRS 156.070, 156.808(3)(t)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.808(3)(t) requires the Kentucky Board of Education[Executive Director of the Office of Career and Technical Education] to promulgate administrative regulations governing employee grievances and complaints for certified and equivalent staff of the Office of Career and Technical Education. [KRS 156.808(3)(t) requires the Office of Career and Technical Education to prescribe a form to complete by an employee who wishes to file an appeal.] This administrative regulation establishes the requirements governing employee grievances for certified and equivalent employees of the Office of Career and Technical Education.

Section 1. Definition. "Grievance" means a complaint filed by an employee which concerns working conditions over which the Office of Career and Technical Education has control and which has specifically occurred, or of which the employee has become aware, within thirty (30) calendar days prior to filing.

Section 2. General Provisions.

(1) An employee in the certified and equivalent personnel system who believes that he or she[the employee] has been subjected to unfair or unjust treatment concerning the conditions of employment may file a grievance in accordance with this administrative regulation.

(2) A grievance concerning an action which is appealable directly to the Kentucky Technical Education Personnel Board may be filed with the Office of Career and Technical Education. The filing of a grievance with the office shall not:

(a) Prohibit the employee from filing an appeal with the Kentucky

Technical Education Personnel Board; or

(b) Extend the thirty (30) calendar day appeal period.

(3) An employee shall be entitled to file grievances without interference, coercion, discrimination, or reprisal.

(4) The associate commissioner[appointing authority] shall inform all employees in the Office of Career and Technical Education of the provisions of this administrative regulation, or any modifications in the levels of review.

(5) The associate commissioner[Executive Director] of the Office of Career and Technical Education shall make available to employees, [through the appointing authority,] the "KRS 156 Grievance Form [-151B]", which shall be used to file a grievance. The form shall contain a notice that, if the grievance concerns an action appealable directly to the Kentucky Technical Education Personnel Board pursuant to KRS 156.820, the employee's right to file an appeal shall not be extended beyond thirty (30) calendar days.

(6) A state employee shall not use state time, equipment, materials, or personnel in pursuing a grievance, except for the participation in an interview scheduled by the agency to evaluate or investigate the grievance.

Section 3. Procedures.

(1) A grievance shall be filed with the employee's immediate supervisor within thirty (30) calendar days following occurrence, or the employee becoming aware through the exercise of due diligence, of the action which is the subject of the grievance. If an act of the immediate supervisor is the basis for the grievance, the grievance shall be filed with the next line supervisor.

(2) The employee shall set forth in writing the basis of the grievance or complaint together with the corrective action desired. If the employee wishes to submit additional information or documentation, the employee shall attach it to the grievance.

(3) If a grievance is filed that alleges harassment or discrimination on the basis of race, color, religion, national origin, sex, disability, or age, the recipient shall immediately notify the associate commissioner[Executive Director] of the Office of Career and Technical Education and the agency[Office of] Equal Employment Opportunity (EEO) Coordinator to comply with the affirmative action plan.

[(4)] [~~An interview to evaluate or investigate the grievance outside of normal work hours with the grievant or other employees shall entitle those employees to compensatory time.~~]

(4)[(5)] An interview to evaluate or investigate the grievance held with the grievant or other employee shall not require the use of leave time.

(5)[(6)] Both parties shall be given the opportunity to have a representative present at each step of the grievance procedure.

Section 4. Grievance Levels.

(1)(a) Except as provided in paragraph (d) of this subsection, the immediate supervisor shall, upon investigation, issue findings and a decision in writing to the employee within ten (10) working days after receipt of the grievance.

(b) If the first line supervisor is unable to resolve the complaint to the satisfaction of the employee, the employee may request review of the grievance within five (5) working days of receipt of the decision to the second line supervisor.

(c) If the area supervisor or the division director is the first line supervisor, the request for review shall automatically be requested from the Ombudsman for the Office of Career and Technical Education.

(d) In accordance with Section 3(1) of this administrative regulation, if an act of the immediate supervisor was the basis for the grievance:

1. The immediate supervisor shall not investigate or issue findings or a decision; and

2. The grievance shall be investigated by the second line supervisor, with subsequent appeals available, as provided in subsections (2) through (6) of this section.

(2)(a) The second line supervisor shall, upon investigation, issue findings and a decision in writing to the employee within ten (10) working days after receipt of the grievance.

(b) If the second line supervisor is unable to resolve the

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complaint to the satisfaction of the employee, the employee may request review of the grievance within five (5) working days of receipt of the decision to the ombudsman in the Office of Career and Technical Education.

(3) If the ombudsman is unable to mediate the grievance to the satisfaction of the employee, the employee may request review of the grievance within five (5) working days of receipt of the decision to the associate commissioner~~[Executive Director]~~ of the Office of Career and Technical Education or his or her designee for a final determination. The associate commissioner~~[executive director]~~, upon investigation, shall issue findings and a final determination in writing to the employee within ten (10) working days.

(4) Failure of supervisory or management personnel to respond within the prescribed time limits shall be grounds for the advancement of the grievance to the next review level, unless the time limits have been extended by agreement of the parties.

(5) An intermediate grievance level may be waived by written agreement of the parties.

Section 5. Incorporation by Reference.

(1) "KRS 156 Grievance Form[-154B]", 4/2024~~[revised 7/2008]~~ is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Education~~[Office of Career and Technical Education]~~, 300 Sower Blvd., 5th Floor~~[500 Mero Street, 3rd Floor]~~, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(5).

FILED WITH LRC: July 9, 2024

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

PUBLIC PROTECTION CABINET Department of Financial Institutions (As Amended at ARRS, July 9, 2024)

808 KAR 10:260. Examination requirement for individuals advising the public on securities, broker-dealers, and agents.

RELATES TO: KRS 292.310, 292.330, 292.331(3), 292.337, 292.338, 292.500(3), 15 U.S.C. sec. 78c

STATUTORY AUTHORITY: KRS 292.331(3), 292.500(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 292.331(3) authorizes the commissioner to require an examination as evidence of knowledge of the securities business as a condition of registration. KRS 292.500(3) authorizes the commissioner to classify securities, persons, and matters within his or her jurisdiction and prescribe different requirements for different classes. This administrative regulation requires an individual who advises the public regarding securities to successfully complete a written examination that demonstrates knowledge of the requirements of the securities laws and exempts certain individuals from the examination requirement. This administrative regulation also sets the examination requirements for agents~~[individuals]~~ who participate in the FINRA Maintaining Qualifications Program (FINRA MQP) pursuant to FINRA Rule 1240(c) and investment adviser representatives who, provided the individual elects to participate in the NASAA Examination Validity Extension Program (NASAA EVEP).

Section 1. Except as provided in Section 2 of this administrative regulation, to register in Kentucky as an individual, including an investment adviser or an investment adviser representative, an individual who advises the public regarding the value of a security or the advisability of investing in, purchasing, or selling a security shall demonstrate competence in the law of securities by providing the commissioner with proof of obtaining a

passing score, as determined by the Financial Industry Regulatory Authority (FINRA), on ~~one (1) of the following examinations~~:

(1) The Uniform Investment Advisor Law Examination (Series 65 examination); or

(2) Both:

(a) The General Securities Representative Examination (Series 7 examination); and

(b) The Uniform Combined State Law Examination (Series 66 examination).

Section 2. The following individuals shall not be required to take and pass the examinations referenced in Section 1 of this administrative regulation~~[examination]~~:

(1) An individual who registered as an investment adviser or investment adviser representative in a state on or before January 1, 2000 and has been continuously registered since that date, except that the commissioner may require the examinations identified in Section 1 of this administrative regulation for an individual found to have violated a state or federal securities law as a condition of continued registration;

(2) An individual who currently holds one (1) of the following professional designations and is in compliance with all continuing education and other requirements of good standing for the designation:

(a) Certified Financial Planner (CFP) issued by the Certified Financial Planner Board of Standards, Inc.;

(b) Chartered Financial Consultant (ChFC) issued by The American College, Bryn Mawr, Pennsylvania;

(c) Personal Financial Specialist (PFS) granted by the American Institute of Certified Public Accountants;

(d) Chartered Financial Analyst (CFA) granted by the Association for Investment Management and Research; or

(e) Certified Investment Management Analyst (CIMA) awarded by the Investment & Wealth Institute, Chartered Investment Counselor (CIC) granted by the Investment Counsel Association of America; or

(3) An individual who:

(a) Was registered as an~~[a broker-dealer]~~ agent prior to January 1, 1988; and

(b) Has been continuously registered since that date; and

(c) Has had no reportable disclosures on Form U-4, as incorporated by reference in 808 KAR 10:010; or

(4) An individual who was registered as an investment adviser representative, relying on the professional designation of Chartered Investment Counselor (CIC) prior to January 1, 2025, has been continuously registered since that date and has no reportable disclosures on Form U-4, as incorporated by reference in 808 KAR 10:010.

Section 3. An individual not required to take and pass any examination because of holding a designation specified in Section 2(2) of this administrative regulation may be required to take the examination if that individual fails to maintain the designation in good standing.

Section 4. A registered investment adviser shall not employ an individual as an investment adviser or as ~~one who represents~~ an investment adviser representative unless that individual has complied with this administrative regulation.

Section 5.

(1) To register in Kentucky as an~~[a broker-dealer or]~~ agent, [an individual or a principal, if] the applicant [is an entity], shall:

(a) (1) Pass the FINRA Securities Industry Essentials (SIE) and an appropriate examination, which depending on the proposed business, shall be one (1) of the following FINRA examinations: Series 4, 1, 2, 6, 7, 9, 10, 11, 14, 16, 17, 22, 23, 24, 26, 27, 28, 39, 50, 51~~[40]~~, 52, 53, 54, 57~~[62, or]~~ 79, 82, 86, 87, or 99; and

(b) (2) Pass the North American Securities Administrators Association (["NASAA"]) Series 63 or Series 66 examination.

(2) To register in Kentucky as a broker-dealer, the applicant shall employ an individual who:

(a) Has passed the appropriate examinations listed in Section 5 of this administrative regulation; and

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(b) Is to be deemed a principal of the broker-dealer.

Section 6.

(1) Except as provided in subsections (2) and (3) of this Section, an individual who has been unregistered for a period of time in excess of two (2) years shall be required to take and pass the examinations specified in Sections 1 and 5 of this administrative regulation unless the commissioner grants a waiver for good cause shown in response to a written request by the investment adviser, broker-dealer, or issuer which the individual will represent.

(2) An individual who has been unregistered as an agent in any state for a period of time in excess of two (2) years but less than five (5) years, shall be deemed in compliance with the examination requirements of Section 5 of this administrative regulation if:

(a) The individual who has elected to participate in the FINRA Maintaining Qualifications Program (FINRA MQP) pursuant to FINRA Rule 1240(c);

(b) The individual's, and whose FINRA qualifying examinations remain valid pursuant to participation in the FINRA MQP; and

(c) [shall be deemed in compliance with the examination requirements of Section 5 of this administrative regulation, provided] The individual elects to participate in the NASAA Examination Validity Extension Program (NASAA EVEP) within two (2) years of agent registration termination.; and

(3) An individual who terminates his or her registration as an investment adviser representative may, for purposes of compliance with the examination requirements of Section 1 of this administrative regulation, maintain the validity of his or her Series 65/Uniform Investment Adviser Law Examination, or the investment adviser representative portion of the Series 66/Uniform Combined State Law Examination, as applicable, without being employed by or associated with an investment adviser or a federally covered investment adviser for a maximum of five (5) years following the termination of the individual's investment adviser representative registration if, provided the individual:

(a) Previously passed the examination for which the individual seeks to maintain validity under this administrative regulation;

(b) Was registered as an investment adviser representative for at least one (1) year immediately preceding the termination of the investment adviser representative registration;

(c) Was not subject to a statutory disqualification, as defined in 15 U.S.C. sec. 78c(a)(39), (Section 3(a)(39) of the Exchange Act while registered as an investment adviser representative or at any period after termination of the registration;

(d) Elects to participate in the NASAA EVEP under this paragraph within two (2) years from the effective date of the termination of the investment adviser representative registration;

(e) Does not have a deficiency under KRS 292.338 the investment adviser representative continuing education program at the time the investment adviser representative registration becomes ineffective; and

(f)

1. Completes annually, not later than December 31 of each calendar year in which the person participates in the investment adviser representative NASAA EVEP and for each calendar year that elapses after the individual's investment adviser representative registration became ineffective, regardless of when the individual elects to participate in NASAA EVEP, the continuing education requirements set forth in KRS 292.338(2);

1. [Six (6) credits of investment adviser representative continuing education Ethics and Professional Responsibility Content offered by an authorized provider, including at least three (3) hours covering the topic of ethics; and]

2. [Six (6) credits of IAR CE Products and Practice Content offered by an authorized provider;]

(4) [An individual who elects to participate in NASAA EVEP must complete the credits required by subsection (3)(f) of this section for each calendar year that elapses after the individual's investment adviser representative registration became ineffective, regardless of when the individual elects to

participate in NASAA EVEP].

2.(5)] An individual who complies with the FINRA MQP under FINRA Rule 1240(c) shall be deemed in compliance with KRS 292.338(2)(b) subsection (3)(f)2. of this section.

FILED WITH LRC: July 9, 2024

CONTACT PERSON: Gary Stephens, Assistant General Counsel and Marni Gibson, Commissioner, 500 Mero Street, 2 SW 19, Frankfort, Kentucky 40601, phone 502-782-9046, fax 502-573-8787, email Gary.Stephens@ky.gov and Marni.Gibson@ky.gov.

**CABINET FOR HEALTH AND FAMILY SERVICES
Department for Aging and Independent Living
Division of Quality Living
(As Amended at ARRS, July 9, 2024)**

910 KAR 1:270. Hart-Supported Living grant program.

RELATES TO: KRS 17.165, 194A.060, 205.900(3), 209.030, 210.770-210.795, 42 U.S.C. 9902(2), 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.

[(6),(7)] "Department" or "DAIL" means the Department for Aging and Independent Living.

[(7),(8)] "Designated Representative" means an uncompensated individual:

(a) Designated by the consumer to assist in managing the consumer's Hart Supported Living plan and needed services; and
be]

(b) Chosen [chese] by the recipient, family, or legal guardian.

[(8),(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.

[(9),(10)] [(9)] "Eligibility" means meeting the financial eligibility

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criteria established in:

- (a) Section 2 of this administrative regulation; and
- (b) KRS 210.790.

~~(10)(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.

~~(11)(12)~~ [(11)] "Family" means the recipient's parent, stepparent, adoptive parent, foster parent, grandparent, siblings, spouse, or legal guardian.

~~(12)(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.

~~(13)(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).

~~(14)(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).

~~(15)(16)~~ [(15)] "Hart-Supported Living grant program" or "HSL" is defined by KRS 210.770(5) and (6).

~~(16)(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.

~~(17)(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.

~~(18)(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 **twelve**

~~(12) eighteen (18)~~ [(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. [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 (1) 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 (1) start up grant per lifetime, per applicant; 5. [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; and

(iii) Does not exceed the vendor specified budget amount in DAIL-HSL-02;

6. [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. [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. [Individualized life planning authorized by KRS 210.770(8)(i); and;

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; and

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.

~~(19)(20)~~ [(19)] "Operating agency" means the department or its designee that administers Hart-Supported Living.

~~(20)(21)~~ [(20)] "Person with a disability" is defined by KRS 210.770(2).

~~(21)(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.

~~(22)(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.

~~(23)(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.

~~(24)(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.

~~(25)(26)~~ [(25)] "Request for informal dispute resolution" means

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the process to be followed if a recipient disagrees with a decision made by the ~~department~~[~~regional supported living coordinator~~], review team, or council.

~~(26)~~~~(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 or her own services; and
2. A lack of availability of a person to act as his or her representative; or

(b) Unable to access the Medicaid program through 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 U.S.[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;

~~[(t)] [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)] [(m)] [(n)] Household items;~~

~~[(o)] [(n)] [(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)] [(o)] [(p)] Vacations;~~

~~[(q)] [(p)] [(q)] Camps that are segregated;~~

~~[(r)] [(q)] [(r)] Payment of medical treatments including:~~

1. Medical costs;
2. Prescriptions;
3. Vitamins and supplements;
4. Nutritional supplements; or
5. Medical supplies;

~~[(s)] [(r)] [(s)] Groceries, meals, or dining out;~~

~~[(t)] [(s)] [(t)] Fees and expenses for anyone other than the recipient and one (1) attendant; or~~

~~[(u)] [(t)] [(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-

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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 paragraphs (a) through (d) of this subsection ~~[(1)(a-d)]~~ and subsection (2)(a) and (b) ~~[(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

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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 Vulnerable Adult Maltreatment/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; and.]

(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 Vulnerable Adult Maltreatment /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 shall not work more than forty (40) hours in a calendar week (Sunday through Saturday). [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 1:061.1[-] ~~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; and

(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

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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 of 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 a~~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]~~;

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- (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>.

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CABINET FOR HEALTH AND FAMILY SERVICES
Office of the Secretary
(As Amended at ARRS, July 9, 2024)

915 KAR 1:001. Definitions for 915 KAR Chapter 1.

RELATES TO: KRS Chapter 218B

STATUTORY AUTHORITY: KRS 218B.140

NECESSITY, FUNCTION, AND CONFORMITY: KRS 218B.140 requires the Cabinet for Health and Family Services to promulgate administrative regulations to administer the medicinal cannabis program in the Commonwealth. This administrative regulation establishes definitions of terms used by the cabinet in administrative regulations pertaining to cannabis businesses and the medicinal cannabis program.

Section 1. Definitions.

- (1) "Accreditation body" means an impartial non-profit organization that operates in conformance with the International Organization for Standardization (ISO) and International Electrotechnical Commission (IEC) standard 17011 and is a signatory to the International Laboratory Accreditation Cooperation (ILAC) Mutual Recognition Arrangement (MRA) for Testing.
- (2) "Advertising" means the publication, dissemination, solicitation, or circulation, for a fee, that is visual, oral, written, or electronic to induce directly or indirectly an individual to patronize a cannabis business or to purchase medicinal cannabis.
- (3) "Advertising device" means any billboard, sign, notice, poster, display, or other device, including the structure erected or used in connection with the display or device and all lighting or other attachments used in connection with the display or device, that is:
- (a) Operated or owned by a person or entity who is earning compensation directly or indirectly from a third party or parties for the placement of a message on the device; and
- (b) Intended to attract the attention of operators of motor vehicles on the highways.
- (4) "**Agent**" means a person who acts on behalf of another person or group.
- (5) "Applicant" means a person or entity, including any parent entity, who applies for a cannabis business license to operate as a cultivator, processor, producer, dispensary, or safety compliance facility in the Commonwealth.
- (6)(5) "Appropriate signs" means exterior signage that accurately reflects a cannabis business's legal name, business name, "doing business as" name, or trade name and contact information on record with the cabinet.
- (7)(6) "Cabinet" means the Cabinet for Health and Family Services.
- (8)(7) "Cannabis business" is defined by KRS 218B.010(3).
- (9)(8) "Cannabis business activities" means growing, cultivating, processing, producing, packaging, labeling, transporting, dispensing, or testing medicinal cannabis.
- (10)(9) "Cannabis business agent" is defined by KRS 218B.010(4).
- (11)(10) "Cannabis business category" means one (1) of the following:- Tier I cultivator, Tier II cultivator, Tier III cultivator, Tier

IV cultivator, processor, producer, dispensary, or safety compliance facility.

(12)(41) "Canopy" means the total surface area within a cultivation area that is dedicated to live plant production.

(13)(42) "Cardholder" is defined by KRS 218B.010(5).

(14)(43) "Certificate of accreditation" means a document issued by an accreditation body evidencing that a safety compliance facility is in compliance with International Organization for Standardization Standard ISO and IEC 17025 and other requirements relevant to the operation of laboratories conducting tests on medicinal cannabis and other items used in the growing, processing, or dispensing of medicinal cannabis.

(15)(44) "Certificate of analysis" means a document that confirms that the test performed by a safety compliance facility on a harvest batch or production batch meets the testing requirements set forth by the cabinet.

(16)(45) "Chain of custody" means the process used by employees or agents of a cannabis business or authorized agents of the cabinet to record the possession and transfer of medicinal cannabis samples or test samples from the time the samples are collected until testing is completed and the samples are destroyed.

(17) "**Controlled incineration**" means the controlled burning of medicinal cannabis in an enclosed, secured limited access area capable of capturing and neutralizing any exhaust, fumes, or fugitive odors and is capable of protecting the operator and surrounding individuals from intoxication.

(18)(46) "Cultivation activities" means the activities involved with growing, cultivating, and selling medicinal cannabis, including planting, raising, harvesting, trimming, testing, packaging, labeling, transferring, transporting, and storing medicinal cannabis.

(19)(47) "Cultivator" is defined by KRS 218B.010(6).

(20)(48) "Daycare center" means "child-care center" as defined by KRS 199.894(3), "**family child-care home**" as defined by KRS 199.894(5), and registered childcare providers in the Child Care Assistance Program as regulated by 922 KAR 2:180.

(21)(49) "Designated caregiver" is defined by KRS 218B.010(8).

(22)(20) "Dispensary" is defined by KRS 218B.010(9).

(23)(24) "Disqualifying felony offense" is defined by KRS 218B.010(11).

(24)(22) "Enclosed, locked facility" is defined by KRS 218B.010(12).

(25)(23) "Food grade" means a non-toxic material that is safe for direct contact with food.

(26)(24) "Harvest batch" means a group of packages created from harvested medicinal cannabis plants of the same strain which were harvested at the same time. Packages of raw plant material are created from a harvest batch.

(27)(25) "Licensee" means the recipient of a license from the cabinet authorizing a cannabis business to operate in Kentucky for the term of the license.

(28)(26) "Limited access area" means:

(a) An area on a cultivator or producer's site or within its facility where seedlings or medicinal cannabis plants are growing; seedlings, medicinal cannabis plants, or medicinal cannabis are being loaded into or out of transport vehicles; medicinal cannabis is being packaged for sale or stored; medicinal cannabis waste is processed, stored, or destroyed; and security alarm and surveillance system devices are stored or maintained;

(b) An area on a processor or producer's site or within its facility where medicinal cannabis is being processed; medicinal cannabis is being loaded into or out of transport vehicles; medicinal cannabis is being packaged for sale or stored; medicinal cannabis waste is processed, stored, or destroyed; and security alarm and surveillance system devices are stored or maintained;

(c) An area on a safety compliance facility's site or within its facility where medicinal cannabis is being loaded into or out of transport vehicles, stored, tested, or destroyed and where security alarm and surveillance system devices are stored or maintained; or

(d) An area on a dispensary's site or within its building where medicinal cannabis is being loaded into or out of transport vehicles, stored, or destroyed and where security alarm and surveillance system devices are stored or maintained.

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~~(29)~~~~(27)~~ "Local government" means a city, county, urban-county government, consolidated local government, charter county government, or unified local government.

~~(30)~~~~(28)~~ "Medicinal cannabis" is defined by KRS 218B.010(15).

~~(31)~~~~(29)~~ "Medicinal cannabis accessories" is defined by KRS 218B.~~(#)~~.010(16).

~~(32)~~~~(30)~~ "Medicinal cannabis practitioner" is defined by KRS 218B.010(17).

~~(33)~~~~(31)~~ "Medicinal cannabis product" is defined by KRS 218B.010(18).

~~(34)~~~~(32)~~ "Medicinal cannabis waste" means:

(a) Solid, liquid, semi-solid, or contained gaseous materials that are generated by a cultivator, processor, producer, or safety compliance facility;

(b) Unused, surplus, returned, recalled, contaminated, or expired medicinal cannabis;

(c) Medicinal cannabis plant material that is not used in the growing, harvesting, processing, or testing of medicinal cannabis, including flowers, stems, trim, leaves, seeds, dead medicinal cannabis plants, dead seedlings, unused medicinal cannabis plant parts, unused seedling parts, or roots;

(d) Medicinal cannabis that exceeds any maximum allowable testing limit or fails to meet any other standards or requirements set forth in 915 KAR 001:110;

(e) Spent hydroponic nutrient solution;

(f) Containers used for:

1. Growing seedlings or medicinal cannabis plants or for use in the growing of medicinal cannabis; and

2. Processing of medicinal cannabis.

(g) Used or unused fertilizers and pesticides;

(h) Used or unused solvents, chemicals, or excipients;

(i) Samples that have been tested;

(j) Excess samples that will not be tested; and

(k) Wastewater.

~~(35)~~~~(33)~~ "Minor" is defined by KRS 218B.010(19).

~~(36)~~~~(34)~~ "Pesticide" means:

(a) Any substance or mixture of substances intended to prevent, destroy, control, repel, attract, or mitigate any pest;

(b) Any substance or mixture of substances intended to be used as a plant regulator, defoliant, or desiccant;

(c) Any herbicide used to manipulate or control undesirable vegetation;

(d) Any fungicide used to kill or prevent the growth of fungi and their spores; and

(e) Any substance or mixture of substances intended to be used as a spray adjuvant, once they have been mixed with an EPA-registered product.

(37) "Principal officer" means a person who has ultimate responsibility for implementing the decisions of the cannabis business's governing body, or for supervising the management, administration, or operation of the cannabis business.

~~(38)~~~~(35)~~ "Processing activities" means the activities involved with processing raw plant material and medicinal cannabis into medicinal cannabis products, including acquiring, purchasing, possessing, processing, preparing, manufacturing, manipulating, blending, packaging, labeling, transferring, transporting, supplying, or selling medicinal cannabis or medicinal cannabis products to other cannabis businesses in the Commonwealth.

~~(39)~~~~(36)~~ "Processor" is defined by KRS 218B.010(21).

~~(40)~~~~(37)~~ "Producer" is defined by KRS 218B.010(23).

~~(41)~~~~(38)~~ "Product example" means a limited amount of medicinal cannabis or medicinal cannabis product that has been designed by a dispensary for display on its premises for the sole purpose of product education for cardholders.

~~(42)~~~~(39)~~ "Production batch" means a group of packages created from a production run of medicinal cannabis and indicates the medicinal cannabis in the packages has changed forms chemically or physically, which severs previous test results from those packages and requires new testing to be completed.

~~(43)~~~~(40)~~ "Qualifying medical condition" is defined by KRS 218B.010(26).

~~(44)~~~~(41)~~ "Raw plant material" is defined by KRS 218B.010(27).

~~(45)~~~~(42)~~ "Registered qualified patient" is defined by KRS 218B.010(28).

~~(46)~~~~(43)~~ "Registry identification card" is defined by KRS 218B.010(29).

~~(47)~~~~(44)~~ "Safety compliance facility" is defined by KRS 218B.010(30).

~~(48)~~~~(45)~~ "Sample" means medicinal cannabis randomly selected from a harvest batch or production batch and collected by an employee or agent of a cannabis business or an authorized agent of the cabinet for testing by a safety compliance facility. "Sample" includes both a primary sample and a reserve sample.

~~(49)~~~~(46)~~ "Sampler" means an employee or agent of a cultivator, processor, producer, safety compliance facility, or dispensary that is authorized by his or her employer to collect samples or test samples in accordance with the contracted safety compliance facility's standard operating procedures and 915 KAR 1:060.

(50) "School" means a public elementary or secondary school of the state and non-public schools certified by the Kentucky Department of Education.

~~(51)~~~~(47)~~ "Seedling" is defined by KRS 218B.010(32).

~~(52)~~~~(48)~~ "Serious violation" is defined by KRS 218B.010(33).

~~(53)~~~~(49)~~ "Smoking" is defined by KRS 218B.010(34).

~~(54)~~~~(50)~~ "Test sample" means an amount of medicinal cannabis or medicinal cannabis products, or amount of soil, growing medium, water, or solvents used to grow or process medicinal cannabis, dust, or other particles obtained from the swab of a counter or equipment used in the growing or processing of medicinal cannabis, or other item used in the growing or processing of medicinal cannabis in a facility taken by an employee or agent of a cannabis business or an authorized agent of the cabinet and provided to a safety compliance facility for testing.

~~(55)~~~~(51)~~ "Transport vehicle" means a vehicle that is used to transport seeds, seedlings, medicinal cannabis plants, medicinal cannabis, and medicinal cannabis products between cannabis businesses or between a dispensary and registered qualified patients or designated caregivers.

~~(56)~~~~(52)~~ "Visiting qualified patient" is defined by KRS 218B.010(38).

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**CABINET FOR HEALTH AND FAMILY SERVICES
Office of the Secretary
(As Amended at ARRS, July 9, 2024)**

915 KAR 1:030. Cultivator.

RELATES TO: KRS Chapter 218B

STATUTORY AUTHORITY: KRS 218B.140

NECESSITY, FUNCTION, AND CONFORMITY: KRS 218B.140 requires the Cabinet for Health and Family Services to promulgate administrative regulations establishing requirements and procedures for medicinal cannabis cultivator operations in the Commonwealth. This administrative regulation establishes those requirements and procedures.

Section 1. General Requirements.

(1) ~~A~~~~No~~ person or entity shall not engage in the business of planting, growing, cultivating, raising, harvesting, trimming, storing, testing, packaging, labeling, transferring, transporting, selling, or offering to sell medicinal cannabis seeds, seedlings, **tissue cultures, clones not taller than eight (8) inches**, medicinal cannabis plants, medicinal cannabis, or medicinal cannabis products to a cannabis business without first being issued a license by the cabinet. A cultivator shall not sell or transfer, or allow the sale or transfer, of medicinal cannabis seeds, seedlings, **tissue cultures, clones not taller than eight (8) inches**, medicinal cannabis plants, medicinal cannabis, or medicinal cannabis products to any person or entity in the Commonwealth who does not

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hold a cannabis business license issued by the cabinet.

(2) A cultivator shall:

(a) Conduct cultivation activities in an enclosed, locked facility in accordance with KRS 218B.095(5);

(b) Conduct a criminal background check into the criminal history of each person seeking to become a principal officer, board member, agent, volunteer, or employee before that person begins work and shall retain records of these background checks for five (5) years and provide same to the cabinet during subsequent inspections or upon request; and

(c) Comply with all applicable requirements of KRS Chapter 218B, specifically KRS 218B.095 and 218B.105, and 915 KAR Chapter 1.

(3) A cultivator shall not:

(a) Employ, take on as a volunteer, or have as a board member, principal officer, or agent any person who was convicted of a disqualifying felony offense or is younger than twenty-one (21) years of age; or

(b) Sell or transfer, or allow the sale or transfer, of medicinal cannabis seeds, seedlings, medicinal cannabis plants, medicinal cannabis, or medicinal cannabis products to any person or entity in the Commonwealth who does not hold a cannabis business license issued by the cabinet.

(4) The qualifications that a cultivator shall meet to receive a license are continuing qualifications to maintain the license throughout the licensure period.

Section 2. Plans of Operation.

(1) Prior to its first day of cultivation activities in the Commonwealth, a cultivator shall establish standard operating procedures for ~~the following~~:

(a) Employment policies and procedures;

(b) Security, including:

1. Staff identification measures, including use of employee identification badges;

2. Monitoring of attendance of staff and visitors;

3. Alarm systems;

4. Video surveillance;

5. Monitoring and tracking inventory, including use of the Commonwealth's electronic monitoring system and seed to sale tracking system established pursuant to KRS 218B.140;

6. Personnel security;

7. Transportation of medicinal cannabis and how to properly secure medicinal cannabis in the event of a traffic collision or transport vehicle malfunction;

8. Cash management and anti-fraud procedures;

9. Measures to prevent loitering, which shall include signage; and

10. Storage of seeds, seedlings, tissue cultures, clones not taller than eight (8) inches, medicinal cannabis plants, medicinal cannabis, or medicinal cannabis products;

(c) The process for receiving, growing, cultivating, harvesting, handling, packaging, labeling, storing, transporting, and disposing of seeds, seedlings, tissue cultures, clones not taller than eight (8) inches, medicinal cannabis plants, medicinal cannabis, or medicinal cannabis products and a process for handling, tracking, transporting, storing, and disposing of medicinal cannabis waste;

(d) Workplace safety, including conducting safety checks;

(e) Contamination;

(f) Maintenance, cleaning, and sanitation of equipment used to grow and cultivate medicinal cannabis;

(g) Maintenance and sanitation of the cultivator's facility;

(h) Application of pesticides, fertilizers, and herbicides to medicinal cannabis at any point during the growing, cultivating, and harvesting processes;

(i) Proper handling and storage of any chemical or substance used in growing medicinal cannabis;

(j) Logging the use of all pesticides and chemical applications applied to medicinal cannabis and medicinal cannabis products;

(k) Quality control, including strict regulation of the amount of delta-9 tetrahydrocannabinol content in each medicinal cannabis harvest batch, proper labeling, and minimization of medicinal cannabis contamination;

(l) Recordkeeping and inventory control;

(m) Investigation of complaints and potential adverse events received from other cannabis businesses, cardholders, or medicinal cannabis practitioners regarding the cultivator's operations;

(n) Preventing unlawful diversion of medicinal cannabis;

(o) A recall plan; and

(p) Any other standard operating procedures required for all cannabis businesses in KRS Chapter 218B and 915 KAR Chapter 1. ^[7]

(2) A cultivator shall make its standard operation procedures available to the cabinet upon request and during any inspection of the cultivator's site and facility.

Section 3. Cultivator Facilities.

(1) A cultivator shall only plant, grow, cultivate, and harvest medicinal cannabis in an enclosed, locked facility on the specific site licensed by the cabinet and identified on its license issued by the cabinet. A cultivator shall not grow medicinal cannabis directly in the ground.

(2) All cultivation activities, excluding disposal, destruction, or transport of medicinal cannabis, shall take place within a building or secure structure that ~~meets all applicable state and local building codes and specifications in addition to the following~~:

(a) Has a foundation, slab, or equivalent base with a complete roof enclosure supported by connecting walls, constructed of solid materials extending from the ground to the roof;

(b) Is secure against unauthorized entry;

(c) Has commercial grade door locks on all external doors that are locked at all times;

(d) Restricts access to only authorized personnel to limited access areas identified with signage and daily records of entry and exit;

(e) Contains adequate plumbing to carry sufficient quantities of water to locations throughout the facility and convey any sewage and waste from the facility without cross contamination of potable water and waste;

(f) Stores toxic cleaning compounds, sanitizing agents, pesticides, fertilizers, and herbicides in a manner that is in accordance with applicable local, state, and federal laws and regulations;

(g) Maintains proper ventilation;

(h) Maintains pest control;

(i) Maintains adequate indoor and exterior lighting to facilitate video surveillance at all times; ~~and~~

(j) Maintains adequate on-site parking for employees, agents, visitors, transporters of medicinal cannabis, or cabinet staff; and
(k) Meets all applicable state and local building codes and specifications.

(3) A cultivator shall clearly mark all limited access areas on its premises with proper signage. All areas of ingress and egress to a limited access area shall be clearly identified by the posting of a sign which shall be not less than twelve (12) inches wide and twelve (12) inches long, composed of letters not less than one-half (1/2) inch in height, which shall state: "Do Not Enter. Limited Access Area. Access Limited to Authorized Personnel and Escorted Visitors."

(4) A cultivator shall have a secure area for the loading and unloading of medicinal cannabis seeds, seedlings, medicinal cannabis plants, and medicinal cannabis into and from a transport vehicle.

(5) If a cultivator intends to conduct medicinal cannabis cultivation and hemp cultivation at the same licensed location, the cultivator shall, prior to its first day of medicinal cannabis cultivation activities, provide the cabinet with:

(a) Proof that the cultivator is permitted to operate a hemp business by the appropriate permitting authority and is in good standing;

(b) A written plan for keeping strictly separated all medicinal cannabis cultivation activities from hemp cultivation activities; and

(c) A site map or blueprint showing which portions of the facility are designated for medicinal cannabis cultivation activities and which portions are designated for hemp cultivation activities.

(6) Pursuant to KRS 218B.100(1), a cannabis business that co-locates with a hemp business shall be subject to reasonable inspection by the cabinet and the cabinet may inspect the entire facility as part of an inspection.

Section 4. Inventory.

(1) A cultivator shall, within twenty-four (24) hours of receipt, record in the Commonwealth's designated electronic monitoring system and seed to sale tracking system each medicinal cannabis seed, seedling, **tissue culture, clone,** or plant that it acquires.

(2) A cultivator shall only grow medicinal cannabis plants from seeds, **tissue cultures, clones not taller than eight (8) inches,** and seedlings located physically in its facility.

(3) Canopy. A cultivator shall not exceed the indoor growth area specified in KRS 218B.105(3) for its respective cultivator tier. The surface area of the plant canopy shall be calculated in square feet. Measurement shall include all of the area within the boundaries where the cultivation of medicinal cannabis plants occurs. If a tiered or shelving system is used in the cultivation area, the surface of each tier or shelf shall be included in the calculation. Calculation of the area of the plant canopy shall not include square footage within a cultivator's enclosed, locked facility used for the storage of **seeds, seedlings, tissue cultures, or clones not taller than eight (8) inches,** supplies, pesticides, fertilizers, or other products as well as square footage used for quarantine, office space, or other non-cultivation activities.

Section 5. Employees Records and Identification.

(1) A cultivator shall keep an individual employment record for all employees, including:

- (a) Full legal name;
- (b) Detailed job description;
- (c) Documentation of completed criminal background check;
- (d) Record of all training received or acquired by the employee;
- (e) Dates of employment;
- (f) Records of days and hours worked; and
- (g) Any disciplinary actions taken by the cultivator.

(2) Employment records shall be maintained, either electronically or in hard copy, for at least five (5) years after the employee's last date of employment with the cultivator.

(3) A cultivator shall create an identification badge for each employee, agent, or volunteer. The badge shall be conspicuously worn by employees, agents, or volunteers at all times that they are on the licensed premises or during transport of medicinal cannabis. The badge shall contain:

- (a) The individual's name, photo, ~~[and]~~-employee identification number, **and the license number of the cultivator;**
- (b) A phone number and email address for the cultivator; and
- (c) A phone number and email address for the Kentucky Medical Cannabis Program.

Section 6. Visitors to Cultivator Facilities.

(1) A cultivator site and facility shall not be open to the general public.

(2) **When admitting a visitor to its site and facility,** a cultivator shall ~~complete the following~~ **[steps]** ~~when admitting a visitor to its site and facility~~:

- (a) Require the visitor to sign a visitor log upon entering and leaving the facility;
- (b) Check the visitor's government-issued identification to verify **the visitor's age and** that the name on the identification provided matches the name in the visitor log;
- (c) Issue a visitor identification badge with the visitor's name and company, if applicable, and a badge number;
- (d) Escort the visitor while the visitor remains on the site or in the facility ~~keeping a record of the areas of the site and the facility visited~~; and
- (e) Ensure that the visitor does not touch any medicinal cannabis plant or medicinal cannabis located in a limited access area.

(3) **A person** ~~No one~~ under the age of eighteen (18) shall **not** be permitted to enter a cultivator's site or facility. A person who is at least eighteen (18) years of age may enter and remain on the cultivator's premises if that person is present to perform contract

work, including electrical, plumbing, or security maintenance, ~~which~~ **that** does not involve handling medicinal cannabis, or is a government employee and is at the cannabis business in the course of his or her official duties.

(4) A cultivator shall post a sign in a conspicuous location at each entrance of its site and facility that states "THESE PREMISES ARE UNDER CONSTANT VIDEO SURVEILLANCE. NO ONE UNDER THE AGE OF 18 IS PERMITTED TO ENTER." **The letters on the signs shall be at minimum one-half (1/2) inch in height.**

(5) The cultivator shall maintain the visitor log required under this section for five (5) years and make the visitor log available to the cabinet, law enforcement, and other federal or state government officials upon request to perform the government officials' functions and duties. The visitor log shall include the date, the full name of each visitor, the visitor identification badge number, the time of arrival, the time of departure, and the purpose of the visit, **including the areas of the site and the facility visited.**

(6) This section **shall does** not limit the right of the cabinet or its authorized agents, or other federal, state, or local government officials from entering any area of a cultivator's site and facility if necessary to perform the governmental officials' functions and duties.

(7) A principal officer, board member, agent, financial backer, employee, or volunteer of a cultivator shall not receive any type of consideration or compensation for allowing a visitor to enter a limited access area.

Section 7. Security and Surveillance.

(1) A cultivator shall have security and surveillance systems, utilizing commercial-grade equipment, to prevent unauthorized entry and to prevent and detect an adverse loss. The security and surveillance systems shall include ~~the following~~:

(a) A professionally monitored security alarm system that includes:

1. Coverage of all facility entrances and exits; rooms with exterior windows, exterior walls, roof hatches, or skylights; storage rooms, including those that contain medicinal cannabis and safes; and the perimeter of the facility;

2. An audible security alarm system signal, known as a panic alarm, generated by the manual activation of a device intended to signal a life-threatening or emergency situation requiring law enforcement response;

3. A silent alarm signal, known as a holdup alarm, generated by the manual activation of a device intended to signal a robbery in progress;

4. A failure notification system that provides an audible, text, or visual notification of any failure in the systems. The failure notification system shall provide by telephone, e-mail, or text message an alert to a designated security person within the facility within five (5) minutes after the failure;

5. Smoke and fire alarms;

6. Auxiliary power sufficient to maintain operation for at least twenty-four (24) hours following a power outage;

7. The ability to ensure all access doors are not solely controlled by an electronic access panel to prevent locks from becoming released during a power outage; and

8. Motion detectors for exterior lighting; ~~and.~~

(b) A professionally monitored security surveillance system that is operational twenty-four (24) hours a day, seven (7) days a week, and records all activity in images capable of clearly revealing facial detail. The security and surveillance system shall include:

1. Fixed camera placement that allows for a clear image of all individuals and activities in and around ~~the following~~:

a. All limited access areas;

b. A room or area containing a security alarm and surveillance system storage device or equipment;

c. Entrances to and exits from the facility. Entrances and exits shall be recorded from both indoor and outdoor vantage points;

d. Rooms with exterior windows, exterior walls, roof hatches, or skylights and storage rooms, including those that may contain medicinal cannabis and safes and excluding restrooms; and

e. Twenty (20) feet from the exterior of the perimeter of the facility. ~~]~~

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2. Auxiliary power sufficient to maintain operation for at least twenty-four (24) hours following a power outage;

3. The ability to operate under the normal lighting conditions of each area under surveillance;

4. The ability to immediately produce a clear, color, still photograph in a digital format that is easily accessible;

5. The ability to clearly and accurately display the date and time. The date and time shall be synchronized and set correctly and shall not significantly obscure the picture;

6. The ability to record all images captured by each surveillance camera in a format that shall be easily accessed for a minimum of ~~sixty (60)~~thirty (30) days, unless otherwise required for investigative or litigation purposes. The recordings shall be kept:

a. At the cultivator's facility:

(i) In a locked cabinet, closet, or other secure place to protect it from tampering or theft; and

(ii) In a limited access area or other room to which access is limited to authorized individuals; or

b. At a secure location other than the location of the cultivator's facility if approved by the cabinet; and;

7. The ability to easily export video recordings and still photographs requested by the cabinet, law enforcement, and other federal or state government officials and provide same in a standard file format that is easily accessible.

(2) Regarding inspection, servicing, alteration of, and any upgrade to, the security alarm and surveillance systems:

(a) The systems shall be inspected and all devices tested once every year by a qualified alarm system vendor and a qualified surveillance system vendor;

(b) A cultivator shall conduct maintenance inspections once every month to ensure that any repairs, alterations, or upgrades to the security alarm and surveillance systems are made for the proper operation of the systems. No more than thirty (30) calendar days shall lapse between the inspections required under this paragraph provision;

(c) A cultivator shall retain at the facility, for at least five (5) years, records of all inspections, servicing, alterations, and upgrades performed on the security alarm and surveillance systems and shall make the records available to the cabinet and its authorized agents within two (2) business days following a request; and

(d) If there is a mechanical malfunction of the security alarm or surveillance system that a cultivator anticipates shall exceed an eight (8) hour period, the cultivator shall notify the cabinet immediately by electronic mail to kymedcanreporting@ky.gov and, with cabinet approval, provide alternative security measures that may include closure of the facility.

(3) Regarding records retention, a cultivator shall:

(a) Have a secure electronic back-up system for all electronic records;

(b) Within three (3) business days following a request for records under this paragraph, provide up to four (4) screen captures of an unaltered copy of a video surveillance recording to the cabinet or its authorized agents, law enforcement, or other federal, state, or local government officials if necessary to perform the governmental officials' functions and duties; and

(c) If if a cultivator has been notified in writing by the cabinet or its authorized agents, law enforcement, or other federal, state, or local government officials of a pending criminal or administrative investigation for which a recording may contain relevant information, retain an unaltered copy of the recording for two (2) years or until the investigation or proceeding is closed or the entity conducting the investigation or proceeding notifies the cultivator that it is not necessary to retain the recording, whichever is later.

(4) During all non-working hours, all entrances to and exits from the cultivator's facility shall be securely locked.

(5) A cultivator shall install lighting to ensure proper surveillance inside and outside of the facility.

(6) A cultivator shall limit access to a room containing the equipment operating the security alarm and surveillance monitoring systems to:

(a) Persons who are essential to maintaining security and surveillance operations;

(b) Federal, state, and local law enforcement;

(c) Security alarm and surveillance system service employees;

(d) The cabinet or its authorized agents; and

(e) Other persons with the prior written approval of the cabinet.

(7) A cultivator shall make available to the cabinet or its authorized agents, upon request, a current list of authorized employees and service employees or contractors who have access to areas containing the equipment operating the security alarm and surveillance monitoring systems and place a copy of this list on or next to the doors that access those areas. and

(8) A cultivator shall keep rooms housing the equipment operating the security alarm and surveillance monitoring systems locked at all times and shall not use these rooms for any other purpose or function.

Section 8. Requirements for Cultivating and Growing Medicinal Cannabis.

(1) A cultivator who uses a pesticide on medicinal cannabis shall be certified to apply pesticides by the Kentucky Department of Agriculture pursuant to KRS Chapter 217B. and;

(2)(a) A cultivator who is certified to apply pesticides by the Kentucky Department of Agriculture shall not use, or be eligible to use, a Category 10 license to apply pesticides to medicinal cannabis in violation of the product label. and;

(3)(b) A cultivator shall not use any pesticide in violation of the product label. and;

(4)(e) A cultivator who uses a pesticide on growth medium used for multiple medicinal cannabis cultivation cycles shall comply with the longest of any planting restriction interval on the product label prior to reusing the growth medium. and;

(5)(d) The cabinet may perform pesticide testing on a random basis or if its authorized agents have reason to believe that a pesticide may have been applied to medicinal cannabis in violation of the product label. and

(6)(e) Medicinal cannabis seeds, seedlings, tissue cultures, clones, plants, and materials bearing pesticide residue in violation of the label or testing standards established by the cabinet shall be subject to forfeiture or destruction without compensation.

(7)(2) The cabinet shall publish a list of approved pesticides and any other chemical applications for use in growing and cultivating medicinal cannabis on the Web site for the Kentucky Medical Cannabis Program, <https://kymedcan.ky.gov>. This list shall be reviewed and updated annually by the cabinet.

(8)(3) A cultivator shall maintain a log of the use of all pesticides and any other chemical applications applied to medicinal cannabis and medicinal cannabis products for a minimum of five (5) years, including:

(a) The date of application;

(b) The name of the individual making the application;

(c) The product that was applied;

(d) The section, including the square footage, that received the application;

(e) The amount of product that was applied; and;

(f) A copy of the label of the product that was applied.

(9)(4) A cultivator shall:

(a) Use appropriate nutrient practices;

(b) Use a fertilizer or hydroponic solution of a type, formulation, and at a rate to support healthy growth of plants; and

(c) Maintain a log of the type and amounts of fertilizer and any growth additives used.

(10)(5) A cultivator shall perform visual inspections of growing medicinal cannabis plants and harvested medicinal cannabis plant material to ensure there are no visible insects, mold, mildew, pests, rot, grey or black plant material, or inorganic material, including plastic, glass, and metal shavings.

(11)(6) A cultivator shall have a separate and secure area for temporary storage of medicinal cannabis that is awaiting disposal by the cultivator.

(12)(7) A cultivator shall establish procedures install a system to monitor, record, and regulate:

(a) Temperature;

(b) Humidity;

(c) Ventilation;

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- (d) Lighting; and
- (e) Water supply.

Section 9. Electronic Monitoring System and Seed to Sale Tracking System.

(1) A cultivator shall use the electronic monitoring system and seed to sale tracking system prescribed by the cabinet containing the requirements in KRS Chapter 218B, specifically KRS 218B.140, and in accordance with written instructions provided by the cabinet. **A cultivator shall ensure its inventory recorded in the electronic monitoring system and seed to sale tracking system is accurate in real-time.**

(2) A cultivator shall establish inventory controls and procedures to conduct inventory reviews at its facility, **including that a cultivator shall:-**

(a) [~~A cultivator shall~~] Prepare ~~monthly~~[~~quarterly~~] physical inventory reports that ~~include~~[~~includes~~] any necessary adjustments and the reason(s) for an adjustment and that demonstrates the physical inventory reconciles with the inventory recorded in the Commonwealth's designated electronic monitoring system and seed to sale tracking system, including any medicinal cannabis that has been or is in the process of being destroyed. **No more than thirty (30) calendar days shall lapse between the preparation of a report required under this paragraph provision**; and

(b) ~~Create and maintain~~ a written or electronic record [~~shall be created and maintained~~] of each inventory conducted under this section that includes the date of the inventory, a summary of the inventory findings, and the employee identification numbers and titles or positions of the individuals who conducted the inventory.

Section 10. Equipment, operation, and maintenance.

(1) A cultivator shall have a written process [~~in place~~] to maintain the sanitation and operation of equipment that comes into contact with medicinal cannabis to prevent contamination. The cultivator shall provide a copy of the written process to the cabinet upon request.

(2) As part of the written process required under this section, a cultivator shall:

(a) Routinely calibrate, check, and inspect automatic, mechanical, or electronic equipment as well as any scales, balances, or other measurement devices used in the cultivator's operations to ensure accuracy; and

(b) Maintain an accurate log recording the:

- 1. Maintenance of equipment;
- 2. Cleaning of equipment; and
- 3. Calibration of equipment.

Section 11. Sanitation and Safety in a Cultivator Facility.

(1) A cultivator shall maintain its site and facility in a sanitary condition to limit the potential for contamination of the medicinal cannabis grown in the facility, including ~~that~~

(a) Equipment and surfaces, including floors, counters, walls, and ceilings, shall be cleaned and sanitized as frequently as necessary to protect against contamination[.] using a sanitizing agent registered by the United States Environmental Protection Agency[.] in accordance with the instructions printed on the label. All equipment and utensils used by a cultivator shall be capable of being adequately cleaned;

(b) Trash shall be properly and routinely removed to prevent pest infestation;

(c) Floors, walls, and ceilings shall be kept in good repair;

(d) Equipment, counters, and surfaces used for packaging and labeling of medicinal cannabis shall be food grade quality;

(e) Adequate protection against pests shall be provided through the use of integrated pest management practices and techniques that identify and manage plant pathogens and pest problems; and

(f) Toxic cleaning compounds, sanitizing agents, pesticides, herbicides, and other chemicals shall be labeled and stored in a manner that prevents contamination of seeds, seedlings, **tissue cultures, clones,** medicinal cannabis plants, and medicinal cannabis.

(2) All employees and volunteers shall conform to sanitary practices while on duty, **which includes**[~~including~~]:

- (a) Maintaining adequate personal cleanliness;

(b) Washing hands thoroughly in an adequate hand-washing area before starting work and at any other time when hands may have become soiled or contaminated;

(c) Wearing proper clothing, including gloves, hair nets, headbands, caps, beard covers, or other effective hair restraints where appropriate;

(d) Removing all unsecured jewelry and other objects that might fall into medicinal cannabis, equipment, or containers, and removing hand jewelry that cannot be adequately sanitized during periods in which medicinal cannabis is manipulated by hand. If [~~such~~] hand jewelry cannot be removed, it ~~shall~~[~~may~~] be covered by material ~~that~~[~~which~~] can be maintained in an intact, clean, and sanitary condition and which effectively protects the medicinal cannabis from contamination by these objects;

(e) Storing clothing or other personal belongings in areas other than where medicinal cannabis is exposed or where equipment is cleaned;

(f) [~~Confining the following to areas other than where medicinal cannabis may be exposed or where equipment is cleaned~~]-Eating food, chewing gum, drinking beverages, or using ~~vaping or~~ tobacco **products be confined to areas other than where medicinal cannabis may be exposed or where equipment is cleaned**; and

(g) Taking any other necessary precautions to protect against contamination of medicinal cannabis with microorganisms or foreign substances including perspiration, hair, cosmetics, tobacco, chemicals, and medicines applied to the skin.

(3) A cultivator shall:

(a) Provide its employees, volunteers, and visitors with adequate and convenient hand-washing facilities furnished with running water at a temperature suitable for sanitizing hands. Effective nontoxic sanitizing cleansers and sanitary towel service or suitable drying devices shall also be provided;

(b) Provide its employees, volunteers, and visitors with adequate, readily accessible restrooms that are maintained in a sanitary condition and in good repair;

(c) Ensure that its facility is provided with a water supply sufficient for its operations, which shall be derived from a source that is a public water system, or a nonpublic system that is capable of providing a safe, potable, and adequate supply of water to meet the operational needs of the facility; and

(d) Comply with all other applicable federal, state, and local building code requirements and occupational safety and health requirements.

Section 12. Storage Requirements.

(1) A cultivator shall have separate locked limited access areas for storage of seeds, seedlings, **tissue cultures, clones,** medicinal cannabis plants, and medicinal cannabis that are expired, damaged, deteriorated, mislabeled, contaminated, recalled, or whose containers or packaging have been opened or breached until the seeds, seedlings, **tissue cultures, clones,** medicinal cannabis plants, and medicinal cannabis are destroyed or otherwise disposed of as required under Section 15 of this administrative regulation.

(2) A cultivator shall maintain all storage areas in a clean and orderly condition and free from infestation by insects, rodents, birds, and pests.

Section 13. Management and Disposal of Medicinal Cannabis Waste.

(1) A cultivator shall dispose of undesired, excess, unauthorized, obsolete, adulterated, misbranded, or deteriorated medicinal cannabis in [~~such~~]-a manner as to render the medicinal cannabis unusable. A cultivator shall record medicinal cannabis waste as required in the Commonwealth's designated electronic monitoring system and seed to sale tracking system.

(2) Medicinal cannabis that is rendered unusable shall be discarded into a [~~locked~~]-dumpster **with commercial grade locks** or other approved, locked container for removal from the facility by a waste removal company selected by the cultivator, **except that for ashes resulting from the controlled incineration of medicinal cannabis may be placed in an unlocked dumpster**[.] or [~~may be~~] composted in a secured area at the cultivation site for future use at the facility. Medicinal cannabis shall be rendered unusable by:

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- (a) Controlled incineration; or
- (b) Grinding and incorporating the medicinal cannabis with one (1) or more of the non-consumable, solid wastes listed below ~~sof,]]~~ ~~[such]~~ that the resulting mixture is majority non-cannabis waste:

- 1. Paper waste;
- 2. Cardboard waste;
- 3. Food waste;
- 4. Yard or garden waste;
- 5. Grease or other compostable oil waste; or
- 6. Soil or other used growth media.

(3) The disposal of medicinal cannabis shall be performed under video surveillance from the time the destruction begins to when it is placed in a locked dumpster or other approved, locked container and removed from the cultivator's site and facility.

(4) **A minimum of two (2) employees shall oversee**~~The employee overseeing~~ the disposal of medicinal cannabis **and the cultivator** shall maintain and make available a separate record of every disposal indicating:

- (a) The date and time of disposal;
- (b) The manner of disposal;
- (c) **Any**~~The~~ unique identification codes associated with the medicinal cannabis scheduled for destruction;
- (d) The reasoning for and description of the disposal;
- (e) The **names**~~name~~, employee identification **numbers**~~number~~, and **signatures**~~signature~~ of the **employees**~~employee~~ overseeing the disposal of the medicinal cannabis; and

(f) If the ~~medicinal cannabis waste for~~ disposal contains **medicinal cannabis**~~plant material~~ that was prepared for sale to a dispensary or processor, the harvest batch number, strain, volume, ~~and~~ **weight, and number of units if applicable** of the **medicinal cannabis**~~plant material~~ being disposed of.

(5) The disposal of other waste from the cultivator that does not include medicinal cannabis, including hazardous waste and liquid waste, shall be performed in a manner consistent with applicable federal, state, and local requirements.

Section 14. Requirements for Cultivators to Deliver Raw Plant Material to Dispensaries for Sale.

(1) A cultivator that delivers medicinal cannabis to licensed dispensaries for sale to cardholders shall comply with the requirements of KRS Chapter 218B and 915 KAR Chapter 1, including 915 KAR 1:080, 915 KAR 1:100, and 915 KAR 1:110.

(2) A cultivator that delivers medicinal cannabis to a licensed dispensary for sale to cardholders shall not:

- (a) Deliver, transfer, or sell raw plant material to a dispensary for more than fair market value;
- (b) Supply a dispensary with more than the amount of raw plant material reasonably required by a dispensary to maintain an inventory sufficient for normal retail operations; and
- (c) Deliver, transfer, or sell raw plant material to a dispensary with a delta-9 tetrahydrocannabinol content of more than thirty-five **(35)** percent~~[(35%)]~~.

(3) Any raw plant material to be sold as a medicinal cannabis product by a cultivator to a dispensary shall:

- (a) Be free of seeds and **extraneous** stems;
- (b) Be free of dirt, sand, debris, or other foreign matter; and
- (c) Not contain a level of pesticides, herbicides, poisons, toxins, mold, mildew, insects, bacteria, or any other chemical substance higher than the levels established in the standards for testing within 915 KAR 1:110.

(4) A cultivator shall prepare raw plant material for sale to dispensaries in a safe and sanitary manner, including **that**

- (a) Raw plant material shall be handled on food grade stainless steel benches or tables;
- (b) Proper sanitation shall be maintained;
- (c) Proper rodent, bird, and pest exclusion practices shall be employed; and
- (d) Prior to packaging, the raw plant material shall have passed all required safety compliance facility tests established in 915 KAR 1:110.
- (5) In addition to other packaging and labeling requirements

established in 915 KAR 1:100, all raw plant material packaged and sold by a cultivator in the Commonwealth shall be marked or labeled as "NOT INTENDED FOR CONSUMPTION BY SMOKING."

(6) Except for transfer of samples to a safety compliance facility for testing, no medicinal cannabis shall be sold or transferred to another cannabis business until all required testing is complete and the representative sample passed inspection. Cultivators shall not sell medicinal cannabis directly to cardholders.

Section 15. Complaints About or Recall of ~~Medical~~ Medicinal Cannabis Products.

(1) A cannabis business shall immediately notify the cabinet **by via** electronic mail to kymedcanreporting@ky.gov, as well as the cultivator from which it obtained any medicinal cannabis in question, upon becoming aware of any defects or quality issues with the medicinal cannabis or any complaint made to the cannabis business by another cannabis business, a cardholder, or medicinal cannabis practitioner who reports an adverse event from using medicinal cannabis purchased by the cannabis business from the cultivator. A cultivator shall investigate the report **and as follows**:

~~(a)~~ **A cultivator** shall immediately investigate a complaint to determine if a voluntary or mandatory recall of seeds, seedlings, medicinal cannabis plants, postharvest plant material, or medicinal cannabis is necessary or if any further action is required~~;~~

~~(a)~~ ~~(b)~~ If a cultivator determines that further action is not required, the cultivator shall notify the cabinet of its decision and, within twenty-four (24) hours, submit a written report to the cabinet stating its rationale for not taking further action. The cabinet shall review the written report and consult with the cultivator as needed. If the cabinet disagrees with the cultivator's decision, the cabinet shall take all necessary steps allowable under KRS Chapter 218B and 915 KAR Chapter 1 to ensure public health and safety, including ~~but not limited to~~ issuing a cease-and-desist order to pause the sale and distribution of the medicinal cannabis at issue until resolution of the matter~~;~~ **and**

~~(b)~~ ~~(e)~~ If a cultivator determines that further action is required, the cultivator shall initiate a voluntary or mandatory recall in accordance with the requirements of this section.

(2) Voluntary recalls. If a cultivator voluntarily initiates a recall, the cultivator shall recall seeds, seedlings, medicinal cannabis plants, postharvest plant material, or medicinal cannabis from the market at its discretion for reasons that **shall do** not pose a risk to public health and safety and shall notify the cabinet **by at the time the cultivator begins the recall via** electronic mail to kymedcanreporting@ky.gov **at the time the cultivator begins the recall**.

(3) Mandatory recalls. If a cultivator discovers that a condition relating to the seeds, seedlings, medicinal cannabis plants, postharvest plant material, or medicinal cannabis grown at its facility poses a risk to public health and safety, the cultivator shall:

(a) Immediately notify the cabinet by phone and electronic mail to kymedcanreporting@ky.gov; and

(b) Secure, isolate, and prevent the distribution of the seeds, seedlings, **tissue cultures, clones,** medicinal cannabis plants, postharvest plant material, or medicinal cannabis that may have been affected by the condition and remains in its possession. The cultivator shall not dispose of affected seeds, seedlings, **tissue cultures, clones,** medicinal cannabis plants, postharvest plant material, or medicinal cannabis prior to notifying the cabinet and coordinating the disposal with the cabinet.

(4) If a cultivator fails to cooperate with the cabinet in a recall, or fails to immediately notify the cabinet of a need for a recall under this section, the cabinet may seek a cease~~]~~ ~~and]~~ desist order and the cultivator may be subject to any other penalties or sanctions provided for in KRS Chapter 218B and 915 KAR Chapter 1:020.

(5) A cultivator's recall plan as required under this administrative regulation shall include:

(a) Designation of one **(1)** or more employees to serve as the recall coordinator(s). A recall coordinator shall be responsible for, among other duties, accepting the recalled seeds, seedlings, **tissue cultures, clones,** medicinal cannabis plants, postharvest plant material, or medicinal cannabis;

(b) Procedures for identifying and isolating the affected seeds,

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seedlings, tissue cultures, clones, medicinal cannabis plants, postharvest plant material, or medicinal cannabis to prevent or minimize its distribution to cardholders and other cannabis businesses;

(c) Procedures to retrieve and dispose of the affected seeds, seedlings, medicinal cannabis plants, postharvest plant material, or medicinal cannabis;

(d) A communications plan to notify those affected by the recall, including:

1. The manner in which the cultivator shall notify other cannabis businesses in possession of seeds, seedlings, tissue cultures, clones, medicinal cannabis plants, postharvest plant material, or medicinal cannabis subject to the recall; and

2. The use of press releases and other appropriate notifications to ensure that cardholders are notified of the recall if affected medicinal cannabis was dispensed to cardholders.

(e) Procedures for notifying the cabinet; and

(f) Procedures for entering information relating to the recall into the Commonwealth's designated electronic monitoring system and seed to sale tracking system.

(6) A cultivator shall follow the procedures outlined in its recall plan unless the cultivator obtains prior written approval of the cabinet[;] or the cabinet notifies the cultivator in writing to perform other procedures. A cultivator shall conduct recall procedures in a manner that maximizes the recall of affected seeds, seedlings, tissue cultures, clones, medicinal cannabis plants, postharvest plant material, and medicinal cannabis and minimizes risks to public health and safety.

(7) A cultivator shall coordinate the disposal of recalled seeds, seedlings, tissue cultures, clones, medicinal cannabis plants, postharvest plant material, and medicinal cannabis with the cabinet. The cabinet or its authorized agents may oversee the disposal to ensure that the recalled seeds, seedlings, tissue cultures, clones, medicinal cannabis plants, postharvest plant material, and medicinal cannabis are disposed of in a manner that shall not pose a risk to public health and safety.

(8) The cultivator shall enter information relevant to the recall into the Commonwealth's designated electronic monitoring system and seed to sale tracking system as part of the inventory, which shall[may] include[~~the following~~]:

(a) The total amount of recalled seeds, seedlings, tissue cultures, clones, medicinal cannabis plants, postharvest plant material, and medicinal cannabis, including types and harvest batches, if applicable;

(b) The total amount of recalled seeds, seedlings, tissue cultures, clones, medicinal cannabis plants, postharvest plant material, or medicinal cannabis returned to the cultivator, including types, forms, and harvest batches, if applicable;

(c) The names of the recall coordinators;

(d) From whom the recalled seeds, seedlings, tissue cultures, clones, medicinal cannabis plants, postharvest plant material, or medicinal cannabis were received;

(e) The means of transport of the recalled seeds, seedlings, tissue cultures, clones, medicinal cannabis plants, postharvest plant material, medicinal cannabis, or medicinal cannabis products;

(f) The reason for the recall;

(g) The number of recalled samples, types, forms, and harvest batches, if applicable, sent to safety compliance facilities, the names and addresses of the safety compliance facilities, the dates of testing, and the results by sample; and

(h) The manner of disposal of the recalled seeds, seedlings, tissue cultures, clones, medicinal cannabis plants, postharvest plant material, and medicinal cannabis, including:

1. The names[name] of the individuals[individual] overseeing the disposal of the recalled seeds, seedlings, tissue cultures, clones, medicinal cannabis plants, postharvest plant material, or medicinal cannabis;

2. The name of the disposal company, if applicable;

3. The method of disposal;

4. The date of disposal; and

5. The amount disposed of by types, forms, and harvest batches, if applicable.

(9) The cabinet may initiate a mandatory recall upon receipt of information that a condition relating to the seeds, seedlings, tissue cultures, clones, medicinal cannabis plants, postharvest plant material, or medicinal cannabis grown or sold by a cultivator poses a risk to public health and safety.

Section 16. Increase of Canopy Limits.

(1) Pursuant to KRS 218B.140(3), if a need for additional medicinal cannabis cultivation in the Commonwealth is demonstrated by cannabis businesses or the cabinet's own analysis, the cabinet may through the promulgation of administrative regulations increase the canopy size limits for cultivators by up to three (3) times the limits established in KRS 218B.105. Any increase in the canopy size limits adopted by the cabinet shall not result in an increase in licensure application or renewal fees established by the cabinet.

(2) In making its determination whether to increase canopy limits for cultivators, the cabinet may consider factors including the population of the Commonwealth, the number of active cardholders, changes to the list of qualifying medical conditions for medicinal cannabis, market supply and demand, the amount of medicinal cannabis being sold by dispensaries, the amount of allowable canopy space being utilized by cultivators, and workforce development opportunities[~~and any other factors that the cabinet deems relevant to its analysis~~].

Section 17. Duty to Report.

(1) At the time a cultivator submits a license renewal application to the cabinet, a cultivator shall report to the cabinet by[~~via~~] electronic mail to kymedcanreporting@ky.gov[~~the following~~]:

(a) The average amount of allowable canopy space being utilized by the cultivator during the current licensure period. If a cultivator is not utilizing the full amount of allowable canopy space during the current licensure period, the cultivator shall provide a written explanation to the cabinet of the reasons for not utilizing all available canopy space;

(b) The total amount of medicinal cannabis grown during the current licensure period, the total amount of medicinal cannabis[raw plant material] sold during the current licensure period and the average price per pound, and total amount of medicinal cannabis sold as finished goods to a dispensary as opposed to sold in bulk to other cannabis businesses for processing; and

(c) The number of current employees, respective job titles, and hourly wage[; ~~and~~]

(2) A cultivator shall participate in market surveys distributed by the cabinet throughout a licensure period and provide full and complete responses.

FILED WITH LRC: July 9, 2024

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CABINET FOR HEALTH AND FAMILY SERVICES

Office of the Secretary

(As Amended at ARRS, July 9, 2024)

915 KAR 1:040. Processor.

RELATES TO: KRS Chapter 218B

STATUTORY AUTHORITY: KRS 218B.140

NECESSITY, FUNCTION, AND CONFORMITY: KRS 218B.140 requires the Cabinet for Health and Family Services to promulgate administrative regulations establishing requirements and procedures for medicinal cannabis processor operations in the Commonwealth. This administrative regulation sets out those requirements and procedures.

Section 1. General Requirements.

(1) A[No] person or entity shall not[may] engage in processing activities in the Commonwealth without first being issued a license

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by the cabinet. A processor shall not sell or transfer, or allow the sale or transfer, of medicinal cannabis or medicinal cannabis products to any person or entity in the Commonwealth who does not hold a cannabis business license issued by the cabinet.

(2) A processor shall:

(a) Only acquire or purchase raw plant material and medicinal cannabis from a cultivator, processor, or producer in the Commonwealth;

(b) Conduct processing activities in a secure facility on the specific site licensed by the cabinet and identified on its license issued by the cabinet;

(c) Conduct a criminal background check into the criminal history of each person seeking to become a principal officer, board member, agent, volunteer, or employee before that person begins work and shall retain records of these background checks for five (5) years and provide same to the cabinet during subsequent inspections or upon request; and

(d) Comply with all applicable requirements of KRS Chapter 218B, specifically KRS 218B.095 and 218B.115, and 915 KAR Chapter 1.

(3) A processor shall not employ, take on as a volunteer, or have as a board member, principal officer, or agent any person who was convicted of a disqualifying felony offense or is younger than twenty-one (21) years of age.

(4) The qualifications that a processor shall meet to receive a license are continuing qualifications to maintain the license throughout the licensure period.

Section 2. Plans of Operation.

(1) Prior to its first day of processing activities in the Commonwealth, a processor shall establish standard operating procedures for ~~the following~~:

(a) Employment policies and procedures;

(b) Security, including:

1. Staff identification measures and use of employee identification badges;

2. Monitoring of attendance of staff and visitors;

3. Alarm systems;

4. Video surveillance;

5. Monitoring and tracking inventory, including use of the Commonwealth's electronic monitoring system and seed to sale tracking system established pursuant to KRS 218B.140;

6. Personnel security;

7. Transportation of medicinal cannabis and how to properly secure medicinal cannabis in the event of a traffic collision or transport vehicle malfunction;

8. Cash management and anti-fraud procedures;

9. Measures to prevent loitering, which shall include signage; and

10. Storage of medicinal cannabis and medicinal cannabis products;

(c) The process for receiving, handling, processing, packaging, labeling, storing, transporting, and disposing of medicinal cannabis and medicinal cannabis products and a process for handling, tracking, transporting, storing, and disposing of medicinal cannabis waste;

(d) Workplace safety, including conducting safety checks;

(e) Contamination;

(f) Maintenance, cleaning, and sanitation of equipment used to process medicinal cannabis;

(g) Maintenance and sanitation of the processor's facility;

(h) Extraction method(s), including standards for processing of raw plant material, refining of medicinal cannabis extracts, and manufacturing of medicinal cannabis products, including safety protocols and equipment;

(i) Proper handling and storage of any solvent, gas, or other chemical or substance used in processing medicinal cannabis;

(j) Quality control, including strict regulation of the amount of delta-9 tetrahydrocannabinol content in each harvest or production batch in accordance with KRS 218B.115(2), proper labeling, and minimization of medicinal cannabis contamination;

(k) Recordkeeping and inventory control;

(l) Investigation of complaints and potential adverse events

received from other cannabis businesses, cardholders, or medicinal cannabis practitioners regarding the processor's operations;

(m) Preventing unlawful diversion of medicinal cannabis;

(n) A recall plan; and

(o) Any other standard operating procedures required for all cannabis businesses in KRS Chapter 218B and 915 KAR Chapter 1.

(2) A processor shall make its standard operation procedures available to the cabinet upon request and during any inspection of the processor's site and facility.

Section 3. Processor Facilities.

(1) A processor shall only process medicinal cannabis within a building or secure structure on the specific site licensed by the cabinet and identified on its license issued by the cabinet. The building or secure structure shall ~~meet all applicable state and local building codes and specifications as well as the following requirements~~:

(a) ~~Have~~Has a complete roof enclosure supported by connecting permanent walls, constructed of solid materials extending from the ground to the roof;

(b) ~~Be~~Is secure against unauthorized entry;

(c) ~~Have~~Has a foundation, slab, or equivalent base to which the floor is securely attached;

(d) ~~Have~~Has commercial grade door locks on all external doors that are locked at all times;

(e) ~~Restrict~~Restricts access to only authorized personnel to locked and secure areas identified with signage and daily records of entry and exit;

(f) ~~Contain~~Contains adequate plumbing to carry sufficient quantities of water to locations throughout the facility and convey sewage and waste from the facility without cross contamination of potable water and waste;

(g) ~~Store~~Stores toxic cleaning compounds, sanitizing agents, solvents, gas, or other chemicals or substances used in processing medicinal cannabis in a manner that is in accordance with applicable local, state, and federal laws and regulations;

(h) ~~Maintain~~Maintains exhaust and ventilation systems to mitigate noxious gasses or other fumes used or created as part of processing activities;

(i) ~~Maintain~~Maintains pest control;

(j) ~~Maintain~~Maintains adequate indoor and exterior lighting to facilitate video surveillance at all times; ~~and~~

(k) ~~Maintain~~Maintains adequate on-site parking for employees, agents, visitors, transporters of medicinal cannabis, or cabinet staff; ~~and~~;

(l) Meet all applicable state and local building codes and specifications.

(2) A processor shall clearly mark all limited access areas on its premises with proper signage. All areas of ingress and egress to a limited access area shall be clearly identified by the posting of a sign which shall be not less than twelve (12) inches wide and twelve (12) inches long, composed of letters not less than one-half (1/2) inch in height, which shall state: "Do Not Enter. Limited Access Area. Access Limited to Authorized Personnel and Escorted Visitors."

(3) A processor shall have a secure area for the loading and unloading of medicinal cannabis into and from a transport vehicle.

(4) On all perimeter doors, a processor shall post signs that which shall not be less than twelve (12) inches wide and twelve (12) inches long, composed of letters not less than one-half (1/2) inch in height, that clearly state the type of extraction method or methods used within the facility.

(5) A processor shall enact reasonable measures to ensure medicinal cannabis and medicinal cannabis products are not visible from outside the facility.

(6) If a processor intends to conduct medicinal cannabis processing and hemp processing at the same licensed location, the processor shall, prior to its first day of medicinal cannabis processing activities, provide the cabinet with:

(a) Proof that the processor is permitted to operate a hemp business by the appropriate permitting authority and is in good standing;

(b) A written plan for keeping strictly separated all

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medicinal cannabis processing activities from hemp processing activities; and

(c) A site map or blueprint showing which portions of the facility are designated for medicinal cannabis processing activities, including storage of medicinal cannabis, and which portions are designated for hemp processing activities, including storage of hemp and hemp products.

(7) Pursuant to KRS 218B.100(1), a cannabis business that co-locates with a hemp business shall be subject to reasonable inspection by the cabinet and the cabinet may inspect the entire facility as part of an inspection.

Section 4. Electronic Monitoring System and Seed to Sale Tracking System.

(1) Except as provided in this section, a processor shall not possess, process, produce, or manufacture:

(a) Raw plant material with a delta-9 tetrahydrocannabinol content of more than thirty-five (35) percent;

(b) Medicinal cannabis products intended for oral consumption as an edible, oil, or tincture with more than ten (10) milligrams of delta-9 tetrahydrocannabinol per serving;

(c) Any medicinal cannabis product not described in this section with a delta-9 tetrahydrocannabinol content of more than seventy (70) percent; or

(d) Any medicinal cannabis product that contains vitamin E acetate.

(2) A processor may possess unfinished medicinal cannabis products not ready for retail sale that exceed the delta-9 tetrahydrocannabinol limits in this section. However, all finished medicinal cannabis products intended for sale to cardholders shall comply with the delta-9 tetrahydrocannabinol limits in this section.

(3) A processor shall use the electronic monitoring system and seed to sale tracking system prescribed by the cabinet containing the requirements in KRS Chapter 218B, specifically KRS 218B.140. A processor shall use the electronic monitoring system and seed to sale tracking system in accordance with written instructions provided by the cabinet.

(4) A processor shall record in the Commonwealth's designated electronic monitoring system and seed to sale tracking system all medicinal cannabis received, sold, disposed, or otherwise transferred by the processor and ensure the inventory is accurate in real-time.

(5) A processor shall establish inventory controls and procedures to conduct inventory reviews and comprehensive inventories at its facility and shall [to include]:

(a) [A processor shall -]Prepare monthly[quarterly] physical inventory reports that include[includes] any necessary adjustments and the reason(s) for an adjustment and that demonstrates the physical inventory reconciles with the inventory recorded in the Commonwealth's designated electronic monitoring system and seed to sale tracking system, including any medicinal cannabis that has been or is in the process of being destroyed. No more than thirty (30) calendar days shall lapse between the preparation of a report required under this paragraph provision]; and

(b) Create and maintain a written or electronic record [shall be created and maintained -]of each inventory conducted under this section that includes the date of the inventory, a summary of the inventory findings, and the employee identification numbers and titles or positions of the individuals who conducted the inventory.

Section 5. Employees Records and Identification.

(1) A processor shall keep an individual employment record for all employees, including:

- (a) Full legal name;
- (b) Detailed job description;
- (c) Documentation of completed criminal background check;
- (d) Record of all training received or acquired by the employee;
- (e) Dates of employment;
- (f) Records of days and hours worked; and
- (g) Any disciplinary actions taken by the processor.

(2) Employment records shall be maintained, either electronically or in hard copy, for at least five (5) years after the employee's last date of employment with the processor.

(3) A processor shall create an identification badge for each

employee, agent, or volunteer. The[This] badge shall be conspicuously worn by employees, agents, or volunteers at all times that they are on the licensed premises or during transport of medicinal cannabis or medicinal cannabis products. The badge shall contain:

(a) The individual's name, photo, and -]employee identification number, and the license number of the processor;

(b) A phone number and email address for the processor; and

(c) A phone number and email address for the Kentucky Medical Cannabis Program.

Section 6. Visitors to Processor Facilities.

(1) A processor site and facility shall not be open to the general public.

(2) When admitting a visitor to its site and facility, a processor shall -complete the following steps when admitting a visitor to its site and facility]:

(a) Require the visitor to sign a visitor log upon entering and leaving the facility;

(b) Check the visitor's government-issued identification to verify the visitor's age and that the name on the identification provided matches the name in the visitor log;

(c) Issue a visitor identification badge with the visitor's name and company, if applicable, and a badge number;

(d) Escort the visitor while the visitor remains on the site or in the facility -keeping a record of the areas of the site and the facility visited]; and

(e) Ensure that the visitor does not touch any medicinal cannabis or medicinal cannabis product located in a limited access area.

(3) A person [No one] under the age of eighteen (18) shall not be permitted to enter a processor's site or facility. A person who is at least eighteen (18) years of age [or older -]may enter and remain on the processor's premises if that person is present to perform contract work, including electrical, plumbing, or security maintenance, which[that] does not involve handling medicinal cannabis, or is a government employee and is at the cannabis business in the course of his or her official duties.

(4) A processor shall post a sign in a conspicuous location at each entrance of its site and facility that states "THESE PREMISES ARE UNDER CONSTANT VIDEO SURVEILLANCE. NO ONE UNDER THE AGE OF 18 IS PERMITTED TO ENTER." The letters on the signs required by this subsection [provision] shall be at minimum one-half (1/2) inch in height.

(5) The processor shall maintain the visitor log required under this section for five (5) years and make the visitor log available to the cabinet, law enforcement, and other federal or state government officials upon request to perform the government officials' functions and duties. The visitor log shall include the date, the full name of each visitor, the visitor identification badge number, the time of arrival, the time of departure, and the purpose of the visit ,-including the areas of the site and the facility visited].

(6) This section shall[does] not limit the right of the cabinet or its authorized agents, or other federal, state, or local government officials from entering any area of a processor's site and facility if necessary to perform the governmental officials' functions and duties.

(7) A principal officer, board member, agent, financial backer, employee, or volunteer of a processor shall[may] not receive any type of consideration or compensation for allowing a visitor to enter a limited access area.

Section 7. Security and Surveillance.

(1) A processor shall have security and surveillance systems, utilizing commercial-grade equipment, to prevent unauthorized entry and to prevent and detect an adverse loss. The security and surveillance systems shall include -the following]:

(a) A professionally monitored security alarm system that includes:

1. Coverage of all facility entrances and exits; rooms with exterior windows, exterior walls, roof hatches, or skylights; storage rooms, including those that contain medicinal cannabis and safes; and the perimeter of the facility ,-]

2. An audible security alarm system signal, known as a panic

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alarm, generated by the manual activation of a device intended to signal a life-threatening or emergency situation requiring law enforcement response;

3. A silent alarm signal, known as a holdup alarm, generated by the manual activation of a device intended to signal a robbery in progress;

4. A failure notification system that provides an audible, text, or visual notification of any failure in the systems. The failure notification system shall provide by telephone, e-mail, or text message an alert to a designated security person within the facility within five (5) minutes after the failure;

5. Smoke and fire alarms;

6. Auxiliary power sufficient to maintain operation for at least twenty-four (24) hours following a power outage;

7. The ability to ensure all access doors shall not be solely controlled by an electronic access panel to prevent locks from becoming released during a power outage; and

8. Motion detectors for exterior lighting; and[-]

(b) A professionally monitored security surveillance system that is operational twenty-four (24) hours a day, seven (7) days a week, and records all activity in images capable of clearly revealing facial detail. The security and surveillance system shall include:

1. Fixed camera placement that allows for a clear image of all individuals and activities in and around ~~the following~~[-]:

a. All limited access areas;

b. A room or area containing a security alarm and surveillance system storage device or equipment;

c. Entrances to and exits from the facility. Entrances and exits shall be recorded from both indoor and outdoor vantage points;

d. Rooms with exterior windows, exterior walls, roof hatches, or skylights and storage rooms, including those that may contain medicinal cannabis and safes and excluding restrooms; and

e. Twenty (20) feet from the exterior of the perimeter of the facility.[-]

2. Auxiliary power sufficient to maintain operation for at least twenty-four (24) hours following a power outage;

3. The ability to operate under the normal lighting conditions of each area under surveillance;

4. The ability to immediately produce a clear, color, still photograph in a digital format that is easily accessible;

5. The ability to display the date and time clearly and accurately. The date and time shall be synchronized and set correctly and shall[-] not significantly obscure the picture;

6. The ability to record all images captured by each surveillance camera in a format that shall[-] be easily accessed for a minimum of sixty (60) ~~thirty (30)~~ days, unless otherwise required for investigative or litigation purposes. The recordings shall be kept:

a. At the processor's facility:

(i) In a locked cabinet, closet, or other secure place to protect it from tampering or theft; and

(ii) In a limited access area or other room to which access is limited to authorized individuals; or

b. At a secure location other than the location of the processor's facility if approved by the cabinet; and[-]

7. The ability to easily export video recordings and still photographs requested by the cabinet, law enforcement, and other federal or state government officials and provide same in a standard file format that is easily accessible.

(2) Regarding inspection, servicing, or alteration of, and any upgrade to, the site ~~site's~~ and facility's security alarm and surveillance systems:

(a) The systems shall be inspected and all devices tested once every year by a qualified alarm system vendor and a qualified surveillance system vendor;

(b) A processor shall conduct maintenance inspections once every month to ensure that any repairs, alterations, or upgrades to the security alarm and surveillance systems are made for the proper operation of the systems. No more than thirty (30) calendar days shall lapse between the inspections required under this paragraph ~~provision~~[-];

(c) A processor shall retain at the facility, for at least five (5) years, records of all inspections, servicing, alterations, and upgrades performed on the security alarm and surveillance systems and shall

make the records available to the cabinet and its authorized agents within two (2) business days following a request; and

(d) If there is ~~In the event of~~ a mechanical malfunction of the security alarm or surveillance system that a processor anticipates shall exceed an eight (8) hour period, the processor shall notify the cabinet immediately by ~~via~~ electronic mail to kymedcanreporting@ky.gov and, with cabinet approval, provide alternative security measures that may include closure of the facility.

(3) Regarding records retention, a processor shall:

(a) Have a secure electronic back-up system for all electronic records;

(b) Within three (3) business days following a request for records under this paragraph, provide up to four (4) screen captures of an unaltered copy of a video surveillance recording to the cabinet or its authorized agents, law enforcement, or other federal, state, or local government officials if necessary to perform the governmental officials' functions and duties; and

(c) If if a processor has been notified in writing by the cabinet or its authorized agents, law enforcement, or other federal, state, or local government officials of a pending criminal or administrative investigation for which a recording may contain relevant information, retain an unaltered copy of the recording for two (2) years or until the investigation or proceeding is closed or the entity conducting the investigation or proceeding notifies the processor that it is not necessary to retain the recording, whichever is later.

(4) During all non-working hours, all entrances to and exits from the processor's facility shall be securely locked.

(5) A processor shall install lighting to ensure proper surveillance inside and outside of the facility.

(6) A processor shall limit access to a room containing the equipment operating the security alarm and surveillance monitoring systems to:

(a) Persons who are essential to maintaining security and surveillance operations;

(b) Federal, state, and local law enforcement;

(c) Security alarm and surveillance system service employees;

(d) The cabinet or its authorized agents; and

(e) Other persons with the prior written approval of the cabinet.

(7) A processor shall make available to the cabinet or its authorized agents, upon request, a current list of authorized employees and service employees or contractors who have access to areas containing the equipment operating the security alarm and surveillance monitoring systems and place a copy of this list on or next to the doors that access those areas.

(8) A processor shall keep rooms housing the equipment operating the security alarm and surveillance monitoring systems locked at all times and shall[-] not use these rooms for any other purpose or function.

Section 8. Forms of Medicinal Cannabis.

(1) A processor may process medicinal cannabis for sale to a cannabis business in forms including:

(a) Edible;

(b) Oil;

(c) Topical forms, including gel, creams, ointments, and cosmetics;

(d) A form medically appropriate for administration by vaporization or nebulization;

(e) Tincture;

(f) Dermal patch;

(g) Suppositories;

(h) Beverages; ~~and~~[-]

(i) Raw plant material; or ~~and~~[-].

(j) Capsules.

(2) In addition to other packaging and labeling requirements established in 915 KAR 1:100, all raw plant material packaged and sold by a processor in this Commonwealth shall be marked or labeled as "NOT INTENDED FOR CONSUMPTION BY SMOKING." Processors delivering raw plant material to dispensaries for sale shall comply with the requirements established ~~contained~~ in 915 KAR 1:030, Section 14.

(3) Unless specifically authorized in writing by the cabinet, all hard medicinal cannabis products intended for oral

consumption as an edible shall be stamped with the standardized symbol indicating a product contains medicinal cannabis provided in Appendix A to 915 KAR 1:100. If the medicinal cannabis product intended for oral consumption as an edible contains multiple servings, the processor shall ensure a cardholder can easily separate out a single serving from the whole.

(4) Except for transfer of samples to a safety compliance facility for testing, ~~no~~ medicinal cannabis shall **not** be sold or transferred to another cannabis business until all required testing is complete and the representative sample passed inspection. Processors shall not sell medicinal cannabis directly to cardholders.

Section 9. Requirements for Processing Medicinal Cannabis.

(1) A processor **shall may** only use the methods, equipment, solvents, and gases set forth in this section in the processing and manufacture of medicinal cannabis and medicinal cannabis products.

(2) A processor may use hydrocarbon solvent-based extraction methods in a spark-free and properly ventilated environment, isolated from any open flame or ignition source, and may use the following solvents, at a minimum of ninety-nine **(99)** percent purity, in a professional grade, closed-loop extraction system designed to recover the solvents:

- (a) Propane;
- (b) N-butane;
- (c) Isobutane; and
- (d) Heptane.

(3) A processor may use carbon dioxide-based extraction methods using food grade carbon dioxide at a minimum of ninety-nine **(99)** percent [~~(99%)~~] purity in a professional grade, closed-loop system in which each vessel is rated to a minimum pressure to accommodate the specific extraction protocol, including supercritical, liquid, and subcritical.

(4) A processor may use ethanol at a minimum of ninety-nine **(99)** percent [~~(99%)~~] purity to produce extracts for use in the manufacture of medicinal cannabis products.

(5) A processor may use food grade glycerin and propylene glycol in the manufacture of medicinal cannabis products.

(6) A processor may use non-solvent extraction methods involving the mechanical separation of cannabinoids from plant material to produce medicinal cannabis extracts for use in the manufacture of medicinal cannabis products.

(7) A processor may use non-cannabis ingredients in the manufacture of medicinal cannabis products **if that meet the following conditions**:

- (a) The non-cannabis ingredients are nontoxic and safe for human consumption; and
- (b) The non-cannabis ingredients were not prepared or stored in a private residence.

(8) A processor using hydrocarbon solvent-based or carbon dioxide extraction methods shall designate at least one (1) individual to train and supervise employees in the use of extraction equipment and associated solvents who has earned, at minimum, a Bachelor's Degree in engineering or physical sciences from an accredited university, or who has at least three (3) years of experience in the operation of the equipment being used in the facility or similar equipment.

(9) A processor shall maintain a log of the use of all extraction methods, equipment, solvents, and gases used in the processing and manufacture of medicinal cannabis products for a minimum of five (5) years.

(10) A processor **shall may** only process the parts of the medicinal cannabis plant that are free of dirt, sand, debris, or other foreign matter.

(11) Prior to processing, a processor shall perform visual inspections of the raw plant material to ensure there are no visible insects, mold, mildew, pests, rot, grey or black plant material, or inorganic material, including plastic, glass, and metal shavings.

(12) A processor shall have a separate and secure area for temporary storage of medicinal cannabis that is awaiting disposal by the processor.

(13) A processor shall process medicinal cannabis in a safe and sanitary manner, which includes **that**

(a) Medicinal cannabis, raw plant material, and other product used in the processing of medicinal cannabis shall be handled on food-grade stainless steel benches or tables;

(b) Proper sanitation shall be maintained;

(c) Proper rodent, bird, and pest exclusion practices shall be employed;

(d) Prior to packaging, the medicinal cannabis shall have passed all required testing established within 915 KAR 1:110; and

(e) Any person making human-consumable products or substances that will be used to make human-consumable products, shall be Good Manufacturing Practices-compliant and permitted by the Department of Public Health within the cabinet.

(14) A processor shall **establish procedures**~~[install a system]~~ to monitor, record, and regulate:

- (a) Temperature;
- (b) Humidity;
- (c) Ventilation;
- (d) Lighting; and
- (e) Water supply.

Section 10. Equipment, Operation, and Maintenance.

(1) A processor shall have a written process ~~[in place]~~ to maintain the sanitation and operation of equipment that comes into contact with medicinal cannabis to prevent contamination. The processor shall provide a copy of the written process to the cabinet upon request.

(2) As part of the written process required under this section, a processor shall:

- (a) Routinely calibrate, check and inspect automatic, mechanical, or electronic equipment as well as any scales, balances, or other measurement devices used in the processor's operations to ensure accuracy; and
- (b) Maintain an accurate log recording:
 - 1. Maintenance of equipment;
 - 2. Cleaning of equipment; and
 - 3. Calibration of equipment.

Section 11. Sanitation and Safety in a Processor Facility.

(1) A processor shall maintain its site and facility in a sanitary condition to limit the potential for contamination of the medicinal cannabis processed in the facility, including **that**

(a) Equipment and surfaces, including floors, counters, walls, and ceilings, shall be cleaned and sanitized as frequently as necessary to protect against contamination~~[,]~~ using a sanitizing agent registered by the United States Environmental Protection Agency~~[,]~~ in accordance with the instructions printed on the label. All equipment and utensils used by a processor shall be capable of being adequately cleaned;

(b) Trash shall be properly and routinely removed to prevent pest infestation;

(c) Floors, walls, and ceilings shall be kept in good repair;

(d) Equipment, counters, and surfaces for processing shall be food grade quality and **shall may** not react adversely with any solvent being used;

(e) Adequate protection against pests shall be provided through the use of integrated pest management practices and techniques that identify and manage plant pathogens and pest problems; and

(f) Toxic cleaning compounds, sanitizing agents, solvents, and any other allowable chemicals used in the processing of medicinal cannabis shall be labeled and stored in a manner that prevents contamination of medicinal cannabis.

(2) All employees and volunteers shall conform to sanitary practices while on duty, **which includes**~~[including]~~:

(a) Maintaining adequate personal cleanliness;

(b) Washing hands thoroughly in an adequate hand-washing area before starting work and at any other time when hands may have become soiled or contaminated;

(c) Wearing proper clothing, including gloves, hair nets, headbands, caps, beard covers, or other effective hair restraints where appropriate;

(d) Removing all unsecured jewelry and other objects that might fall into medicinal cannabis, equipment, or containers, and removing hand jewelry that cannot be adequately sanitized during periods in which medicinal cannabis is manipulated by hand. If ~~[such]~~ hand

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jewelry cannot be removed, it ~~shall~~may be covered by material which can be maintained in an intact, clean, and sanitary condition ~~that and which~~ effectively protects the medicinal cannabis from contamination by these objects;

(e) Storing clothing or other personal belongings in areas other than where medicinal cannabis is exposed or where equipment is cleaned;

(f) ~~[Confining the following to areas other than where medicinal cannabis may be exposed or where equipment is cleaned:]~~ Eating food, chewing gum, drinking beverages, or using ~~vaping or~~ tobacco ~~products be confined to areas other than where medicinal cannabis may be exposed or where equipment is cleaned;~~ and

(g) Taking any other necessary precautions to protect against contamination of medicinal cannabis with microorganisms or foreign substances including perspiration, hair, cosmetics, tobacco, chemicals, and medicines applied to the skin.

(3) A processor shall:

(a) Provide its employees, volunteers, and visitors with adequate and convenient hand-washing facilities furnished with running water at a temperature suitable for sanitizing hands. Effective nontoxic sanitizing cleansers and sanitary towel service or suitable drying devices shall also be provided;

(b) Provide its employees, volunteers, and visitors with adequate, readily accessible restrooms that are maintained in a sanitary condition and in good repair;

(c) Ensure that its facility is provided with a water supply sufficient for its operations, which shall be derived from a source that is a public water system, or a nonpublic system that is capable of providing a safe, potable, and adequate supply of water to meet the operational needs of the facility; and

(d) Comply with all other applicable federal, state, and local building code requirements and occupational safety and health requirements.

Section 12. Storage Requirements.

(1) A processor shall have separate locked limited access areas for storage of medicinal cannabis that is expired, damaged, deteriorated, mislabeled, contaminated, recalled, or whose containers or packaging have been opened or breached until the medicinal cannabis is destroyed or otherwise disposed of as required under Section 13 of this administrative regulation.

(2) A processor shall maintain all storage areas in a clean and orderly condition and free from infestation by insects, rodents, birds, and pests.

Section 13. Management and Disposal of Medicinal Cannabis Waste.

(1) A processor shall dispose of undesired, excess, unauthorized, obsolete, adulterated, misbranded, or deteriorated medicinal cannabis in ~~[such]~~ a manner as to render the medicinal cannabis unusable. A processor shall record medicinal cannabis waste as required in the Commonwealth's designated electronic monitoring system and seed to sale tracking system.

(2) Medicinal cannabis that is rendered unusable shall be discarded into a ~~[locked]~~ dumpster with commercial grade locks or other approved, locked container for removal from the facility by a waste removal company selected by the processor, except that ashes resulting from the controlled incineration of medicinal cannabis may be placed in an unlocked dumpster. Medicinal cannabis shall be rendered unusable by:

(a) Controlled incineration; or

(b) Grinding and incorporating the medicinal cannabis with one (1) or more of the non-consumable, solid wastes listed below ~~so~~such that the resulting mixture is majority non-cannabis waste:

1. Paper waste;
2. Cardboard waste;
3. Food waste;
4. Yard or garden waste;
5. Grease or other compostable oil waste; or
6. Soil or other used growth media.

(3) The disposal of medicinal cannabis shall be performed under video surveillance from the time the destruction begins to when it is placed in a locked dumpster or other approved, locked container and

removed from the processor's site and facility.

(4) A minimum of two (2) employees shall oversee~~The employee overseeing~~ the disposal of medicinal cannabis and the processor shall maintain and make available a separate record of every disposal indicating ~~the following~~:

(a) The date and time of disposal;

(b) The manner of disposal;

(c) Any~~The~~ unique identification codes associated with the medicinal cannabis scheduled for destruction;

(d) The reasoning for and description of the disposal;

(e) The names~~name~~, employee identification numbers~~number~~, and signatures~~signature~~ of the employees~~employee~~ overseeing the disposal of the medicinal cannabis; and

(f) If the ~~medicinal cannabis waste for~~ disposal contains medicinal cannabis~~plant material~~ that was prepared for sale to a dispensary, the harvest or production batch number, strain, volume, ~~and~~ weight, and number of units if applicable of the medicinal cannabis~~plant material~~ being disposed of.

(5) The disposal of other waste from the processor that does not include medicinal cannabis, including hazardous waste and liquid waste, shall be performed in a manner consistent with applicable federal, state, and local requirements.

Section 14. Complaints About or Recall of Medicinal Cannabis and Medicinal Cannabis Products.

(1) A cannabis business shall immediately notify the cabinet by~~via~~ electronic mail to kymedcanreporting@ky.gov, as well as the processor from which it obtained any medicinal cannabis in question, upon becoming aware of any defects or quality issues with the medicinal cannabis or any complaint made to the cannabis business by another cannabis business, a cardholder, or medicinal cannabis practitioner who reports an adverse event from using medicinal cannabis purchased by the cannabis business from the processor. A processor shall investigate the report and shall~~as follows~~:

~~(a)~~ [A processor shall] immediately investigate a complaint to determine if a voluntary or mandatory recall of medicinal cannabis and medicinal cannabis products is necessary or if any further action is required.;

~~(a)~~(b) If a processor determines that further action is not required, the processor shall notify the cabinet of its decision by~~via~~ electronic mail to kymedcanreporting@ky.gov and, within twenty-four (24) hours, submit a written report to the cabinet stating its rationale for not taking further action. The cabinet shall review the written report and consult with the processor as needed. If the cabinet disagrees with the processor's decision, the cabinet shall take all necessary steps allowable under KRS Chapter 218B and 915 KAR Chapter 1 to ensure public health and safety, including issuing a cease-and-desist order to pause the sale and distribution of the medicinal cannabis at issue until resolution of the matter.;

~~(b)~~(c) If a processor determines that further action is required, the processor shall initiate a voluntary or mandatory recall in accordance with the requirements of this section.

(2) Voluntary recalls. If a processor voluntarily initiates a recall, the processor shall recall seeds, seedlings, medicinal cannabis plants, postharvest plant material, or medicinal cannabis from the market at its discretion for reasons that ~~shall~~do not pose a risk to public health and safety and shall notify the cabinet by~~at the time the processor begins the recall via~~ electronic mail to kymedcanreporting@ky.gov at the time the processor begins the recall.

(3) Mandatory recalls. If a processor discovers that a condition relating to medicinal cannabis processed at its facility poses a risk to public health and safety, the processor shall:

(a) Immediately notify the cabinet by phone and electronic mail to kymedcanreporting@ky.gov; and

(b) Secure, isolate, and prevent the distribution of the medicinal cannabis that may have been affected by the condition and remains in its possession. The processor shall not dispose of affected medicinal cannabis prior to notifying the cabinet and coordinating the disposal with the cabinet.

(4) If a processor fails to cooperate with the cabinet in a recall, or fails to immediately notify the cabinet of a need for a recall under this section, the cabinet may seek a cease-and-desist order and the

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processor may be subject to any other penalties or sanctions provided for in KRS Chapter 218B and 915 KAR Chapter 1:020.

(5) A processor's recall plan, as required under this administrative regulation, shall include ~~the following~~:

(a) Designation of one (1) or more employees to serve as the recall coordinators. A recall coordinator shall be responsible for, among other duties, accepting the recalled medicinal cannabis;

(b) Procedures for identifying and isolating the affected medicinal cannabis to prevent or minimize its distribution to cardholders and other cannabis businesses;

(c) Procedures to retrieve and dispose of the medicinal cannabis;

(d) A communications plan to notify those affected by the recall, including:

1. The manner in which the processor shall notify other cannabis businesses in possession of medicinal cannabis subject to the recall; and

2. The use of press releases and other appropriate notifications to ensure that cardholders shall be notified of the recall if affected medicinal cannabis was dispensed to cardholders.

(e) Procedures for notifying the cabinet; and

(f) Procedures for entering information relating to the recall into the Commonwealth's designated electronic monitoring system and seed to sale tracking system.

(6) A processor shall follow the procedures outlined in its recall plan unless the processor obtains prior written approval of the cabinet or the cabinet notifies the processor in writing to perform other procedures. A processor shall conduct recall procedures in a manner that maximizes the recall of affected medicinal cannabis and minimizes risks to public health and safety.

(7) A processor shall coordinate the disposal of recalled medicinal cannabis with the cabinet. The cabinet or its authorized agents may oversee the disposal to ensure that the recalled medicinal cannabis is disposed of in a manner that shall/will not pose a risk to public health and safety.

(8) The processor shall enter information relevant to the recall into the Commonwealth's designated electronic monitoring system and seed to sale tracking system as part of the inventory, which shall/may include ~~the following~~:

(a) The total amount of recalled medicinal cannabis, including types, harvest batches, and production batches, if applicable;

(b) The total amount of recalled medicinal cannabis returned to the processor, including types, forms, harvest batches, and production batches, if applicable;

(c) The names of the recall coordinators;

(d) From whom the recalled medicinal cannabis was received;

(e) The means of transport of the recalled medicinal cannabis;

(f) The reason for the recall;

(g) The number of recalled samples, types, forms, harvest batches, and production batches, if applicable, sent to safety compliance facilities, the names and addresses of the safety compliance facilities, the dates of testing, and the results by sample; and

(h) The manner of disposal of the recalled medicinal cannabis, including:

1. The names/name of the individuals/individual overseeing the disposal of the recalled medicinal cannabis;

2. The name of the disposal company, if applicable;

3. The method of disposal;

4. The date of disposal; and

5. The amount disposed of by types, forms, harvest batches, and production batches, if applicable.

(9) The cabinet may initiate a mandatory recall upon receipt of information that a condition relating to the medicinal cannabis processed by a processor poses a risk to public health and safety.

Section 15. Duty to Report.

(1) At the time a processor submits a license renewal application to the cabinet, the/a processor shall also report to the cabinet by/via electronic mail to kymedcanreporting@ky.gov ~~the following~~:

(a) Any significant issues with the supply and demand of medicinal cannabis experienced by the processor;

(b) The total amount of raw plant material purchased and processed during the current licensure period and the average price per pound as well as the total amount of raw plant material purchased and sold as raw plant material and the average price per pound; and

(c) The number of current employees, their respective job titles, and hourly wage. ~~;~~ and

(2) A processor shall participate in market surveys distributed by the cabinet throughout a licensure period and provide full and complete responses.

FILED WITH LRC: July 9, 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
Office of the Secretary
(As Amended at ARRS, July 9, 2024)

915 KAR 1:050. Producer.

RELATES TO: KRS Chapter 218B

STATUTORY AUTHORITY: KRS 218B.140

NECESSITY, FUNCTION, AND CONFORMITY: KRS 218B.140 requires the Cabinet for Health and Family Services to promulgate administrative regulations establishing requirements and procedures for medicinal cannabis producer operations in the Commonwealth. This administrative regulation establishes those requirements and procedures.

Section 1. General Requirements.

(1) A/No person or entity shall not/may engage in cultivation activities or processing activities in the Commonwealth without first being issued a license by the cabinet. A producer shall not sell or transfer, or allow the sale or transfer, of medicinal cannabis or medicinal cannabis products to any person or entity in the Commonwealth who does not hold a cannabis business license issued by the cabinet.

(2) A producer shall comply with all applicable requirements of KRS Chapter 218B, specifically KRS 218B.095 and 218B.120, and 915 KAR Chapter 1, specifically 915 KAR 1:030 and 915 KAR 1:040.

(3) A producer shall not employ, take on as a volunteer, or have as a board member, principal officer, or agent any person who was convicted of a disqualifying felony offense or is younger than twenty-one (21) years of age.

(4) A producer may conduct cultivation and processing activities at separate locations, but shall not operate more than one (1) cultivation and one (1) processing facility per license issued by the cabinet.

(5) If a producer intends to conduct cultivation and processing activities at the same licensed location, the producer shall, prior to its first day of cultivation and processing activities at the same location, provide the cabinet with:

(a) A written plan for keeping strictly separated all cultivation activities from the processing activities; and

(b) A site map or blueprint showing which portions of its facility are designated for cultivation activities and which portions are designated for processing activities.

(6) A producer shall not exceed 50,000 square feet of total canopy size at an enclosed, locked facility.

(7) The qualifications that a producer shall meet to receive a license are continuing qualifications to maintain the license throughout the licensure period.

(8) If a need for additional medicinal cannabis cultivation or processing is demonstrated by cannabis businesses or the cabinet's own analysis, the cabinet may offer currently licensed cultivators or processors with the option to become licensed as a producer at the expiration of their current license. In making this determination, the cabinet may consider factors including:

(a) The population of the Commonwealth;

(b) The number of active cardholders;

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- (c) Changes to the list of qualifying medical conditions for medicinal cannabis;
- (d) Market supply and demand;
- (e) Geographic distribution of cannabis businesses;
- (f) The desire of cultivators or processors to receive a producer license;
- (g) The demonstrated experience of the cultivators and processors;
- (h) Workforce development opportunities; and
- (i) Any other factors that the cabinet deems relevant to its analysis.

Section 2. Increase of Canopy Limits.

- (1) If a need for additional medicinal cannabis cultivation is demonstrated by cannabis businesses or the cabinet's own analysis, the cabinet may through the promulgation of administrative regulations increase the canopy size limits for producers by up to three (3) times the limits established in KRS 218B.120. Any increase in the canopy size limits adopted by the cabinet shall not result in an increase in licensure application or renewal fees established by the cabinet.
- (2) In making its determination whether to increase canopy limits for producers, the cabinet may consider factors including:
 - (a) The population of the Commonwealth;
 - (b) The number of active cardholders;
 - (c) Changes to the list of qualifying medical conditions for medicinal cannabis;
 - (d) Market supply and demand;
 - (e) The amount of medicinal cannabis being sold by dispensaries;
 - (f) The amount of allowable canopy space being utilized by producers;
 - (g) Workforce development opportunities; and
 - (h) Any other factors that the cabinet deems relevant to its analysis.

Section 3. Duty to Report.

- (1) At the time a producer submits a license renewal application to the cabinet, ~~the~~**a** producer shall report ~~the following~~ to the cabinet ~~by~~**via** electronic mail to kymedcanreporting@ky.gov:
 - (a) The average amount of allowable canopy space being utilized by the producer during the current licensure period. If a producer is not utilizing the full amount of allowable canopy space during the current licensure period, the producer shall provide a written explanation to the cabinet of the reasons for not utilizing all available canopy space;
 - (b) Any significant issues with the supply and demand of medicinal cannabis experienced by the producer;
 - (c) The total amount of raw plant material sold during the current licensure period and the average price per pound;
 - (d) The total amount of raw plant material processed during the current licensure period and the average price per pound; and
 - (e) The number of current employees, their respective job titles, and hourly wage.
- (2) A producer shall participate in market surveys distributed by the cabinet throughout a licensure period and provide full and complete responses.

FILED WITH LRC: July 9, 2024

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CABINET FOR HEALTH AND FAMILY SERVICES Office of the Secretary (As Amended at ARRS, July 9, 2024)

915 KAR 1:060. Safety compliance facility.

RELATES TO: KRS Chapter 218B
STATUTORY AUTHORITY: KRS 218B.140
NECESSITY, FUNCTION, AND CONFORMITY: KRS 218B.140 requires the Cabinet for Health and Family Services to promulgate

administrative regulations establishing requirements and procedures for safety compliance facilities that provide testing services to medicinal cannabis businesses in the Commonwealth. This administrative regulation sets out those requirements and procedures.

Section 1. General Requirements.

- (1) A safety compliance facility shall not collect, handle, receive, or conduct tests on medicinal cannabis samples unless it has been issued a license by the cabinet. Prior to conducting any testing of a sample at the request of a cannabis business, a safety compliance facility shall enter into a written contract with the cannabis business for testing services. A safety compliance facility shall provide a copy of ~~its~~**their** contracts with cannabis businesses to the cabinet within two (2) business days of receipt of the request.
- (2) The cabinet shall post a list of licensed safety compliance facilities on the Web site for the Kentucky Medical Cannabis Program, <https://kymedcan.ky.gov>.
- (3) A safety compliance facility shall employ at least one (1) director to oversee and be responsible for the testing operations of the facility. A director shall have earned, from a college or university accredited by a national or regional accrediting authority, at least one (1) of the following:
 - (a) A doctorate of science or an equivalent degree in chemistry, biology, or a subdiscipline of chemistry or biology;
 - (b) A master's level degree in a chemical or biological science and a minimum of two (2) years post-degree experience related to laboratory testing of medicinal or pharmaceutical products; or
 - (c) A bachelor's degree in a biological science and a minimum of four (4) years post-degree experience related to laboratory testing of medicinal or pharmaceutical products.
- (4) A principal officer, board member, employee, volunteer, or agent of a cultivator, processor, producer, or dispensary shall not be employed by or affiliated with a safety compliance facility that has a contract with that respective cannabis business.
- (5) A license issued by the cabinet to a safety compliance facility is valid only for the specific site licensed and identified on the license.
- (6) A safety compliance facility shall:
 - (a) Conduct a criminal background check into the criminal history of each person seeking to become a principal officer, board member, agent, volunteer, or employee before that person begins work and shall retain records of these background checks for five (5) years and provide same to the cabinet during subsequent inspections or upon request;
 - (b) Maintain and adhere to proper standards of accuracy for testing and comply with the testing requirements ~~established~~**contained** in 915 KAR 1:110;
 - (c) Comply with all required analytes standards for the relevant test methods of cannabinoids, terpenoids, residual solvents and processing chemicals, residual pesticides, heavy metals, microbial impurities, mycotoxins, water activity, yeast, mold, and vitamin E acetate;
 - (d) Accurately and honestly report all medicinal cannabis test results;
 - (e) Only allow authorized individuals to perform medicinal cannabis testing and sign reports;
 - (f) Only accept a sample or test sample from a cannabis business employee or agent, ~~or cardholder~~, or an authorized representative of the cabinet;
 - (g) Maintain a certificate of accreditation in good standing from an accreditation body and provide a copy to the cabinet during subsequent inspections or upon request. The certificate of accreditation shall attest to the safety compliance facility's competence to perform testing, including all the required analytes for the relevant test methods required, and shall be obtained by the safety compliance facility prior to collecting, receiving, or testing any medicinal cannabis sample or test sample;
 - (h) Develop and maintain standard operating procedures for a laboratory approved by the accreditation body that issued the certificate of accreditation to the safety compliance facility and provide copies to the cabinet during subsequent inspections or upon request;

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(i) Properly enter medicinal cannabis test results into the Commonwealth's designated electronic monitoring system and seed to sale tracking system as required by the cabinet and in accordance with written instructions provided by the cabinet; and

(j) Comply with all applicable requirements of KRS Chapter 218B, specifically KRS 218B.095 and 218B.125, and 915 KAR Chapter 1.

(7) A safety compliance facility shall not employ, take on as a volunteer, or have as a board member, principal officer, or agent any person who was convicted of a disqualifying felony offense or is younger than twenty-one (21) years of age.

(8) The qualifications that a safety compliance facility shall meet to receive a license are continuing qualifications to maintain the license throughout the licensure period.

Section 2. Selecting and Collecting Samples for Testing.

(1) A sampler is an employee or agent of a cultivator, processor, producer, safety compliance facility, or dispensary that is authorized by his or her employer to collect samples or test samples in accordance with the contracted safety compliance facility's standard operating procedures and this administrative regulation. A sampler shall obtain an amount for a sample or test sample on behalf of his or her employer sufficient to be aliquoted into a primary sample and a reserve sample, which shall be equal in amount. The primary sample and reserve sample shall be in the amounts specified in the safety compliance facility's standard operating procedures.

(2) A safety compliance facility shall ensure that samples and test samples are selected and collected in accordance with standard operating procedures established by the safety compliance facility and required by this administrative regulation. The standard operating procedures for sampling shall be written and provided to the cabinet and each cannabis business that the safety compliance facility contracts with for testing prior to collecting, receiving, or testing any medicinal cannabis. These standard operating procedures shall be in place prior to the first day that the safety compliance facility collects, receives, or tests a sample.

(3) Samples shall consist of enough samples from a harvest batch or production batch to ensure that the required attributes in the products are homogenous and consistent with the safety compliance facility's standard operating procedures for selecting and collecting samples. Test samples shall consist of enough samples of the item identified for testing to ensure any required testing can be accomplished in accordance with the safety compliance facility's standard operating procedures.

(4) The sampling policies and procedures shall include:

(a) A step-by-step guide for obtaining samples and test samples;

(b) Random taking of samples or test samples throughout the harvest batch or production batch;

(c) Using appropriate sampling equipment, including protocols relating to the sanitizing of equipment and tools, protective garb, and sampling containers;

(d) Using consistent collection procedures for samples and test samples;

(e) Transporting samples in a manner that does not endanger the integrity of the samples and that is in accordance with transportation requirements for samples established[contained] in 915 KAR 1:080;

(f) Creating a unique sample identification number that will be linked to the harvest batch or production batch number assigned by the cultivator, processor, or producer in the Commonwealth's designated electronic monitoring system and seed to sale tracking system; and

(g) The process for properly documenting a chain of custody for each sample or test sample and retaining those records for a minimum of two (2) years.

(5) An employee or agent of a safety compliance facility shall only enter a facility operated by a cultivator, processor, producer, or dispensary for the purpose of:

(a) Selecting and collecting samples and test samples and shall have access to limited access areas in the facility for these purposes; and

(b) Providing training to cannabis business agents as provided in KRS 218B.125(7).

(6) An employee or agent of a safety compliance facility shall comply with all visitor requirements for entry into the cultivator, processor, producer, or dispensary's facility.

(7) An authorized cannabis business employee collecting any samples for testing shall follow the standard operating procedures established by the contracted safety compliance facility conducting the testing for sampling and documenting the chain of custody.

Section 3. Standards for Testing. A safety compliance facility shall follow:

(1) The methodologies and parameters that are contained in the scope of the certificate of accreditation issued to the safety compliance facility; and

(2) The testing requirements established[contained] in 915 KAR 1:110.

Section 4. Quality Assurance Program.

(1) Prior to its first day of collecting or receiving samples or test samples in the Commonwealth, a safety compliance facility shall establish and implement a written quality assurance program to ensure that measurements are accurate, errors are controlled, and equipment, devices, or instruments used for testing are routinely and properly calibrated in accordance with the equipment, device, or instrument manufacturer recommendations regarding calibration and frequency.

(2) The quality assurance program required under this section shall include ~~the following components~~:

(a) An organizational chart that includes the testing responsibilities of employees;

(b) A description of sampling procedures to be utilized;

(c) Appropriate chain of custody protocols;

(d) Analytical procedures;

(e) Data reduction and validation procedures; and

(f) A plan for implementing corrective action, when necessary.

(3) A safety compliance facility shall provide a copy of its written quality assurance program to the cabinet upon request or during subsequent inspections or investigations.

Section 5. Cabinet Request for Testing. If the cabinet requests that a safety compliance facility conduct tests on any samples or test samples collected by the cabinet, the safety compliance facility shall comply with the request and directions of the cabinet and provide the cabinet with a written report of the results from a sample tested under this section within seven (7) calendar days of receipt of the sample, or sooner if requested by the cabinet.

Section 6. Ownership Prohibition. The following individuals shall not have a management or a direct or indirect financial or other ownership interest in a safety compliance facility:

(1) An owner, principal officer, board member, financial backer, employee, volunteer, or agent of a cultivator, processor, producer, or dispensary; and

(2) A medicinal cannabis practitioner.

Section 7. Plans of Operation.

(1) In addition to any other standard operating procedures required by this administrative regulation, and prior to its first day of collecting or receiving samples or test samples in the Commonwealth, a safety compliance facility shall establish standard operating procedures for ~~the following~~ prior to its first day of collecting or receiving samples or test samples in the Commonwealth:

(a) Employment policies and procedures;

(b) Security, including:

1. Staff identification measures and use of employee identification badges;

2. Monitoring of attendance of staff and visitors;

3. Alarm systems;

4. Video surveillance;

5. Monitoring and tracking samples and test results, including use of the Commonwealth's electronic monitoring system and seed to sale tracking system established pursuant to KRS 218B.140;

6. Personnel security;

7. Transportation of medicinal cannabis and how to properly

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secure medicinal cannabis in the event of a traffic collision or transport vehicle malfunction;

8. Cash management and anti-fraud procedures;
 9. Measures to prevent loitering, which shall include signage; and
 10. Storage of medicinal cannabis and medicinal cannabis products;
 - (c) Recordkeeping;
 - (d) The process for receiving, handling, packaging, labeling, storing, transporting, and disposing of medicinal cannabis samples;
 - (e) Employee qualifications, supervision, and training;
 - (f) Workplace safety;
 - (g) Waste disposal and sanitation;
 - (h) Inventory management, including intake, labeling, and storage of samples and test samples;
 - (i) Contamination;
 - (j) Maintenance, cleaning, and sanitation of equipment used to test samples;
 - (k) Maintenance, cleaning, and sanitation of the safety compliance facility;
 - (l) Proper handling and storage of any chemical or substance used in testing medicinal cannabis;
 - (m) Investigation of complaints and potential adverse events received from other cannabis businesses, registered qualified patients, designated caregivers, or medicinal cannabis practitioners regarding the safety compliance facility's operations;
 - (n) Preventing unlawful diversion of medicinal cannabis; and
 - (o) Any other standard operating procedures required for all cannabis businesses in KRS Chapter 218B and 915 KAR Chapter 1.
- (2) A safety compliance facility shall make its standard operation procedures available to the cabinet upon request and during any inspection or investigation.

Section 8. Facilities.

- (1) A safety compliance facility shall only test samples in a facility on the specific site licensed by the cabinet and identified on its license issued by the cabinet. The facility shall ~~meet all applicable state and local building codes and specifications in addition to the following~~:
 - (a) ~~Have~~**[Has]** a complete roof enclosure supported by connecting permanent walls, constructed of solid materials extending from the ground to the roof;
 - (b) ~~Be~~**[Is]** secure against unauthorized entry;
 - (c) ~~Have~~**[Has]** a foundation, slab, or equivalent base to which the floor is securely attached;
 - (d) ~~Have~~**[Has]** commercial grade door locks on all external doors that are locked at all times;
 - (e) ~~Restrict~~**[Restricts]** access to only authorized personnel to limited access areas identified with signage and daily records of entry and exit;
 - (f) ~~Contain~~**[Contains]** adequate plumbing to carry sufficient quantities of water to locations throughout the facility and convey sewage and waste from the facility without cross contamination of potable water and waste;
 - (g) ~~Store~~**[Stores]** toxic cleaning compounds, sanitizing agents, and substances used in testing samples in a manner that is in accordance with applicable local, state, and federal laws and regulations;
 - (h) ~~Maintain~~**[Maintains]** proper ventilation;
 - (i) ~~Maintain~~**[Maintains]** pest control;
 - (j) ~~Maintain~~**[Maintains]** adequate indoor and exterior lighting to facilitate video surveillance at all times;~~and~~
 - (k) ~~Maintain~~**[Maintains]** adequate on-site parking for employees, agents, visitors, transporters of medicinal cannabis, or cabinet staff;~~and~~.

(l) Meet all applicable state and local building codes and specifications.

- (2) A safety compliance facility shall clearly mark all limited access areas on its premises with proper signage. All areas of ingress and egress to a limited access area shall be clearly identified by the posting of a sign which shall be not less than twelve (12) inches wide and twelve (12) inches long, composed of letters not

less than one-half **(1/2)** inch in height, which shall state: "Do Not Enter. Limited Access Area. Access Limited to Authorized Personnel and Escorted Visitors."

- (3) A safety compliance facility shall have a secure area for the loading and unloading of medicinal cannabis samples into and from a transport vehicle.

Section 9. Employee Records and Identification.

- (1) A safety compliance facility shall keep an individual employment record for all employees, including:
 - (a) Full legal name;
 - (b) Detailed job description;
 - (c) Documentation of completed criminal background check;
 - (d) Record of all training received or acquired by the employee;
 - (e) Dates of employment;
 - (f) Records of days and hours worked; and
 - (g) Any disciplinary actions taken by the safety compliance facility.
- (2) Employment records shall be maintained, either electronically or in hard copy, for at least five (5) years after the employee's last date of employment with the safety compliance facility.
- (3) A safety compliance facility shall create an identification badge for each employee, agent, or volunteer. ~~The~~**[This]** badge shall be conspicuously worn by employees or agents at all times that they are on the licensed premises or during transport of samples or test samples. The badge shall contain:
 - (a) The individual's name, photo, ~~and~~ employee identification number, **and the license number of the safety compliance facility.**
 - (b) A phone number and email address for the safety compliance facility; and
 - (c) A phone number and email address for the Kentucky Medical Cannabis Program.

Section 10. Visitors to Safety Compliance Facilities.

- (1) A safety compliance facility shall not be open to the general public.
- (2) ~~When admitting a visitor to its site and facility,~~ a safety compliance facility shall ~~complete the following steps when admitting a visitor to its site and facility~~:
 - (a) Require the visitor to sign a visitor log upon entering and leaving the facility;
 - (b) Check the visitor's government-issued identification to verify **the visitor's age and** that the name on the identification provided matches the name in the visitor log;
 - (c) Issue a visitor identification badge with the visitor's name and company, if applicable, and a badge number;
 - (d) Escort the visitor while the visitor remains in the facility~~keeping a record of the areas of the facility visited~~; and
 - (e) Ensure that the visitor does not touch any medicinal cannabis located in a limited access area.
- (3) ~~A person~~**[No one]** under the age of eighteen (18) shall ~~not~~ be permitted to enter a safety compliance facility. A person who is at least eighteen (18) years of age may enter and remain on the premises if that person is present to perform contract work, including electrical, plumbing, or security maintenance, ~~which~~**[that]** does not involve handling medicinal cannabis, or is a government employee and is at the facility in the course of his or her official duties.
- (4) A safety compliance facility shall post a sign in a conspicuous location at each entrance of its facility that states "THESE PREMISES ARE UNDER CONSTANT VIDEO SURVEILLANCE. NO ONE UNDER THE AGE OF 18 IS PERMITTED TO ENTER."**The letters on the signs required by this subsection/provision shall be at minimum one-half (1/2) inch in height.**
- (5) A safety compliance facility shall maintain the visitor log required under this section for five (5) years and make the visitor log available to the cabinet, law enforcement, and other federal or state government officials upon request to perform the government officials' functions and duties. The visitor log shall include the date, the full name of each visitor, the visitor identification badge number, the time of arrival, the time of departure, and the purpose of the visit~~including the areas of the site and the facility visited~~.
- (6) This section ~~shall~~**[does]** not limit the right of the cabinet or

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its authorized agents, or other federal, state, or local government officials from entering any area of a safety compliance facility if necessary to perform the governmental officials' functions and duties.

(7) A principal officer, board member, agent, financial backer, or employee of a safety compliance facility ~~shall~~**[may]** not receive any type of consideration or compensation for allowing a visitor to enter a limited access area.

Section 11. Security and Surveillance.

(1) A safety compliance facility shall have security and surveillance systems, utilizing commercial-grade equipment, to prevent unauthorized entry and to prevent and detect an adverse loss. The security and surveillance systems shall include~~—the following~~:

(a) A professionally monitored security alarm system that includes:

1. Coverage of all facility entrances and exits, storage rooms, including those that contain medicinal cannabis and safes, and the perimeter of the facility;
2. Smoke and fire alarms;
3. Auxiliary power sufficient to maintain operation for at least twenty-four (24) hours following a power outage;
4. The ability to ensure all access doors are not solely controlled by an electronic access panel to prevent locks from becoming released during a power outage; and
5. Motion detectors for exterior lighting; ~~and~~[-].

(b) A professionally monitored security surveillance system that is operational twenty-four (24) hours a day, seven (7) days a week, and records all activity in images capable of clearly revealing facial detail. The security and surveillance system shall include:

1. Fixed camera placement that allows for a clear image of all individuals and activities in and around~~—the following~~:

- a. All limited access areas;
- b. A room or area containing a security alarm and surveillance system storage device or equipment;
- c. Entrances to and exits from the facility; and
- d. Twenty (20) feet from the exterior of the perimeter of the facility; [-].

2. ~~The~~ ability to operate under the normal lighting conditions of each area under surveillance;

3. ~~The~~ ability to immediately produce a clear, color, still photograph in a digital format that is easily accessible;

4. ~~The~~ ability to display the date and time clearly and accurately. The date and time shall be synchronized and set correctly and ~~shall~~**[may]** not significantly obscure the picture; ~~and~~[-].

5. ~~The~~ ability to record all images captured by each surveillance camera in a format that ~~shall~~**[may]** be easily accessed for a minimum of ~~sixty (60)~~**[thirty (30)]** days, unless otherwise required for investigative or litigation purposes. The recordings shall be kept:

- a. At the safety compliance facility:
 - (i) In a locked cabinet, closet, or other secure place to protect it from tampering or theft; and
 - (ii) In a limited access area or other room to which access is limited to authorized individuals; or
- b. At a secure location other than the location of the safety compliance facility if approved by the cabinet; ~~and~~[-].

6. The ability to easily export video recordings and still photographs requested by the cabinet, law enforcement, and other federal or state government officials and provide same in a standard file format that is easily accessible.

(2) The following requirements apply to the inspection, servicing, or alteration of, and any upgrade to, the security alarm and surveillance systems:

(a) The systems shall be inspected and all devices tested once every year by a qualified alarm system vendor and a qualified surveillance system vendor;

(b) A safety compliance facility shall conduct maintenance inspections once every month to ensure that any repairs, alterations, or upgrades to the security alarm and surveillance systems are made for the proper operation of the systems. **No more than thirty (30) calendar days shall lapse between the inspections required under this paragraph provision**;

(c) A safety compliance facility shall retain at the facility, for at least five (5) years, records of all inspections, servicing, alterations, and upgrades performed on the security alarm and surveillance systems and shall make the records available to the cabinet and its authorized agents within two (2) business days following a request; and

(d) ~~If there is~~**[In the event of]** a mechanical malfunction of the security alarm or surveillance system that a safety compliance facility anticipates will exceed an eight (8) hour period, the safety compliance facility shall notify the cabinet immediately ~~by~~**[via]** electronic mail to kymedcanreporting@ky.gov ~~and~~, with cabinet approval, provide alternative security measures that may include closure of the facility.

(3) **Regarding records retention**, a safety compliance facility shall~~—meet the following requirements regarding records retention~~:

(a) Have a secure electronic back-up system for all electronic records;

(b) Within three (3) business days following a request for records under this paragraph, provide up to four (4) screen captures of an unaltered copy of a video surveillance recording to the cabinet or its authorized agents, law enforcement, or other federal, state, or local government officials if necessary to perform the governmental officials' functions and duties; and

(c) If ~~if~~**[a safety compliance facility]** has been notified in writing by the cabinet or its authorized agents, law enforcement, or other federal, state, or local government officials of a pending criminal or administrative investigation for which a recording may contain relevant information, retain an unaltered copy of the recording for two (2) years or until the investigation or proceeding is closed or the entity conducting the investigation or proceeding notifies the cultivator that it is not necessary to retain the recording, whichever is later.

(4) During all non-working hours, all entrances to and exits from the safety compliance facility shall be securely locked.

(5) A safety compliance facility shall install lighting to ensure proper surveillance inside and outside of the facility.

(6) A safety compliance facility shall limit access to a room containing the equipment operating the security alarm and surveillance monitoring systems to:

- (a) Persons who are essential to maintaining security and surveillance operations;
- (b) Federal, state, and local law enforcement;
- (c) Security alarm and surveillance system service employees;
- (d) The cabinet or its authorized agents; and
- (e) Other persons with the prior written approval of the cabinet.

(7) A safety compliance facility shall make available to the cabinet or its authorized agents, upon request, a current list of authorized employees and service employees or contractors who have access to areas containing the equipment operating the security alarm and surveillance monitoring systems **and place a copy of this list on or next to the doors that access those areas.**

(8) A safety compliance facility shall keep rooms housing the equipment operating the security alarm and surveillance monitoring systems locked at all times and ~~shall~~**[may]** not use these rooms for any other purpose or function.

Section 12. Electronic Monitoring System and Seed to Sale Tracking System.

(1) A safety compliance facility shall use the electronic monitoring system and seed to sale tracking system prescribed by the cabinet containing the requirements in KRS Chapter 218B, specifically KRS 218B.140. A safety compliance facility shall use the electronic monitoring system and seed to sale tracking system in accordance with written instructions provided by the cabinet.

(2) A safety compliance facility shall record in the Commonwealth's designated electronic monitoring system and seed to sale tracking system all medicinal cannabis received, disposed, or otherwise transferred by the safety compliance facility and ensure the inventory is accurate in real-time.

(3) A safety compliance facility shall establish inventory controls and procedures to conduct inventory reviews and comprehensive inventories at its facility to include:

~~(a) Preparing a safety compliance facility shall prepare monthly physical inventory reports that include any necessary adjustments and the reason(s) for an adjustment and that demonstrate the physical inventory reconciles with the inventory recorded in the commonwealth's designated electronic monitoring system and seed to sale tracking system, including any medicinal cannabis that has been or is in the process of being destroyed. No more than thirty (30) calendar days shall lapse between the preparation of a report required under this paragraph provision; and~~

~~(b) Creating and maintaining a written or electronic record shall be created and maintained of each inventory conducted under this section that includes the date of the inventory, a summary of the inventory findings, and the employee identification numbers and titles or positions of the individuals who conducted the inventory.~~

Section 13. Equipment, Operation, and Maintenance.

(1) A safety compliance facility shall have a written process ~~in~~ place to maintain the sanitation and operation of equipment that comes into contact with samples to prevent contamination. A safety compliance facility shall provide a copy of the written process to the cabinet upon request.

(2) As part of the written process required under this section, a safety compliance facility shall:

- (a) Routinely check and inspect automatic, mechanical, or electronic equipment as well as any measurement devices used in the safety compliance facility's operations to ensure accuracy; and
- (b) Maintain an accurate log recording the:
 1. Maintenance of equipment;
 2. Cleaning of equipment; and
 3. Calibration of equipment.

Section 14. Sanitation and Safety in a Safety Compliance Facility.

(1) A safety compliance facility shall maintain its site and facility in a sanitary condition to limit the potential for contamination of samples, ~~including that. The following requirements shall apply:~~

- (a) Equipment and surfaces, including floors, counters, walls, and ceilings, shall be cleaned and sanitized as frequently as necessary to protect against contamination[,] using a sanitizing agent registered by the United States Environmental Protection Agency[,] in accordance with the instructions printed on the label. All equipment and utensils used by a safety compliance facility shall be capable of being adequately cleaned;
- (b) Trash shall be properly and routinely removed;
- (c) Floors, walls, and ceilings shall be kept in good repair;
- (d) Adequate protection against pests shall be provided; and
- (e) Toxic cleaning compounds, sanitizing agents, and other chemicals shall be labeled and stored in a manner that prevents contamination of samples, and in a manner that otherwise complies with other applicable laws, rules, and regulations.

(2) All employees shall conform to sanitary practices while on duty, ~~which includes~~ including:

- (a) Maintaining adequate personal cleanliness;
- (b) Washing hands thoroughly in an adequate hand-washing area before starting work and at any other time when hands may have become soiled or contaminated;
- (c) Wearing proper clothing, including gloves, hair nets, headbands, caps, beard covers, or other effective hair restraints where appropriate;
- (d) Removing all unsecured jewelry and other objects that might fall into medicinal cannabis, equipment, or containers, and removing hand jewelry that cannot be adequately sanitized during periods in which medicinal cannabis is manipulated by hand. If ~~such~~ hand jewelry cannot be removed, it ~~shall~~ may be covered by material which can be maintained in an intact, clean, and sanitary condition and which effectively protects the medicinal cannabis from contamination by these objects;
- (e) Storing clothing or other personal belongings in areas other than where medicinal cannabis is exposed or where equipment is cleaned;

(f) ~~Eating food, chewing gum, drinking beverages, or using~~

~~vaping or tobacco products be confined~~ Confining the following] to areas other than where medicinal cannabis may be exposed or where equipment is cleaned[~~:- eating food, chewing gum, drinking beverages, or using tobacco~~]; and

(g) Taking any other necessary precautions to protect against contamination of medicinal cannabis with microorganisms or foreign substances including perspiration, hair, cosmetics, tobacco, chemicals, and medicines applied to the skin.

(3) A safety compliance facility shall provide its employees and visitors with adequate and convenient hand-washing facilities furnished with running water at a temperature suitable for sanitizing hands. Effective nontoxic sanitizing cleansers and sanitary towel service or suitable drying devices shall also be provided.

(4) A safety compliance facility shall provide its employees and visitors with adequate, readily accessible restrooms that are maintained in a sanitary condition and in good repair.

(5) A safety compliance facility shall ensure that its facility is provided with a water supply sufficient for its operations, which shall be derived from a source that is a public water system, or a nonpublic system that is capable of providing a safe, potable, and adequate supply of water to meet the operational needs of the facility.

(6) A safety compliance facility shall comply with all other applicable federal, state, and local building code requirements and occupational safety and health requirements.

Section 15. Storage Requirements.

(1) A safety compliance facility shall have separate locked limited access areas for storage of all samples and test samples until they can be tested and destroyed or otherwise disposed of as required under Section 16 of this administrative regulation.

(2) A safety compliance facility shall maintain all storage areas in a clean and orderly condition and free from infestation by insects, rodents, birds, and pests.

Section 16. Management and Disposal of Medicinal Cannabis Waste.

(1) A safety compliance facility shall dispose of samples in ~~such~~ a manner as to render the medicinal cannabis unusable. A safety compliance facility shall record medicinal cannabis waste as required in the Commonwealth's designated electronic monitoring system and seed to sale tracking system.

(2) Medicinal cannabis that is rendered unusable shall be discarded into a ~~locked~~ dumpster ~~with commercial grade locks~~ or other approved, locked container for removal from the facility by a waste removal company selected by the safety compliance facility, ~~except that ashes resulting from the controlled incineration of medicinal cannabis may be placed in an unlocked dumpster.~~ Medicinal cannabis shall be rendered unusable by:

- (a) Controlled incineration; or
- (b) Grinding and incorporating the medicinal cannabis with one (1) or more of the non-consumable, solid wastes listed below ~~so~~ ~~such~~ that the resulting mixture is majority non-cannabis waste:
 1. Paper waste;
 2. Cardboard waste;
 3. Food waste;
 4. Yard or garden waste;
 5. Grease or other compostable oil waste; or
 6. Soil or other used growth media.

(3) The disposal of medicinal cannabis shall be performed under video surveillance from the time the destruction begins to when it is placed in a locked dumpster or other approved, locked container and removed from the safety compliance facility location.

(4) ~~A minimum of two (2) employees shall oversee~~ The employee overseeing] the disposal of medicinal cannabis ~~and the safety compliance facility~~ shall maintain and make available a separate record of every disposal indicating ~~the following~~:

- (a) The date and time of disposal;
- (b) The manner of disposal;
- (c) ~~Any~~ The unique identification codes associated with the medicinal cannabis scheduled for destruction;
- (d) The reasoning for and description of the disposal;
- (e) The ~~names~~ name], employee identification

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numbers[number], and signatures[signature] of the employees[employee] overseeing the disposal of the medicinal cannabis; and

(f) The harvest batch or production batch number and weight of the medicinal cannabis[plant material] being disposed of.

(5) The disposal of other waste from the safety compliance facility that does not include medicinal cannabis, including hazardous waste and liquid waste, shall be performed in a manner consistent with applicable federal, state, and local requirements.

Section 17. Duty to Report.

(1) At the time a safety compliance facility submits a license renewal application to the cabinet, ~~if a safety compliance facility~~ shall report to the cabinet ~~by~~[via] electronic mail to kymedcanreporting@ky.gov ~~the following~~:

(a) A list of the cannabis businesses that the safety compliance facility has contracted with for sample testing;

(b) A list of non-testing activities allowed under KRS 218B.125 that the safety compliance facility engaged in during the licensure period, a list of its customers for each activity, and the compensation received for each activity. If the safety compliance facility produced and sold educational materials related to the use of medicinal cannabis, the safety compliance facility shall provide copies of those educational materials to the cabinet upon request;

(c) Any issues with accomplishing sample testing in a timely manner; ~~and~~

(d) The number of current employees, their respective job titles, and hourly wage; ~~[-]~~

(e) The number of samples tested during the previous twelve (12) months; and

(f) The number of samples that failed testing during the previous twelve (12) months and a breakdown of the reason(s) the tests failed.

(2) A safety compliance facility shall participate in surveys distributed by the cabinet throughout a licensure period and provide full and complete responses.

FILED WITH LRC: July 9, 2024

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**CABINET FOR HEALTH AND FAMILY SERVICES
Office of the Secretary
(As Amended at ARRS, July 9, 2024)**

915 KAR 1:070. Dispensary.

RELATES TO: KRS Chapter 218B

STATUTORY AUTHORITY: KRS 218B.140

NECESSITY, FUNCTION, AND CONFORMITY: KRS 218B.140 requires the Cabinet for Health and Family Services to promulgate administrative regulations establishing requirements and procedures for medicinal cannabis dispensaries in the Commonwealth. This administrative regulation establishes those requirements and procedures.

Section 1. General Requirements.

(1) ~~A~~[No] person or entity shall not[may] dispense, sell, or deliver medicinal cannabis to cardholders without first being issued a license by the cabinet.

(2) The cabinet shall post a list of licensed dispensaries on the Web site for the Kentucky Medical Cannabis Program, <https://kymedcan.ky.gov>.

(3) A dispensary shall:

(a) Conduct a criminal background check into the criminal history of each person seeking to become a principal officer, board member, agent, volunteer, or employee before that person begins work and shall retain records of these background checks for five (5) years and provide same to the cabinet during subsequent inspections or upon request;

(b) Not acquire medicinal cannabis for retail sale from any

person or business other than a cannabis business licensed by the cabinet;

(c) Not sell or dispense medicinal cannabis products intended for consumption by vaporizing to a cardholder who is younger than twenty-one (21) years of age or to a designated caregiver for a registered qualified patient who is younger than twenty-one (21) years of age;

(d) Not sell medicinal cannabis directly to a minor;

(e) Not co-locate in a shared space or have any financial arrangement with a medicinal cannabis practitioner;

(f) Not acquire, possess, dispense, sell, offer for sale, transfer, or transport:

1. Raw plant material with a delta-9 tetrahydrocannabinol (THC) content of more than thirty-five (35) percent;

2. Medicinal cannabis products intended for oral consumption as an edible, oil, or tincture with more than ten (10) milligrams of THC per serving;

3. Any medicinal cannabis product not otherwise described in this subsection[provision] with a THC content of more than seventy (70) percent; or

4. Any medicinal cannabis product that contains vitamin E acetate;

(g) Prohibit a cardholder from self-administering or a designated caregiver from assisting with administering medicinal cannabis on the premises of the licensed dispensary location;

(h) Only dispense or sell medicinal cannabis that has passed the testing requirements established[contained] in 915 KAR 1:110;

(i) Only dispense or sell medicinal cannabis to a cardholder in a sealed and properly labeled package as required by 915 KAR 1:100;

(j) Maintain adequate on-site parking for employees, agents, visitors, transporters of medicinal cannabis, or cabinet staff; and

(k) Comply with all applicable requirements of KRS Chapter 218B, specifically KRS 218B.095 and 218B.110, and 915 KAR Chapter 1.

(4) A dispensary shall not employ, take on as a volunteer, or have as a board member, principal officer, or agent any person who was convicted of a disqualifying felony offense or is younger than twenty-one (21) years of age.

(5) The qualifications that a dispensary shall meet to receive a license are continuing qualifications to maintain the license throughout the licensure period.

(6) A dispensary shall not package medicinal cannabis and medicinal cannabis products for sale to cardholders.

Section 2. Dispensing Medicinal Cannabis.

(1) A dispensary shall only dispense medicinal cannabis to a registered qualified patient, visiting qualified patient, or designated caregiver who:

(a) Presents a valid registry identification card issued by the cabinet; or

(b) Presents a valid out-of-state registry identification card and documentation of having been diagnosed with a qualifying medical condition if the individual is a visiting qualified patient without a valid registry card issued by the cabinet.

(2) Prior to dispensing medicinal cannabis to registered qualified patients, designated caregivers, and visiting qualified patients who have a registry identification card issued by the cabinet, the dispensary shall:

(a) Verify the validity of the registry identification card through use of the Commonwealth's designated electronic monitoring system;

(b) Verify that the individual presenting the registry identification card is at least eighteen (18) years of age and is the person identified on the registry identification card by examining at least one (1) other form of government-issued photo identification; and

(c) Verify the amount of medicinal cannabis that the registered qualified patients, designated caregivers, and visiting qualified patients who have a registry identification card issued by the cabinet is legally permitted to purchase pursuant to KRS 218B.025 by checking the Commonwealth's designated electronic monitoring system. If a medicinal cannabis practitioner sets forth recommendations, requirements, or limitations as to the form or dosage of medicinal cannabis on the written certification issued to the individual, the medicinal cannabis dispensed shall conform to those recommendations, requirements, or limitations.

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(3) Prior to dispensing medicinal cannabis to visiting qualified patients ~~who that~~ do not have a registry identification card issued by the cabinet, the dispensary shall:

(a) Review the out-of-state registry identification card presented by the individual to determine any issues with its validity, including checking any expiration date;

(b) Verify that the individual presenting the registry identification card is at least eighteen (18) years of age and is the person identified on the registry identification card by examining at least one (1) other form of government-issued photo identification;

(c) Examine documentation provided by the individual of having been diagnosed with a qualifying medical condition. This documentation shall consist of contemporaneous records containing an express statement of diagnosis of a qualifying medical condition and may include a written certification from a physician, patient history and physical report, or a physician summary report; and

(d) Inform the individual that he or she is not ~~be~~ permitted to purchase more medicinal cannabis than the amount determined by the cabinet to constitute an uninterrupted ten (10) day supply of medicinal cannabis during a given eight (8) day period.

(4) A dispensary shall maintain records that include specific notations of the type and amount of medicinal cannabis being dispensed to a cardholder and whether it was dispensed directly to a registered qualified patient or visiting qualified patient, or to a registered qualified patient's designated caregiver. Each entry shall include the date and time the medicinal cannabis was dispensed. The data required to be recorded by this subsection~~provision~~ shall be entered into the Commonwealth's designated electronic monitoring system and seed to sale tracking system in accordance with written instructions provided by the cabinet.

(5) Prior to the completion of the transaction, the employee conducting the transaction at the dispensary shall prepare a receipt of the transaction, provide a hardcopy or electronic copy of the receipt to the cardholder, and retain a hardcopy or electronic copy of the receipt for the dispensary's records for a minimum of two (2) years. The receipt shall include ~~the following information~~:

(a) The dispensary's name, address, and license number;

(b) The name of the cardholder;

(c) The date and time the medicinal cannabis was dispensed;

(d) ~~[Any requirement or limitation noted by the medicinal cannabis practitioner on the cardholder's written certification as to the form or amount of medicinal cannabis that the individual should use;]~~

~~[(e)]~~ The form and the quantity of medicinal cannabis dispensed;

~~[(e)]~~~~[(f)]~~ Any medicinal cannabis accessories or educational materials included in the transaction; and

~~[(f)]~~~~[(g)]~~ The amount paid by the cardholder for the medicinal cannabis and other items.

(6) When dispensing medicinal cannabis to visiting qualified patients with an out-of-state registry identification card and required documentation of having been diagnosed with a qualifying medical condition, a dispensary may assess a convenience fee to be collected ~~by the dispensary~~ as part of the transaction. The convenience fee shall not exceed fifteen (15) dollars per transaction.

Section 3. Limitations on Dispensing Medicinal Cannabis. In addition to other dispensing requirements established~~contained~~ in KRS Chapter 218B and this administrative regulation, a dispensary shall not dispense to a cardholder:

(1) A quantity of medicinal cannabis that is greater than the amount indicated on the individual's written certification, if any;

(2) A form or dosage of medicinal cannabis that is listed as a restriction or limitation on the individual's written certification;

(3) A quantity of medicinal cannabis that is greater than the cardholder is legally permitted to purchase at the time of the transaction;

(4) Any expired medicinal cannabis or medicinal cannabis products; and

(5) Any medicinal cannabis or medicinal cannabis products that have been identified as part of a recall.

Section 4. Dispensary Facilities.

(1) A dispensary shall only sell medicinal cannabis within a building or secure structure located on the specific site licensed by

the cabinet and identified on its license issued by the cabinet. The building or secure structure shall ~~meet all applicable state and local building codes and specifications in addition to the following~~:

(a) Have~~Has~~ a complete roof enclosure supported by connecting permanent walls~~;~~ constructed of solid materials extending from the ground to the roof;

(b) Be~~Is~~ secure against unauthorized entry;

(c) Have~~Has~~ a foundation, slab, or equivalent base to which the floor is securely attached;

(d) Have~~Has~~ commercial grade door locks on all external doors that are locked at all times;

(e) Restrict~~Restricts~~ access to only authorized personnel to limited access areas identified with signage and daily records of entry and exit;

(f) Contain~~Contains~~ adequate plumbing to carry sufficient quantities of water to locations throughout the facility and convey sewage and waste from the facility without cross contamination of potable water and waste;

(g) Properly store~~stores~~ toxic cleaning compounds or sanitizing agents in a manner that is in accordance with applicable local, state, and federal laws and regulations;

(h) Maintain~~Maintains~~ pest control; ~~and~~

(i) Maintain~~Maintains~~ adequate indoor and exterior lighting to facilitate video surveillance at all times; ~~and~~;

(j) Meet all applicable state and local building codes and specifications.

(2) A dispensary shall only dispense medicinal cannabis to a cardholder in an indoor, enclosed, secure facility between the hours of 8 a.m. and 8 p.m.

(3) A dispensary shall not be located at the same site and location used for growing, cultivating, or processing medicinal cannabis, ~~or~~ in the same office space as a medicinal cannabis practitioner or other physician, or in the same location as a hemp business.

(4) A dispensary shall not permit a person under eighteen (18) years of age to enter or remain on its premises. A dispensary shall not permit an individual who is not a cardholder to enter or remain on its premises except in accordance with KRS 218B.095(6) and Section 10 of this administrative regulation.

(5) A dispensary shall post a sign in a conspicuous location at each entrance of the facility that reads: "THESE PREMISES ARE UNDER CONSTANT VIDEO SURVEILLANCE. NO ONE UNDER THE AGE OF 18 IS PERMITTED TO ENTER." The letters on the signs required by this subsection~~provision~~ shall be at minimum one-half (1/2) inch in height.

(6) A dispensary shall clearly mark all limited access areas on its premises with proper signage. All areas of ingress and egress to a limited access area shall be clearly identified by the posting of a sign which shall be not less than twelve (12) inches wide and twelve (12) inches long, composed of letters not less than one-half (1/2) inch in height, which shall state: "Do Not Enter. Limited Access Area. Access Limited to Authorized Personnel and Escorted Visitors."

(7) A dispensary shall have a secure area for the loading and unloading of medicinal cannabis into and from a transport vehicle.

Section 5. Items and Services Provided at a Dispensary.

(1) Unless expressly authorized by this administrative regulation, a dispensary shall not sell, offer for sale, or dispense any product except~~dispense~~ medicinal cannabis, medicinal cannabis products, and medicinal cannabis accessories in accordance with this administrative regulation. A dispensary shall not sell prerolled medicinal cannabis products, including such as joints or blunts or any other products that are solely intended for consumption by smoking.

(2) A dispensary may operate a delivery service for registered qualified patients and designated caregivers in accordance with the delivery service requirements established in 915 KAR 001:080, Section 2.

(3) A dispensary may dispense medicinal cannabis to cardholders using~~via~~ a drive-thru window or curbside pickup service if:

(a) The dispensary notifies the cabinet by~~via~~ electronic mail to

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kymedcanreporting@ky.gov of its intent to dispense medicinal cannabis using[via] a drive-thru window or curbside pickup service;

(b) The dispensary provides the cabinet with detailed written plans and procedures for drive-thru and curbside pickup operations, including operating hours, how payment will be accomplished, how medicinal cannabis products will be provided to cardholders, and safety and security measures to ensure safe operations;

(c) The cabinet approves the dispensary's proposed written plans and procedures; and

(d) The dispensary complies with the dispensing requirements established[contained] in Sections 2 and 3 of this administrative regulation.

(4) A dispensary may display product examples that have been designated by the dispensary for the purpose of product education for cardholders if:

(a) There is a sign or label conspicuously displayed on or near the product example that clearly states "PRODUCT EXAMPLE FOR DISPLAY PURPOSES ONLY. NOT FOR SALE OR CONSUMPTION" in bold, capital letters;

(b) The product example is packaged in a secure jar protected by a plastic, glass, or metal mesh screen to allow cardholders to see the medicinal cannabis or medicinal cannabis product;

(c) The product example is recorded in the Commonwealth's electronic monitoring system and seed to sale tracking system as a product example; and

(d) At the point a product example has noticeably degraded to where it is no longer representative of a new product, the dispensary shall destroy the product example in accordance with Section 14 of this administrative regulation.

(5) Dispensaries may utilize inducements to assist cardholders. Inducements shall not persuade or influence the use of medicinal cannabis outside of medicinal cannabis practitioner recommendations or limitations or the amounts allowed by KRS Chapter 218B. Authorized inducements may include[are as follows]:

(a) The use of coupons, loyalty programs, and discounts; or[and]

(b) The giving away of educational materials and branded merchandise.

(6) Pursuant to KRS 218B.110(1)(e), a dispensary may accept returns of medicinal cannabis and medicinal cannabis products from a cardholder[;][but only] for the purpose of disposal. A dispensary shall[may] not offer anything of monetary value in return for medicinal cannabis or medicinal cannabis products received from a cardholder, except clearly defective products may be exchanged for the same or similar product of equal or lesser value with no monetary refund. All medicinal cannabis and medicinal cannabis product returns and their subsequent destruction shall be documented by the dispensary.

(7) A dispensary may sell branded merchandise, including t-shirts, mugs, water bottles, and hats.

(8) A dispensary shall not sell any medicinal cannabis accessory that is used solely for the purpose of smoking medicinal cannabis, including rolling papers and lighters.

Section 6. Educational Materials and Product Information.

(1) When dispensing medicinal cannabis, a dispensary shall disseminate evidence-based educational materials and product information regarding dosage, directions for use, and impairment to cardholders who purchase medicinal cannabis as follows:

(a) A dispensary may provide the educational material and product information required under this section to cardholders through the use of a quick response (QR) code that links to the information required under this section. The QR code shall be labeled as "Educational Materials" directly above or below the code and shall be large enough to be smart-phone readable. The QR code may appear on the receipt provided to the cardholder or on a separate sheet of paper provided to the cardholder;

(b) Upon request of the cardholder purchasing the medicinal cannabis, a dispensary shall provide hardcopies of any materials required under this section[provision]; and

(c) Upon request of the cabinet, a dispensary shall provide the cabinet with copies of the educational material required under this

section within five (5) business days of receipt of the request.

(2) The educational materials and product information required by this section shall include[the following information]:

(a) The method or methods for administering individual servings of medicinal cannabis;

(b) Dosage or serving size information;

(c) [Side]Effects and impairment;

(d) How to obtain appropriate services or treatment for medicinal cannabis abuse;

(e) Any known[side effects and] contraindications associated with medicinal cannabis that may cause harm to the patient; and

(f) How to properly store medicinal cannabis and medicinal cannabis products.

Section 7. Secret Shoppers. The cabinet may utilize secret shoppers to assist with reviewing a dispensary's compliance with KRS Chapter 218B and 915 KAR Chapter 1, including attempting to purchase medicinal cannabis or medicinal cannabis products. The cabinet may conduct an inspection or investigation resulting from a secret shopper's experience.

Section 8. Plans of Operation.

(1) Prior to its first day of selling or dispensing medicinal cannabis in the Commonwealth, a dispensary shall establish standard operating procedures for[the following]:

(a) Employment policies and procedures;

(b) Security, including:

1. Staff identification measures, including use of identification badges;

2. Monitoring of attendance of staff and visitors;

3. Alarm systems;

4. Video surveillance;

5. Monitoring and tracking inventory, including use of the Commonwealth's electronic monitoring system and seed to sale tracking system established pursuant to KRS 218B.140;

6. Personnel security;

7. Transportation of medicinal cannabis and how to properly secure medicinal cannabis in the event of a traffic collision or transport vehicle malfunction;

8. Cash management and anti-fraud procedures;

9. Measures to prevent loitering, which shall include signage;[and]

10. Storage of medicinal cannabis and medicinal cannabis products; and

11. Customer service, including procedures for halting a sale;

(c) Recordkeeping;

(d) The process for receiving, handling, transporting, storing, selling, and disposing of medicinal cannabis;

(e) Employee qualifications, supervision, and training;

(f) Workplace safety;

(g) Waste disposal;

(h) Maintenance, cleaning, and sanitation of facility;

(i) Investigation of complaints and potential adverse events received from other cannabis businesses, cardholders, or medicinal cannabis practitioners;

(j) Preventing unlawful diversion of medicinal cannabis;

(k) A recall plan;

(l) Contamination;

(m) Maintaining confidentiality of cardholder information, including information and documentation provided by visiting qualified patients; and

(n) Any other standard operating procedures required for all cannabis businesses in KRS Chapter 218B and 915 KAR Chapter 1.

(2) A dispensary shall make its standard operation procedures available to the cabinet upon request and during any inspection of the dispensary.

Section 9. Employees Records and Identification.

(1) A dispensary shall keep an individual employment record for all employees, including:

(a) Full legal name;

(b) Detailed job description;

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- (c) Documentation of completed criminal background check;
- (d) Record of all training received or acquired by the employee;
- (e) Dates of employment;
- (f) Records of days and hours worked; and
- (g) Any disciplinary actions taken by the dispensary.

(2) Employment records shall be maintained, either electronically or in hard copy, for at least five (5) years after the employee's last date of employment with the dispensary.

(3) A dispensary shall create an identification badge for each employee, agent, or volunteer. ~~The~~**This** badge shall be conspicuously worn by employees, agents, or volunteers at all times that they are on the licensed premises or during transport of medicinal cannabis. The badge shall contain:

(a) The individual's name, photo, ~~and~~ employee identification number, **and the license number of the dispensary;**

(b) The phone number and email address for the dispensary; and

(c) The phone number and email address for the Kentucky Medical Cannabis Program.

Section 10. Visitor Access to Limited Access Areas.

(1) Except as provided in this section, only authorized employees or agents of a dispensary shall enter a limited access area.

(2) ~~If a visitor requires~~**A dispensary shall require visitors requiring** access to a limited access area in the dispensary's facility, ~~the dispensary shall~~**to**:

(a) ~~Require the visitor to~~sign a visitor log upon entering and leaving the limited access area and detail the need for entry;

(b) Check the visitor's government-issued identification to verify **the visitor's age and** that the name on the identification provided matches the name in the visitor log;

(c) Issue a visitor identification badge with the visitor's name and company, if applicable, and a badge number;

(d) Escort the visitor while the visitor remains **at the dispensary location**~~in a limited access area~~; and

(e) Ensure that the visitor does not touch any medicinal cannabis located in a limited access area.

(3) The visitor log required by this section shall:

(a) Be maintained for five (5) years and available to the cabinet, law enforcement, and other federal or state government officials upon request to perform the government officials' functions and duties; and

(b) Include the full name of each visitor, the visitor identification badge number, the time of arrival, the time of departure, and the purpose of the visit, ~~including the areas of the site and facility visited~~.

(4) This section ~~shall~~**does** not limit the right of the cabinet or its authorized agents, or other federal, state, or local government officials, from entering any area of a dispensary if necessary to perform the government officials' functions and duties.

(5) A principal officer, board member, agent, financial backer, employee, or volunteer of a dispensary ~~shall~~**may** not receive any type of consideration or compensation for allowing a visitor to enter a limited access area.

Section 11. Security and Surveillance.

(1) A dispensary shall have security and surveillance systems, utilizing commercial-grade equipment, to prevent unauthorized entry, and to prevent and detect an adverse loss. The security and surveillance systems shall include~~the following~~:

(a) A professionally monitored security alarm system that includes~~the following~~:

1. Coverage of all facility entrances and exits; rooms with exterior windows, exterior walls, roof hatches, or skylights; storage rooms, including those that contain medicinal cannabis, and safes; and the perimeter of the facility;

2. An audible security alarm system signal, known as a panic alarm, generated by the manual activation of a device intended to signal a life-threatening or emergency situation requiring law enforcement response;

3. A silent alarm signal, known as a holdup alarm, generated by the manual activation of a device intended to signal a robbery in progress;

4. A failure notification system that provides an audible, text, or visual notification of any failure in the systems. The failure notification system shall provide by telephone, e-mail, or text message an alert to a designated security person within the facility within five **(5)** minutes after the failure;

5. Smoke and fire alarms;

6. Auxiliary power sufficient to maintain operation for at least twenty-four (24) hours following a power outage;

7. The ability to ensure all access doors are not solely controlled by an electronic access panel to prevent locks from becoming released during a power outage; and

8. Motion detectors for exterior lighting; ~~and~~.

(b) A professionally monitored security surveillance system that is operational twenty-four (24) hours a day, seven (7) days a week, and records all activity in images capable of clearly revealing facial detail. The security and surveillance system shall include:

1. Fixed camera placement that allows for a clear image of all individuals and activities in and around~~the following~~:

a. All limited access areas;

b. A room or area containing a security alarm and surveillance system storage device or equipment;

c. Entrances to and exits from the facility. Entrances and exits shall be recorded from both indoor and outdoor vantage points;

d. Rooms with exterior windows, exterior walls, roof hatches, or skylights and storage rooms, including those that may contain medicinal cannabis and safes and excluding restrooms; and

e. ~~Twenty (20)~~**Five (5)** feet from the exterior of the perimeter of the facility;

2. Auxiliary power sufficient to maintain operation for at least twenty-four (24) hours following a power outage;

3. ~~The~~ ability to operate under the normal lighting conditions of each area under surveillance;

4. ~~The~~ ability to immediately produce a clear, color, still photograph in a digital format that is easily accessible;

5. ~~The~~ ability to clearly and accurately display the date and time. The date and time shall be synchronized and set correctly and may not significantly obscure the picture;

6. ~~The~~ ability to record all images captured by each surveillance camera in a format that may be easily accessed for a minimum of ~~sixty (60)~~**thirty (30)** days, unless otherwise required for investigative or litigation purposes. The recordings shall be kept:

a. At the dispensary;

(i) In a locked cabinet, closet, or other secure place to protect it from tampering or theft; and

(ii) In a limited access area or other room to which access is limited to authorized individuals; or

b. At a secure location other than the location of the dispensary if approved by the cabinet; ~~and~~.

7. The ability to easily export video recordings and still photographs requested by the cabinet, law enforcement, and other federal or state government officials and provide same in a standard file format that is easily accessible.

(2) The following requirements apply to the inspection, servicing, or alteration of, and any upgrade to, the security alarm and surveillance systems:

(a) The systems shall be inspected and all devices tested once every year by a qualified alarm system vendor and a qualified surveillance system vendor;

(b) The dispensary shall conduct maintenance inspections once every month to ensure that any repairs, alterations, or upgrades to the security alarm and surveillance systems are made for the proper operation of the systems. **No more than thirty (30) calendar days shall lapse between the inspections required under this paragraph provision;**

(c) The dispensary shall retain at the facility, for at least five (5) years, records of all inspections, servicing, alterations, and upgrades performed on the security alarm and surveillance systems and shall make the records available to the cabinet and its authorized agents within two (2) business days following a request; and

(d) ~~If there is~~**In the event**~~of~~ a mechanical malfunction of the security alarm or surveillance system that a dispensary anticipates will exceed an eight (8) hour period, the dispensary shall notify the

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cabinet immediately by [via] electronic mail to kymedcanreporting@ky.gov and, with cabinet approval, provide alternative security measures that may include closure of the facility.

(3) Regarding records retention, a dispensary shall ~~meet the following requirements regarding records retention~~:

(a) Have a secure electronic back-up system for all electronic records;

(b) Within three (3) business days following a request for records under this paragraph, provide up to four (4) screen captures of an unaltered copy of a video surveillance recording to the cabinet or its authorized agents, law enforcement, or other federal, state, or local government officials if necessary to perform the governmental officials' functions and duties; and

(c) If ~~if a dispensary~~ has been notified in writing by the cabinet or its authorized agents, law enforcement, or other federal, state, or local government officials of a pending criminal or administrative investigation for which a recording may contain relevant information, retain an unaltered copy of the recording for two (2) years or until the investigation or proceeding is closed or the entity conducting the investigation or proceeding notifies the dispensary that it is not necessary to retain the recording, whichever is later.

(4) A dispensary shall install commercial-grade, nonresidential doors and door locks on each external door of the facility. Keys or key codes for all doors shall remain in the possession of designated authorized individuals.

(5) During all non-working hours, all entrances to and exits from the dispensary shall be securely locked.

(6) A dispensary shall limit access to a room containing the equipment operating the security alarm and surveillance monitoring systems to:

(a) Persons who are essential to maintaining security and surveillance operations;

(b) Federal, state, and local law enforcement;

(c) Security alarm and surveillance system service employees;

(d) The cabinet or its authorized agents; and

(e) Other persons with the prior written approval of the cabinet.

(7) A dispensary shall make available to the cabinet or its authorized agents, upon request, a current list of authorized employees and service employees or contractors who have access to areas containing the equipment operating the security alarm and surveillance monitoring systems and place a copy of this list on or next to the doors that access those areas.

(8) A dispensary shall keep rooms housing the equipment operating the security alarm and surveillance monitoring systems locked at all times and shall [may] not use these rooms for any other purpose or function.

(9) A dispensary shall routinely inspect its point of sale systems to confirm no malicious software, programs, or applications have been downloaded that affect cardholder or sales information and shall document each inspection in writing. The documentation required under this subsection [provision] shall be retained by the dispensary for a minimum of two (2) years from the date of the inspection.

Section 12. Electronic Monitoring System and Seed to Sale Tracking System.

(1) A dispensary shall use the electronic monitoring system and seed to sale tracking system prescribed by the cabinet containing the requirements in KRS Chapter 218B, specifically KRS 218B.140, and in accordance with written instructions provided by the cabinet.

(2) A dispensary shall establish inventory controls and procedures to conduct inventory reviews at its facility and ensure its inventory is accurate in real-time in the Commonwealth's designated electronic monitoring system and seed to sale tracking system.

(3) A dispensary shall:

(a) ~~[A dispensary shall]~~ Prepare a monthly [quarterly] physical inventory report that includes any necessary adjustments, and the reason(s) for an adjustment, and that demonstrates the physical inventory reconciles with the inventory recorded in the Commonwealth's designated electronic monitoring system and seed to sale tracking system, including any medicinal cannabis that has been or is in the process of being destroyed. No more than thirty

(30) calendar days shall lapse between the preparation of a report required under this paragraph [provision]; and

(b) Create and maintain a written or electronic record ~~[shall be created and maintained]~~ of each inventory conducted under this section that includes the date of the inventory, a summary of the inventory findings, and the employee identification numbers and titles or positions of the individuals who conducted the inventory.

Section 13. Storage Requirements.

(1) A dispensary shall have separate locked limited access areas for storage of:

(a) Medicinal cannabis and medicinal cannabis products that are ready for sale to cardholders; and

(b) Medicinal cannabis that is expired, damaged, deteriorated, mislabeled, contaminated, recalled, or whose containers or packaging have been opened or breached until the medicinal cannabis is returned to another cannabis business, destroyed, or otherwise disposed of as required under Section 14 of this administrative regulation.

(2) A dispensary shall maintain all storage areas in a clean and orderly condition and free from infestation by insects, rodents, birds, and pests.

(3) A dispensary shall store medicinal cannabis and medicinal cannabis products in a manner that prevents degradation of active compounds and spoilage.

(4) A dispensary shall routinely review medicinal cannabis and medicinal cannabis products in its inventory available for sale to identify any products that are past their respective expiration date and remove those products from the saleable inventory.

Section 14. Management and Disposal of Medicinal Cannabis Waste.

(1) A dispensary shall dispose of expired, undesired, excess, unauthorized, obsolete, adulterated, misbranded, or deteriorated medicinal cannabis in ~~[such]~~ a manner as to render the medicinal cannabis unusable. A dispensary shall record medicinal cannabis waste as required in the Commonwealth's designated electronic monitoring system and seed to sale tracking system.

(2) Medicinal cannabis that is rendered unusable shall be discarded into a ~~[locked]~~ dumpster with commercial grade locks or other approved, locked container for removal from the dispensary by a waste removal company selected by the dispensary, except that ashes resulting from the controlled incineration of medicinal cannabis may be placed in an unlocked dumpster. Medicinal cannabis shall be rendered unusable by:

(a) Controlled incineration; or

(b) Grinding and incorporating the medicinal cannabis with one (1) or more of the non-consumable, solid wastes listed below, ~~[so]~~ such that the resulting mixture is majority non-cannabis waste:

1. Paper waste;
2. Cardboard waste;
3. Food waste;
4. Yard or garden waste;
5. Grease or other compostable oil waste; or
6. Soil or other used growth media.

(3) The disposal of medicinal cannabis shall be performed under video surveillance from the time the destruction begins to when it is placed in a locked dumpster or other approved, locked container and removed from the dispensary's location.

(4) A minimum of two (2) employees shall oversee [The employee overseeing] the disposal of medicinal cannabis and the dispensary shall maintain and make available a separate record of every disposal indicating ~~the following~~:

(a) The date and time of disposal;

(b) The manner of disposal;

(c) Any [The] unique identification code(s) associated with the medicinal cannabis scheduled for destruction;

(d) The reasoning for and description of the disposal;

(e) The names [name], employee identification numbers [number], and signatures [signature] of the employees [employee] overseeing the disposal of the medicinal cannabis; and

(f) ~~[If the medicinal cannabis waste for disposal contains~~

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~~raw plant material that was prepared for sale at the dispensary,]~~
The harvest or production batch, strain, volume, number of units if applicable, and weight of the medicinal cannabis~~[plant material]~~ being disposed.

(5) The disposal of other waste from the dispensary that does not include medicinal cannabis, including hazardous waste and liquid waste, shall be performed in a manner consistent with applicable federal, state, and local requirements.

Section 15. Sanitation and Safety in a Dispensary.

(1) A dispensary shall maintain its facility in a sanitary condition to limit the potential for contamination or adulteration of the medicinal cannabis stored in or dispensed at the facility. The following requirements shall apply:

- (a) Trash shall be properly and routinely removed;
- (b) Floors, walls, and ceilings shall be kept in good repair;
- (c) Adequate protection against pests shall be provided; and
- (d) Toxic cleaning compounds, sanitizing agents, and other chemicals shall be labeled and stored in a manner that prevents contamination of medicinal cannabis, and in a manner that otherwise complies with other applicable laws, rules, and regulations.

(2) All employees shall conform to sanitary practices while on duty, which includes~~[including]~~:

- (a) Maintaining adequate personal cleanliness;
- (b) Washing hands thoroughly in an adequate hand-washing area before starting work and at any other time when hands may have become soiled or contaminated; and

(c) Eating food, chewing gum, drinking beverages, or using vaping or tobacco products be confined~~[Confining]~~[the following] to areas other than where medicinal cannabis may be exposed~~[- eating food, chewing gum, drinking beverages, or using tobacco]~~.

(3) A dispensary shall provide its employees and visitors with adequate and convenient hand-washing facilities furnished with running water at a temperature suitable for sanitizing hands. Effective nontoxic sanitizing cleansers and sanitary towel service or suitable drying devices shall also be provided.

(4) A dispensary shall provide employees, agents, volunteers, cardholders, and visitors with adequate, readily accessible restrooms that are maintained in a sanitary condition and in good repair.

(5) A dispensary shall comply with all other applicable federal, state, and local building code requirements and occupational safety and health requirements.

Section 16. Complaints About or Recall of Medicinal Cannabis and Medicinal Cannabis Products.

(1) A dispensary shall immediately notify the cabinet by~~[via]~~ electronic mail to kymedcanreporting@ky.gov, as well as the cannabis business from which it received any medicinal cannabis in question, upon becoming aware of any defects or quality issues with the medicinal cannabis or any complaint made to the dispensary by another cannabis business, a cardholder, or medicinal cannabis practitioner who reports an adverse event from using medicinal cannabis purchased from the dispensary. A dispensary shall investigate the report and as follows:

~~[(a)]~~ ~~[A dispensary]~~ shall immediately investigate a complaint to determine if a voluntary or mandatory recall of medicinal cannabis and medicinal cannabis products is necessary or if any further action is required~~[,]~~

~~(a)~~~~(b)~~ If a dispensary determines that further action is not required, the dispensary shall notify the cabinet of its decision by~~[via]~~ electronic mail to kymedcanreporting@ky.gov and, within twenty-four (24) hours, submit a written report to the cabinet stating its rationale for not taking further action. The cabinet shall review the written report and consult with the dispensary as needed. If the cabinet disagrees with the dispensary's decision, the cabinet shall take all necessary steps allowable under KRS Chapter 218B and 915 KAR Chapter 1 to ensure public health and safety, including issuing a cease~~[,]and-[]~~desist order to pause the sale and distribution of the medicinal cannabis at issue until resolution of the matter~~[,]and]~~

~~(b)~~~~(c)~~ If a dispensary determines that further action is required, the dispensary shall initiate a voluntary or mandatory recall in

accordance with the requirements of this section.

(2) Voluntary recalls. If a dispensary voluntarily initiates a recall, the dispensary shall recall medicinal cannabis from the market at its discretion for reasons that shall~~[do]~~ not pose a risk to public health and safety and shall notify the cabinet by~~[at the time the dispensary begins the recall via]~~ electronic mail to kymedcanreporting@ky.gov at the time the dispensary begins the recall.

(3) Mandatory recalls. If a dispensary discovers that a condition relating to medicinal cannabis sold at its facility poses a risk to public health and safety, the dispensary shall:

(a) Immediately notify the cabinet by phone and electronic mail to kymedcanreporting@ky.gov; and

(b) Secure, isolate, and prevent the distribution of the medicinal cannabis that may have been affected by the condition and remains in its possession. The dispensary shall not dispose of affected medicinal cannabis prior to notifying the cabinet and coordinating the disposal with the cabinet.

(4) If a dispensary fails to cooperate with the cabinet in a recall, or fails to immediately notify the cabinet of a need for a recall under this section, the cabinet may seek a cease~~[,]and-[]~~desist order and the dispensary may be subject to any other penalties or sanctions provided for in KRS Chapter 218B and 915 KAR Chapter 1:020.

(5) A dispensary's recall plan, as required under this administrative regulation, shall include~~[the following]~~:

(a) Designation of one (1) or more employees to serve as the recall coordinators. A recall coordinator shall be responsible for, among other duties, accepting the recalled medicinal cannabis;

(b) Procedures for identifying and isolating the affected medicinal cannabis to prevent or minimize its distribution to cardholders and other cannabis businesses;

(c) Procedures to retrieve and dispose of the medicinal cannabis;

(d) A communications plan to notify those affected by the recall, including:

1. The manner in which the dispensary shall notify other cannabis businesses in possession of medicinal cannabis subject to the recall; and

2. The use of press releases and other appropriate notifications to ensure that cardholders shall be notified of the recall if affected medicinal cannabis was dispensed to cardholders.

(e) Procedures for notifying the cabinet; and

(f) Procedures for entering information relating to the recall into the Commonwealth's designated electronic monitoring system and seed to sale tracking system.

(6) A dispensary shall follow the procedures outlined in its recall plan unless the dispensary obtains prior written approval of the cabinet or the cabinet notifies the dispensary in writing to perform other procedures. A dispensary shall conduct recall procedures in a manner that maximizes the recall of affected medicinal cannabis and minimizes risks to public health and safety.

(7) Upon receiving notification of a recall from a cannabis business or the cabinet, a dispensary shall cease dispensing the affected medicinal cannabis immediately.

(8) A dispensary shall coordinate the disposal of recalled medicinal cannabis with the cabinet. The cabinet or its authorized agents may oversee the disposal to ensure that the recalled medicinal cannabis is disposed of in a manner that shall~~[will]~~ not pose a risk to public health and safety.

(9) The dispensary shall enter information relevant to the recall into the Commonwealth's designated electronic monitoring system and seed to sale tracking system as part of the inventory, which may include~~[the following]~~:

(a) The total amount of recalled medicinal cannabis, including types, harvest batches, and production batches, if applicable;

(b) The total amount of recalled medicinal cannabis returned to the dispensary, including types, forms, harvest batches, and production batches, if applicable;

(c) The names of the recall coordinators;

(d) From whom the recalled medicinal cannabis was received;

(e) The means of transport of the recalled medicinal cannabis;

(f) The reason for the recall;

(g) The number of recalled samples, types, forms, harvest

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batches, and production batches, if applicable, sent to safety compliance facilities, the names and addresses of the safety compliance facilities, the dates of testing, and the results by sample; and

(h) The manner of disposal of the recalled medicinal cannabis, including:

- 1. The names[name] of the individuals[individual] overseeing the disposal of the recalled medicinal cannabis;
- 2. The name of the disposal company, if applicable;
- 3. The method of disposal;
- 4. The date of disposal; and
- 5. The amount disposed of by types, forms, harvest batches, and production batches, if applicable.

(10) The cabinet may initiate a mandatory recall upon receipt of information that a condition relating to the medicinal cannabis sold by the dispensary poses a risk to public health and safety.

Section 17. Duty to Report.

(1) At the time a dispensary submits a license renewal application to the cabinet, ~~if a dispensary~~ shall also report to the cabinet ~~by~~[via] electronic mail to kymedcanreporting@ky.gov ~~the following~~:

- (a) A list of the cannabis businesses whose medicinal cannabis products are sold at the dispensary;
- (b) A list of the forms of medicinal cannabis sold at the dispensary and their average sale price;
- (c) The amount of medicinal cannabis purchased by the dispensary during the current licensure period, including a breakdown by product type;
- (d) The amount of medicinal cannabis sold by the dispensary during the current licensure period, including a breakdown by product type;
- (e) Any significant issues with the supply and demand of medicinal cannabis experienced by the dispensary; and
- (f)~~(d)~~ The number of current employees, their respective job titles, and hourly wage.

(2) A dispensary shall participate in surveys distributed by the cabinet throughout a licensure period and provide full and complete responses.

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**CABINET FOR HEALTH AND FAMILY SERVICES
Office of the Secretary
(As Amended at ARRS, July 9, 2024)**

915 KAR 1:080. Transportation and delivery of medicinal cannabis.

RELATES TO: KRS Chapter 218B, 304.39-110
STATUTORY AUTHORITY: KRS 218B.140

NECESSITY, FUNCTION, AND CONFORMITY: KRS 218B.140 requires the Cabinet for Health and Family Services to promulgate administrative regulations establishing procedures for the secure transportation, including delivery services provided by dispensaries, of medicinal cannabis by cannabis businesses. This administrative regulation establishes those procedures.

Section 1. Transportation of Medicinal Cannabis Between Cannabis Businesses.

(1) A cannabis business shall only transport medicinal cannabis, including seeds, seedlings, and plants, to other cannabis businesses as follows:

(a) A cannabis business shall use a global positioning system (GPS) to ensure safe, efficient delivery of the medicinal cannabis to other cannabis businesses.[-]

(b) Vehicles permitted to transport medicinal cannabis shall:

- 1. Be equipped with a locked storage compartment that is part of the transport vehicle or have a locked storage container that has

a separate key or combination pad;

2. Have no markings that would either identify or indicate that the vehicle is being used to transport medicinal cannabis;

3. Maintain a current state vehicle registration;

4. Be equipped with an alarm system and a minimum of two (2) video cameras as required by subsection (1)(c) of this section; and

5. Be insured as required by Kentucky law, specifically KRS 304.39-110.[-]

(c) A transport vehicle shall be staffed with a delivery driver, contain a minimum of two (2) video cameras, one (1) with a clear view of the driver and one (1) with a clear view of the location of the medicinal cannabis,~~team consisting of at least two (2) individuals~~ and comply with the following:

1. The delivery driver[team] shall have a copy of the cannabis business license for the business transporting the medicinal cannabis;

2. ~~[At least one (1) delivery team member shall remain with the vehicle at all times that the vehicle contains medicinal cannabis;]~~

~~[3.]~~ Each delivery driver[team member] shall have access to a secure form of communication, such as a cellular telephone, at all times that the vehicle contains medicinal cannabis ~~[in order]~~ to contact cannabis businesses and law enforcement through the 911 emergency system;

~~3.~~~~4.~~ Each delivery driver[team member] shall conspicuously wear an employee identification badge at all times during transport of medicinal cannabis and shall, upon demand, produce it to the cabinet or its authorized agents, law enforcement, or other federal or state government officials if necessary to perform the government officials' functions and duties;

~~4.~~~~5.~~ Each delivery driver[team member] shall have a valid driver's license; and

~~5.~~~~6.~~ While on duty, a delivery driver[team member] shall not wear any clothing or symbols that may indicate ownership or possession of medicinal cannabis.[-]

(d) A delivery driver[team] shall proceed in a transport vehicle from a cannabis business facility, where the medicinal cannabis is loaded, directly to the other cannabis business, where the medicinal cannabis is unloaded, without making unnecessary stops. A delivery driver[team] may deliver medicinal cannabis to multiple cannabis businesses during one (1) transport.[-]

(e) A cannabis business shall immediately report to the cabinet, ~~by~~[via] electronic mail to kymedcanreporting@ky.gov, any vehicle accidents, diversions, losses, or other reportable events that occur during transport of medicinal cannabis.[-]

(f) A transport vehicle ~~shall be~~[is] subject to inspection by the cabinet or its authorized agents, law enforcement, or other federal or state government officials if necessary to perform the government officials' functions and duties. A transport vehicle may be inspected by the cabinet or its authorized agents while on the premises of a cannabis business during the course of an inspection or investigation.[-]

(g) ~~[Transport manifest.]~~ A cannabis business shall generate a printed or electronic transport manifest that accompanies every transport vehicle transporting medicinal cannabis to other cannabis businesses and it shall contain~~contains~~ ~~[the following information]~~:

- 1. The date the transport manifest was created;
- 2. The name, address, telephone number, and license number of the cannabis business transporting the medicinal cannabis and the name of and contact information for a representative of the cannabis business who has direct knowledge of the transport;
- 3. If applicable, the name, address, and telephone number of the contracted third party that is transporting medicinal cannabis on behalf of the cannabis business and the name of and contact information for a representative of the third party who has direct knowledge of the transport;
- 4. The name, address, telephone number, and license number of the cannabis business receiving the delivery;
- 5. The quantity, by weight or unit, of the medicinal cannabis being transported to a cannabis business along with the unique identifier for each harvest batch, production batch, or package;

6. A statement regarding whether the medicinal cannabis being transported to a cannabis business has been tested and, if so, the unique identifier for the harvest batch or production batch test;

7. The date and approximate time of departure;

8. The date and approximate time of arrival;

9. The transport vehicle's make and model and license plate number;

10. The name of each ~~person/member of the delivery team~~ accompanying the transport;

11. The driver's license number of the delivery ~~driver/team member driving the transport vehicle~~;

12. The signature of ~~the/a~~ delivery ~~driver/team member~~ once delivery has been accomplished; and

13. The name and signature of a representative of the cannabis business receiving the medicinal cannabis that confirms receipt of the delivery.[-]

(h) When a delivery ~~driver/team~~ delivers medicinal cannabis to multiple cannabis businesses during one (1) transport, the transport manifest shall correctly reflect the specific medicinal cannabis in transit to each cannabis business location.[-]

(i) A cannabis business shall provide a copy of the transport manifest to the cannabis business receiving the medicinal cannabis described in the transport manifest. To maintain confidentiality, a cannabis business may prepare separate manifests for each recipient.[-]

(j) All medicinal cannabis in transport shall be shielded from public view and placed in a locked storage compartment that is part of the transport vehicle or in a locked storage container that has a separate key or combination pad; ~~and~~[-]

(k) A cannabis business shall, if requested, provide a copy of any printed or electronic transport manifest to the cabinet or its authorized agents, law enforcement, or other federal or state government officials if necessary to perform the government officials' functions and duties.

(2) Evidence of adverse loss during transport.

~~(a) [If a cannabis business receiving a delivery of medicinal cannabis discovers a discrepancy in the transport manifest upon delivery, the cannabis business shall report the discrepancy to the cabinet within eight (8) hours of discovery via electronic mail to kymedcanreporting@ky.gov.]~~

~~[(b)] If a cannabis business transporting medicinal cannabis discovers a discrepancy in the transport manifest, the cannabis business shall:~~

~~1. Conduct an investigation to determine the cause of the discrepancy and memorialize the [investigation] findings in writing, which shall be provided to the cabinet within seven (7) calendar days of receiving a request from the cabinet; and;~~

~~2. Amend the cannabis business's standard plan of operation, if necessary, to prevent future discrepancies between the quantity or description of inventory listed in the transport manifest and the quantity or description of inventory delivered.[-; and]~~

~~[3.] [Electronically submit the following reports of the investigation to the cabinet via electronic mail to kymedcanreporting@ky.gov:]~~

~~[a.] [A written preliminary report of the investigation shall be submitted to the cabinet within seven (7) calendar days of discovering the discrepancy; and]~~

~~[b.] [A final written report of the investigation shall be submitted to the cabinet within thirty (30) calendar days of discovering the discrepancy.]~~

~~[(b)](c) If a cannabis business transporting medicinal cannabis discovers evidence of, or reasonably suspects, a theft or diversion of medicinal cannabis during transport, the cannabis business shall report its findings or suspicions to the cabinet within eight (8) hours of discovery by/via electronic mail to kymedcanreporting@ky.gov.~~

(3) An employee or agent of a safety compliance facility, cultivator, processor, producer, or third-party contractor who transports medicinal cannabis samples from a cultivator, processor, or producer to a safety compliance facility shall:

(a) Protect the physical integrity of the sample;

(b) Keep the composition of the sample intact; and

(c) Protect the sample against factors that interfere with the validity of testing results, including the factors of time and

temperature.

(4) A cannabis business may contract with a third-party for transportation and delivery to other cannabis businesses if:

(a) The third-party contractor complies with the transportation requirements of this section;

(b) The cannabis business conducts a criminal background check into the criminal history of each employee or agent of the third-party contractor that will transport medicinal cannabis on its behalf and shall not allow ~~an[any-such]~~ employee or agent to work for the cannabis business ~~who/thaf~~;

1. Was convicted of a disqualifying felony offense; or

2. Is younger than twenty-one (21) years of age;

(c) The cannabis business provides the third-party contractor with a copy of its license and identification badges for the third-party contractor's employees or agents ~~who/thaf~~ will transport medicinal cannabis. The badges shall be conspicuously worn at all times during transport of medicinal cannabis and shall contain:

1. The individual's name, photo, ~~[and]~~an employee identification number, and the license number of the cannabis business;

2. A phone number and email address for the cannabis business; and

3. A phone number and email address for the Kentucky Medical Cannabis Program;

(d) The cannabis business notifies the cabinet by/via electronic mail to kymedcanreporting@ky.gov of all third parties it has contracted with to transport medicinal cannabis prior to the third party commencing with any transportation of medicinal cannabis and confirms that it has satisfied the requirements of subsection (b) and (c) of this subsection. The cannabis business shall provide the cabinet with any additional information requested by the cabinet regarding the contracted third party's operations.

Section 2. Delivery Services Provided by Dispensaries.

(1) A dispensary may operate a delivery service for registered qualified patients and designated caregivers.

(2) ~~[In order]~~To deliver medicinal cannabis, medicinal cannabis accessories, and educational material to registered qualified patients and designated caregivers, a dispensary shall:

(a) Follow all requirements for dispensing and selling medicinal cannabis to registered qualified patients and designated caregivers in accordance with KRS Chapter 218B and 915 KAR 1:070 prior to delivery;

(b) Accomplish delivery on the date agreed upon by the dispensary and the registered qualified patient or designated caregiver~~[an order is received and processed through the Commonwealth's designated electronic monitoring system and seed-to-sale tracking system]~~;

(c) Accomplish delivery between the hours of 7:00 a.m. and 9:00 p.m.;

(d) Prepare a delivery manifest for each delivery or series of deliveries that includes the names of the delivery driver and any additional employees accompanying the transport~~[team members]~~, address for each delivery, estimated date and time of delivery, and actual date and time of delivery;

(e) Prepare a receipt for each delivery containing~~[the following information]~~:

1. The dispensary's name, address, and license number;

2. The name and address of the registered qualified patient or designated caregiver;

3. The date the medicinal cannabis was dispensed;

4. ~~[Any requirement or limitation noted by the medicinal cannabis practitioner on the registered qualified patient or designated caregiver's written certification as to the form or amount of medicinal cannabis that the individual should use;]~~

~~[5.]~~ The form and the quantity of medicinal cannabis dispensed;

~~[5.]~~~~[6.]~~ Any medicinal cannabis accessories or educational materials included in the delivery order; and

~~[6.]~~~~[7.]~~ The amount paid by the registered qualified patient or designated caregiver for the medicinal cannabis and other items.[-]

(f) At the time of delivery, check the registry identification card of the registered qualified patient or designated caregiver to verify the person accepting delivery is the same person who placed the order. The registered qualified patient or designated caregiver who

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placed the order shall sign the receipt to confirm receipt of all items delivered and receive a copy of the receipt; ~~and~~

(g) Only deliver medicinal cannabis, medicinal cannabis accessories, and educational material to the Kentucky address identified for the individual in the Commonwealth's designated electronic monitoring system; ~~and~~

(h) Allow delivery drivers to ~~may~~ deliver medicinal cannabis to multiple registered qualified patients and designated caregivers during one (1) transport. When delivery drivers deliver to multiple registered qualified patients and designated caregivers during one (1) transport, the transport manifest shall correctly reflect the specific medicinal cannabis in transit to each individual.

(3) Delivery vehicle and delivery driver~~team~~ requirements.

(a) Transport vehicles used for the delivery of medicinal cannabis by dispensaries to registered qualified patients or designated caregivers shall:

1. Be equipped with a locked storage compartment that is part of the transport vehicle or have a locked storage container that has a separate key or combination pad;

2. Have no markings that would either identify or indicate that the vehicle is being used to transport medicinal cannabis;

3. Maintain a current state vehicle registration;

4. Be equipped with an alarm system **and a minimum of two (2) video cameras as required by subsection (3)(b) of this section;** and

5. Be insured as required by Kentucky law, **specifically KRS 304.39-110[for commercial vehicles].**

~~(b) A transport vehicle shall be staffed with a delivery driver and contain a minimum of two (2) video cameras, one (1) with a clear view of the driver and one (1) with a clear view of the location of the medicinal cannabis[team consisting of at least two (2) dispensary employees. At least one (1) delivery team member shall remain with the transport vehicle at any time that it contains medicinal cannabis].~~

(c) Delivery ~~drivers[team members]~~ delivering medicinal cannabis shall:

1. Have a copy of the cannabis business license for the dispensary delivering the medicinal cannabis;

2. Have an employee identification badge issued by the dispensary that shall be conspicuously worn at all times during delivery of medicinal cannabis;

3. Have a valid driver's license; and

4. Not make unnecessary stops.

(d) All medicinal cannabis in transport for delivery to registered qualified patients or designated caregivers shall be shielded from public view and placed in a locked storage compartment that is part of the transport vehicle or in a locked storage container that has a separate key or combination pad.

(e) If a transport vehicle delivering medicinal cannabis is involved in ~~an[any]~~ accident or experiences any type of failure rendering the vehicle immobile or requiring the use of a tow truck, the delivery ~~driver[team]~~ shall notify the cabinet immediately ~~by[via]~~ electronic mail to kymedcanreporting@ky.gov.

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**CABINET FOR HEALTH AND FAMILY SERVICES
Office of the Secretary
(As Amended at ARRS, July 9, 2024)**

915 KAR 1:090. Advertising.

RELATES TO: KRS Chapter 218B

STATUTORY AUTHORITY: KRS 218B.140

NECESSITY, FUNCTION, AND CONFORMITY: KRS 218B.140 requires the Cabinet for Health and Family Services to promulgate administrative regulations establishing restrictions on advertising,

marketing, and signage for cannabis businesses. This administrative regulation establishes those restrictions.

Section 1. Advertising by Cannabis Businesses.

(1) Cannabis businesses shall not advertise medicinal cannabis sales in print, broadcast, online, by paid in-person solicitation of customers, or by any other advertising device, except that **a** cannabis businesses may:

(a) Place appropriate signs on ~~its[their]~~ property identifying ~~the[their]~~ business;

(b) Place listings in business directories;

(c) Place listings in trade or medical publications;

(d) Sponsor health or not-for-profit charity or advocacy events; and

(e) Maintain an informational Web site and social media presence as provided in Section 2 of this administrative regulation.

(2) Cultivators, processors, and producers shall not display any signage, logos, products, or other identifying characteristics on the outside of their respective facilities to alert the public that medicinal cannabis is grown, processed, produced, or stored at the facility.

(3) A cannabis business shall not make any deceptive, false, or misleading assertions or statements on any advertising, advertising device, sign, listing, or informational material.

Section 2. Informational Web site and Social Media Presence.

(1) A cannabis business may maintain an informational Web site and social media presence that provides:

(a) A description of ~~the[their]~~ business and services **offered;**

(b) A listing of medicinal cannabis or medicinal cannabis products cultivated, processed, produced, or sold by the cannabis business, **as well as listing the respective product prices and inducements allowed pursuant to 915 KAR 1:070, Section 5(5);**

(c) Educational materials and product information; and

(d) Certificates of analysis provided by safety compliance facilities for its respective harvest batches and production batches.

(2) The Web site and social media presence may also provide contact information for the cannabis business and a listing of the dispensaries where its medicinal cannabis or medicinal cannabis products are sold, if applicable.

(3) A cannabis business shall provide the cabinet with a list of all informational Web ~~sites[site]~~ and social media accounts maintained by the cannabis business, including links to the respective webpages, and shall not block or prohibit the cabinet from accessing those informational Web ~~sites[site]~~ and any social media postings. A cannabis business shall continually update the list required under this ~~subsection[provision]~~ and notify the cabinet of any changes within two (2) business days of the activation or deactivation of any informational Web site or social media account.

(4) An informational Web site or social media presence for a cannabis business shall not:

(a) Contain statements that are deceptive, false, or misleading;

(b) Contain any content that can reasonably be considered to target individuals under the age of eighteen (18), including images of minors, cartoons, toys, or similar images and items typically marketed towards minors, or references to products that are commonly associated with minors or marketed by minors;

(c) Encourage the transportation of medicinal cannabis products across state lines or otherwise encourage illegal activity; and

(d) Display consumption of medicinal cannabis **in a manner that does not provide an educational benefit.**

(5) An informational Web site or social media presence for a cannabis business shall conspicuously display the following statements:

(a) "Medicinal cannabis is for use by cardholders only"; and

(b) "Keep out of reach of children[-]";

(6) A cannabis business that maintains an informational Web site or social media presence shall utilize appropriate measures to ensure that individuals attempting to access the allowable content are eighteen (18) years of age or older.

Section 3. Removal of Objectionable and Non-conforming Advertising.

(1) A cannabis business shall remove any advertising, advertising device, sign, listing, sponsorship, or online material that

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the cabinet determines to be in violation of this administrative regulation.

(2) The cabinet shall provide written notice to a cannabis business of any violation of this administrative regulation and specify a reasonable time period for the cannabis business to remove any advertising, advertising device, sign, listing, sponsorship, or online material that the cabinet finds objectionable.

Section 4. Advertising to Other Cannabis Businesses.

(1) Cultivators, processors, producers, or dispensaries may directly promote their business, services, medicinal cannabis, medicinal cannabis products, medicinal cannabis accessories, educational materials, and product information to other cultivators, processors, producers, or dispensaries.

(2) A safety compliance facility shall only promote its medicinal cannabis testing services and other activities allowed by KRS 218B.125 to other cannabis businesses.

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CABINET FOR HEALTH AND FAMILY SERVICES
Office of the Secretary
(As Amended at ARRS, July 9, 2024)

915 KAR 1:100. Packaging and labeling of medicinal cannabis.

RELATES TO: KRS Chapter 218

STATUTORY AUTHORITY: KRS 218B.140, 15 U.S.C. secs. 1471 to 1476

NECESSITY, FUNCTION, AND CONFORMITY: KRS 218B.140 requires the Cabinet for Health and Family Services to promulgate administrative regulations establishing standards for the packaging and labeling of medicinal cannabis transferred, sold, or distributed by cannabis businesses. This administrative regulation establishes those standards.

Section 1. General Requirements for Packaging and Labeling of Medicinal Cannabis.

(1) Packaging and labeling of any medicinal cannabis or medicinal cannabis product shall not bear:

(a) Any resemblance to the trademarked, characteristic, or product-specialized packaging of any commercially available food or beverage product ~~or and not~~ be visually reminiscent of major brands of edible noncannabis products;

(b) Any statement, artwork, or design that could reasonably lead an individual to believe that the package contains anything other than medicinal cannabis;

(c) The logo of the cabinet or any seal, flag, crest, coat of arms, or other insignia that could reasonably mislead an individual to believe that the product has been endorsed, manufactured, or approved for use by any state, county, or municipality or any agency thereof; ~~or and~~

(d) Any cartoon, image, graphic, or feature that may make the package attractive to ~~children~~ or minors.

(2) ~~Medicinal cannabis shall be prepared, packaged, and labeled by a cannabis business[businesses] at its[their] licensed locations.[A cannabis business shall package and label at its facility each form of medicinal cannabis prepared for sale to cardholders.]~~ The original seal of a package may not be broken, except:

(a) For testing at a safety compliance facility;

(b) By a dispensary for the purpose of displaying product examples for the benefit of cardholders; or

(c) As needed by the cabinet or its authorized agents as part of an inspection or investigation.

Section 2. Packaging of Medicinal Cannabis for Sale to Cardholders.

(1) Pursuant to KRS 218B.140(1)(c)(13), a cannabis business shall comply with 15 U.S.C. secs. 1471 to 1476 when packaging and labeling medicinal cannabis and medicinal cannabis products for sale to cardholders.

(2) When packaging medicinal cannabis and medicinal cannabis products for sale to cardholders, a cannabis business shall ensure each product package:

(a) Is child-resistant and requires at least a two (2) step process of initial opening;

(b) Has a tamper-evident seal;

(c) Minimizes exposure to oxygen;

(d) Contains the following warnings:

1. The typical length of time for the medicinal cannabis to take effect;

2. The statements **in bold** "For medicinal use by cardholders only. KEEP OUT OF REACH OF CHILDREN"; and

3. For raw plant material packaged for sale to a cardholder, the statement "NOT INTENDED FOR CONSUMPTION BY SMOKING";

(e) Discloses the strain of medicinal cannabis, **including whether it is a sativa, indica, or hybrid**, form of medicinal cannabis, and standard amount of delta-9 tetrahydrocannabinol (THC), **terpenes**, and cannabidiol (CBD) in the medicinal cannabis, including:

1. If the medicinal cannabis product is intended for oral consumption as an edible, oil, or tincture, potency shall be stated as milligrams per serving for total THC and total CBD, as applicable, and milligrams per package for total THC and total CBD, as applicable; and

2. For concentrates **and raw plant material**, total THC, **total terpenes**, and total CBD, as applicable, shall be stated in percentages;

(f) Discloses the amount of medicinal cannabis the product is considered the equivalent to, if applicable;

(g) Discloses any possible allergens;

(h) Is light-resistant and opaque;

(i) Clearly and conspicuously displays the standardized symbol in navy blue provided in Appendix A, which is incorporated by reference, indicating that a product contains medicinal cannabis;

(j) Is resealable, if applicable;

(k) Contains the name~~[-address,]~~ and license number of the cannabis business packaging the medicinal cannabis;

(l) Protects the medicinal cannabis from contamination;

(m) Does not impart any toxic or deleterious substance to the medicinal cannabis; and

(n) Provides the telephone number for the National Poison Control Center.

Section 3. Labeling of Medicinal Cannabis for Sale to Cardholders.

(1) Medicinal cannabis and medicinal cannabis products prepared for sale to cardholders shall include a label, **with writing no smaller than one-sixteenth of an inch in height**, that is firmly affixed to the packaging holding medicinal cannabis or firmly affixed to any outer packaging if used.

(2) ~~The label required by this section may contain a quick response (QR) code that links to some or all of the information required under this section. The QR code shall be:~~

~~[(a)] [Labeled as "Specific Product Information" directly above or below the QR code; and]~~

~~[(b)] [Large enough to be smart-phone readable.]~~

~~[(3)] The label required by this section shall:~~

(a) Be made of weather-resistant and tamper-resistant materials;

(b) Be legible;

(c) List the strain~~[-form,]~~ and net weight of the medicinal cannabis included in the package;

(d) List any ingredients;

(e) List the specific amount of THC and CBD in the medicinal

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cannabis included in the package as stated on the certificate of analysis for the medicinal cannabis's harvest batch or production batch. For concentrates, the specific amount of THC and CBD shall~~may~~ be expressed in milligrams ~~and~~~~or~~ by percentage, as applicable;

(f) List the percentage of total terpenes and the ~~three (3)~~-most prevalent terpenes expressed in the medicinal cannabis, as applicable. For concentrates, the specific amount of terpenes shall be expressed in milligrams and by percentage, as applicable;

(g) Provide the name and license number of the cannabis business that cultivated the medicinal cannabis;

(h) Provide the name and license number of the cannabis business that processed the medicinal cannabis, if applicable;

(i) Provide the identifier that is unique to the particular harvest batch or production batch of medicinal cannabis in the package;

(j) List the date the medicinal cannabis was harvested or processed, as applicable;

(k) List the date the medicinal cannabis was packaged;

(l) List the name and license number of the safety compliance facility that tested the medicinal cannabis and the date the medicinal cannabis was tested;

(m) List the expiration date of the medicinal cannabis;~~and~~

(n) List the method of extraction, if applicable;

(o) If the product contains multiple servings, contain the statement in bold "MULTIPLE SERVINGS";

(p) Include directions for use for concentrates and THC infused medicinal cannabis products; and

(q) If the medicinal cannabis product is intended for oral consumption as an edible, oil, or tincture, provide a nutritional fact panel, the number of individual servings contained within the package, and the amount of THC per serving, which shall not exceed ten (10) milligrams per serving.

(3) Quick response (QR) codes. The label required by this section may contain a QR code that links to information required under this section.

(a) ~~The~~Any QR code shall be:

1. Labeled as "Specific Product Information" directly above or below the QR code; and

2. Large enough to be smart-phone readable.

(b) The information available through use of a QR code may include:

1. The name and license number of the cannabis business that cultivated the medicinal cannabis;

2. The name and license number of the cannabis business that processed the medicinal cannabis, if applicable;

3. The name and license number of the cannabis business that packaged the medicinal cannabis;

4. The method of extraction, if applicable; and

5. The date the medicinal cannabis was packaged.

(c) If a cannabis business makes any of the items listed in subsection 3(b) of this section available through use of a QR code on the product label, the cannabis business shall~~is~~ not be required to include that information directly on the product label.

(4) A dispensary shall affix a sticker to each package of medicinal cannabis sold at its licensed location that contains the dispensary's name, license number, and telephone number.

Section 4. Packaging and Labeling Requirements for Sale or Transfer of Medicinal Cannabis Between Cannabis Businesses.

(1) All medicinal cannabis sold or otherwise transferred between cannabis businesses for the purpose of processing or packaging and labeling for retail sale to cardholders shall:

(a) Regarding packaging:

1. Fully enclose the medicinal cannabis so that it cannot be seen from outside the packaging;

2. Protect the medicinal cannabis from contamination; and

3. Not impart any toxic or deleterious substance to the medicinal cannabis; ~~and~~;

(b) Be accompanied by all tracking tags required by the state's designated seed to sale tracking system for the medicinal cannabis contained in the transfer. The tracking tag

required by the state's designated seed to sale tracking system shall be firmly affixed to the outer most packaging of the respective package containing the medicinal cannabis identified by the tag. A transport manifest shall also accompany transfers of medicinal cannabis between cannabis businesses as required by 915 KAR 1:080(1)(g).~~[A label shall be firmly affixed to the packaging holding medicinal cannabis or firmly affixed to outer packaging if used that, at a minimum, contains the following information:]~~

~~[1.] [Name, address, phone number, and license number of the cannabis business that is selling or otherwise transferring the medicinal cannabis to another cannabis business;]~~

~~[2.] [Name, address, phone number, and license number of the cannabis business receiving the medicinal cannabis;]~~

~~[3.] [The type and amount of medicinal cannabis in the package;]~~

~~[4.] [An identifier that is unique to the particular harvest batch or production batch of medicinal cannabis in the package;]~~

~~[5.] [The date the medicinal cannabis was harvested and, if applicable, processed;]~~

~~[6.] [The date the medicinal cannabis was packaged; and]~~

~~[7.] [A statement confirming that the medicinal cannabis in the package has been tested, and;]~~

~~[a.] [Affix a QR code to the label that directs the purchaser to the certificate of analysis for the medicinal cannabis harvest batch or production batch contained in the package; or]~~

~~[b.] [Provide a hardcopy or electronic copy of the certificate of analysis for the medicinal cannabis harvest batch or production batch contained in the package to the purchaser at the time of sale.]~~

(2) Any sale or transfer of medicinal cannabis between cannabis businesses shall be documented in the Commonwealth's designated electronic monitoring system and seed to sale tracking system.

Section 5. Voluntary Packaging and Labeling Compliance Review.

(1) Cannabis businesses shall comply with the packaging and labeling requirements established in this administrative regulation.

(2) Cannabis businesses may submit proposed packaging and labels for medicinal cannabis and medicinal cannabis products intended for sale to cardholders to the cabinet for a voluntary compliance review. Cannabis businesses shall submit proposed packaging and labels in the manner prescribed by the cabinet and made available through the Web site for the Kentucky Medical Cannabis Program, <https://kymedcan.ky.gov>.

(3) At the time of submission, a cannabis business requesting a voluntary compliance review for a product shall provide ~~[the following]~~ to the cabinet~~[at the time of submission]~~:

(a) Documentation from the packaging company confirming the proposed packaging is child-resistant and has at least a two (2) step process of initial opening;

(b) A clear digital proof or photograph of the product packaging with a file size no greater than twenty-five (25) megabytes;

(c) A clear digital proof or photograph of the product label with a file size no greater than twenty-five (25) megabytes; and

(d) The category of product being submitted, such as raw plant material, concentrate, or infused product.

(4) If the cabinet determines that a voluntary compliance review request is lacking sufficient information upon which to make a determination, the cabinet shall notify the cannabis business in writing of the additional information and documentation needed to complete the review. The cannabis business shall have seven (7) calendar days from the date of the notice to provide the requested information and documentation to the cabinet. If a cannabis business fails to provide the requested information to the cabinet by the deadline, the cabinet shall not provide a compliance

determination to the cannabis business for the product submitted.

(5) The nonrefundable fee for the voluntary compliance review established in this section is \$200 per product submission and shall be paid by the cannabis business at the time of submission by/via credit card or automated clearing house (ACH) transfer.

(6) The cabinet shall complete a product packaging and labeling compliance review within twenty-one (21) calendar days of submission to the cabinet, unless additional information is requested by the cabinet as provided in subsection (4) of this section.

(7) Upon completion of its review, the cabinet shall:

(a) For compliant submissions, provide the cannabis business with an electronic notification stating the submitted product packaging and label is in compliance with 915 KAR 1:100. This compliance determination shall only apply to the specific product package and label submitted to the cabinet for review and shall not apply to any variations of that product package or label; or

(b) For non-compliant submissions, provide the cannabis business with an electronic notification stating the submitted product packaging and label is not in compliance with 915 KAR 1:100 and the reasons for that determination. A cannabis business may correct a product package and label previously found to be non-compliant by the cabinet and resubmit that package and label for an additional voluntary compliance review upon payment of the fee established in subsection (5) of this section.

Section 6. Incorporation by Reference.

(1) "Appendix A: Standardized symbol indicating a product contains medicinal cannabis", dated January 4, 2024, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Cabinet for Health and Family Services, Office of the Secretary, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8:30 a.m. to 4:30 p.m.. This material may also be viewed on the Kentucky Medical Cannabis Program's Web site at <https://kymedcan.ky.gov>.

FILED WITH LRC: July 9, 2024

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CABINET FOR HEALTH AND FAMILY SERVICES
Office of the Secretary
(As Amended at ARRS, July 9, 2024)

915 KAR 1:110. Medicinal cannabis testing.

RELATES TO: KRS Chapter 218B

STATUTORY AUTHORITY: KRS 218B.140

NECESSITY, FUNCTION, AND CONFORMITY: KRS 218B.140 requires the Cabinet for Health and Family Services to promulgate administrative regulations establishing requirements for random sample testing of medicinal cannabis to ensure quality control. This administrative regulation establishes those requirements and procedures.

Section 1. General Requirements.

(1) To ensure the suitability and safety for human consumption of medicinal cannabis and medicinal cannabis products, cultivators, processors, and producers shall test medicinal cannabis in accordance with Section 2 of this administrative regulation.

(2) ~~All~~**[No]** laboratory ~~shall not~~**[may]** test medicinal cannabis under this administrative regulation without being issued a license to operate as a safety compliance facility. A safety compliance facility shall only send medicinal cannabis samples for testing to another licensed safety compliance facility in the Commonwealth.

(3) Batch size.

(a) Cultivators and producers shall separate all harvested medicinal cannabis into harvest batches not to exceed ~~twenty (20)~~**[fifteen (15)]** pounds with the exception of any raw plant material to be sold to a processor or producer for the purposes of turning the raw plant material into concentrate which may be separated into harvest batches of no more than fifty (50) pounds.

(b) Processors and producers shall separate all medicinal cannabis product into production batches not to exceed ~~five (5)~~**[four (4)]** liters of liquid medicinal cannabis concentrate or nine (9) pounds for nonliquid medicinal cannabis products and, for final medicinal cannabis products, no greater than ~~[one thousand (1,000)]~~ grams of delta-9-tetrahydrocannabinol.

(4) An authorized cannabis business employee or agent collecting any samples for testing shall follow the standard operating procedures established by the contracted safety compliance facility conducting the testing for:

- (a) Sampling; and
- (b) Documenting the chain of custody.
- (5) Testing frequency.

(a) Harvest batch samples shall be obtained and tested post-harvest and prior to sell, transfer, or delivery of the medicinal cannabis from the respective harvest batch.

(b) Production batch samples shall be obtained and tested in their final form prepackaging and prior to sale, transfer, or delivery of the medicinal cannabis from the respective production batch.

(6) Prohibitions.

(a) Cultivators and producers shall not sell, transfer, or deliver any medicinal cannabis from a harvest batch to a dispensary, processor, cultivator, or producer until a sample of the harvest batch has passed all tests required by Section 2 of this administrative regulation.

(b) Processors and producers shall not sell, transfer, or deliver any medicinal cannabis from a production batch to a dispensary, processor, cultivator, or producer until a sample of the production batch has passed all tests required by Section 2 of this administrative regulation.

(c) Dispensaries shall not dispense or sell medicinal cannabis to cardholders until a sample of its harvest or production batch has passed all tests required by Section 2 of this administrative regulation.

(d) Following the collection of a sample from a harvest batch or production batch, medicinal cannabis shall not undergo any additional processing, transforming, or other changes that alter the substance of the medicinal cannabis or otherwise would result in different test results. Any medicinal cannabis that undergoes additional processing, transforming, or other changes that alters the substance of the medicinal cannabis following sample collection shall be tested as required by Section 2 of this administrative regulation prior to any sale, transfer, or delivery to a dispensary, processor, or producer.

(7) The cabinet may select and collect a sample or test sample from a cannabis business at any time. The cabinet may require a cultivator, processor, producer, or dispensary to submit a sample or test sample to a safety compliance facility upon request when the cabinet has reason to believe the medicinal cannabis is unsafe for cardholder consumption or inhalation or has not been tested in accordance with KRS Chapter 218B and Section 2 of this administrative regulation. A cultivator, processor, producer, or dispensary shall provide the samples for testing at their own expense.

(8) Except as authorized in Section 5 of this administrative regulation, cannabis businesses shall properly dispose of and shall not use, sell, or otherwise transfer medicinal cannabis that fails to meet any testing standard or requirement set forth in this administrative regulation. Cannabis businesses shall dispose of this medicinal cannabis waste in accordance with the 915 KAR 1:030, 915 KAR 1:040, 915 KAR 1:060, and 915 KAR 1:070, as applicable.

Section 2. Medicinal Cannabis Tests.

(1) **In accordance with Section 3 of this administrative regulation, finished medicinal cannabis products intended for sale by dispensaries to cardholders** shall be tested for:

- (a) Tetrahydrocannabinol (THC) and cannabinoid

concentration;

- (b) Terpenoid type and concentration;
- (c) Residual solvents and processing chemicals (for production batches);
- (d) Residual pesticides;
- (e) Heavy metals;
- (f) Microbial impurities;
- (g) Mycotoxins;
- (h) Water activity (for harvest batches);
- (i) Yeast and mold; and
- (j) Vitamin E acetate.

(2) The cabinet may conduct additional tests on samples or test samples at its discretion.

(3) For harvest batches consisting of raw plant material not intended for sale to cardholders in its current form, the following tests shall be performed prior to sale or transfer of the harvest batch to another licensed cannabis business:

- (a) Residual pesticides; and**
- (b) THC and cannabinoid concentration.**

(4) For production batches consisting of non-finished medicinal cannabis products not intended for sale to cardholders in its current form, the following tests shall be performed prior to sale or transfer of the production batch to another licensed cannabis business:

- (a) Residual solvents and processing chemicals;**
- (b) Heavy metals; and**
- (c) THC and cannabinoid concentration.**

(5) Harvest batches and production batches tested pursuant to subsections (3) and (4) of this Section that pass those tests shall not be required to be retested for those items in their final form if those batches were not physically or chemically altered following the prior sale or transfer.

Section 3. Maximum Allowable Limits for Medicinal Cannabis Tests.

(1) Cannabinoid and terpenoid concentration. KRS Chapter 218B, specifically KRS 218B.095, KRS 218B.105, KRS 218B.115, and KRS 218B.120, establishes the maximum delta-9 tetrahydrocannabinol content for raw plant material and medicinal cannabis products in the Commonwealth. Cultivators, processors, and producers shall test harvest batch and production batch samples for levels of total THC and cannabinoid concentration and terpenoid type and concentration.

(a) For THC and cannabinoid concentration, the testing shall include:

- 1. Total THC;
- 2. Total cannabidiol (CBD);
- 3. Total cannabinoids;
- 4. Tetrahydrocannabinolic acid (THCa);
- 5. Delta-9-tetrahydrocannabinol (Delta-9-THC);
- 6. Delta-8-tetrahydrocannabinol (Delta-8-THC);
- 7. Cannabidiolic acid (CBDA);
- 8. Cannabidiol (CBD);
- 9. Cannabinol (CBN);
- 10. Cannabigerolic acid (CBGa);
- 11. Cannabigerol (CBG);
- 12. Tetrahydrocannabivarin (THCV); **and**
- 13. Cannabichromene (CBC);

(b) For terpenoid type and ~~concentrate~~ concentration, the testing shall **establish the percentage of total terpenes and the most prevalent terpenes expressed in the sample; and include**.

- ~~[1.] [Total terpenes;]~~
- ~~[2.] [Limonene;]~~
- ~~[3.] [Myrcene;]~~
- ~~[4.] [Pinene;]~~
- ~~[5.] [Linalool;]~~
- ~~[6.] [Eucalyptol;]~~
- ~~[7.] [Delta-terpinene (terpinolene);]~~
- ~~[8.] [Caryophyllene]~~
- ~~[9.] [Nerolidol;]~~
- ~~[10.] [Humulene;]~~
- ~~[11.] [Bisabolol;]~~
- ~~[12.] [Camphene;]~~

~~[13.] [Delta-3 Carene;]~~

~~[14.] [Borneol;]~~

~~[15.] [Geraniol; and]~~

~~[16.] [Terpineol;]~~

(c) In accordance with KRS 218B.140(1)(c)(9), cultivators and producers shall track the terpene content of the twelve (12) major terpenoids within each strain of medicinal cannabis that they cultivate in the Commonwealth and provide a written summary of this information to the cabinet upon request.

(2) Residual solvents and processing chemicals. Production batch samples shall be tested for residual solvents and processing chemicals and shall not exceed the maximum allowable concentration for each solvent or chemical used as set forth in Appendix A, which is incorporated by reference.

(3) Residual Pesticides. Harvest batch samples and production batch samples shall be tested for residual pesticides and shall not exceed the maximum allowable concentration for each pesticide used as set forth in Appendix B, which is incorporated by reference.

(4) Heavy Metals. All harvest batch and production batch samples shall be tested for heavy metals, which shall include arsenic, cadmium, lead, and mercury, as follows:

(a) For inhaled medicinal cannabis products, including administration by metered dose nasal spray or pressurized metered dose inhaler, harvest and production batches shall be tested for the following heavy metal analytes and shall comply with the maximum allowable concentration:

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

(b) For medicinal cannabis products not intended to be inhaled, harvest and production batches shall be tested for the following heavy metal analytes and shall comply with the maximum allowable concentration:

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

(5) Microbial impurities. Harvest batch samples and production batch samples shall be tested for the presence of microbial impurities. Harvest batch and production batch samples shall be deemed to have passed the microbial impurities testing if ~~the following conditions are met~~:

(a) Total Escherichia coli is not detected above one hundred (100) colony forming units/gram;

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

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

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

(6) Mycotoxins. Harvest batch and production batch samples shall be tested for the following mycotoxins: aflatoxin B1, B2, G1, and G2 ochratoxin A. A production batch shall be deemed to have passed mycotoxin testing if ~~the following conditions are met~~:

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

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

(7) Water activity. Harvest batch samples shall be tested to determine the level of water activity. Harvest batch samples shall have a water activity (aw) rate of less than 0.65.

(8) Yeast and mold. Harvest batch and production batch samples shall be tested to determine the level of yeast and mold. Harvest batch and production batch samples shall have a total combined yeast and mold not to exceed ~~10,000~~**100,000** colony forming units per gram.

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(9) Vitamin E acetate. ~~[Harvest batches and]~~ Production batches shall be tested for any detectable level of vitamin E acetate.

Section 4. Failed Testing.

(1) A harvest batch or production batch sample that fails any initial testing may be reanalyzed by the safety compliance facility using the reserve sample for that harvest or production batch.

~~(2) [If the reserve sample passes the required testing, an authorized cannabis business employee or agent shall resample the harvest batch or production batch in question and send the new sample to a different safety compliance facility than the one that performed the initial testing. In order for the harvest batch or production batch in question to pass testing under this administrative regulation, the new safety compliance facility shall test the resample and confirm the resample passed all required tests.]~~

~~(3)~~ A harvest batch or production batch shall fail testing if the respective sample exceeds any maximum allowable limit established in Section 3 of this administrative regulation or the maximum allowable delta-9 tetrahydrocannabinol content for raw plant material and medicinal cannabis products established in KRS Chapter 218B:

(a) During an initial test where no reanalysis is requested; or

(b) Upon reanalysis as described in this section.

~~(3)~~~~(4)~~ If a harvest batch or production batch sample fails a test or a reanalysis, the harvest batch or production batch:

~~(a)~~~~(1)~~ May be remediated or sterilized if allowed by Section 5 of this administrative regulation; or

~~(b)~~~~(2)~~ If it cannot be remediated or sterilized in accordance with Section 5 of this administrative regulation, the harvest or production batch shall be deemed medicinal cannabis waste and destroyed by the cultivator, processor, or producer in accordance with 915 KAR 1:030 or 915 KAR 1:040 as applicable for their respective business.

~~(4)~~~~(4)~~ Medicinal cannabis from a harvest or production batch that failed testing shall not be combined with another harvest or production batch. Mixed products shall be considered adulterated and shall not be sold, transferred, or otherwise delivered to a cannabis business.

Section 5. Remediation.

(1) THC concentration.

(a) If a harvest batch sample exceeds the THC content limit imposed on raw plant material in KRS 218B.095, ~~[KRS]~~218B.105, 218B.115, or 218B.120, the harvest batch shall be deemed medicinal cannabis waste and destroyed by the cultivator or producer in accordance with 915 KAR 1:030.

(b) If a production batch sample exceeds the THC content limits imposed on edibles, oils, tincture, and other medicinal cannabis products by KRS 218B.095, 218B.115, or 218B.120, the production batch may be remediated using procedures that would reduce the concentration of THC to allowable levels provided that the remediation method does not impart any toxic or deleterious substance to the medicinal cannabis in the production batch.

(c) A production batch that is remediated in accordance with this subsection shall be sampled and tested in accordance with Sections 2 and 3 of this administrative regulation.

(d) A processor or producer shall inform the safety compliance facility conducting the retesting prior to samples being taken that the production batch has previously failed testing and is being retested after undergoing remediation. Any remediation methods or remediation solvents used on the production batch being retested shall be disclosed to the safety compliance facility conducting the retesting.

(e) A production batch that exceeds the required THC content limits that is not remediated or that if remediated fails testing shall be deemed medicinal cannabis waste and destroyed by the processor or producer in accordance with 915 KAR 1:040.

(2) Residual solvents and processing chemicals.

(a) If a production batch sample fails residual solvent testing, the production batch may be remediated using procedures that would reduce the concentration of solvents to less than the action level provided that the remediation method does not impart any toxic or deleterious substance to the medicinal cannabis in the production batch.

(b) A production batch that is remediated in accordance with this subsection shall be sampled and tested in accordance with Sections 2 and 3 of this administrative regulation.

(c) A processor or producer shall inform the safety compliance facility conducting the retesting prior to samples being taken that the production batch has previously failed testing and is being retested after undergoing remediation or decontamination. Any remediation methods or remediation solvents used on the production batch being retested shall be disclosed to the safety compliance facility conducting the retesting.

(d) A production batch that fails solvent testing that is not remediated or that if remediated fails testing shall be deemed medicinal cannabis waste and destroyed by the processor or producer in accordance with the 915 KAR 1:040.

(3) Residual Pesticides. A harvest batch or production batch that fails residual pesticide testing shall be deemed medicinal cannabis waste and destroyed by the cultivator, processor, or producer in accordance with 915 KAR 1:030 or 915 KAR 1:040 as applicable for their respective business.

(4) Heavy metals. A harvest batch or production batch that fails heavy metals testing shall be deemed medicinal cannabis waste and destroyed by the cultivator, processor, or producer in accordance with the 915 KAR 1:030 or 915 KAR 1:040 as applicable for their respective business.

(5) Microbial impurities.

(a) If a harvest batch or production batch sample fails microbial impurities testing, the harvest batch or production batch may be further processed if the processing method effectively sterilizes the batch and does not impart any toxic or deleterious substance to the medicinal cannabis in the batch.

(b) A harvest batch or production batch that is sterilized in accordance with this subsection shall be sampled and tested in accordance with Sections 2 and 3 of this administrative regulation.

(c) A cultivator, processor, or producer shall inform the safety compliance facility conducting the retesting prior to samples being taken that the harvest or production batch has previously failed testing and is being retested after undergoing sterilization. Any sterilization methods or sterilization solvents used on the harvest or production batch being retested shall be disclosed to the safety compliance facility conducting the retesting.

(d) A harvest batch or production batch that fails microbiological contaminant testing after undergoing a sterilization process in accordance with this subsection shall be deemed medicinal cannabis waste and destroyed by the cultivator, processor, or producer in accordance with 915 KAR 1:030 or 915 KAR 1:040 as applicable for their respective business.

(6) Mycotoxins. A harvest batch or production batch that fails mycotoxins testing shall be deemed medicinal cannabis waste and destroyed by the cultivator, processor, or producer in accordance with 915 KAR 1:030 or 915 KAR 1:040 as applicable for their respective business.

(7) Water activity. If a harvest batch sample fails water activity testing, the harvest batch may be further dried and cured by the cultivator or producer. A harvest batch that is further dried and cured shall be sampled and retested in accordance with Sections 2 and 3 of this administrative regulation.

(8) Yeast and mold. A harvest batch or production batch sample that fails yeast and mold testing shall be deemed medicinal cannabis waste and destroyed by the cultivator, processor, or producer in accordance ~~with~~ 915 KAR 1:030 or 915 KAR 1:040 as applicable for their respective business.

(9) Vitamin E acetate. A harvest batch or production batch that fails vitamin E acetate testing shall be deemed medicinal cannabis waste and destroyed by the cultivator, processor, or producer in accordance with 915 KAR 1:030 or 915 KAR 1:040 as applicable for their respective business.

(10) Where remediation is allowed, a harvest or production batch shall only be remediated twice. If the harvest or production batch fails testing after a second remediation attempt and the second retesting, the harvest or production batch shall be deemed medicinal cannabis waste and destroyed by the cultivator, processor, or producer in accordance with 915 KAR 1:030 or 915 KAR 1:040 as applicable for their respective business.

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(11) Prior to taking any remediation efforts, cultivators, processors, and producers shall:

(a) Create and maintain detailed written procedures for all remediation processes used by the cannabis business and provide those procedures to the cabinet upon request within three (3) business days of receiving the request or during an inspection; and

(b) Document all remediation, sterilization, resampling, retesting, and disposal of medicinal cannabis that fails testing required by Section 2 of this administrative regulation.

Section 6. Certificate of Analysis.

(1) A safety compliance facility shall:

(a) Generate a certificate of analysis (COA) for each harvest batch and production batch sample that the safety compliance facility analyzes; and

(b) Ensure the COA contains the results of all required analyses performed for the harvest batch or production batch sample.

(2) The COA shall contain, at minimum:

(a) The safety compliance facility's name, address, and license number;

(b) The cultivator, processor, or producer's name, address, and license number;

(c) The harvest batch or production batch number from which the sample was obtained;

(d) Sample identifying information, including matrix type and unique sample identifiers;

(e) Sample history, including the date collected, the date received by the safety compliance facility, and the date of all sample analyses and corresponding testing results;

(f) The analytical methods, analytical instrumentation used, and corresponding limit of detection (LOD) and limits of quantitation (LOQ);

(g) An attestation from an authorized employee of the safety compliance facility that all testing required by Section 2 of this administrative regulation was performed; and

(h) Analytes detected during the analyses of the harvest batch or production batch sample that are unknown, unidentified, or injurious to human health if consumed, if any.

(3) The safety compliance facility shall report test results for each representative harvest batch or production batch sample on the COA as an overall "pass" or "fail" for the entire batch as follows:-]

(a) When reporting qualitative results for each analyte, the safety compliance facility shall indicate "pass" or "fail";

(b) When reporting quantitative results for each analyte, the testing facility shall use the appropriate units of measurement for testing the analyte;

(c) When reporting results for each test method, the testing facility shall indicate "pass" or "fail";

(d) When reporting results for any analytes that were detected below the analytical method LOQ, indicate "<LOQ," notwithstanding cannabinoid and terpenoid results;

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

(f) Indicate "NT" for any test that the safety compliance facility did not perform.

(4) The safety compliance facility shall retain a reserve sample for each harvest or production batch consisting of any portion of a sample that was not used in the testing process. The reserve sample shall be kept for a minimum of forty-five (45) calendar days after the analyses, after which time it may be destroyed as medicinal cannabis waste by the safety compliance facility in accordance with 915 KAR 1:060.

(5) The safety compliance facility shall securely store the reserve sample in a manner that minimizes the risk of sample degradation, contamination, and tampering.

(6) The safety compliance facility shall provide any reserve samples to the cabinet upon request within three (3) business days of receiving the request.

(7) All certificates of analysis prepared by safety compliance facilities shall be documented in the Commonwealth's designated electronic monitoring system and seed to sale tracking system in accordance with instructions provided by the cabinet.

(8) On any informational Web site that they maintain in accordance with 915 KAR 1:090, Section 2, cultivators, processors, and producers shall publish or provide links to the COAs that they receive from safety compliance facilities for their respective harvest batches and production batches. The information required to be provided under this subsection[provision] shall be presented in [such]-a way that cardholders can easily access the specific COA for the harvest batch or production batch referenced on the medicinal cannabis product label.

Section 7. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Appendix A: List of residual solvents for medicinal cannabis testing", dated January 4, 2024; and

(b) "Appendix B: List of residual pesticides for medicinal cannabis testing", dated January 4, 2024.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Cabinet for Health and Family Services, Office of the Secretary, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8:30 a.m.[AM] to 4:30 p.m.[PM]. This material may also be viewed on the Kentucky Medical Cannabis Program's Web site[website] at <https://kymedcan.ky.gov>.

FILED WITH LRC: July 9, 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 Office of the Secretary (As Amended at ARRS, July 9, 2024)

915 KAR 2:010. Procedures for registry identification cards.

RELATES TO: KRS Chapter 13B, Chapter 218B, Chapter 387
STATUTORY AUTHORITY: KRS 218B.140

NECESSITY, FUNCTION, AND CONFORMITY: KRS 218B.140 requires the Cabinet for Health and Family Services to promulgate administrative regulations establishing procedures for the issuance, renewal, suspension, and revocation of registry identification cards, including the creation of an application form. This administrative regulation establishes those procedures.

Section 1. Patient and Caregiver Registry.

(1) Except for persons who possess valid out-of-state registry identification cards and documentation of having been diagnosed with a qualifying medical condition as defined by KRS 218B.010(26), a[no] person shall not possess, purchase, acquire, or otherwise engage in the use of medicinal cannabis in Kentucky without first applying for and receiving a registry identification card issued by the cabinet.

(2) The eligibility requirements for qualified patients, designated caregivers, and visiting qualified patients to receive a registry identification card from the cabinet are established[contained] in KRS 218B.055, including not being convicted of a disqualifying felony offense. The qualifications that a patient or caregiver shall meet to receive a registry identification card are continuing qualifications.

(3) The cabinet shall maintain a patient and caregiver registry for the Kentucky Medical Cannabis Program as part of the state's designated electronic monitoring system. To receive a registry identification card, qualified patients, visiting qualified patients, and designated caregivers shall complete an application in accordance with this administrative regulation[written instructions provided by the cabinet].

(4) The cabinet shall adhere to the confidentiality requirements for cardholders and information provided by qualified patients, visiting qualified patients, and designated caregivers established[contained] in KRS 218B.135.

(5) Except as provided in KRS 218B.060(3)(b), the expiration date for registry identification cards shall be one (1) year after the

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date of issuance. A registry identification card shall not be valid beyond the expiration date.

Section 2. Application for a Registry Identification Card.

(1) An applicant shall only use the applicable registry identification card application form prescribed by the cabinet and made available through the Web site for the Kentucky Medical Cannabis Program, <https://kymedcan.ky.gov>.

(2) An applicant shall submit a registry identification card application to the cabinet in the manner prescribed by the application instructions **and this administrative regulation**.

(3) Pursuant to KRS 218B.055(6), a registry identification card application submitted by or on behalf of qualified patients shall include:

(a) The full name, address, telephone number, email address, date of birth, Social Security number, and driver's license number of the qualified patient, except that if the applicant is homeless an address where the applicant may be reached shall be provided to the cabinet;

(b) A written certification issued to the qualified patient by a medicinal cannabis practitioner;

(c) The name, address, and telephone number of the qualified patient's medicinal cannabis practitioner;

(d) The full name, address, telephone number, email address, and date of birth of not more than two (2) individuals chosen by the qualified patient to be designated as a caregiver if the qualified patient chooses to designate a caregiver, except that if an individual has been appointed as a guardian, limited guardian, conservator, or limited conservator under KRS Chapter 387, the qualified patient shall choose that individual as a designated caregiver;

(e) The application fee for a qualified patient;

(f) ~~An option for~~**A question asking**~~[whether]~~ the qualified patient ~~[wants]~~ to receive notifications from the cabinet of any clinical studies needing human subjects for research on the use of medicinal cannabis in accordance with KRS 218B.055(9);

(g) An attestation that:

1. The qualified patient authorizes the cabinet to share cardholder information with licensed dispensaries for the purpose of sales and validating registry identification cards; and

2. The qualified patient authorizes the cabinet to share cardholder information with law enforcement for the purpose of validating registry identification cards; and

(h) A notarized signature page signed by the qualified patient attesting that:

1. The qualified patient verifies and affirms that all of the information provided in and with his or her application is true and accurate;

2. The qualified patient understands that if the cabinet later determines any of the information provided in his or her application to be false, misleading, or inaccurate, the cabinet may suspend or revoke any registry identification card issued to the qualified patient and any caregiver designated by the qualified patient; and

3. The qualified patient shall not divert medicinal cannabis to anyone who is not permitted to possess medicinal cannabis pursuant to KRS Chapter 218B and understands the potential penalties for doing so, including criminal prosecution and revocation of any registry identification card issued to the qualified patient by the cabinet.

(4) Pursuant to KRS 218B.055(7), a registry identification card application submitted by or on behalf of qualified patients under the age of eighteen (18) shall, in addition to the information required under subsection (3) of this section, submit:

(a) Documentation of diagnosis of a qualifying medical condition by a practitioner other than the medicinal cannabis practitioner who provided the written certification for the use of medicinal cannabis; and

(b) A statement signed by the custodial parent or legal guardian with responsibility for health care decisions for the minor qualified patient stating that the custodial parent or legal guardian agrees to:

1. Allow the minor qualified patient to use medicinal cannabis;

2. Serve as the minor qualified patient's designated caregiver; and

3. Control the acquisition, possession, dosage, and frequency

of use of medicinal cannabis by the minor qualified patient.

(5) Except as provided in Section 5(4) of this administrative regulation, a caregiver may submit a registry identification card application following issuance of a registry identification card to the qualified patient who designated the caregiver in his or her registry identification card application. A caregiver shall submit a registry identification card application for each registered qualified patient that designated the caregiver in his or her application. Except as provided in KRS 218B.055(3)(b), a caregiver shall **not** assist ~~[no]~~ more than three (3) registered qualified patients with the use of medicinal cannabis at any given time.

(6) A registry identification card application submitted by a caregiver shall include:

(a) The full name, address, telephone number, email address, date of birth, Social Security number, and driver's license number of the caregiver;

(b) The full name and registry identification card number of the qualified patient who designated the applicant to be his or her caregiver;

(c) The application fee for a designated caregiver;

(d) An attestation that:

1. The caregiver authorizes the cabinet to share cardholder information with licensed dispensaries for the purpose of sales and validating registry identification cards; and

2. The caregiver authorizes the cabinet to share cardholder information with law enforcement for the purpose of validating registry identification cards; and

(e) A notarized signature page signed by the caregiver attesting that:

1. The caregiver verifies and affirms that all of the information provided in and with his or her application is true and accurate;

2. The caregiver understands that if the cabinet later determines any of the information provided in his or her application to be false, misleading, or inaccurate, the cabinet may suspend or revoke any registry identification card issued to the caregiver by the cabinet;

3. The caregiver agrees to be designated as the caregiver for the registered qualified patient identified in his or her application; and

4. The caregiver shall not divert medicinal cannabis to anyone other than the registered qualified patient to whom he or she is connected through the cabinet's registration process and understands the potential penalties for unlawfully diverting medicinal cannabis, including criminal prosecution and revocation of any registry identification card issued to the caregiver by the cabinet.

(7) Pursuant to KRS 218B.055(8), a registry identification card application submitted by or on behalf of visiting qualified patients shall include:

(a) The full name, address, telephone number, email address, date of birth, Social Security number, and driver's license number of the applicant, except that if the applicant is homeless an address where the applicant may be reached shall be provided to the cabinet;

(b) A copy of his or her valid out-of-state registry identification card;

(c) Documentation that he or she has been diagnosed with a qualifying medical condition as defined by KRS 218B.010(26), which shall consist of one (1) or more medical records containing an express statement of diagnosis from a physician or advanced practice registered nurse;

(d) The application fee for a visiting qualified patient;

(e) An attestation that:

1. The visiting qualified patient authorizes the cabinet to share cardholder information with licensed dispensaries for the purpose of sales and validating registry identification cards; and

2. The visiting qualified patient authorizes the cabinet to share cardholder information with law enforcement for the purpose of validating registry identification cards; and

(f) A notarized signature page signed by the visiting qualified patient attesting that:

1. The visiting qualified patient verifies and affirms that all of the information provided in and with his or her application is true and accurate;

2. The visiting qualified patient understands that if the cabinet later determines any of the information provided in his or her application to be false, misleading, or inaccurate, the cabinet may

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suspend or revoke any registry identification card issued to the visiting qualified patient; and

3. The visiting qualified patient shall not divert medicinal cannabis to anyone who is not permitted to possess medicinal cannabis pursuant to KRS Chapter 218B and understands the potential penalties for doing so, including criminal prosecution and revocation of any registry identification card issued to the visiting qualified patient by the cabinet.

Section 3. Renewing Registry Identification Cards.

(1) To renew a registry identification card, an applicant shall use the registry identification card renewal application form prescribed by the cabinet that contains the items required by Section 2 of this administrative regulation. The renewal application shall be made available through the Web site for the Kentucky Medical Cannabis Program, <https://kymedcan.ky.gov>. An applicant shall submit a registry identification card renewal application to the cabinet in the manner prescribed by the application instructions and this administrative regulation.

(2) A registered qualified patient applying to renew a registry identification card shall submit to the cabinet a written certification issued by a medicinal cannabis practitioner to the patient within ~~sixty (60)~~~~ninety (90)]~~ calendar days immediately preceding the date of the renewal application submission.

(3) A registered qualified patient shall submit a registry identification card renewal application to the cabinet no later than thirty (30) calendar days prior to the expiration date on the card.

(4) Except as provided in Section 5(4) of this administrative regulation, a designated caregiver may submit a registry identification card renewal application following issuance of a registry identification card to the registered qualified patient who designated the caregiver in his or her renewal application. A designated caregiver shall submit a registry identification card renewal application for each registered qualified patient that designated the caregiver in his or her renewal application.

Section 4. Fees.

(1) To apply for or renew a registry identification card, the application fee shall be fees are:

- Twenty-five (25) dollars for qualified patients;
- Twenty-five (25) dollars for visiting qualified patients; and
- Twenty-five (25) dollars for designated caregivers.

(2) The fees established by this section shall be paid by credit card or automated clearing house (ACH) transfer at the time of application submission to the cabinet. If the applicant is submitting a paper application to the cabinet instead of an electronic application, the fees established by this section shall be paid by inclusion of a check with the application submission or another form of payment as determined by the cabinet and stated in the paper application instructions. All fees to apply for a registry identification card are nonrefundable.

Section 5. Cabinet Action on Applications; Application Denial.

(1) The cabinet shall acknowledge receipt of an initial or renewal application for a registry identification card within fifteen (15) calendar days of receipt. The cabinet shall review each application to determine whether the application is complete.

(2) The cabinet shall provide notification to applicants as to whether an initial or renewal application for a registry identification card has been approved or denied within thirty (30) calendar days of receiving an application and determining it is complete. Any application denials shall be done in accordance with KRS 218B.065(2), (3), (4), (5), (7), and (8), including:

(a) Providing written notice of the denial and the reason(s) to the applicant; and

(b) Providing written notice that the applicant may, within thirty (30) calendar days after the date of the mailing of the cabinet's notice, file a written request for an administrative hearing on the application. Any hearing resulting from the applicant's written request shall be conducted in accordance with KRS Chapter 13B.

(3) Except as provided in subsection (4) of this section, the cabinet shall issue registry identification cards to qualified patients, designated caregivers, or visiting qualified patients within five (5) calendar days of approving their initial or renewal applications. An

individual designated as a caregiver shall be issued a registry identification card for each registered qualified patient to whom he or she is connected through the cabinet's registration process.

(4) Pursuant to KRS 218B.065(2)(b), the cabinet shall not issue a valid registry identification card to a qualified patient who is younger than eighteen (18) years of age unless the designated caregiver application for the custodial parent or legal guardian with responsibility for health care decisions for the qualified patient is approved.

(5) Registry identification cards issued by the cabinet shall include the items required by KRS 218B.060(2).

Section 6. Cardholder Responsibilities.

(1) A cardholder shall adhere to and comply with the notification requirements to the cabinet contained in KRS 218B.070(1)(a) through (e) and comply with the requirements for returning or disposing of medicinal cannabis contained in KRS 218B.070(2) and (5). A cardholder shall provide any required notifications to the cabinet by/via electronic mail to kymedcancards@ky.gov or through the patient and caregiver registry portal.

(2) During the application process, an applicant for a registry identification card shall, upon discovery of any change in facts or circumstances reflected in the application submitted to the cabinet, notify the cabinet in writing of any/the change or [any]-newly discovered fact or circumstance that would have been included in the application if known at the time the application was submitted. The notification required under this section shall be sent by/via electronic mail to kymedcancards@ky.gov within twenty-four (24) hours of discovery. Failure to timely notify the cabinet of a change or newly discovered facts or circumstances may result in denial of the application.

(3) A cardholder shall obtain medicinal cannabis and medicinal cannabis products in the Commonwealth from a dispensary licensed by the cabinet.

(4) The cabinet shall conduct cardholder surveys to request information regarding their ability to obtain timely affordable access to medicinal cannabis in their area and other items relevant to the Kentucky Medical Cannabis Program.

Section 7. Revocation or Suspension of a Registry Identification Card.

(1) Pursuant to KRS 218B.075(1), any cardholder who sells, distributes, or dispenses medicinal cannabis to a person who is not permitted to possess or use medicinal cannabis under KRS Chapter 218B shall have his or her registry identification card revoked and shall be subject to other penalties including criminal prosecution.

(2) The cabinet may revoke or suspend a cardholder's registry identification card if the cardholder knowingly commits multiple violations or a serious violation of KRS Chapter 218B or 915 KAR Chapter 2.

(3) The cabinet shall provide written notice by/via certified mail to the cardholder of any suspension or revocation of his or her registry identification card. The cardholder may, within thirty (30) days after the date of the mailing of the cabinet's notice, file a written request with the cabinet for an administrative hearing regarding the revocation or suspension. The hearing shall be conducted in compliance with the requirements of KRS Chapter 13B.

Section 8. Material Incorporated by Reference.

(1) "Registry Identification Card Application for Qualified Patients, Visiting Qualified Patients, and Designated Caregivers", dated June 26, 2024, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Cabinet for Health and Family Services, Office of the Secretary, 275 East Main Street, 2nd Floor, Frankfort, Kentucky 40621, Monday through Friday, 8:30 a.m. to 4:30 p.m.

[Section 8.] [Provisional Registration Receipt System.]

[(1)] [Pursuant to KRS 218B.060(5), the cabinet shall operate a provisional registration receipt system for registered qualified patients, designated caregivers, and visiting qualified patients. A valid provisional registration receipt shall be accepted by licensed dispensaries in place of a registry

identification card.]

~~[(2) [A provisional registration receipt provided by the cabinet shall include the items required by KRS 218B.060(5)(a).]~~

~~[(3) [A provisional registration receipt shall be provided by the cabinet via electronic mail to the applicant upon submission of an apparently complete application that contains all of the applicable information and documentation required by Section 2 of this administrative regulation. A provisional registration receipt shall be valid for forty-five (45) days from the date of issuance, or until:]~~

~~[(a) [The cabinet issues a permanent registry identification card to the applicant; or]~~

~~[(b) [The cabinet denies the applicant's application.]~~

~~[(4) [If an applicant for a registry identification card is ultimately denied, the applicant shall immediately destroy the provisional registration receipt provided to him or her and return any unused medicinal cannabis products to a licensed dispensary for destruction.]~~

~~[(5) [A registered qualified patient or designated caregiver shall only use a provisional registration receipt issued under this section to purchase medicinal cannabis in accordance with any recommendation or limitation as to the form and dosage contained in the written certification provided to the registered qualified patient by a medicinal cannabis practitioner.]~~

FILED WITH LRC: July 9, 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
Office of the Secretary
(As Amended at ARRS, July 9, 2024)

915 KAR 2:030. Written certifications.

RELATES TO: KRS 218A.202, Chapter 218B

STATUTORY AUTHORITY: KRS 218B.140

NECESSITY, FUNCTION, AND CONFORMITY: KRS 218B.140 requires the Cabinet for Health and Family Services to promulgate administrative regulations creating a standardized written certification form for use by medicinal cannabis practitioners. This administrative regulation establishes the written certification form for the Kentucky Medical Cannabis Program.

Section 1. Medicinal Cannabis Practitioners.

(1) The cabinet shall maintain a medicinal cannabis practitioner registry for the Kentucky Medical Cannabis Program as part of the state's designated electronic monitoring system.

(2) Medicinal cannabis practitioners shall register with the state's medicinal cannabis practitioner registry in accordance with this administrative regulation~~[written instructions provided by the cabinet]~~ and shall properly enter written certifications and dosage recommendations for qualified patients into the registry.

(3) Prior to providing a patient with a written certification, a medicinal cannabis practitioner shall comply with KRS 218B.050(4)~~], including establishing a bona fide practitioner-patient relationship with the patient].~~

~~[(4) A medicinal cannabis practitioner shall [also] comply with the respective administrative regulation promulgated by his or her state licensing board establishing professional standards for medicinal cannabis practitioners, 201 KAR 9:067 or 201 KAR 20:067, and shall be authorized to provide written certifications for use of medicinal cannabis to qualified patients by his or her state licensing board.~~

Section 2. Written Certification Form.

(1) When issuing a written certification for the use of medicinal cannabis to a patient, the medicinal cannabis practitioner shall use the form prescribed by the cabinet and available in the medicinal cannabis practitioner registry. The written certification form shall include:

(a) The medicinal cannabis practitioner's full name, license type (such as MD or APRN), license number, office address, telephone number, and email address;

(b) The date of the medicinal cannabis practitioner's examination of the qualified patient;

(c) The qualified patient's full name, date of birth, Social Security number, and email address;

(d) If the qualified patient is a minor, the custodial parent or legal guardian's full name, date of birth, Social Security number, email address, and phone number;

(e) Identification of the diagnosed qualifying medical condition(s);

(f) Attestations that the medicinal cannabis practitioner has:

1. Established a bona fide practitioner-patient relationship with the patient;

2. Diagnosed the patient, or confirmed a diagnosis provided by another healthcare provider, with a qualifying medical condition for which the medicinal cannabis practitioner believes that the patient is less likely to~~[may]~~ receive safe and effective therapeutic or palliative benefit from the use of medicinal cannabis;

3. Reviewed a report of information from the electronic monitoring system established pursuant to KRS 218A.202 related to the patient for a period of time that covers at least the twelve (12) months immediately preceding the date of the report;

4. 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, 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

5. Obtained the consent of the patient's custodial parent or legal guardian responsible for providing consent to treatment if the patient is a minor; and

(g) The medicinal cannabis practitioner's signature and the date signed.

(2) An initial written certification shall be provided by the medicinal cannabis practitioner to the qualified patient during the course of an in-person examination. Subsequent written certifications for the purpose of renewing a registry identification card may be provided electronically or during the course of a telehealth consultation.

~~[(3) A medicinal cannabis practitioner shall comply with the time frame established in KRS 218B.050(6)(d) to record the issuance of a written certification in the state's designated medicinal cannabis practitioner registry. Pursuant to KRS 218B.050(6)(d), within twenty-four (24) hours of providing a patient with a written certification for the use of medicinal cannabis, a medicinal cannabis practitioner shall record the issuance of the written certification in the state's designated medicinal cannabis practitioner registry].~~

~~[(4) [Pursuant to KRS 218B.050(6)(e),] For the purpose of initially applying for a registry identification card, an initial written certification shall be valid in accordance with KRS 218B.050(6)(c) a written certification shall be valid for a period of not more than sixty (60) days. A medicinal cannabis practitioner may renew a written certification for not more than three (3) additional periods of not more than sixty (60) days each. Thereafter, the medicinal cannabis practitioner may issue another written certification to the patient for use in the registry identification card application process only after an in-person examination or an examination conducted via telehealth of the patient by the medicinal cannabis practitioner].~~

(5) Pursuant to KRS 218B.055(10), for the purpose of renewing a registry identification card, a written certification issued by a medicinal cannabis practitioner shall be valid if issued within sixty (60)~~[ninety (90)]~~ days immediately preceding the date of a renewal application.

(6) When entering a written certification into the state's designated medicinal cannabis practitioner registry, a medicinal cannabis practitioner shall enter any recommendation or limitation as to the form and dosage of medicinal cannabis that can be dispensed to the registered qualified patient.

Section 3. Material Incorporated by Reference.

(1) "Written Certification Form", dated June 26, 2024, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Cabinet for Health and Family Services, Office of the Secretary, 275 East Main Street, 2nd Floor, Frankfort, Kentucky, 40621, Monday through Friday, 8:30 a.m. to 4:30 p.m.

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**CABINET FOR HEALTH AND FAMILY SERVICES
Office of the Secretary
(As Amended at ARRS, July 9, 2024)**

915 KAR 2:040. Procedures to publish list of varieties of medicinal cannabis.

RELATES TO: KRS Chapter 218B

STATUTORY AUTHORITY: KRS 218B.140

NECESSITY, FUNCTION, AND CONFORMITY: KRS 218B.140 requires the Cabinet for Health and Family Services to promulgate administrative regulations establishing procedures to publish and annually update a list of cannabis varieties or strains that possess a low but effective level of tetrahydrocannabinol, including the substance cannabidiol. This administrative regulation establishes those procedures.

Section 1. List of Varieties or Strains of Medicinal Cannabis.

(1) Beginning January 1, 2026, the cabinet shall conduct regular surveys of licensed cultivators and producers in the Commonwealth to obtain ~~the following information~~:

(a) A current list of cannabis varieties or strains being grown and cultivated in the Commonwealth;

(b) The average total tetrahydrocannabinol (THC) in each variety or strain based on the respective certificates of analysis;

(c) The average total cannabidiol (CBD) in each variety or strain based on the respective certificates of analysis; and

(d) The average terpenoid type and concentration in each variety or strain based on the respective certificates of analysis.

(2) Beginning January 1, 2026, the cabinet shall conduct regular surveys of licensed dispensaries in the Commonwealth to obtain a list of any varieties of medicinal cannabis or medicinal cannabis products requested by cardholders that are not available for sale in the Commonwealth.

(3) On or before December 1, 2026, the cabinet shall review, compile, and publish the information obtained from the surveys required by this section in print materials for cardholders available on the Web site for the Kentucky Medical Cannabis Program at <https://kymedcan.ky.gov>. Along with listing the cannabis varieties or strains being grown and cultivated in the Commonwealth, the printed materials may include information regarding:

(a) Types of cannabis;

(b) Types and general effects of THC;

(c) Types and general effects of cannabinoids;

(d) Types and general effects of terpenoids or terpenes;

(e) Potential side effects of medicinal cannabis use and consumption;

(f) Forms of medicinal cannabis and average activation times for different products;

(g) Dosage or serving size information;

(h) How to obtain appropriate services or treatment for medicinal cannabis abuse;

(i) How to dispose of unused medicinal cannabis; and

(j) Any other information that the cabinet deems appropriate for inclusion.

(4) The cabinet shall annually review and update the printed materials for cardholders, including the list of cannabis varieties or strains being grown and cultivated in the Commonwealth.

ADMINISTRATIVE REGULATIONS AMENDED AFTER PUBLIC HEARING
OR RECEIPT OF WRITTEN COMMENTS

BOARDS AND COMMISSIONS
Board of Nursing
(Amended After Comments)

201 KAR 20:320. Standards for curriculum of prelicensure registered nurse and practical nurse programs.

RELATES TO: KRS 194A.540(11), 314.011(5), 314.021, 314.041(1)(a), 314.111(1), 314.131(1), (2), ~~344.010(4)~~, 620.020(8)
STATUTORY AUTHORITY: KRS 314.041(1)(a), 314.051(1)(a), 314.111(1), 314.131(1), (2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.041(1)(a) and 314.051(1)(a) require that an applicant for licensure as a registered or licensed practical nurse complete the basic nursing curriculum in an approved school of nursing. KRS 314.111(1) requires that schools of nursing regardless of delivery models shall meet minimum standards and be approved by the Board of Nursing. KRS 314.131(1) and (2) authorizes the board to promulgate administrative regulations necessary to approve programs of nursing. This administrative regulation establishes the curriculum requirements for prelicensure registered nurse and practical nursing programs.

Section 1. Definitions.

(1) "Debriefing" means an activity that follows a simulation experience, is led by a nurse faculty as established in 201 KAR 20:310, Section 2, encourages participant's reflective thinking, and provides feedback regarding the participant's performance.

(2) "Disability" is defined by KRS 344.010(4).

(3) "Distance learning" means didactic instruction offered by any means where the student and faculty are in separate physical locations.

(4)(3) "External examination" means a standardized or norm-referenced examination that is designed to compare and rank test takers in relation to one another and is not produced by the program of nursing.

(5)(4) "Practical nursing program" means a program of nursing organized and administered by a vocational, technical, or adult education system or an independent school at a postsecondary level that awards the graduate a diploma in practical nursing upon meeting requirements of the program.

(6)(5) "Program of nursing" means the educational unit that prepares a person for licensure as a registered or licensed practical nurse.

(7)(6) "Registered nursing program" means a program of nursing organized and administered by an institution of higher learning that awards a degree in nursing upon meeting requirements of the program.

(8)(7) "Remediation" means the process by which a student improves or corrects a knowledge deficit through external examinations, other assignments, or activities.

(9)(8) "Simulation" means an activity or a technique that replicates actual or potential situations in clinical practice that allows the participant to develop or enhance critical thinking.

Section 2. General.

(1) An applicant for licensure shall complete a prelicensure program of nursing that meets the requirements of this administrative regulation.

(2) Length.

(a) A registered nursing program shall be a minimum of two (2) academic years, which may include prior articulated academic credits.

(b) A practical nursing program shall be a minimum of one (1) academic year.

(3) Philosophy, mission, and outcomes.

(a) The philosophy, mission, and outcomes of the program of nursing shall be clearly defined in writing by the nursing faculty and be consistent with those of the governing institution.

(b) The program outcomes shall describe the expected

competencies of the graduate.

(c) The program shall conduct an evaluation to validate that identified program outcomes have been achieved and provide evidence of improvement based on an analysis of those results.

(4) Approval.

(a) A curriculum plan shall be approved by the board in accordance with this administrative regulation.

(b) The curriculum plan shall enable the student to develop the nursing knowledge, skills, and competencies for the expected entry level and scope of practice.

(c) Theory and clinical experiences shall provide the student with opportunities to acquire and demonstrate the knowledge, skills, and competencies necessary for safe practice.

(5) Curriculum plan.

(a) The development, implementation, evaluation, and revision of the curriculum shall be the responsibility of the nursing faculty including the program administrator with input from students.

(b) The curriculum of the program of nursing shall assure the development of evidence based practice for the level and scope of nursing practice. This shall include the skills to identify and apply best practices in nursing care by providing client-centered, culturally competent care and respecting client differences, values, preferences, and expressed needs.

(c) A registered nursing program may determine that a portion of the curriculum fulfills the scope of practice for licensed practical nursing and allow students to exit the program and be made eligible for the NCLEX-PN examination. The registered nursing program shall submit its plan to the board for approval.

(6) Organization of the curriculum.

(a) There shall be a written plan, including supporting rationale, which describes the organization and development of the curriculum.

(b) The curriculum plan shall reflect the philosophy, mission, and outcomes of the program.

(c) There shall be a rationale for the amount of time or credits allocated to course and clinical practice experience.

(d) A course syllabus shall be developed for each nursing course to include outcomes, planned instruction, learning activities, and method of evaluation.

1. Each course shall be implemented in accordance with the established course syllabus.

2. A copy of each course syllabus shall be on file in the program of nursing office and shall be available to the board upon request.

(e) The curriculum plan shall be logical and sequential, and shall demonstrate an increase in difficulty and complexity as the student progresses through the program.

(f) A course may be offered as a distance learning course. A distance learning course shall meet the same standards as established in 201 KAR 20:260 through ~~[201 KAR]~~20:360 for any other course.

(7) Curriculum components.

(a) The curriculum of a registered nursing program or a practical nursing program shall prepare the graduate for licensure and full scope of practice as defined by current standards for nursing practice and expected competencies of graduates at the appropriate educational level.

(b) The curriculum shall include:

1. Theory and selected clinical practice experiences designed to enable students to provide nursing care to individuals throughout the life span; and

2. Information regarding Kentucky nursing laws, including scope of practice, licensure requirements, and the role of the board of nursing.

(c) Clinical practice settings shall be appropriate for the type of nursing program and the program outcomes and enable the student to observe and practice safe nursing care of persons at each stage of the life span. Experiences shall include opportunities to learn and provide care to diverse ethnic and cultural populations.

(d) Clinical practice experience shall be supervised by board approved nursing faculty in accordance with 201 KAR 20:310.

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(e) The curriculum shall have written measurable program outcomes that reflect the role of the graduate.

(f) Students shall have sufficient opportunities in simulated or clinical settings to develop psychomotor skills essential for safe, effective practice.

(8) Curriculum change.

(a) A program of nursing that is not accredited by a national nursing accrediting body shall submit a written plan for major curriculum revisions to the board a minimum of four (4) months prior to the planned implementation.

1. A request for curriculum revision shall include the present plan and the proposed change with rationale and expected outcomes.

2. The board shall be available to assist if curriculum revisions are being considered.

3. Major curriculum revisions shall include:

a. A change in the philosophy, mission, or outcomes that results in a reorganization or reconceptualization of the entire curriculum; or
b. The addition of tracks or alternative programs of study that provide educational mobility.

(b) A program of nursing that implements a curriculum change shall provide an evaluation of the outcomes of those changes through the first graduating class following full implementation of the curriculum change. The program of nursing shall also submit the evaluation with its annual report.

(9) Integrated practicum.

(a) The curriculum shall include an integrated practicum. The integrated practicum shall consist of a minimum of 120 clock hours of concentrated clinical experience of direct patient care in a health care facility or health care organization.

(b) The integrated practicum shall be completed within a period not to exceed seven (7) consecutive weeks while the governing institution is in session and within seven (7) months of graduation.

The program of nursing may permit a student to complete the integrated practicum during seven (7) nonconsecutive weeks due to documented medical emergency or disability. If the institution is not in session, the program administrator shall monitor the remainder of the student's practicum with an assigned preceptor.

Section 3. Simulation Standards.

(1)

(a) A program of nursing that uses simulation shall adhere to the standards set in this section.

(b) A program of nursing shall not use simulation for more than fifty (50) percent of its total clinical hours required for graduation.

(2)

(a) The program of nursing shall provide resources sufficient to support the simulation activities, including training of the faculty, and programmatic outcomes.

(b) Simulation activities shall be managed by a nurse who is academically and experientially qualified in the use of simulation, both in its pedagogical and technical aspects. The managing nurse shall demonstrate his or her qualifications by:

1. Attendance at simulation conferences;
2. Completion of educational activities related to simulation; or
3. Holding a credential issued by the Society for Simulation in Healthcare or a simulation preparation program recognized by the International Nursing Association for Clinical Simulation.

(c) The program of nursing shall have written rationale for the use and purpose of simulation within the curriculum.

(d) The program of nursing shall have an orientation plan for faculty concerning simulation.

(e) The program of nursing shall have a written procedure on the method of prebriefing and debriefing each simulated activity.

(3) The program of nursing shall have appropriate facilities for conducting simulation. This shall include educational and technological resources and equipment to meet the intended objectives of the simulation.

(4) Faculty, both didactic and clinical, that utilize simulation shall:

- (a) Have training in the use of simulation; and
- (b) Engage in on-going professional development in the use of simulation.

(5) The simulation activities shall be linked to the program of

nursing's course objectives and the programmatic outcomes.

(6) Beginning July 1, 2019, a program of nursing shall submit evidence of compliance with these standards in the annual report required by 201 KAR 20:360, Section 3(1) of this administrative regulation.

Section 4. Use of External Examinations.

(1) External examinations may be used to assist in the remediation of a student or as a part of the final course grade.[.]

(2) A program of nursing shall not use an external examination as the sole basis to determine a student's progression or graduation.

(3) A curriculum change that includes the implementation of an external examination shall include consideration of multiple evaluation criteria, and shall not be based solely on external examination test results.

(4) A program of nursing that utilizes external examinations as a component of student remediation shall ensure that completion of remediation occurs within the same semester or quarter.

(5) The academic progression policy of the program of nursing and course syllabi shall clearly outline the role of an external examination, including the frequency of and schedule for the testing, and the weight to be applied to results when calculating the final course grade. A course syllabus that references an external examination shall include information needed to calculate the impact of test results in any given external examination on the final course grade. If a course syllabus requires a specific average[~~test~~] score [~~on all exams~~]for examinations as a condition for passing the course, an external examination shall not be weighted more than the lowest weighted individual examination included within the course grade average[~~student results on external exams shall be excluded from that calculation~~].

(6) A program of nursing shall not require students who have completed all requirements for graduation to earn a specific score or benchmark on an external examination as a condition for graduation[or for placing the student's name on the Certified List of Kentucky Program of Nursing Graduates pursuant to 201 KAR 20:070].

Section 5.

(1) A program of nursing shall provide the students on-campus physical facilities pursuant to 201 KAR 20:350, Section 2, to practice clinical skills where the student may be observed in-person by a member of nurse faculty or a skills laboratory instructor, as defined in 201 KAR 20:310, Section 1.

(2) Prior to the evaluation of clinical skills, students shall be provided access to physical facilities on campus to practice clinical skills, where the student is observed in-person by a member of nurse faculty or skills laboratory instructor who may provide feedback.

(3) Students shall be evaluated in the clinical skills laboratory on the program's campus or in a clinical setting. The clinical skills laboratory may be video recorded for evaluation using equipment provided by the program of nursing. The students' skills shall be evaluated by a member of nurse faculty or a skills laboratory instructor.

Section 6.[Section 5.] Curriculum Additions.

(1) Each program of nursing shall include information in its curriculum that meets the requirements of KRS 194A.540 related to domestic violence and elder abuse, neglect, and exploitation.

(2) Each program of nursing shall include information about[.]

[~~(a)] Pediatric abusive head trauma as it is defined in KRS 620.020(8)[.]~~

[~~(b)] [Suicide prevention and wellness topics listed in subsection (3) of this section by August 15, 2022; and]~~

[~~(c)] [Implicit bias topics listed in subsection (4) of this section by August 15, 2022].~~

(3) Each program of nursing shall include suicide[Suicide] prevention and wellness information[topics shall include:], including the following topics:

(a) Chronic toxic stress and secondary traumatic stress potentially increasing the incidence of suicide amongst nurses;

(b) 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) Systems of care, evidence-informed approaches, and best

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practices to reduce suicide rates; and

(d) Ethical legal considerations of caring for patients and nurses who are suicidal.

~~[(4)] [Implicit bias topics shall include:]~~

~~[(a)] [The impact of historical racism and other forms of invidious discrimination on the provisions of healthcare:]~~

~~[(b)] [Methods of evaluation the presence and extent of implicit bias; and]~~

~~[(c)] [Measures that may be taken to reduce implicit bias.]~~

AUDRIA DENKER, President

APPROVED BY AGENCY: February 15, 2024

FILED WITH LRC: July 9, 2024 at 12:05 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 21, 2024 at 10:00 a.m. at Kentucky Board of Nursing, 312 Whittington Parkway, Ste 300, Louisville, Kentucky 40222. Individuals interested in being heard at this hearing shall notify this agency in writing by May 14, 2024, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through May 31, 2024. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Jeffrey R. Prather, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, (502) 338-2851, email Jeffrey.Prather@ky.gov or submit a comment at <https://secure.kentucky.gov/formservices/Nursing/PendReg>.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jeffrey Prather

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets standards for curriculum in prelicensure programs of nursing education.

(b) The necessity of this administrative regulation: This administrative regulation is necessary because of KRS 314.111.

(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 standards for curriculum in prelicensure programs of nursing education.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing standards for curriculum in prelicensure programs of nursing education.

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

(a) How the amendment will change this existing administrative regulation: It clarifies that external examinations may be weighted no more than the lowest weighted individual examination included within the course grade average; requires on-campus physical facilities pursuant for students to practice clinical skills and be observed and provided feedback prior to testing; and it removes implicit bias as a required curriculum subject for programs of prelicensure RN and LPN education.

(b) The necessity of the amendment to this administrative regulation: Programs of nursing and students have struggled with the use and interpretation of regulatory guidelines regarding the weight of external examinations. Moreover, the Board has concerns about the effectiveness of programs of nursing that do not provide for hands-on clinical training experience. The Board is removing implicit bias training due to concerns raised by licensees and the general assembly.

(c) How the amendment conforms to the content of the authorizing statutes: The clarification regarding external exams permits programs of nursing education to use external exams as a

tool in nursing education, and more guidance to programs of nursing in their use of such examinations. The amendments conform to the authorizing statutes by expanding curriculum requirements to include subjects that are a needed component of nursing education.

(d) How the amendment will assist in the effective administration of the statutes: By setting curriculum standards for programs of prelicensure RN and LPN education.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Prelicensure programs of nursing, RN and LPN nursing students, approximately ninety-five (95).

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

(a) List 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 have provided for facilities to allow students to have hands-on clinical experience.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are no additional costs for the removal of the implicit bias requirement or establishing a grade weight for external examinations, or clinical facilities. Programs of nursing are currently required to have adequate facilities under 201 KAR 20:350, Section 2, this amendment adds that students shall be provided access to the facilities for training and validation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Students will be better prepared for nursing practice through their participation in in-person clinical training and the use of external examinations.

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

(a) Initially: There are no additional costs.

(b) On a continuing basis: There are not additional costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency funds.

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

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

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

FISCAL IMPACT STATEMENT

(1) Identify each state statute, federal statute, or federal regulation that requires or authorizes the action taken by the administrative regulation. Kentucky Revised Statutes 314.041(1)(a), 314.051(1)(a), 3124.111(1), and 314.131(1,2)

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: The Kentucky Board of Nursing.

(a) Estimate the following for the first year:

Expenditures: No expenditures to estimate.

Revenues: No revenues to estimate.

Cost Savings: No additional cost savings.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? There will be no difference to expenditures, revenues, or cost savings.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): None.

(a) Estimate the following for the first year:

Expenditures: N/A

Revenues: N/A

Cost Savings: N/A

(b) How will expenditures, revenues, or cost savings differ in subsequent years? N/A

(4) Identify additional regulated entities not listed in questions (2) or (3): Programs of Nursing.

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(a) Estimate the following for the first year:

Expenditures: Programs of Nursing without appropriate clinical facilities to provide hands-on training and evaluation of nursing students will need to provide them. Expenditures unknown.

Revenues: No additional revenues.

Cost Savings: No cost savings.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? There will be no difference to revenues or cost savings. Expenditures may be tied to upkeep for clinical facilities.

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: The programs of nursing will need clinical facilities to provide in-person training and evaluation of nursing students to validate hands-on competency. Most existing programs of nursing that provide a basic curriculum for preparing registered nurses in an approved by the board should already have such facilities available to students.

(b) Methodology and resources used to determine the fiscal impact: N/A

(6) Explain:

(a) Whether this administrative regulation will have an overall negative or adverse major economic impact to the entities identified in questions (2) - (4). (\$500,000 or more, in aggregate) This administrative regulation will not have a major economic impact.

(b) The methodology and resources used to reach this conclusion: N/A

PROPOSED AMENDMENTS

Public comment periods for ordinary, non-emergency regulations are at least two months long. For other regulations with open comment periods, please also see last month's *Administrative Register of Kentucky*.

EDUCATION AND LABOR CABINET
Education Professional Standards Board
(Amendment)

16 KAR 1:030. Procedures for educator certificate surrender, revocation, suspension, reinstatement, and reissuance, and for application denial.

RELATES TO: KRS Chapter 13B, 160.380, 161.010-161.100, 161.102, 161.120, 218A.010

STATUTORY AUTHORITY: KRS 161.028(1), 161.120(1), 161.175(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.028(1) authorizes the Education Professional Standards Board (EPSB) to establish standards and requirements for obtaining and maintaining an educator's certificate; revoke, suspend, or refuse to issue or renew a certificate; impose probationary or supervisory conditions upon a certificate; issue a written reprimand or admonishment; or any combination of those actions regarding any certificate issued to Kentucky certified educators for reasons delineated in KRS 161.120(1). KRS 161.175(2) authorizes the EPSB to promulgate administrative regulations requiring an educator whose certificate has been suspended or revoked by the EPSB to submit to drug testing when~~because~~ the educator engaged in misconduct involving the illegal use of controlled substances~~to submit to drug testing~~. This administrative regulation identifies the conditions for initiating a disciplinary action against an educator's certificate and establishes procedures for certificate reinstatement, reissuance, and application denial.

Section 1. Purpose.

(1) In order to support the mission of the EPSB, the EPSB may take action against an educator's certificate in an effort:

- (a) To ensure that an educator has an understanding of an educator's professional duties and responsibilities; and
- (b) To protect students, parents of students, school personnel, or school officials.

(2) The EPSB may take action against any certificate issued under KRS 161.010 to ~~161.102~~~~[464.400]~~ for any of the reasons set forth in KRS 161.120(1).

Section 2. Complaints and Reports.

(1) A complaint may be made by any person, organization, or entity. The complaint shall be in writing and shall be signed by the person offering the complaint. The complaint shall be sent to the EPSB and contain:

(a) The name, phone number, and address of the person making the complaint, and the name of the educator against whom the complaint is made. If known, the person making the complaint shall include the address of the school district where the educator works;~~and~~

(b) A clear and concise description of the issues of fact;~~and~~[-]

(c) Any supporting documentation necessary to provide sufficient credible evidence that a violation may have occurred. This may include but is not limited to signed witness statements, audio, video, contact information for eyewitnesses, or other documentary evidence.

(2) A report shall be sent to the EPSB by superintendents of local school districts pursuant to KRS 161.120(3)~~[464.420(2)(a)]~~.

(a) A superintendent's duty to report shall include the reporting of criminal convictions discovered by the district pursuant to KRS 160.380, even if the conviction occurred prior to the date the educator's certification was issued.

(b) The superintendent shall have thirty (30) calendar days from the date the superintendent is made aware~~[receives notice]~~ of the

criminal conviction to report that criminal conviction to the EPSB pursuant to KRS ~~161.120(3)(a)~~~~[464.120(2)(a)]~~.

(c) Failure of the superintendent to provide the full facts and circumstances or to forward copies of all relevant documents and records in the superintendent's possession pursuant to KRS 161.120(3)(b)~~[464.120(2)(b)]~~, may result in action against the superintendent's certificate pursuant to 161.120(1)(j).

(d) The superintendent shall supplement the report in writing within thirty (30) calendar days of the superintendent receiving the additional information or supporting documentation.

(3) For complaints and reports received prior to July 15, 2024, EPSB staff shall do an initial review of all complaints and reports to determine whether there is sufficient credible evidence that a violation of KRS 161.120(1) may have occurred. If the report or complaint contains sufficient credible evidence that a violation of KRS 161.120(1) may have occurred, EPSB staff shall open a file and assign that file a number.

(a) The EPSB staff shall send a copy of these complaints and reports by certified mail to the educator's address on file with EPSB.

(b) The educator shall have the right to file a rebuttal with the EPSB within thirty (30) calendar days from the date the educator receives the complaint or report from the EPSB unless the parties agree to extend that deadline.

(c) EPSB staff shall add the case to the EPSB's docket and prepare the file for EPSB review by redacting all the educator's identifiers if one (1) of the following occurs:

- 1. The educator's rebuttal is received;
- 2. The notice is returned as undeliverable; or
- 3. The educator:

- a. Fails to file a rebuttal with the EPSB; and
- b. Has not requested to extend the thirty (30) day deadline.

(d) The EPSB shall determine whether the nature and quality of the alleged violation warrants deferral, dismissal, training, admonishment, further investigation, or initiation of a hearing.

(e) In making its determination, the EPSB shall consider if the allegation, if proven, would warrant sanction by the EPSB.

(4) For complaints and reports received on or after July 15, 2024, the EPSB shall use the process established in KRS 161.120(2).

(a) A complaint shall be considered complete when the complainant indicates that the complaint contains all information in the complainant's possession and is complete.

(b) If the initial review under KRS 161.120(2)(a) finds sufficient evidence that a violation may have occurred, EPSB staff shall open a file and assign that file a number.

(c) Notices to the certificate holder and superintendents required by KRS 161.120(2)-(3) shall be made using the Kentucky Educator Credentialing System (KECS). Notices to non-superintendent complainants shall be sent to the contact information provided by the complainant.

(d) To extend the rebuttal period an additional thirty (30) days, the written request under KRS 161.120(2)(b) shall be received by EPSB staff on or before noon eastern time on the date the rebuttal period expires.

(e) Conferences with certificate holders under KRS 161.120(2)(d) shall be virtual unless both parties agree to hold the conference in-person.

(5)~~(ff)]~~ When making a determination as to the level of sanctions warranted, the EPSB shall consider the following factors:

~~(a)[4-]~~ The seriousness of the alleged violation;
~~[2-]~~ ~~[Whether the alleged violation was premeditated or intentional];~~

~~(b)[3-]~~ Whether an attempt to conceal the alleged violation was made;

~~(c)[4-]~~ Whether there were any prior violations;

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~~(d)[5.]~~ Whether training is appropriate to prevent further violations;

~~(e)[6.]~~ Whether the sanction is necessary to deter future violations; or

~~(f)[7.]~~ Other relevant circumstances or facts.

~~(6)[(4)]~~

~~(a)~~ If after further investigation occurs, the EPSB determines that sanctions may be~~are~~ warranted, and an agreed upon resolution could not be achieved, the EPSB shall initiate a~~refer the matter to~~ hearing.

~~(a)[(b)]~~ If the EPSB votes to initiate a~~refers the matter to~~ hearing, the EPSB shall, by majority vote, approve the issuance of a notice of hearing and the statement of charges. The statement of charges shall include specific reasons for the EPSB's proposed action, including the:

1. Statutory or regulatory violation;
2. Factual basis on which the disciplinary action is based; and
3. Penalty sought.

~~(b)[(e)]~~ The parties may agree to resolve the matter informally at any time, in accordance with KRS ~~161.120(9)~~~~[161.120(9)]~~. Any agreement to resolve the matter shall be memorialized in an agreed order. To be valid, the agreement shall be approved by the EPSB. The agreed order shall be signed by the educator, the educator's attorney, if any, and the EPSB chair.

~~(c)[(d)]~~ The EPSB staff shall initiate the hearing process by filing the statement of charges with the hearing officer, in accordance with KRS Chapter 13B, ~~[within thirty (30) days]~~ after the EPSB refers the matter to hearing.

Section 3. Hearing Process.

(1) The hearing shall be held in accordance with KRS Chapter 13B.

~~(2) [Either party may be entitled to a reasonable continuance of the hearing date for good cause.]~~

~~(3)~~ The educator has the right to request a private in-person hearing, in accordance with KRS ~~161.120(6)(c)~~~~[161.120(5)(b)]~~.

(a) The educator shall waive the right to a private in-person hearing if the educator fails to specifically make a written request for a private in-person hearing at least five (5) days prior to the hearing.

(b) Even if the educator elects to proceed with a private, in-person hearing, the hearing transcript for that hearing shall be subject to disclosure after the EPSB issues its final order unless exempt from disclosure by law.

(c) All hearings shall be conducted in the office of the EPSB unless a new location is agreed upon by the parties.

~~(3)[(4)]~~ The hearing officer's recommended order shall include a discussion of the factors set forth in Section 2(5)~~[Section 2(3)(f)]~~ of this administrative regulation if recommending sanctions.

~~(4)[(5)]~~ A party may file any exceptions to the recommended order within fifteen (15) calendar days from the date the recommended order is mailed.

(a) This time limit shall not be extended, and responses to exceptions shall not be considered by the EPSB.

(b) Any disagreement with a factual finding or conclusion of law in the recommended order not contained in the exceptions shall be waived.

Section 4. Final Decision.

(1) The EPSB may delegate to the EPSB chair the authority to sign a decision made or order issued under this section on behalf of a majority of the EPSB members.

(2) After the EPSB chair certifies that a quorum is present, a majority of the voting members present shall be required to make a final decision on the recommended order, agreed order, or request for the issuance of an order of default judgment.

(3) In making a final order in accordance with KRS 13B.120, the EPSB shall consider the record including the recommended order and any exceptions filed.[-]

Section 5. Procedure for Suspension, Surrender, or Revocation of a Certificate.

(1) When the EPSB issues a final decision, the EPSB staff shall upload a copy to the certificate holder's KECS account. Final orders

issued pursuant to KRS 13B.120 shall also be sent to the certificate holder~~[mail a copy of the final decision to the educator]~~ by certified mail using the address the educator provided to the EPSB, or any other means permitted by law.

(2) A record of EPSB action shall become part of the educator's official records maintained by EPSB staff.

(3) If the EPSB final decision impacts the certificate holder's eligibility for employment, the EPSB staff shall notify the certificate holder's employing district of the action taken.~~[Immediately following the issuance of the EPSB final decision, the EPSB staff shall notify the reporting parties of the action taken.]~~

(4) EPSB staff shall also ensure that the suspension, surrender, or revocation is noted on the EPSB's Web site.

(5) EPSB staff shall also ensure that the information is provided to the National Association of State Directors of Teacher Education and Certification (NASDTEC) for inclusion in the NASDTEC Clearinghouse, which is a searchable database administered by NASDTEC relating to educator certification and discipline.

Section 6. Procedure for Reinstatement of a Suspended Certificate.

(1) Reinstatement of a suspended certificate for reasons other than misconduct involving the illegal use of controlled substance as defined in KRS 218A.010 shall be subject to the following requirements:

(a) A certificate that has been suspended by the EPSB shall not be reinstated until the certificate holder has met all conditions and requirements ordered by the EPSB.

(b) If a certificate lapses during a period of suspension, the certificate holder shall apply for renewal of the certificate at the end of the suspension period. The EPSB shall renew the certification if the certificate holder has met all educational requirements for renewal and has completed all of the conditions and requirements ordered by the EPSB.

(c) The burden to initiate the process to reinstate a suspended certificate shall be on the certificate holder.

1. If the suspension does not include conditions, the EPSB staff shall remove all references of the suspension from the Web site at the conclusion of the suspension period.

2. If the suspension includes conditions, the certificate holder shall provide the EPSB proof that all conditions have been met.

a. The EPSB shall reinstate the certificate at the conclusion of the suspension period once the EPSB receives evidence from the certificate holder demonstrating that the conditions of suspension were met.

b. The EPSB shall remove from its Web site any reference to the suspension once the certificate holder has provided evidence that the conditions of suspension have been met.

(d) The record of suspension as well as reinstatement of the certification shall become part of the educator's official certification records, but the record of suspension shall not be referenced on any certificate subsequently issued to the certificate holder.

(2) Reinstatement of a suspended certificate for misconduct involving the illegal use of controlled substance as defined in KRS 218A.010 shall be subject to the following requirements:

(a) In addition to conditions for reinstatement of a suspended certificate established in subsection (1) of this section, the certificate holder shall provide written evidence that the certificate holder has submitted to a drug test at the certificate holder's own expense administered by a drug testing facility approved by the EPSB within thirty (30) days of reinstatement.

(b) The certificate holder shall arrange for the drug testing facility to send the results of the drug test directly to the EPSB.

(c) A certificate holder subject to the terms of this subsection may petition the EPSB to approve a state approved drug testing facility of the certificate holder's choice.

1. Petition to Approve Drug Testing Facility. The petition shall contain the following information:

- a. The drug testing facility's name and location;
- b. The name and telephone number for the director of the facility;
- c. The method of test specimen collection;
- d. The drug testing facility's method of assuring identity of the test subject;

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- e. Procedures for testing specimens, including forensic testing methods; and
 - f. Chain of custody protocols.
2. The drug testing facility shall test at a minimum for the following named controlled substances:
- a. Marijuana;
 - b. Cocaine;
 - c. Opiates;
 - d. Amphetamines;
 - e. Phencyclidine;
 - f. Morphine;
 - g. MDMA (Ecstasy);
 - h. Methadone;
 - i. Benzodiazepines;
 - j. Barbiturates; and
 - k. Oxycodone.
- (d) If the results of the drug test indicate illegal drug use by the certificate holder, the certificate shall not be reinstated.

Section 7. Procedure for Reissuance of a Certificate after Revocation.

- (1) If revocation was for reasons other than misconduct involving the illegal use of controlled substance as defined in KRS 218A.010, the conditions established in this subsection shall apply.
- (a) The former certificate holder shall complete the same application that all educators in Kentucky shall complete to obtain certification.
- (b) The former certificate holder shall bear the burden of proving that the certificate holder is fit for practice.
- (c) The former certificate holder shall satisfy all current educational requirements for the certificate sought.
- (d) The EPSB may include terms and conditions that the EPSB reasonably deems appropriate as a condition of reissuance in accordance with KRS ~~161.120(12)(b)~~~~[161.420(14)(b)]~~ if reissuing the certificate.

- (2) If revocation was for misconduct involving the illegal use of controlled substance as defined in KRS 218A.010, the former certificate holder shall:
- (a) Comply with the requirements established in Section 6(1) of this administrative regulation; and
- (b) Submit to drug testing as established in Section 6(2) of this administrative regulation.
- (3) Regardless of the reason for the revocation, the revocation shall be noted on the certificate that is issued and shall remain on the EPSB Web site.

Section 8. Denial of Application for a Certificate. If the EPSB denies an individual's application for a Kentucky certificate pursuant to this administrative regulation, the applicant may file an appeal in accordance with KRS ~~161.120(6)(a)2~~~~[161.120(5)(a)2]~~.

Section 9. Motion to Reconsider.

- (1) In accordance with KRS ~~161.120(10)~~~~[161.120(9)]~~, the EPSB may reconsider, modify, or reverse its decision of its own volition.
- (2) Under exceptional circumstances, the EPSB may reconsider, modify or reverse its decision on any disciplinary matter upon a motion by one (1) of the parties.

JUSTIN MITCHELL, Board Chair

APPROVED BY AGENCY: July 15, 2024

FILED WITH LRC: July 15, 2024 at 10:50 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on September 23, 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 September 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 identifies the conditions for initiating a disciplinary action against a teaching or administrative certificate and establishes procedures for certificate surrender, revocation, suspension, reinstatement, reissuance, and application denial.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to identify the conditions for initiating a disciplinary action against an educator's certificate and establishes procedures for certificate surrender, revocation, suspension, reinstatement, reissuance and application denial.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 161.028 requires the Education Professional Standards Board to establish the standards and requirements for obtaining and maintaining a teaching certificate; and provides the authority to issue, renew, revoke, suspend, or refuse to issue or renew; impose probationary or supervisory conditions upon; issue a written reprimand or admonishment; or any combination of actions regarding any certificate for reasons delineated in KRS 161.120(1). KRS 161.175(2) authorizes the Education Professional Standards Board to promulgate administrative regulations requiring an educator whose certificate has been suspended or revoked by the Education Professional Standards Board because the educator engaged in misconduct involving the illegal use of controlled substances to submit to drug testing.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation sets forth the process for initiating a disciplinary action against a teaching or administrative certificate and establishes procedures for certificate surrender, revocation, suspension, reinstatement, reissuance, and application denial.

(2) If 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 specifies how the Education Professional Standards Board will process complaints against certificate holders that are received prior to July 15, 2024, and how they will process those complaints received on or after July 15, 2024. The process for processing complaints after July 15, 2024, is created to comply with the new process created by House Bill 300 of the 2024 legislative session. Additional amendments are made to update statutory references.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to comply with the changes to KRS 161.120 from House Bill 300 of the 2024 Legislative Session.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 161.028(1) authorizes the Education Professional Standards Board to establish standards and requirements for obtaining and maintaining a teaching certificate, and provides the authority to issue, renew, revoke, suspend, or refuse to issue or renew; impose probationary or supervisory conditions upon; issue a written reprimand or admonishment; or any combination of actions regarding any certificate for reasons delineated in KRS 161.120(1). KRS 161.175(2) authorizes the Education Professional Standards Board to promulgate administrative regulations requiring an educator whose certificate has been suspended or revoked by the Education Professional Standards Board because the educator engaged in misconduct involving the illegal use of controlled substances to submit to drug

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testing. House Bill 300 of the 2024 legislative session establishes the process by which EPSB is to handle complaints filed against certificate holders in KRS 161.120(2).

(d) How the amendment will assist in the effective administration of the statutes: This amendment updates the regulation to comply with the changes to KRS 161.120 and will ensure the processing of complaints and reports filed against certificate holders meets the statutory requirements.

(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 seeking teaching certifications, educators currently holding certifications, and superintendents for the 171 Kentucky public school districts that employ educators holding certifications.

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

(a) List 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 by the applicants or certificate holders will be required. Superintendents will be required to submit complaints in accordance with KRS 161.120(3) and indicate when complaints are complete.

(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 amendment for districts, certificate holders or applicants for certification.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Complaints and reports will be processed in the timelines provided in KRS 161.120 and the requisite notifications will be issued.

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

(a) Initially: \$226,509

(b) On a continuing basis: \$197,519

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Restricted funds generated by educator certification application fees.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: While the amendments necessary to comply with the new process created by House Bill 300's amendment to KRS 161.120 comes at a significant cost, the Education Professional Standards Board is working to implement this without raising certification fees.

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

(9) TIERING: Is tiering applied? Tiering is not applicable to the requirements of this regulation.

FISCAL IMPACT STATEMENT

(1) Identify each state statute, federal statute, or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 161.028, KRS 161.120.

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: The Education Professional Standards Board.

(a) Estimate the following for the first year:

Expenditures: Significant expenditures are expected in the first year to comply with the requirements of House Bill 300 from the 2024 legislative session. This will include the cost of two additional staff members (\$190,629 salary and benefits) and updates to the case management system (\$35,880). Total additional expenditures for the first year are estimated at \$226,509. An increase in hearing expenses is also expected, but it is difficult to estimate at this time.

Revenues: The amendment to this administrative regulation is not expected to generate any revenue during the first year as this

regulation does not create fees or generate funds for the Education Professional Standards Board.

Cost Savings: No cost savings are expected with this amendment.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? Expenditure is expected to remain in subsequent years. Staff hired in the first year will still be needed in subsequent years. (\$190,629 for salary and benefits) While the cost for updating the case management system will be specific to the first year, there will be costs for maintenance and upkeep in subsequent years (\$6,890). Cost for subsequent years is estimated at \$197,519. Revenues and cost savings are not expected to differ in subsequent years.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): Public-school districts.

(a) Estimate the following for the first year:

Expenditures: There are no expected expenditures for districts as there are no fees established in this regulation.

Revenues: This regulation does not generate revenue.

Cost Savings: There are no cost savings expected with this amendment.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? The expenditures, revenues and cost savings are not expected to differ in subsequent years.

(4) Identify additional regulated entities not listed in questions (2) or (3): Applicants for certification and certificate holders.

(a) Estimate the following for the first year:

Expenditures: There are no required expenditures for certificate holders or applicants to comply with this amendment.

Revenues: This regulation does not generate any revenue.

Cost Savings: There is no expected cost savings since there are no fees for applicants or certificate holders created or reduced by this regulation.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? The expenditures, revenues and cost savings are not expected to differ in subsequent years.

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: There is a fiscal impact on the Education Professional Standards Board as a result of the proposed amendments to this regulation necessary to comply with the requirements of House Bill 300 from the 2024 legislative session. This impact is the cost of the additional staff members and updates to the case management system necessary to comply with the amendments. Initial costs will be \$226,509, with a cost of \$197,519 in subsequent years.

(b) Methodology and resources used to determine the fiscal impact: The methodology and resources used to determine this is looking to current systems and processes to see if they are sufficient to carry out the processes established by House Bill 300. It was determined that a minimum of two additional staff members were needed to comply with the timelines, conference requirements and notice requirements of House Bill 300. It was also determined that the case management system would need to be updated to comply with the new process. The cost of the salary and fringe benefits for the new staff members was added to the estimated cost of the system updates and upkeep to determine the fiscal impact.

(6) Explain:

(a) Whether this administrative regulation will have an overall negative or adverse major economic impact to the entities identified in questions (2) - (4). (\$500,000 or more, in aggregate) There is an expected negative economic impact for the Education Professional Standards Board as there are significant costs with the staffing needs and updates of the case management system necessary to implement the process created under House Bill 300 of the 2024 legislative session. Given the initial expenditure of \$226,509 and subsequent \$190,629, the Education Professional Standards Board will incur costs of over \$500,000 in under three years. There is not an expected major economic impact from this regulation for the other entities.

(b) The methodology and resources used to reach this conclusion: The methodology and resources used to determine this is looking to current systems and processes to see if they are sufficient to carry out the processes established by House Bill 300.

It was determined that a minimum of two additional staff members were needed to comply with the timelines, conference requirements and notice requirements of House Bill 300. It was also determined that the case management system would need to be updated to comply with the new process. The cost of the salary and fringe benefits for the new staff members was added to the estimated cost of the system updates and upkeep to determine the economic impact.

EDUCATION AND LABOR CABINET
Education Professional Standards Board
(Amendment)

16 KAR 2:030. Substitute teachers[and emergency school personnel].

RELATES TO: KRS 161.020, 161.028(1)(a), (f), 161.030[(4), (9)], 161.100

STATUTORY AUTHORITY: KRS 161.020, 161.028(1)(a), (f), 161.030[(4), (9)], 161.100, 161.102

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.020, 161.028, and 161.030 require that a teacher and other professional school personnel hold a certificate of legal qualifications for the respective position issued by the Education Professional Standards Board (EPSB). KRS 161.102 creates a one (1) year, five (5) year, and ten (10) year certificate for substitute teaching.[KRS 161.100 provides for the issuance of an emergency certificate.] This administrative regulation establishes the requirements for the issuance of the certificates for substitute teaching and[a Certificate for Substitute Teaching,] the priority selection process for employing a substitute teacher[, and the Emergency Noncertified School Personnel Program.]

Section 1. One (1) Year Emergency Certificate for Substitute Teaching.

(1) 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 substitute teachers.

(2) A one (1) year emergency certificate for substitute teaching may be issued to a candidate who possesses a minimum of a high school diploma or high school equivalency diploma.

(3) A local school district shall review the qualifications and transcripts for each applicant for an emergency substitute certificate and verify to the EPSB that the candidate possesses a minimum of a high school diploma or a high school equivalency diploma.

(4) Application for the one (1) year emergency certificate for substitute teaching shall be submitted to the EPSB and shall:

- (a) Contain verification of an offer of employment in a Kentucky school district;
- (b) Contain verification that the candidate possesses a minimum of a high school diploma or high school equivalency; and
- (c) Be in compliance with 16 KAR 2:010, Section 3(1).

Section 2. Five (5) Year Certificate for Substitute Teaching.

(1) A five (5) year certificate for substitute teaching may be issued to a candidate who possesses a bachelor's degree from a regionally or nationally accredited postsecondary education institution.

(2) Application for the five (5) year certificate for substitute teaching shall be submitted to the EPSB and shall:

- (a) Contain an official transcript from the college or university attended resulting in a bachelor's degree; and
- (b) Be in compliance with 16 KAR 2:010, Section 3(1).

(3) Application for renewal of the five (5) year certificate for substitute teaching shall be submitted to the EPSB and be in compliance with 16 KAR 2:010, Section 3(1).

(4) The five (5) year certificate for substitute teaching shall be issued at a Rank IV.

Section 3. Ten (10) Year Certificate for Substitute Teaching.

(1) A ten (10) year certificate for substitute teaching may be issued to a candidate who:[The Certificate for Substitute Teaching

shall be issued in accordance with the pertinent Kentucky statutes and administrative regulations of the Education Professional Standards Board to an applicant who:]

(a) Holds a valid statement of eligibility for a Kentucky teaching certificate;[-or]

(b) Has previously held a Kentucky certificate for classroom teaching for which the completion of a four (4) year program of teacher preparation and a bachelor's degree were required[-]; or

(c) Currently holds or previously held a valid out-of-state teaching certificate for which the completion of a four (4) year program of teacher preparation and a bachelor's degree were required.

(2) Application for the ten (10) year certificate for substitute teaching shall be submitted to the EPSB and shall:

(a) Contain an official transcript from the college or university attended resulting in a bachelor's degree; and

(b) Be in compliance with 16 KAR 2:010, Section 3(1).

(3) Application for renewal of the ten (10) year certificate for substitute teaching shall be submitted to the EPSB and be in compliance with 16 KAR 2:010, Section 3(1).

(4) A teacher holding a valid Kentucky teaching certificate shall be issued a ten (10) year certificate for substitute teaching at the rank designated on the teacher's regular certificate.

(5) A teacher holding or previously holding a valid out-of-state teaching certificate shall be issued a ten (10) year certificate for substitute teaching at the rank corresponding to the teacher's regular certificate.

[(2)] [The Certificate for Substitute Teaching shall be issued initially for a duration period of five (5) years and may be reissued or renewed upon recommendation of the employing school district superintendent.]

[(3)] [The Certificate for Substitute Teaching shall:]

[(a)] [Be valid for substitute teaching; and]

[(b)] [Not be valid:]

[1-] [For continuous part-time employment for classroom teaching;-or]

[2-] [As a permanent replacement for a teacher of record for the remainder of the school year-]

Section 4.[Section 2:] To employ a substitute teacher during the temporary absence of the teacher of record for a position, priority in selection and employment shall be given in accordance with the following order:

(1) A teacher who holds appropriate regular certification corresponding to the grade level of the teaching assignment;

(2) A teacher who holds regular certification for classroom teaching at any grade level;

(3) A teacher who holds the ten (10) year certificate for substitute teaching[Certificate for Substitute Teaching];

(4) A candidate who holds the five (5) year certificate for substitute teaching;

(5) A candidate who holds the one (1) year emergency certificate for substitute teaching.

[(4)] [Except as provided in subsection (5) of this section, a person certified on an emergency basis for substitute teaching pursuant to 16 KAR 2:120, who shall be called according to the following descending order relating to the amount of college hours completed:]

[(a)] [A Bachelor's degree:]

[(b)] [At least ninety-six (96) semester hours of college credit:]

[(c)] [From sixty-four (64) to ninety-five (95) semester hours of college credit:]

[(5)] [A person certified on an emergency basis for substitute teaching in a health, technical, or industrial occupation with 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:]

[Section 3.] [If a district is unable to employ a substitute teacher using the priority selection process established in Section 2 of this administrative regulation, a district may utilize a person through the Emergency Noncertified School Personnel Program established by

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~~the Education Professional Standards Board. A district seeking participation in this program shall apply to and receive approval from the Education Professional Standards Board on an annual basis.]~~

~~[(1)] [A district shall submit a written letter of application for participation in the Emergency Noncertified School Personnel Program. A district may make application at any time during the school year. The application letter shall be reviewed for approval by the Education Professional Standards Board based upon the following documented components:]~~

~~[(a)] [The number of teaching days not filled with an appropriately certified teacher or appropriately certified emergency substitute in the preceding school year;]~~

~~[(b)] [The extent and anticipated usage of emergency school personnel;]~~

~~[(c)] [A plan to eliminate the need for emergency school personnel in the future;]~~

~~[(d)] [The steps taken by the district to recruit and retain emergency certified personnel;]~~

~~[(e)] [The recruitment of persons with a high school diploma or its equivalent as determined by evidence of a passing score on the General Education Development Test, age twenty-five (25) or over, except an individual enrolled in an approved teacher education program who may be less than twenty-five (25) years old;]~~

~~[(f)] [Recruitment of parents or other paraprofessionals assigned to the school;]~~

~~[(g)] [A detailed outline of a minimum eighteen (18) clock hour orientation program including emphasis on student safety, district policies, and procedures; and]~~

~~[(h)] [An outline of the district screening process, including the required criminal record and reference check.]~~

~~[(2)] [Upon Education Professional Standards Board approval of the plan for the school year, the district shall:]~~

~~[(a)] [Submit a list, by name, Social Security number, and school, of personnel meeting the requirements established in subsection (1) of this section;]~~

~~[(b)] [Submit a quarterly report to the Education Professional Standards Board identifying the number of days personnel were utilized under this plan;]~~

~~[(c)] [Submit a summary evaluation of the program at the end of the school year for which approval was received from the Education Professional Standards Board; and]~~

~~[(d)]~~

~~[1.] [Utilize emergency school personnel in a single school for which the staff member has been approved and assigned by the district; or]~~

~~[2.] [If the staff member participated in the district's Emergency Noncertified School Personnel Program the previous school year, the district may choose to utilize the staff member in more than one (1) school in the district.]~~

~~[(3)] [A district that was approved by the Education Professional Standards Board to operate an Emergency Noncertified School Personnel Program the preceding year may file Form TC-EN requesting renewal for continuation of the program. Renewal shall be contingent upon:]~~

~~[(a)] [Demonstration of the continued need for the program; and]~~

~~[(b)] [Successful evaluation of the previous year's program pursuant to reporting requirements of this administrative regulation.]~~

~~[Section 4.] [Incorporation by Reference.]~~

~~[(1)] [Form TC-EN, May 2002, 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: July 15, 2024

FILED WITH LRC: July 15, 2024 at 10:50 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on September 23, 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 September 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 three certificates for substitute teaching and the priority selection process.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to set the certification requirements for the three certificates for substitute teaching and the priority selection process.

(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 approved by the Education Professional Standards Board. KRS 161.102 creates a one (1) year emergency certificate for substitute teaching, a five (5) year certificate for substitute teaching, and a ten (10) year certificate for substitute teaching.

(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 three certificates for substitute teaching.

(2) If 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 includes the certification requirements for all three certificates and updates the priority selection process accordingly. Additionally, the amendment removes the emergency noncertified personnel program, since the amendments to KRS 161.102 in House Bill 387 of the legislative session allow these individuals to qualify the one (1) year emergency certificate for substitute teaching.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to comply with the amendments to KRS 161.102 in House Bill 387 of the 2024 legislative session and set the requirements for the three certificates for substitute teaching it established. It is also necessary to remove the emergency noncertified personnel program as those candidates qualify for the new one (1) year emergency certificate.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment sets the requirements for issuance of the three certificates for substitute teaching established in KRS 161.120.

(d) How the amendment will assist in the effective administration of the statutes: This amendment sets clear certification standards for the issuance of the three certificates for substitute teaching and amends the priority selection process accordingly.

(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 for certification for substitute teaching.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this

administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Applicants for certification for substitute teaching will have to meet the requirements of the certificate that they are pursuing. Districts will have to employ substitutes utilizing the priority selection process.

(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 substitute teaching certificates to qualified candidates.

(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? There are three substitute teaching certificates for created in KRS 161.102 with different requirements for each. A candidate's academic preparation determines which substitute teaching certificate is available to them. These requirements are mirrored in the regulation.

FISCAL IMPACT STATEMENT

(1) Identify each state statute, federal statute, or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 161.020, 161.028, 161.030, 161.102

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: The Education Professional Standards Board.

(a) Estimate the following for the first year:

Expenditures: No additional expenditure is expected to be needed since the systems and staff are already in place for processing applications and issuing certificates for substitute teaching.

Revenues: The amendment to this administrative regulation is not expected to generate any revenue during the first year as this regulation does not create fees. There are also no fees associated with one (1) year certificates.

Cost Savings: No cost savings are expected with this amendment.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? Expenditures, revenues and cost savings are not expected to differ in subsequent years.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): Public-school districts.

(a) Estimate the following for the first year:

Expenditures: There are no expected expenditures for districts as there are no fees established in this regulation.

Revenues: This regulation sets the standards for issuance of the certificates for substitute teaching and will not generate revenue for districts.

Cost Savings: There is no expected cost savings since there are no fees created or reduced by this regulation.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? The expenditures, revenues and cost savings are not expected to differ in subsequent years.

(4) Identify additional regulated entities not listed in questions (2) or (3): Applicants for certification for substitute teaching.

(a) Estimate the following for the first year:

Expenditures: There are no expected expenditures for applicants to comply with this amendment.

Revenues: This regulation sets the standards for the certificates for substitute teaching. It will not generate revenue for applicants.

Cost Savings: There is no expected cost savings since there are no fees created or reduced by this regulation.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? The expenditures, revenues and cost savings are not expected to differ in subsequent years.

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: There is no fiscal impact as a result of the proposed amendments to this regulation. No fees are established or increased in this regulation. While processing applications and issuing certificates does require staff time and resources from the Education Professional Standards Board, the amendments can be carried out by the existing staff and systems.

(b) Methodology and resources used to determine the fiscal impact: The methodology and resources used to determine that there is no fiscal impact, is looking to current systems and processes to see if additional expenditures or resources are needed to carry out the amendments. Since no additional expenditures or resources are needed to carry out the amendments, and there are no fees established or increased by this regulation, it was determined there is no fiscal impact.

(6) Explain:

(a) Whether this administrative regulation will have an overall negative or adverse major economic impact to the entities identified in questions (2) - (4). (\$500,000 or more, in aggregate) There is not an expected major economic impact from this regulation as it does not create additional costs for the Education Professional Standards Board or the regulated entities.

(b) The methodology and resources used to reach this conclusion: The methodology and resources used to determine this is looking to current systems and processes to see if additional expenditures or resources are needed to carry out the amendments. Since no additional expenditures or resources are needed to carry out the amendments, and there are no fees are established or increased by this regulation, there will not be a negative or adverse major economic impact.

EDUCATION AND LABOR CABINET Education Professional Standards Board (Amendment)

16 KAR 9:010. Provisional and professional certificate for exceptional work experience.

RELATES TO: KRS 161.028, 161.030, 161.048

STATUTORY AUTHORITY: KRS 161.028, 161.030, 161.048

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.048 establishes the eligibility requirements for a candidate seeking to participate in an alternative teacher preparation program. This administrative regulation establishes the requirements for issuance [and renewal] of a provisional and professional certificate based on exceptional work experience.

Section 1. Definitions.

(1) "Exceptional work experience" means a person with recognized superiority as compared with others in rank, status, and attainment or superior knowledge and skill in comparison with the generally accepted standards in the area in which certification is sought.

(2) "Population based certificate" means a certificate for

teaching elementary, exceptional children, or interdisciplinary early childhood education.

Section 2. Verification of exceptional qualifications of an applicant for certification, in a field of endeavor taught or service practiced in a public school of Kentucky, shall include:

(1) Sufficient documentation that demonstrates to the local school district and the Education Professional Standards Board that an applicant is one who has exceptional work experience and has talents and abilities commensurate with the teacher standards, established in 16 KAR 1:010;

(2) Documentation may include advanced degrees earned, distinguished employment, evidence of related study or experience, publications, professional awards, achievement, or recognition attained for contributions to an applicant's field of endeavor; and recommendations from professional associations, former employers, professional colleagues, or any other individual or group whose evaluations shall support exceptional work in the field.

(3) Exceptional work experience shall not apply to population based certificates.

Section 3. Certification Requirements.

(1) An eligible candidate for certification other than a population based certificate who meets the requirements of KRS 161.048(2) and 16 KAR 2:010, Section 3(1), shall be issued a two (2) year provisional certificate for exceptional work experience.

(2) The provisional certificate shall be issued for the content area and grade range corresponding to the candidate's degree and teaching experience.

(3) The provisional certificate shall be valid for teaching the content area and grade range indicated on the face of the certificate.

(4) If a candidate does not complete one (1) year of successful teaching experience during the initial provisional certificate, the candidate may apply to renew the provisional certificate.

(5) Application for renewal of the two (2) year provisional certificate shall be submitted to the EPSB and be in compliance with 16 KAR 2:010, Section 3(1).

(6) Upon completion of one (1) year of successful teaching experience on the provisional certificate, the candidate may apply for the professional certificate.

(2) Application for the professional certificate shall be submitted to the EPSB and shall:

(a) Contain proof of successful completion of one (1) year of teaching experience;

(b) Contain a recommendation from the employing school district; and

(c) Be in compliance with 16 KAR 2:010, Section 3(1).

JUSTIN MITCHELL, Board Chair

APPROVED BY AGENCY: June 4, 2024

FILED WITH LRC: July 8, 2024 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on September 23, 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 September 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 requirements for the professional and provisional certificate for the Option 1 exceptional work experience alternative route to certification.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to set the certification requirements for Option 1, Exceptional Work Experience Route to Teacher Certification.

(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 approved by the Education Professional Standards Board. KRS 161.048 authorizes the Education Professional Standards Board to promulgate administrative regulations establishing the standards and procedures for the Option 1, Exceptional Work Experience Route to Teacher Certification.

(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 Option 1 Exceptional Work Experience Route to Teacher Certification.

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

(a) How the amendment will change this existing administrative regulation: The proposed amendment to 16 KAR 9:010 allows a candidate for the Option 1, Exceptional Work Experience Alternative Route to Certification to be issued a two (2) year provisional certificate upon application to the EPSB, proof of compliance with KRS 161.048(2), demonstration of exceptional work experience, and completion of the character and fitness review. Applicants are no longer required to have an offer of employment before issuance of the initial certificate but must successfully complete one (1) year of teaching experience and have a recommendation from the employing school district prior to issuance of the professional certificate.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to comply with the changes to KRS 161.048(2) from Senate Bill 265 of the 2024 Legislative Session.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment sets the requirements for issuance of certification under the Option 1 Exceptional Work Experience Route to Teacher Certification. The amendment removes the requirement that candidates have a job offer prior to issuance and adds the requirement that candidates complete one (1) year of teaching experience and have a recommendation from the employing district prior to issuance of the professional certificate.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in establishing the requirements for the provisional and professional certificate for the Option 1 Exceptional Work Experience Route to Teacher Certification.

(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 those pursuing the Option 1 Exceptional Work Experience Route to Teacher 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: Applicants for the Option 1 route will have to meet the requirements for issuance of the provisional certificate, then obtain one (1) year of teaching experience before applying for the professional certificates. Districts will no longer have to verify that candidates have an offer of employment but will have to provide a recommendation for those candidates that complete one (1) year of teaching experience.

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

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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 the provisional and professional certificate to eligible candidates.

(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 teachers seeking certification through the Option 1 Exceptional Work Experience Route to Teacher Certification.

FISCAL IMPACT STATEMENT

(1) Identify each state statute, federal statute, or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 161.020, 161.028, 161.030, 161.048.

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: The Education Professional Standards Board.

(a) Estimate the following for the first year:

Expenditures: No additional expenditures are expected to be needed since the systems and staff are already in place for processing applications and issuing certificates under the Option 1 route.

Revenues: The amendment to this administrative regulation is not expected to generate any revenue during the first year as this regulation does not create fees.

Cost Savings: No cost savings are expected with this amendment.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? Expenditures, revenues and cost savings are not expected to differ in subsequent years.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): Public-school districts.

(a) Estimate the following for the first year:

Expenditures: There are no expected expenditures for districts as there are no fees established in this regulation.

Revenues: This regulation sets the standards for certification under the Option 1 route to certification. It will not generate revenues for districts.

Cost Savings: There are no cost savings expected with this amendment.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? The expenditures, revenues and cost savings are not expected to differ in subsequent years.

(4) Identify additional regulated entities not listed in questions (2) or (3): Applicants for certification under the Option 1 Exceptional Work Experience Route to Teacher Certification.

(a) Estimate the following for the first year:

Expenditures: There are no expected expenditures for applicants to comply with this amendment.

Revenues: This regulation sets the standards for certification under the Option 1 route. It will not generate revenue for applicants.

Cost Savings: There is no expected cost savings since there are no fees created or reduced by this regulation.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? The expenditures, revenues and cost savings are not expected to differ in subsequent years.

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: There is no fiscal impact as a result of the proposed amendments to this regulation. No fees are established or increased in this regulation, and there are no fees for two (2) year provisional certificates. While processing applications and issuing certificates does require staff time and resources from the Education Professional Standards Board, the amendments can be carried out by the existing staff and systems.

(b) Methodology and resources used to determine the fiscal impact: The methodology and resources used to determine that there is no fiscal impact, is looking to current systems and processes to see if additional expenditures or resources are needed to carry out the amendments. Since no additional expenditures or resources are needed to carry out the amendments, and there are no fees established or increased by this regulation, it was determined there is no fiscal impact.

(6) Explain:

(a) Whether this administrative regulation will have an overall negative or adverse major economic impact to the entities identified in questions (2) - (4). (\$500,000 or more, in aggregate) There is not an expected major economic impact from this regulation as it does not create additional costs for the Education Professional Standards Board or the regulated entities.

(b) The methodology and resources used to reach this conclusion: The methodology and resources used to determine this is looking to current systems and processes to see if additional expenditures or resources are needed to carry out the amendments. Since no additional expenditures or resources are needed to carry out the amendments, and there are no fees established or increased by this regulation, there will not be a negative or adverse major economic impact.

EDUCATION AND LABOR CABINET Education Professional Standards Board (Amendment)

16 KAR 9:080. University-based alternative certification program.

RELATES TO: KRS 156.111, 160.345(2)(h), 161.027, 161.028(1)(k), (s), (t), 161.030(11), 161.048, 161.1211, 34 C.F.R. 300.156(c)(2)

STATUTORY AUTHORITY: KRS 161.027(1), 161.048(1)(d), (7)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.048(1)(d) and (7) require the Education Professional Standards Board (EPSB) to promulgate administrative regulations establishing the standards and procedures for a university alternative certification option for teacher and administrator certification. This administrative regulation establishes the requirements for entry and completion of the teacher and administrator university-based alternative certification options, the responsibilities of the employing school or school district, and the responsibilities of the approved college or university alternative program.

Section 1. Definitions.

(1) "Alternative certification administrator program" means a college or university post baccalaureate or post masters administrator preparation program for an individual enrolled concurrently with employment in a local school district as an assistant principal, principal, assistant superintendent, school counselor, director of special education, director of pupil personnel, supervisor of instruction, or superintendent.

(2) "Alternative certification teacher program" means a college or university post baccalaureate teacher preparation program for an individual enrolled concurrently with employment as a teacher.

Section 2. Admission Requirements.

(1) An applicant for an alternative certification teacher program shall meet the admission standards for an initial certification program established in 16 KAR 5:020.

(2) An applicant for an alternative certification administrator program shall meet the admission standards for the corresponding administrator certification program established in 16 KAR Chapter 3.

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Section 3. University Requirements for Alternative Certification Teacher Program.

(1) An accredited college or university seeking to offer an alternative certification teacher program shall apply to the EPSB for program approval in accordance with 16 KAR 5:010.

(2) In addition to the standards for program approval established in 16 KAR 5:010, the educator preparation provider seeking alternative certification teacher program approval shall design the alternative certification teacher program to provide a candidate with the coursework and mentoring necessary to permit a candidate to maintain employment in an eligible position and to successfully complete any applicable assessments, [~~including internship programs,~~] within a period of three (3) years for those enrolled in an alternative certification teacher program for teachers of exceptional children or interdisciplinary early childhood education employed in a public school, or a period of five (5) years for all other alternative certification teacher programs.

(3) Upon approval, the alternative certification teacher program unit shall:

(a) Assess a candidate's educational background and develop a plan of coursework that shall adequately prepare the candidate for successful completion of the requirements for program completion and certification for the areas and grade ranges that correspond with the candidate's school placement;

(b) Provide a candidate written and dated documentation of eligibility for the university alternative certification teacher program so that the candidate may be considered for employment pursuant to KRS 160.345(2)(h);

(c) Ensure that a candidate begins coursework no later than ninety (90) days from the date the eligibility notice is issued;

(d) Develop a written agreement to provide, in collaboration with the administration of the candidate's employing school, mentoring to the candidate in the employment setting which shall include:

1. A minimum of fifteen (15) hours of annual observation utilizing university faculty and a district-based mentor of the candidate practicing instruction in the classroom, as follows:

a. A minimum of five (5) hours of observation by university faculty;

b. A minimum of five (5) hours of observation by a district-based mentor; and

c. A minimum of five (5) hours of observation by either the university faculty or the district-based mentor;

2. A description of how support shall be offered to the candidate during in-class and out-of-class time to assist the candidate in meeting the teacher's instructional responsibilities;

3. The name, contact person, and role for the collaborating educator preparation provider mentor; and

4. The name and role of all school district mentor teachers;

(e) Establish a process to maintain regular communication with the employing school so that the educator preparation provider and employing school may assist the candidate as needed and address identified areas of improvement; and

(f) Notify the EPSB in writing if a candidate's employment in a covered position or enrollment in the alternative certification teacher program permanently ceases.

(4) Student teaching shall not be required for program completion.

Section 4. Temporary Provisional Certificate for Teaching.

(1) The temporary provisional certificate for teaching shall be issued and renewed in accordance with KRS 161.048(7).

(2) The temporary provisional certificate for teaching shall be issued in accordance with a 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.

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

Section 5. Issuance of a Temporary Provisional Certificate for Teaching.

(1) Prior to seeking employment in a Kentucky public school, a candidate shall request from the educator preparation provider written and dated documentation of eligibility for the alternative certification teacher program to provide to school districts pursuant to KRS 160.345(2)(h).

(2) Prior to employment, a superintendent, on behalf of the employing local board of education, shall be responsible for requesting the temporary provisional certificate.

(3) The candidate shall submit to the EPSB an official college transcript from each college or university attended.

(4) The candidate shall demonstrate compliance with 16 KAR 2:010, Section 3(1).

(5) The employing school district shall submit a completed and signed copy of the mentoring collaboration agreement with the alternative certification teacher program as required by Section 3(3)(d) of this administrative regulation.

(6) The educator preparation provider shall submit a recommendation for the grade level and specialization of the temporary provisional certificate.

Section 6. Requirements for Renewal of the Temporary Provisional Certificate for Teaching.

(1) A candidate shall be eligible for renewal of the temporary provisional certificate 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, completion of annual observation hours, and progress towards the completion of the alternative teacher preparation program.

~~[(2)] [If a candidate is required to complete an internship in accordance with KRS 161.030, the candidate shall complete the required assessments as established in 16 KAR 6:010 prior to issuance of the final temporary provisional certificate and shall complete the internship during the final temporary provisional certificate.]~~

~~[(3)]~~ A candidate for exceptional children or interdisciplinary early childhood certification employed in a public school may only renew the temporary provisional certificate two (2) times.

~~[(4)]~~ All other alternative certification teacher candidates may renew the temporary provisional certificate four (4) times.

Section 7. Alternative Certification Teacher Program Completion Requirements.

(1) An applicant for teacher certification shall meet all certification requirements for the corresponding certificate established in 16 KAR Chapter 2 and the assessment requirements established in 16 KAR 6:010.

(2) Upon completion of all program requirements of the university based alternative teacher program, the candidate may apply to the EPSB for the professional certificate.

(3) Upon application to the EPSB, compliance with 16 KAR 2:010, Section 3(1), recommendation of the employing school district, and verification that a candidate has met all eligibility requirements for certificate issuance, the EPSB shall issue a professional certificate.

Section 8. University Requirements for an Alternative Certification Administrator Program.

(1) An accredited college or university seeking to offer an alternative certification administrator program shall apply to the EPSB for program approval in accordance with 16 KAR 5:010.

(2) In addition to the standards for program approval established in 16 KAR 5:010, the educator preparation provider seeking alternative certification administrator program approval shall design

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the alternative certification administrator program to provide a candidate with the coursework and mentoring appropriate to permit a candidate to maintain employment in an eligible position and successfully complete any applicable assessments, including any internship or training programs, within a period of two (2) years for those enrolled in an alternative certification administrator program.

(3) Upon approval, the alternative certification administrator program unit shall:

(a) Assess a candidate's educational background and develop a plan of coursework that shall adequately prepare the candidate for successful completion of the requirements for program completion and certification for the areas and grade ranges that correspond with the candidate's school placement;

(b) Provide a candidate written and dated documentation of eligibility for the university alternative certification administrator program so that the candidate may be considered for employment pursuant to KRS 160.345(2)(h);

(c) Ensure that a candidate begins coursework no later than ninety (90) days from the date the eligibility notice is issued;

(d) Develop a written agreement to provide, in collaboration with the administration of the candidate's employing school, mentoring to the candidate in the employment setting which shall include:

1. A minimum of fifteen (15) hours of annual observation utilizing university faculty and a district-based mentor of the candidate practicing in the appropriate administrative role, as follows:

a. A minimum of five (5) hours of observation by university faculty;

b. A minimum of five (5) hours of observation by a district-based mentor; and

c. Five (5) hours of observation by either the university faculty or the district-based mentor;

2. A description of how support shall be offered to the candidate to assist the candidate in meeting the candidate's administrative responsibilities;

3. The name, contact person, and role for the collaborating educator preparation provider mentor; and

4. The name and role of all school district mentors;

(e) Establish a process to maintain regular communication with the employing school so that the educator preparation provider and employing school may assist the candidate as needed and address identified areas of improvement; and

(f) Notify the EPSB in writing if a candidate's employment in a covered position or enrollment in the alternative certification administrator program permanently ceases.

Section 9. Temporary Provisional Administrative Certificate.

(1) The temporary provisional administrative certificate shall be issued for a validity period not to exceed one (1) year.

(2) The temporary provisional administrative certificate may be renewed a maximum of one (1) time.

(3) The temporary provisional administrative certificate shall be valid for employment in a position consistent with the area of certification being sought through the preparation program.

Section 10. Issuance of a Temporary Provisional Administrative Certificate.

(1) Prior to seeking employment in a Kentucky public school, a candidate shall request from the educator preparation provider written and dated documentation of eligibility for the university based alternative certification administrator program to provide to school districts pursuant to KRS 160.345(2)(h).

(2) Prior to employment, a superintendent, on behalf of the employing local board of education, shall be responsible for requesting the temporary provisional certificate.

(3) The candidate shall submit to the EPSB an official college transcript from each college or university attended.

(4) The candidate shall demonstrate compliance with 16 KAR 2:010, Section 3(1).

(5) The employing school district shall submit a completed and signed copy of the mentoring collaboration agreement with the university based alternative certification program as required by Section 8(3)(d) of this administrative regulation.

(6) The educator preparation provider shall submit a recommendation for the specialization of the temporary provisional certificate.

Section 11. Requirements for renewal of the temporary provisional certificate for an administrator.

(1) A candidate shall be eligible for no more than one (1) renewal of the temporary provisional certificate.

(2) A candidate shall be eligible for renewal of the temporary provisional certificate 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 nonpublic school in the position indicated on the initial certificate; and

(b) Recommendation from the educator preparation provider based on continued enrollment, completion of annual observation hours, and progress towards the completion of the alternative administrator program.

(3) If a candidate is seeking principal certification and is required to complete an internship in accordance with KRS 161.030, the candidate shall complete the required assessments as established in 16 KAR 3:090 prior to renewal of the temporary provisional certificate and shall complete the internship during the final temporary provisional certificate.

Section 12. Alternative Certification Administrator Program Completion Requirements.

(1)

(a) During the period of enrollment in the alternative certification administrator program, a candidate seeking superintendent certification and serving in a local school district as a superintendent or assistant superintendent shall successfully complete both the coursework in the institution's alternative certification administrator program as well as the Superintendents Training Program and assessments required in KRS 156.111.

(b) The college or university faculty shall maintain contact with the employing school district and the Kentucky Department of Education regarding the completion of coursework to ensure that a superintendent candidate has completed the required coursework to prepare for the assessments and participation in the Superintendents Training Program.

(2) An applicant for administrator certification shall meet all certification requirements for the corresponding certificate established in 16 KAR Chapter 3.

(3) Upon completion of all program requirements of the alternative administrator program the candidate may apply to the EPSB for the professional certificate.

(4) Upon application to the EPSB, compliance with 16 KAR 2:010, Section 3(1), and verification that a candidate has met all eligibility requirements for certificate issuance, the EPSB shall issue a professional certificate.

JUSTIN MITCHELL, Board Chair

APPROVED BY AGENCY: June 4, 2024

FILED WITH LRC: July 8, 2024 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on September 23, 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 September 30, 2024. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Todd Allen

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for entry and completion of the teacher and administrator university-based alternative certification options, the responsibilities of the employing school or school district, and the responsibilities of the approved college or university alternative program.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the requirements for the teacher and administrator university-based alternative certification options.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 161.028 requires the Education Professional Standards Board to establish standards and requirements for obtaining and maintaining a teaching certificate. KRS 161.028(1)(p) creates the alternative administrator preparation program. KRS 161.048(7) creates the Option 6 alternative route to certification and KRS 161.048(1)(e) requires the Education Professional Standards Board to promulgate administrative regulations establishing standards and procedures for the alternative certification options.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation sets the requirements for the teacher and administrator university-based alternative certification options.

(2) If 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 removes the reference to the Kentucky Teacher Internship Program and requires that a candidate for the Option 6 Alternative Route to Teacher Certification have a recommendation from the employing school district prior to issuance of the professional certificate.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to comply with the changes to KRS 161.030 and KRS 161.048(7) from Senate Bill 265 of the 2024 Legislative Session.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment sets the requirements for issuance of certification under the Option 6 Alternative Route to Teacher Certification. The amendment adds the requirement that candidates have a recommendation from the employing district prior to issuance of the professional certificate and removes the reference to the Kentucky Teacher Internship Program.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in establishing the requirements for certification under the Option 6 Alternative Route to Teacher Certification.

(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 those pursuing the Option 6 Alternative Route to Teacher 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: Applicants for professional certification under the Option 6 route will have to have a recommendation from an employing school district for issuance of the certificate. Districts will have to provide a recommendation for those candidates that complete teaching experience under the Option 6 route.

(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 the professional certificate to eligible candidates.

(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 teachers seeking certification through the Option 6 Alternative Route to Teacher Certification.

FISCAL IMPACT STATEMENT

(1) Identify each state statute, 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, KRS 161.048.

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: The Education Professional Standards Board.

(a) Estimate the following for the first year:

Expenditures: No additional expenditures are expected to be needed since the systems and staff are already in place for processing applications and issuing certificates under the Option 6 route.

Revenues: The amendment to this administrative regulation is not expected to generate any revenue during the first year as this regulation does not create fees.

Cost Savings: No cost savings are expected with this amendment.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? Expenditures, revenues and cost savings are not expected to differ in subsequent years.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): Public-school districts.

(a) Estimate the following for the first year:

Expenditures: There are no expected expenditures for districts as there are no fees established in this regulation.

Revenues: This regulation sets the standards for certification under the Option 6 route to certification. It will not generate revenues for districts.

Cost Savings: There are no cost savings expected with this amendment.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? The expenditures, revenues and cost savings are not expected to differ in subsequent years.

(4) Identify additional regulated entities not listed in questions (2) or (3): Applicants for certification under the Option 6 Alternative Route to Teacher Certification.

(a) Estimate the following for the first year:

Expenditures: There are no expected expenditures for applicants to comply with this amendment.

Revenues: This regulation sets the standards for certification under the Option 6 route. It will not generate revenue for applicants.

Cost Savings: There is no expected cost savings since there

are no fees created or reduced by this regulation.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? The expenditures, revenues and cost savings are not expected to differ in subsequent years.

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: There is no fiscal impact as a result of the proposed amendments to this regulation. No fees are established or increased in this regulation, and there are no fees for temporary provisional certificates. While processing applications and issuing certificates does require staff time and resources from the Education Professional Standards Board, the amendments can be carried out by the existing staff and systems.

(b) Methodology and resources used to determine the fiscal impact: The methodology and resources used to determine that there is no fiscal impact, is looking to current systems and processes to see if additional expenditures or resources are needed to carry out the amendments. Since no additional expenditures or resources are needed to carry out the amendments, and there are no fees established or increased by this regulation, it was determined there is no fiscal impact.

(6) Explain:

(a) Whether this administrative regulation will have an overall negative or adverse major economic impact to the entities identified in questions (2) - (4). (\$500,000 or more, in aggregate) There is not an expected major economic impact from this regulation as it does not create additional costs for the Education Professional Standards Board or the regulated entities.

(b) The methodology and resources used to reach this conclusion: The methodology and resources used to determine this is looking to current systems and processes to see if additional expenditures or resources are needed to carry out the amendments. Since no additional expenditures or resources are needed to carry out the amendments, and there are no fees established or increased by this regulation, there will not be a negative or adverse major economic impact.

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 Option 6 contained in this administrative regulation comply with the requirement in 34 C.F.R. § 300.156 (c)(2) because candidates using the alternative pathway to obtain special education certification will 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.

(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 in the Option 6 alternative route to certification 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 temporary provisional certification for special education instructors 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 9:100. Alternative Route to Certification Institute.

RELATES TO: KRS 161.028, 161.030, 161.048, 34 C.F.R. 300.156 (c)(2)

STATUTORY AUTHORITY: KRS 161.028, 161.030, 161.048(1)(e)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.048(1)(e) requires the Education Professional Standards Board (EPSB) to promulgate administrative regulations establishing standards and procedures for the Alternative Route to Certification Institute and the approval criteria for these programs. This administrative regulation establishes the required elements of the alternative route to certification and the application review process.

Section 1. Institute Providers.

(1) A provider not currently accredited by the EPSB in accordance with 16 KAR 5:010, may demonstrate a partnership with an institution of higher education accredited by the EPSB and a school district or cooperative recognized by the Kentucky Department of Education.

(2) A provider shall submit an application to the EPSB in accordance with the Guidelines for Submitting an Application to Provide an Alternative Route to Certification Institute (Option 7).

Section 2. Application Review.

(1) An application to provide an alternative route to certification institute shall be submitted to EPSB staff.

(2) EPSB staff shall complete an initial review to ensure that the application addresses the requirements of KRS 161.048(8) and the Guidelines for Submitting an Application to Provide an Alternative Route to Certification Institute (Option 7).

(a) If EPSB staff determines that the application addresses the requirements of this subsection, the application shall be forwarded to an external review team.

(b) If EPSB staff determines that the application does not address all the requirements of this subsection, staff shall notify the provider of the deficiencies.

(3) An external review team of trained reviewers appointed by EPSB pursuant to subsection (4) of this section, staff shall review the application in accordance with KRS 161.048(8) and the Guidelines for Submitting an Application to Provide an Alternative Route to Certification Institute (Option 7).

(4) The external review team shall be comprised of:

(a) One (1) representative from an EPSB accredited postsecondary institution;

(b) One (1) representative from a Kentucky education cooperative; and

(c) One (1) representative from a Kentucky public school district.

(5) The external review team shall review the application to provide an alternative route to certification institute and determine the quality of the application based on compliance with subsection (2) of this section. The review team shall recommend acceptance or denial of the application to the EPSB and shall include a supporting rationale for the recommendation.

(6) The EPSB shall review the external review team's recommendation, shall approve or deny each application, and shall transmit the decision and rationale for the decision to the provider.

(7) The provider may revise and resubmit a plan that has been denied.

(8) Any approval granted by the EPSB shall specify the period of approval of the institute, which shall not exceed two (2) years for initial approval. A provider may apply for an extension of approval as established in Section 3 of this administrative regulation.

Section 3. Continuance of Program Approval.

(1) An institute provider may apply for continuance of an approved alternative route to certification institute for an additional period of time not to exceed seven (7) years. The request for continuance shall specify any changes in program components that have occurred since the institute received prior EPSB approval and

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that are planned for implementation in subsequent training periods.

(2) The request for continuance shall provide specific examples of demonstrating program quality as established in this section and the application required by this administrative regulation. The request for continuance shall include statistical information related to teacher retention for all prior candidates who have completed the institute. Standards for program approval established under this administrative regulation shall be maintained under any program extension.

Section 4. Revocation for Cause.

(1) If an area of concern or an allegation of misconduct arises after an institute has been approved, staff shall bring a complaint to the EPSB for initial review.

(2) After review of the allegations in the complaint, the EPSB may refer the matter to the external review team for further investigation.

(3)

(a) Notice of the EPSB's decision to refer the matter and the complaint shall be sent to the provider.

(b) Within thirty (30) days of receipt of the complaint, the provider shall respond to the allegations in writing and provide information pertaining to the allegations in the complaint to the EPSB.

(4)

(a) The external review team shall review any evidence supporting the allegations and any information submitted by the provider.

(b) The external review team may conduct on-site evaluations to evaluate the quality of the program.

(c) Upon completion of the review, the external review team shall issue a report recommending to the EPSB continued approval of the institute or revocation of institute approval if the institute no longer meets the standards and requirements for approval established in this administrative regulation.

(5) The provider shall receive a copy of the external review team's report and may file a response to the recommendation.

(6)

(a) The recommendation from the external review team and the provider's response shall be presented to the EPSB.

(b) The EPSB shall consider the findings and recommendations of the external review team and make a final determination regarding the approval of the institute.

Section 5. Reconsideration.

(1) If a provider seeks reconsideration of an EPSB decision, the provider shall submit a request within thirty (30) days of receipt of the EPSB official notification. A provider shall submit the request on the grounds that:

(a) A prescribed standard was disregarded;

(b) A procedure was not followed; or

(c) Evidence of compliance in place at the time of the review and favorable to the provider was not considered.

(2) A panel of no fewer than three (3) members shall be appointed by the EPSB chair from members of the EPSB who do not have a conflict of interest regarding the provider or institute. The ad hoc committee shall recommend action on the request to the full EPSB.

Section 6. Data Reports.

(1) The EPSB shall maintain data reports related to:

(a) Approval status of all EPSB approved Option 7 programs;

(b) Contact information for the person responsible for the institute;

(c) Year of last program review;

(d) Tables relating the institute total enrollment disaggregated by ethnicity and gender for the last three (3) years;

(e) Tables relating the institute faculty disaggregated by the number of full-time equivalents (FTE), ethnicity, and gender for the last three (3) years;

(f) Table of the number of program completers for the last three (3) years;

(g) Table relating pass rates on the required assessments;

(h) Table relating program completer satisfaction with the preparation program; and

(i) Table relating new teacher (under three (3) years) and supervisor satisfaction with the preparation program.

(2) A provider shall report to the EPSB staff at the end of each school year continuous improvement efforts relating to the institute.

Section 7. Temporary Provisional Certificate.

(1) An eligible candidate who meets the requirements of KRS 161.048(8)(a)[~~1- through 4-~~] and 16 KAR 2:010, Section 3(1), shall be issued a one (1) year provisional teaching certificate.

(2) The candidate shall apply to the EPSB and provide:

(a) Official transcripts of all college work undertaken by the candidate establishing proof of a bachelor's degree or graduate degree and grade point average; and

(b) [~~Proof of a passing score on the admission assessments as established in 16 KAR 5:020, unless the applicant holds a terminal degree;~~]

[~~(c) [Proof of a passing score on the academic content assessment, as established in 16 KAR 6:010, in the area in which certification is being sought;]~~]

[~~(d) Verification by the institute provider of enrollment in an EPSB approved institute[completion of half of the requisite institute hours; and]~~]

[~~(e) [Evidence of employment in a Kentucky school district or regionally or nationally accredited nonpublic school in the content area of the certification.]~~]

(3) A candidate shall be eligible for first renewal of the temporary provisional certificate upon application to the EPSB, compliance with 16 KAR 2:010, Section 3(1), and verification[~~;~~]

[~~(a) [Verification] of completion of:~~]

[~~(a)[~~4-~~] 240 hour institute for elementary or K-12 certification; or~~]

[~~(b)[~~2-~~] 180 hour institute for middle or high school certification.]; and]~~]

[~~(b) [Evidence of employment in a Kentucky school district or regionally or nationally accredited nonpublic school in the content area of the certification.]~~]

(4) A candidate shall be eligible for subsequent renewal of the temporary provisional certificate upon application to the EPSB, compliance with 16 KAR 2:010, Section 3(1), and recommendation[~~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 institute provider based on continued enrollment, completion of mentoring, and progress towards the completion of the program.~~]

[~~(5) [If a candidate is required to complete an internship in accordance with KRS 161.030, the candidate shall complete the required assessments as established in 16 KAR 6:010 prior to issuance of the final temporary provisional certificate and shall complete the internship during the final temporary provisional certificate.]~~]

[~~(5) [(6)]~~] A candidate for exceptional children or interdisciplinary early childhood certification employed in a public school may only renew the temporary provisional certificate two (2) times.

[~~(6) [(7)]~~] All other candidates may renew the temporary provisional certificate four (4) times.

Section 8. Professional Certificate.

(1) Upon completion of all program requirements established in this administrative regulation, and successfully completing one (1) year of teaching, the applicant may apply for the professional certificate.

(2) Prior to issuance of the professional certificate, the candidate shall obtain a passing score on the requisite assessments[~~pedagogy assessment~~], as established in 16 KAR 6:010, for the certificate being sought.

(3) Upon application to the EPSB, compliance with 16 KAR 2:010, Section 3(1), and verification that a candidate has met all eligibility requirements for certificate issuance, the EPSB shall issue the candidate a professional certificate.

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Section 9. Incorporation by Reference.

(1) "Guidelines for Submitting an Application to Provide an Alternative Route to Certification Institute (Option 7)", 2024[2022], is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Education Professional Standards Board, 300 Sower Boulevard, 5th Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available on the Education Professional Standards Board's Web site at <http://www.epsb.ky.gov/course/view.php?id=2>.

JUSTIN MITCHELL, Board Chair

APPROVED BY AGENCY: June 4, 2024

FILED WITH LRC: July 8, 2024 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on September 23, 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 September 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 standards and procedures of the Option 7 institute route to certification.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to set the standards and procedures for the Option 7 institute route to certification.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 161.028 requires the Education Professional Standards Board to establish standards and requirements for obtaining and maintaining a teaching certificate. KRS 161.048(8) creates the Option 7 alternative route to certification and KRS 161.048(1)(e) requires the Education Professional Standards Board to promulgate administrative regulations establishing standards and procedures for the alternative certification options.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation delineates the requirements for providing an Option 7 alternative route to certification program as well as the requirements for candidates of the route to obtain certification.

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

(a) How the amendment will change this existing administrative regulation: The proposed amendment allows a candidate for the Option 7 route to be issued a temporary provisional certificate upon application the Education Professional Standards Board, proof of meeting the degree requirements, and enrollment in an approved institute. The amendment removes the requirement that applicants have an offer of employment, passing assessment scores, and completion of half of the institute hours before issuance of the initial certificate. Candidates must successfully complete one (1) year of teaching experience, have a recommendation from the employing school district, and pass the requisite assessments prior to issuance of the professional certificate.

(b) The necessity of the amendment to this administrative

regulation: This amendment is necessary to comply with the changes to KRS 161.048(8) from Senate Bill 265 of the 2024 Legislative Session.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment sets the requirements for issuance of certification under the Option 7 Institute Route to Teacher Certification. The amendment removes the requirements that candidates have a job offer, complete assessments, and complete half of the institute hours prior to issuance of the temporary provisional certificate. The amendment adds the requirement that candidates complete one (1) year of teaching experience and have a recommendation from the employing district prior to issuance of the professional certificate.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in establishing the requirements for certification under the Option 7 Institute Route to Teacher Certification.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 171 Kentucky school districts, entities seeking approval to offer an Option 7 Institute, and those pursuing the Option 7 Institute Route to Teacher 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: Applicants for the Option 7 route will only have to meet degree requirements and enrollment in an approved Option 7 institute for issuance of the temporary provisional certificate. They will no longer have to have an offer of employment, complete assessments, and complete half of the institute hours prior to issuance of the temporary provisional certificate. Candidates will have to obtain one (1) year of teaching experience and pass the assessments before applying for the professional certificates. Districts will no longer have to verify that candidates have an offer of employment but will have to provide a recommendation for those candidates that complete one (1) year of teaching experience.

(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 certification to eligible candidates.

(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 teachers seeking certification through the Option 7 Institute Route to Teacher Certification and all entities seeking to provide an Option 7 Institute.

FISCAL IMPACT STATEMENT

(1) Identify each state statute, 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, KRS 161.048.

(2) Identify the promulgating agency and any other affected state

units, parts, or divisions: The Education Professional Standards Board.

(a) Estimate the following for the first year:

Expenditures: No additional expenditures are expected to be needed since the systems and staff are already in place for processing applications and issuing certificates under the Option 7 route.

Revenues: The amendment to this administrative regulation is not expected to generate any revenue during the first year as this regulation does not create fees.

Cost Savings: No cost savings are expected with this amendment.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? Expenditures, revenues and cost savings are not expected to differ in subsequent years.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): Public-school districts.

(a) Estimate the following for the first year:

Expenditures: There are no expected expenditures for districts as there are no fees established in this regulation.

Revenues: This regulation sets the standards for certification under the Option 7 route to certification. It will not generate revenues for districts.

Cost Savings: There are no cost savings expected with this amendment.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? The expenditures, revenues and cost savings are not expected to differ in subsequent years.

(4) Identify additional regulated entities not listed in questions (2) or (3): Applicants for certification under the Option 7 Institute Route to Teacher Certification and Option 7 Institute Providers.

(a) Estimate the following for the first year:

Expenditures: There are no expected expenditures for applicants or providers to comply with this amendment.

Revenues: This regulation sets the standards for certification under the Option 7 route. It will not generate revenue for applicants or providers.

Cost Savings: There is no expected cost savings since there are no fees created or reduced by this regulation.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? The expenditures, revenues and cost savings are not expected to differ in subsequent years.

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: There is no fiscal impact as a result of the proposed amendments to this regulation. No fees are established or increased in this regulation, and there are no fees for temporary provisional certificates. While processing applications and issuing certificates does require staff time and resources from the Education Professional Standards Board, the amendments can be carried out by the existing staff and systems.

(b) Methodology and resources used to determine the fiscal impact: The methodology and resources used to determine that there is no fiscal impact, is looking to current systems and processes to see if additional expenditures or resources are needed to carry out the amendments. Since no additional expenditures or resources are needed to carry out the amendments, and there are no fees established or increased by this regulation, it was determined there is no fiscal impact.

(6) Explain:

(a) Whether this administrative regulation will have an overall negative or adverse major economic impact to the entities identified in questions (2) - (4). (\$500,000 or more, in aggregate) There is not an expected major economic impact from this regulation as it does not create additional costs for the Education Professional Standards Board or the regulated entities.

(b) The methodology and resources used to reach this conclusion: The methodology and resources used to determine this is looking to current systems and processes to see if additional expenditures or resources are needed to carry out the amendments. Since no additional expenditures or resources are needed to carry out the amendments, and there are no fees established or increased by this regulation, there will not be a negative or adverse major economic impact.

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 Option 7 contained in this administrative regulation comply with the requirement in 34 C.F.R. § 300.156 (c)(2) because candidates using the alternative pathway to obtain special education certification will 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.

(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 in the Option 7 alternative route to certification 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 temporary provisional certification for special education instructors 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.

**FINANCE AND ADMINISTRATION CABINET
Kentucky Teachers' Retirement System
(Amendment)**

102 KAR 1:350. Full actuarial cost purchase.

RELATES TO: KRS 161.220(22), 161.440, 161.507, 161.515, 161.545, 161.5465, 161.547, 161.548, 161.549

STATUTORY AUTHORITY: KRS 161.310(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.310 requires the Board of Trustees of the ~~[Kentucky]~~Teachers' Retirement System of the State of Kentucky~~[(KTRS)]~~[(TRS)] to promulgate all administrative regulations for the administration of the funds of the retirement system. KRS 161.507, 161.515, 161.545, 161.5465, 161.547, 161.548, and 161.549 permit members to purchase service credit. These purchases of service credit are purchasable at full actuarial cost as defined by KRS 161.220(22). This administrative regulation provides the interest rate to be accredited to members who make an advance payment for service credit at full actuarial cost prior to retirement and the method for paying the full actuarial cost of health insurance.

Section 1. Members who make an advance payment for service credit at full actuarial cost ~~[at least one (1) month prior]~~ to their effective retirement date shall be accredited regular interest against their payment(s) at the rate provided for members under KRS 161.220(13). This interest, as assigned under KRS 161.440, shall be accredited at the time of retirement when the final full actuarial cost purchase amount is reconciled and shall be subject to adjustment to reflect the actuarial experience of the retirement system.

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Section 2. Unless coverage is waived, the full actuarial cost for health insurance shall be paid by the member as follows:

(1) Members shall not be required to pay in advance any lump sum amount towards health insurance in making a full actuarial cost service purchase.

(2) Members who are not otherwise eligible to retire prior to making a full actuarial cost service purchase shall pay the full amount of the health insurance premium plus any amount required under KRS 161.675(4)(b) until the date is reached that they would have been eligible to retire the account under KRS 161.600 without the purchase. Upon reaching the date at which the retiree would have been eligible to retire the account under KRS 161.600 without the purchase, the retiree shall be entitled to the monthly health insurance benefit supplement approved by the board for each year based upon their years of service credit excluding the full actuarial cost service purchased. The retiree shall continue to pay monthly to the retirement system any amount required under KRS 161.675(4)(b) and any difference between the supplement as described in the previous sentence and the full cost of the monthly premium.

(3) Members who are eligible to retire the account under KRS 161.600 prior to making a full actuarial cost service purchase shall, upon retirement, be entitled to the monthly health insurance benefit supplement approved by the board for each year based upon their years of service credit, excluding the full actuarial cost service purchased. The retiree shall pay to the retirement system monthly any amount required under KRS 161.675(4)(b) and any difference between the supplement as described in the previous sentence and the full cost of the monthly premium.

BRENDA MCGOWN, Chair

APPROVED BY AGENCY: June 17, 2024

FILED WITH LRC: July 12, 2024 at 3:30 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on 24 September 2024, at 9:00 a.m. at the Teachers' Retirement System of the State of Kentucky 479 Versailles Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 30 September 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: Robert B. Barnes, Deputy Executive Secretary of Operations and General Counsel, Kentucky Teachers' Retirement System, 479 Versailles Road, Frankfort, Kentucky 40601, phone (502) 848-8508, fax (502) 573-0199, email Beau.Barnes@trs.ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Robert B. Barnes

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides the interest rate to be accredited members who make an advance payment for service credit at full actuarial cost prior to retirement.

(b) The necessity of this administrative regulation: This administrative regulation provides regulatory direction for the interest rate accredited to advance payments of full actuarial cost purchases.

(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 providing the interest rate for advance payments on the full actuarial cost authorized by statute payments for certain types of service credit purchases that are authorized by the statutes.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative

regulation assists in the effective administration of the statutes by providing a procedure for accrediting interest to authorized service credit purchases.

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

(a) How the amendment will change this existing administrative regulation: The amendment will provide further details for paying the full actuarial cost of health insurance.

(b) The necessity of the amendment to this administrative regulation: This amendment will provide further details of how the full actuarial cost of health insurance will be made.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 161.220(22) defines full actuarial cost to include health insurance supplement payments made by the retirement system and this amendment will provide further details of how that cost will be included in the purchase. (d) How the amendment will assist in the effective administration of the statutes: The amendment will provide further details for full actuarial cost purchases of health insurance.

(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: There are fewer than fifty (50) individuals who currently make advance payments for service credit purchases in any one year.

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

(a) List 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 does not require any additional action by the member.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no additional cost to the members of the retirement system as the amendment simply provides further details of how that cost is currently assessed.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Members will have further details set forth in regulation regarding how the full actuarial cost of health insurance is made.

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

(a) Initially: There is no cost to implement the amendment to this regulation.

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

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Administrative expenses of the retirement system are paid by restricted agency funds.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied, as all members are treated the same who make full actuarial cost service credit purchases.

FISCAL IMPACT STATEMENT

(1) Identify each state statute, federal statute, or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 161.220(22), 161.310(1).

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: Teachers' Retirement System

(a) Estimate the following for the first year:

Expenditures: None
Revenues: None
Cost Savings: None

(b) How will expenditures, revenues, or cost savings differ in subsequent years? None

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts):

(a) Estimate the following for the first year:

Expenditures: None

Revenues: None

Cost Savings: None

(b) How will expenditures, revenues, or cost savings differ in subsequent years? None

(4) Identify additional regulated entities not listed in questions (2) or (3): None

(a) Estimate the following for the first year:

Expenditures: None

Revenues: None

Cost Savings: None

(b) How will expenditures, revenues, or cost savings differ in subsequent years? None

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: None.

(b) Methodology and resources used to determine the fiscal impact: No impact.

(6) Explain:

(a) Whether this administrative regulation will have an overall negative or adverse major economic impact to the entities identified in questions (2) - (4). (\$500,000 or more, in aggregate) The amendment to this regulation will have no major impact economic impact.

(b) The methodology and resources used to reach this conclusion: There is no impact.

**FINANCE AND ADMINISTRATION CABINET
Kentucky Public Pensions Authority
(Amendment)**

105 KAR 1:140. Employer's administrative duties.

RELATES TO: KRS 16.505-16.652 [46.583, 46.645(18), 18A.095, 18A.105, 61.505-61.705] [61.546, 61.552(23), 61.560, 61.565, 61.569, 61.597, 61.598, 61.637(17), 61.675, 61.685, 61.702], 78.510-78.852 [78.545(33), (37), 78.616, 78.625, 78.652], 26 U.S.C. 401(a)(17), [(34), 403(b), 408(a), (b), 414(g)(6), 457(b), 3121(b)(10), 41 C.F.R. Part 105-64, [Pub. L. 104-191, Pub. L. 111-5, Div. A, Title XIII, Div. B, Title IV, 26 C.F.R. 31.3121(b)(10)-2, 29 C.F.R. 519.2(a),] 42 C.F.R. 423.504(b)(4)(vi), 45 C.F.R. Parts 160, 162, 164

STATUTORY AUTHORITY: KRS 61.505(1)(g) [46.645(18)], 61.565, [61.645(9)(e)], 61.675, [78.545(33)], 78.625, 78.635

NECESSITY, FUNCTION, AND CONFORMITY: KRS 61.505(1)(g) authorizes the Kentucky Public Pensions Authority [61.645(9)(e) requires the Board of Trustees of the Kentucky Retirement Systems] to promulgate administrative regulations on behalf of the Kentucky Retirement Systems and the County Employees Retirement System that are consistent with [necessary or proper in order to carry out the provisions of] KRS 16.505 to 16.652, 61.505, 61.510 to 61.705, and 78.510 to 78.852. Employers participating in the Kentucky Employees Retirement System, County Employees Retirement System, and State Police Retirement System are required by KRS 16.545, 16.645 [(18)], 61.543, 61.560, 61.565, 61.637, 61.675, [78.545(33), and] 61.702, 78.536, 78.5540, 78.610, 78.615, 78.625, and 78.635 to make contributions to the [retirement] systems, [to] report creditable compensation and other information that the systems may require to the Kentucky Public Pensions Authority [retirement systems and other information that the Board of Trustees may require], and perform other duties and responsibilities as participating employers. [26 U.S.C. 401(a)(17) places a limit on the amount of creditable compensation on which contributions may be made.] This administrative regulation sets out the administrative duties and reporting requirements for all participating employers [agencies].

Section 1. Definitions.

(1) "Classify" means to report an employee as full-time, part-time, seasonal, temporary, emergency, probationary, volunteer,

intermittent, or interim.

(2) "Confidential member account information" means information or data that relates directly or indirectly to a member's account at the agency that is specific or unique to the member.

(3) "County Fee Employer" means county employers who report to the Kentucky Personnel Cabinet due to the population of their county.

(4) "Employer Self-Service Web site" or "ESS Web site" means a secure agency Web site that:

(a) Allows employers to access its online employer account and employee information, download and submit forms, and provides other employer resources; and

(b) Allows some employers to perform reporting and contribution functions.

(5) "End of Year Report" or "EOY Report" means a school board's list of the classified participating and non-participating employees who were reported to the County Employees Retirement System during the school year that is used to average monthly work hours and determine service credit.

(6) "ESS Employer" means all employers as defined by KRS 16.505(3), 61.510(6), and 78.510(7), except a KHRIS Employer or a County Fee Employer.

(7) "Excess contributions" means employee contributions that exceed what is required by statute.

(8) "KHRIS" means Kentucky Human Resource Information System.

(9) "KHRIS Employer" means employers subject to KRS Chapter 18A.

(10) "Non-renewable" means a position created for a fixed period of time that cannot be filled, renewed, or reused after the fixed period of time has lapsed.

(11) "Personal identifiable information" or "PII" is defined by 41 C.F.R. Part 105-64.

(12) "Protected health information" or "PHI" is defined by 45 C.F.R. 160.103.

(13) "Supplemental Report" means a record-keeping tool used by County Fee Employers to report additional non-monetary monthly reporting details that cannot be submitted through KHRIS.

Section 2. Kentucky Public Pensions Authority Employer Reporting Manual. All employers shall follow the requirements and guidelines provided in the Kentucky Public Pensions Authority Employer Reporting Manual.

Section 3. ESS Web site and the Agency's Secure Email Portal.

(1) Each employer shall submit a valid Form 7851, Data Use and Reporting Agreement, completed by the agency head or agency reporting official prior to participating in the systems.

(2) Each employer shall submit a valid Form 7072, Reporting/Balancing Employer Acknowledgment, completed by the agency head or agency reporting official if it needs to designate a third-party entity to report employee information on behalf of the employer.

(3) Each employer shall have an employer administrator to grant and revoke access and security levels to the employer's ESS Web site users. The employer shall submit a valid Form 7071, Employer Self-Service Employer Administrator Account Creation Request, to designate an employer administrator.

(a) The ESS Web site users designated by the employer administrator shall include a primary reporting official and an agency head, and may also include human resources contacts.

(b)

1. Semi-annually, the ESS Web site shall require the primary reporting official to verify contact information for the employer administrator, primary reporting official, human resources contact, and the agency head.

2. If at any time there are changes to contact information in this paragraph or other account information changes, the primary reporting official shall update the ESS Web site with the new information.

(c) An employer is responsible for all acts and omissions of authorized ESS Web site users, including the employer administrator and any ESS Web site user designated by the

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employer administrator in accordance with paragraph (a) of this subsection.

(d) An employer shall ensure that the primary reporting official or any other authorized user holds any password or other means for accessing the ESS Web site in a confidential manner and does not release them to any other person.

(4) The agency shall notify employers of the Web address for the ESS Web site and shall notify employers if the Web address of the ESS Web site changes.

(5) Employers required to submit reports through the ESS Web site as indicated in Sections (4) through (5) of this administrative regulation shall follow the instructions for submission as provided in the Kentucky Public Pensions Authority Employer Reporting Manual. Reports shall be submitted by:

[~~(1) [Each employer shall submit the reports required under KRS 61.675 and KRS 78.625 electronically using the secure Kentucky Retirement Systems' Employer Self-Service Web site by:]~~

(a) The Enter Report Details Module through a series of ESS Web site screens used to enter monthly report details; or

(b) The Upload Detail File Module through an [~~uploading an~~] electronic file upload on the ESS Web site.

1. To submit reports in the Upload Detail File Module, the employer's electronic file format must first meet [~~that meets~~] the requirements of the Strategic Technology Advancements for the Retirement of Tomorrow (START) Employer Contribution Record Layout as provided in the Kentucky Public Pensions Authority Employer Reporting Manual. The employer shall submit a test file to the agency [~~retirement systems~~], which shall be reviewed for compliance with the requirements of the START Employer Contribution Record Layout.

2. If the test file is in compliance with the requirements of the START Employer Contribution Record Layout, the agency [~~retirement systems~~] shall certify the electronic file and inform the employer of the month when the employer may begin using the Upload Detail File Module [~~electronic file~~] for submitting reports.

3. If the test file is not in compliance with the requirements of the START Employer Contribution Record Layout, the agency [~~retirement systems~~] shall inform the employer of the needed corrections to the test file.

4. The employer shall not submit a report using the Upload Detail File Module [~~by electronic file pursuant to this subsection~~] until the test file is certified by the agency [~~retirement systems~~]. If the employer is unable to timely submit its reports in accordance with KRS 61.675 and 78.625 through the Upload Detailed File Module, the employer shall timely submit its reports via the Enter Report Details Module.

[~~(2) [The retirement systems shall notify each employer of the Web address of the secure Kentucky Retirement Systems' Employer Self-Service Web site and shall notify each employer if the Web address of the secure Kentucky Retirement Systems' Employer Self-Service Web site changes.]~~

(6)

(a) An employer shall submit electronic mail containing confidential member account information, PII, or PHI only through the agency's secure electronic mail portal. The Kentucky Public Pensions Authority Employer Reporting Manual shall provide employers with information on how to register, access, and use the secure electronic mail portal.

(b) An employer shall ensure that the primary reporting official or any other authorized user holds any password or other means for accessing the electronic mail portal in a confidential manner and does not release them to any other person.

Section 4. Submitting Reports.

(1) Each employer shall submit the monthly reports required by KRS 61.675, 78.625, and this administrative regulation on or before the 10th of the month following the period being reported. Reports shall be submitted through:

(a) The ESS Web site, for ESS Employers;

(b) KHRIS, for County Fee Employers and KHRIS Employers; and

(c) An electronic file transfer in a system maintained by the Finance and Administration Cabinet, for the Kentucky Personnel

Cabinet.

(2) Each County Fee Employer shall also submit a Supplemental Report through the ESS Web site.

(3) Each month, the agency shall provide detailed information to employers regarding the employer submitted reports from the previous month. If the agency notifies the employer of any errors, the employer shall resolve the errors prior to the employer's next report submission.

Section 5. Additional Reporting Requirements for School Boards.

(1) Each school board shall submit the EOY Report through the ESS Web site by the end of day twenty (20) calendar days following the end of the fiscal year.

(2) After reviewing the EOY Report and identifying any employee who may need a correction or adjustment to his or her record, the agency shall provide the school board with the following applicable report(s) that the school board shall complete and submit through the ESS Web site no later than the end of day November 15th of the same calendar year:

(a) An Exception Report, if an employee had employee contributions reported during the fiscal year, but did not average eighty (80) hours per month of actual worked time in the fiscal year;

(b) A Multiple Enrollment Report, if an employee was reported with multiple periods of employment or multiple positions of employment during the fiscal year requiring an additional breakdown of the total actual days worked;

(c) A Non-Participating Employees Report, if an employee was reported as non-participating during the fiscal year and had salary reported during the school year that appears to meet the definition of a regular full-time position employee; and

(d) An Error Listing Report, if:

1. An employee was included on the EOY report, but was not otherwise reported during the fiscal year;

2. An employee was reported during the fiscal year, but was not included on the EOY report; or

3. An employee had invalid data on the EOY report, including multiple records for the same employee or employees that do not have an account established with the agency.

(3) A penalty of \$1,000 shall be imposed on school boards who fail to submit the required reports within the time periods prescribed by this section. An additional penalty of \$250 per month may be imposed every month until the required reports are submitted.

Section 6. Full-time Employee and Non-participating Position Reporting.

(1) Each employer shall report:

(a) All employees in a regular full-time position;

(b) All employees in non-participating positions, except as provided in subsection (2) of this section; and

(c) Employees whose employment ended during the report month, including the employee's last day of paid employment and the reason the employment ended.

(2) Employers shall not report the following employees in non-participating positions:

(a) Student employees of public universities participating in the Kentucky Employees Retirement System who are enrolled as full-time students in a course of study at the university and who are:

1. Exempt from FICA withholding pursuant to 26 U.S.C. 3121(b)(10) and 26 C.F.R. 31.3121(b)(10)-2; or

2. Classified as full-time students throughout the fiscal year pursuant to 29 C.F.R. 519.2(a);

(b) Retired-reemployed school resource officers, sheriff's deputies, and police officers that are exempt from reporting under 105 KAR 1:390; and

(c) City managers and appointed local government officials in a retirement system, Mayors, or city legislative body members who elect not to participate in the systems by completing, and the employer submitting, Form 2012, Election or Rejection of Participation for Mayors and Members of City Legislative Bodies, prior to participation in the systems in accordance with KRS 78.540(1).

(3) Employees dually employed and participating in another

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state-administered retirement system shall also be reported to the applicable state-administered retirement system in accordance with its rules and regulations.

Section 7. Non-Participating Positions Classification.

(1) An employer shall not change an employee's position status for the same position from full-time to seasonal, temporary, emergency, probationary, or interim.

(2) An employer shall not change the classification of an employee from one (1) non-participating position status to another non-participating position status during a fiscal year, except an employer participating in the County Employees Retirement System may classify an employee as probationary pursuant to KRS 78.510(21)(d) in the same fiscal year that the employer classifies the employee as seasonal, emergency, or part-time.

(3)

(a) An employer shall classify an employee as holding a seasonal position pursuant to KRS 61.510(21)(a) and 78.510(21)(a) only if the position:

1. Is temporary in duration;
2. Coincides with one (1) or more particular season(s) of the year, which may recur regularly from year to year; and
3. Is limited to six (6) months for noncertified school board positions or nine (9) months for all other positions.

(b)

1. Except as provided in subparagraph 2. of this paragraph, if the employer classifies an employee as holding a seasonal position and the employment of the employee in the seasonal position is terminated after the period defined in paragraph (a)3. of this subsection, there shall be a three (3) calendar month break in employment before the employee may again hold a seasonal position.

2. If the employer is a school board that classifies an employee as holding a seasonal position and the employment of the employee in the seasonal position is terminated after the period defined in paragraph (a)3. of this subsection during a fiscal or calendar year, there shall be a six (6) calendar month break in employment before the employee may again hold the same seasonal position.

(4) An employer shall only classify an employee as holding an emergency position pursuant to KRS 61.510(21)(b) or 78.510(21)(b) if the position:

(a) Is created as a result of an emergency as determined by the employer for a period not to exceed thirty (30) working days, and is non-renewable; or

(b) Is created in direct relation to a state of emergency declared by the President of the United States or the Governor of Kentucky.

(5) An employer shall only classify an employee as holding a temporary position pursuant to KRS 61.510(21)(c) or 78.510(21)(c) if the position is nonrenewable and the period in which the position exists does not exceed nine (9) calendar months for positions in the Kentucky Employees Retirement System or twelve (12) calendar months for positions in the County Employees Retirement System.

(6) An employer participating in the Kentucky Employees Retirement System shall only classify an employee as holding an interim position pursuant to KRS 61.510(21)(e) if the position is created for a one (1) time or recurring need that does not exceed nine (9) months.

(7)

(a) Except as provided in paragraph (b) of this subsection, an employer shall only classify an employee as holding a part-time position pursuant to KRS 61.510(21)(d) or 78.510(21)(e) if the position requires less than an average of 100 hours per month of actual worked time in a calendar or fiscal year.

(b) School boards shall only classify a noncertified employee as holding a part-time position pursuant to KRS 78.510(21)(e) if the position requires less than an average of eighty (80) hours per month of actual worked time in a fiscal year.

(8)

(a) An employer shall only classify an employee as holding an intermittent position if the position requires a sporadic work schedule. Across a calendar or fiscal year, an intermittent position employee:

1. May or may not earn wages every month;

2. May qualify as a part-time position in accordance with subsection (7) of this section in some months; or

3. May qualify as a regular full-time position in some months.

(b) For non-school board employees:

1. If an employee's actual worked time averages less than 100 hours per month in a fiscal or calendar year, the employee shall be classified as non-participating.

2. If an employee's actual worked time averages more than 100 hours or more per month in a fiscal or calendar year, the employee shall be classified as participating.

(c) For school board employees:

1. If an employee's actual worked time averages less than eighty (80) hours per month in a fiscal year, the employee shall be classified as non-participating.

2. If an employee's actual worked time averages more than eighty (80) hours per month or more in a fiscal year, the employee shall be classified as participating.

(9)

(a) Except as provided in paragraph (b) of this subsection, an employer shall only classify an employee as holding a volunteer position if the employee meets the requirements of KRS 61.510(42) or 78.510(39).

(b) An employer shall only classify a retired member as a volunteer if the employee meets the requirements in KRS 61.510(42), 61.637(17)(e), 78.510(39), and 78.5540(4)(e) and 105 KAR 1:390.

(10) The agency shall have the authority to determine whether any employee or retired member designated as holding a non-participating position by an employer is an employee in a regular full-time position.

(a) If the employer initially reports the employee in a non-participating position and the agency subsequently determines that the employee worked or averaged the necessary hours, or otherwise meets the requirements to be classified as an employee in a regular full-time position, the employer and employee shall be billed for omitted service in accordance with KRS 61.552(2) and 78.545, except as provided in paragraph (b) of this subsection.

(b) For retired reemployed members, the agency shall adjust the previously reported records from non-participating to retired reemployed and the employer shall pay the employer contributions and, if applicable, health insurance contributions.

(11)

(a) Except as provided in subsections (c) and (d) of this section, hours worked and creditable compensation earned by an employee working in multiple positions with one (1) or more employers participating in the same system shall be combined in accordance with KRS 61.680 and 78.545 only for the following positions:

1. Regular full-time;
2. Part-time;
3. Intermittent; or
4. Volunteer, if the employee has a membership date prior to August 1, 2016.

(b) If multiple part-time positions, intermittent positions, or volunteer positions (for employees with a membership date prior to August 1, 2016) are combined under paragraph (a) of this subsection and, as a result, the employee averages the required hours for a regular full-time position, employer contributions and employee contributions (including any applicable health insurance contributions) shall be remitted in accordance with Section 9 of this administrative regulation.

(c) Hours worked and creditable compensation earned by an employee working in a seasonal, temporary, emergency, probationary, or interim position with an employer shall not be combined with any other regular full-time, part-time, intermittent, or volunteer position with an employer in the same system.

(d) Hours worked and creditable compensation earned by an employee who retires or terminates employment shall not be combined with hours worked and creditable compensation later earned by the employee if the employee reemploys with a participating employer during the same fiscal year.

Section 8. Independent Contractors and Leased Employees.

(1) Quasi-governmental employers as defined in 105 KAR 1:451

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shall report persons providing services as an independent contractor, leased employee, or other employment arrangement in accordance with KRS 61.5991 and 105 KAR 1:451.

(2) The agency shall have the full authority to determine whether any person designated as an independent contractor, leased employee, or non-employee by any employer:

(a) Is an employee in a regular full-time position required to participate in the systems prospectively; or

(b) Was an employee in a regular full-time position for previous periods that were not reported by the employer in accordance with KRS 16.543, 61.543, 61.675, 78.615, and 78.625, and this administrative regulation.

(3) The agency shall apply the common law factors used by the Internal Revenue Service, in accordance with IRS Publication 1779, to make the determination described in subsection (2) of this section. The agency may also consider rules issued by the United States Department of Labor for determining whether a worker is an employee or an independent contractor under federal wage and hour laws.

(4)

(a) The agency shall provide written notification to the employer if it determines that any person designated as an independent contractor, leased employee, or non-employee by the employer:

1. Is an employee in a regular full-time position required to participate in the systems prospectively; or

2. Was an employee in a regular full-time position for previous periods that were not reported by the employer in accordance with KRS 16.543, 61.543, 61.675, 78.615, and 78.625, and this administrative regulation.

(b) A notice provided in accordance with paragraph (a)2. of this subsection shall include a Form 4225, Verification of Past Employment. The employer shall complete and submit the Form 4225 by the end of day thirty (30) calendar days from the date the notice was provided.

(5)

(a) An employer shall remit all reports, records, contributions, and reimbursements for a person as an employee in a regular full-time position in accordance with KRS 61.675, KRS 78.625, and this administrative regulation effective the first day of the calendar month after the date the notification described in subsection (4)(a) of this section is provided.

(b) Once a Form 4225, Verification of Past Employment, is received, the agency shall notify the employer of the delinquent omitted employer contributions owed.

1. An employer shall remit the delinquent omitted employer contributions in accordance with KRS 61.552(2), 61.675(3)(b), 78.545, and 78.625(3) no later than the end of day on the last day of the calendar month following the month the notice is provided.

2. If an employer needs an extension or payment schedule for the delinquent omitted employer contributions owed, it shall contact the agency to request the extension or payment schedule for the delinquent omitted employer contributions owed.

Section 9. Employer, employee, and health insurance contributions.

(1)

(a) [(3)] Each employer shall remit[submit] the employer and employee contributions, and the employer contributions and reimbursements for retiree health insurance premiums as required by KRS 61.675 and [KRS]78.625 no later than the end of day on the 10th calendar day of the month following the month being reported.

(b) Employers shall not remit employer or employee contributions for employees in a non-participating position unless required to do so pursuant to KRS 61.680(6) and 78.545.

(2) Required contributions as indicated in subsection (1) of this section shall be remitted:

(a) By ESS Employers:

1. Through[Electronically using] the agency's secure ESS[Kentucky Retirement Systems' Employer Self Service] Web site;

2. [(b)] By mailing or hand delivering a check;

[(e)] [By the eMARS system maintained by the Finance and

Administration Cabinet;] or

3. [(d)] By wire transfer; and[-]

(b) By KHRIS Employers and County Fee Employers through a payment system maintained by the Finance and Administration Cabinet.

(3)

(1) Except as provided in subsection (b) of this section, if an employer fails to withhold from an employee's creditable compensation the full amount of contributions due from the employee in accordance with KRS 16.583, 61.543, 61.560, 61.597, 61.702, 78.5512, 78.5516, 78.5536, 78.610, or 78.615:

1. The agency shall notify the employer of the additional amount of employee contributions due from the employee;

2. The employer shall withhold the additional contributions due from the employee in accordance with KRS 16.545, 16.583, 61.543, 61.560, 61.597, 61.702, 78.5512, 78.5516, 78.5536, 78.610, or 78.615 from his or her creditable compensation and remit the additional contributions to the agency; and

(b)

1. If the employee is no longer employed by the employer, the employer shall notify the agency and the agency shall refund the incomplete employee contributions submitted by the employer on behalf of the employee to the employer, and the employer shall withhold the applicable taxes from the contributions and remit the remaining money to the employee.

2. If the contributions are refunded in accordance with this paragraph, then the agency shall provide the employee with:

a. Any interest credited on the incomplete employee contributions in accordance with KRS 61.575 or 78.640; and

b. Notification explaining the potential impact to his or her service credit and an invoice for omitted service in accordance with KRS 61.552(2) and 78.545. If the omitted service invoice is not paid, the employee may lose service credit for the month(s).

Section 10. Creditable Compensation.

(1) [(4)] The employer shall report all creditable compensation paid during a month no later than the end of day on[by] the tenth calendar day of the[following] month following the month being reported.

(2)

(a) If creditable compensation is being reported for a month other than the reporting month, the[The] employer shall designate the month to which the creditable compensation shall[should] be applied[if it is not the month for which the employer is reporting and if the].

(b) The report may need to reflect a month other than the reporting month if the creditable compensation[was] earned is from the month in which the employee:

1. Became employed;

2. Became eligible to participate in[one of] the systems[administered by Kentucky Retirement Systems];

3. Was transferred from a[to] hazardous coverage from] nonhazardous position to a hazardous position[participation];

4. Was transferred from a hazardous position[coverage] to a nonhazardous position[participation];

5. Terminated from employment; or

6. Became ineligible to participate in[one (1) of] the systems[administered by Kentucky Retirement Systems].

(3)

(a)

1. The employer shall submit a valid Form 7250, Verification of Payments Outside Regular Wages, prior to payment for creditable compensation paid as

[(b)] [If the employee is paid creditable compensation in] a lump sum,[-of] nonrecurring payment, or other payment outside of regular wages, and[the employer] shall designate the reason for the lump sum,[-of] nonrecurring payment, or other payment outside of regular wages.

2. [-of] If the lump sum,[-of] nonrecurring payment, or other payment outside of regular wages is for[-was] earned during a specific time period, the employer shall designate the time period during which the lump sum,[-of] nonrecurring payment, or other payment outside of regular wages was or will be earned.

(b)

1. The agency shall review the Form 7250 and notify the employer of its findings. If the agency determines the wages are creditable compensation, the agency shall also indicate how the wages shall be reported.

2. If the employer fails to designate a specific time period during which the lump sum, ~~[-or] nonrecurring payment, or other payment outside of regular wages~~ was or will be earned in accordance with paragraph (a)2. of this subsection, the payment shall be considered a lump sum bonus pursuant to KRS 16.505(8), 61.510(13), or 78.510(13).

(4) Workers' compensation payments shall not be included in creditable compensation.

~~[(5) [The provisions of subsection (1) of this section shall not apply to the Kentucky Personnel Cabinet or agencies that are reported by the Kentucky Personnel Cabinet.]~~

~~[(6) [Each employer shall report employees who are regular full-time employees as defined by KRS 61.510(21) and 78.510(21) and shall remit employer and employee contributions for those employees.]~~

~~[(7) [If an employer fails to withhold from an employee's creditable compensation the full amount of contributions due from the employee in accordance with KRS 16.583, 61.560, 61.597, or 61.702:]~~

~~[(a) [The retirement systems shall notify the employer of the additional amount of employee contributions due from the employee;]~~

~~[(b) [The employer shall withhold the additional contributions due from the employee in accordance with KRS 16.583, 61.560, 61.697, or 61.702 from the employee's creditable compensation and remit the additional contributions to the retirement systems;]~~

~~[(c) [If the employee is no longer employed by the employer, the employer shall notify the retirement systems and the retirement systems shall refund the contributions submitted by the employer on behalf of the employee to the employer, which shall withhold the applicable taxes from the contributions and remit the remaining money to the employee; and]~~

~~[(d) [If the contributions are refunded in accordance with paragraph (c) of this subsection, then that service credit shall be omitted service in accordance with KRS 61.552(23).]~~

~~[(8) [Each employer shall report employees who are not regular full-time employees as defined by KRS 61.510(21) and 78.510(21), but shall not remit employer or employee contributions for those employees unless required to do so pursuant to KRS 61.680(6), except:]~~

~~[(a) [Student employees of public universities participating in the Kentucky Employees Retirement System who are enrolled as full-time students in a course of study at the university and who are exempt from FICA withholding pursuant to 26 U.S.C. 3121(b)(10) and 26 C.F.R. 31.3121(b)(10)-2; and]~~

~~[(b) [Student employees of public universities participating in the Kentucky Employees Retirement System who are enrolled as full-time students in a course of study at the university and are classified as full-time students throughout the fiscal year pursuant to 29 C.F.R. 519.2(a).]~~

~~[(9)~~

~~[(a) [An employer participating in Kentucky Employees Retirement System or County Employees Retirement System shall not classify an employee in more than one (1) non-participating position status during the fiscal year, except an employer participating in the County Employees Retirement System may classify an employee as probationary pursuant to KRS 78.510(21)(d) in the same fiscal year that the employer classifies the employee as seasonal, emergency, or part-time.]~~

~~[(b) [An employer participating in the Kentucky Employees Retirement System or the County Employees Retirement System shall not change an employee's position status from full-time to seasonal, temporary, or interim in the same fiscal year.]~~

~~[(c) [An employer shall not classify an employee as a seasonal employee pursuant to KRS 61.510(21)(a) or 78.510(21)(a) unless the duties of the job can only be performed during a defined time period during a fiscal or calendar year. If the employer classifies an employee as seasonal and the employee is terminated after the~~

defined time period during a fiscal or calendar year, there shall be a three (3) calendar month break in employment before the employer may again classify the employee as a seasonal employee, except for employers that are school boards. If an employer that is a school board classifies an employee as seasonal and the employee is terminated after the defined time period during a fiscal or calendar year, there shall be a six (6) calendar month break in employment before the employer may again classify the employee as a seasonal employee.]

~~[(d) [If an employer violates the provisions of this subsection, the retirement systems shall determine if the employee worked or averaged the necessary hours to be in a regular full-time position as provided in KRS 61.510(21) or 78.510(21). If the employee worked or averaged the necessary hours to be in a regular full-time position as defined by KRS 78.510(21), the service credit shall be omitted service in accordance with KRS 61.552(23).]~~

~~[Section 2.]~~

~~[(1) [Each employer shall submit electronic mail to the retirement systems by logging on to the Kentucky Retirement Systems' secure electronic mail server.]~~

~~[(2)~~

~~[(a) [If an employer submits personal information about its employees to the retirement systems in an unsecure electronic format or submits personal information regarding its employees intended to be submitted to the retirement systems to another person or entity by hand delivery, mail, fax, or in an electronic format; the employer shall notify affected employees in writing of the disclosure of personal information and provide information regarding obtaining credit reports.]~~

~~[(b) [Personal information includes the member's first name or first initial and last name in combination with the member's:]~~

~~[1.] [Social Security number;]~~

~~[2.] [Driver's license number;]~~

~~[3.] [Personal Identification Number permitting access to the member's account; or]~~

~~[4.] [Medical Information.]~~

~~[(c) [The retirement systems shall notify the employer of a disclosure upon discovery.]~~

~~[(d) [The employer shall notify the retirement systems of a disclosure upon discovery.]~~

~~[(e) [The employer shall submit a draft of the written notification to be made to affected employees to the retirement systems for approval or denial.]~~

~~[(f) [The employer shall submit copies of the written notifications made to affected employees to the retirement systems after the notifications have been made.]~~

~~[(g) [If the retirement systems is required by federal or state law to provide notification to affected members about the employer's disclosure of personal information or if the retirement systems determines that it should provide the notification to its affected members because of the nature or magnitude of the employer's disclosure, the employer shall reimburse the retirement systems for its costs in notifying members affected by the employer's disclosure.]~~

~~[(h) [In transmitting any medically related personal information, the employer shall comply with all statutes and regulations comprising the Health Insurance Portability and Accountability Act of 1996 "HIPAA", Pub.L. 104-191 and the Health Information Technology for Economic and Clinical Health Act "HITECH", Pub.L. 111-5.]~~

~~[(i) [Each employer shall execute a data use agreement with retirement systems.]~~

~~[Section 3.]~~

~~[(1)~~

~~[(a) [The retirement systems shall submit an invoice to employers for any payments owed to the retirement systems, which were not paid through the normal monthly reports.]~~

~~[(b) [The employer shall remit payment to the retirement systems by the due date provided on the invoice.]~~

~~[(2) [The retirement systems may offset funds owed by the employer to the retirement systems with funds owed to the employer by the retirement systems.]~~

[Section 4.]

[(1)] [An employer shall pay interest at the rate adopted by the board for any creditable compensation paid as a result of an order of a court of competent jurisdiction, the Personnel Board, or the Human Rights Commission or for any creditable compensation paid in anticipation or settlement of an action before a court of competent jurisdiction, the Personnel Board, or the Human Rights Commission including notices of violations of state or federal wage and hour statutes or violations of state or federal discrimination statutes.]

[(2)] [The interest shall be assessed from the time period for which the creditable compensation has been reinstated.]

[Section 5.] [If an employer refuses to provide the retirement systems access to records or information requested in accordance with KRS 61.685 or does not respond to a request for information or records by the retirement systems, the retirement systems may, if appropriate, hold all payments of:]

[(1)] [Any funds due to the employer; or]

[(2)] [Refunds or initial retirement allowances to any employee or former employee of the employer whose refund or retirement may be affected by the records or information requested by the retirement system.]

Section 11.[Section 6.] Maximum Limits to Creditable Compensation.

(1) The agency shall provide the maximum annual compensation limit to employers.

(2) Effective only for the 1996 fiscal year, in determining the compensation of an employee eligible for consideration under this provision, the rules of 26 U.S.C. 414(g)(6) shall apply, except that in applying these rules, the term "family" shall include only the spouse of the employee and any lineal descendants of the employee who have not attained age nineteen (19) before the close of the fiscal year.

(3) Effective July 1, 1996, and before July 1, 2002, the creditable compensation on which contributions are reported shall not exceed the maximum annual compensation limit contained in 26 U.S.C. 401(a)(17), \$150,000, as adjusted for cost-of-living increases under 26 U.S.C. 401(a)(17)(B). [The retirement system shall notify employers of the maximum annual compensation limit.] Each employer shall report contributions on all creditable compensation up to the maximum annual limit. Once an employee's creditable compensation has reached the maximum annual limit, the employer shall continue to report the amount of the employee's creditable compensation in accordance with Section 10 of this administrative regulation, but shall not remit[report] any further employer or employee contributions on the employee's creditable compensation. [If excess contributions are erroneously reported, the retirement system shall refund the excess contributions to the employer for distribution to the employee after making payroll deductions in accordance with federal and state law.]

[(2)] [Effective only for the 1996 plan year, in determining the compensation of an employee eligible for consideration under this provision, the rules of 26 U.S.C. 414(g)(6) shall apply, except that in applying these rules, the term "family" shall include only the spouse of the member and any lineal descendants of the employee who have not attained age nineteen (19) before the close of the year.]

(4)[(3)] Effective with respect to fiscal[plan] years beginning on and after July 1, 2002, an employee's[a plan member's] annual compensation that exceeds \$200,000,[{as adjusted for cost-of-living increases in accordance with 26 U.S.C. 401(a)(17)(B),}] shall not be taken into account in determining benefits or contributions due for any fiscal[plan] year.

(a) Annual compensation shall include compensation during the fiscal[plan] year or any other consecutive twelve (12) calendar month period over which compensation is otherwise determined under the plan (the determination period).

(b) If the determination period consists of fewer than twelve (12) months, the annual compensation limit shall be prorated based on the following for formula:

$$\text{The otherwise applicable annual compensation limit} \times \frac{\text{Number of months in the short determination period}}{12} = \text{The annual compensation limit}$$

(c) If the compensation for any prior determination period is taken into account in determining a plan member's contributions or benefits for the current plan year, the compensation for this prior determination period shall be subject to the applicable annual compensation limit in effect for that prior period.

(d) The cost-of-living adjustment in effect for a calendar year shall apply to annual compensation for the determination period that begins with or within the calendar year. [If the determination period consists of fewer than twelve (12) months, the annual compensation limit shall be an amount equal to the otherwise applicable annual compensation limit multiplied by a fraction, the numerator of which is the number of months in the short determination period, and the denominator of which is twelve (12). If the compensation for any prior determination period is taken into account in determining a plan member's contributions or benefits for the current plan year, the compensation for this prior determination period shall be subject to the applicable annual compensation limit in effect for that prior period.]

(5)

(a)[(4)] Creditable[A participating member may pay contributions for the creditable] compensation over the maximum annual compensation limit may be considered for the years used to determine the employee's[member's] final compensation for purposes of retirement if:

1.[(a)] The employee's[member's] creditable compensation has exceeded the maximum annual compensation limit contained in 26 U.S.C. 401(a)(17) in years prior to the fiscal year beginning July 1, 2002;

2.[(b)] The employee[member] has filed a notification of retirement; [and]

3.[(c)] The excess creditable compensation is within the maximum annual compensation limit applicable in 2002-2003; and

4. The employee has remitted payment of employee contributions on the excess creditable compensation at the rate proscribed by KRS 61.560, 61.702, 78.5536, and 78.610.

(b) Upon receipt of employee contributions, the agency[retirement systems] shall bill the employer for the employer contributions on the excess creditable compensation in accordance with KRS 61.565 and 78.635, and the employer shall remit the employer contributions to the agency[retirement systems].

(c) The excess creditable compensation shall only be included in retirement calculations if both the employee and employer have paid their respective contributions.

Section 12. Creditable Compensation Paid as a Result of an Order of a Court, the Personnel Board, or the Kentucky Commission on Human Rights.

(1) The employer or employee may submit the following for review of potential effects to the employee's account and compliance with KRS 16.505-16.592, 61.510-61.705, and 78.510-78.852 prior to the entry of the agreement or order:

(a) A proposed settlement agreement or draft order related to the resolution of a case pending before the Personnel Board, the Kentucky Commission on Human Rights, or a court of competent jurisdiction regarding employment disputes that may affect an employee's service with the systems; or

(b) An order of reinstatement of an employee pursuant to KRS 61.569 and 78.545.

(2) For creditable compensation paid as a result of an order by the Personnel Board under the authority of KRS 18A.095, by a court of competent jurisdiction, or by the Kentucky Commission on Human Rights:

(a) The creditable compensation shall be reported in accordance with Section 10 of this administrative regulation and shall be credited to the fiscal year during which the wages were earned or should have been paid by the employer;

(b) The employer shall pick-up the employee contributions as required by KRS 61.543, 61.560, 61.702, 78.5536, 78.610, and 78.615 for the designated period;

(c) The employer shall remit employer contributions as required by KRS 61.565 and 78.635 for the designated period; and

(d) The employer shall pay interest at the rate adopted by the Kentucky Retirement Systems or the County Employees Retirement

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System on the creditable compensation.

(3) The interest owed pursuant to subsection (2)(d) of this section shall be assessed beginning on the first day the designated period began or begins.

Section 13. Excess Contributions.

(1)

(a) Upon discovery that excess contributions have erroneously been remitted, the agency shall correct its record in compliance with KRS 61.685 and 78.545 by refunding the excess contributions, except as provided in paragraph (c) of this subsection.

(b) The employer shall withhold the applicable taxes from the employee contributions and remit the remaining money to the employee.

(c) The agency may withhold excess employer contributions to offset a payment owed to the systems.

(d) The agency shall provide the employee with any interest credited on the excess employee contributions in accordance with KRS 61.575 or 78.640.

(2) If an employee uses paid sick leave while awaiting workers' compensation and subsequently receives workers' compensation payments for the hours during which paid sick leave was previously reported, the employee contributions on the paid sick leave that have been reported to the agency shall be refunded, unless the employee has remitted the workers' compensation payments to the employer in exchange for the use of his or her paid sick leave.

Section 14. Death or Disability of a Participating Employee.

(1)

(a) Employers shall report the death of a participating employee through the ESS Web site. Employers may notify the agency of the death of a previous employee.

(b) Upon the employer's report of the death of an employee or retired member, the agency shall begin the process of determining death benefits as provided in KRS 16.601, 61.621, 61.630, 61.640, 61.703, 61.705, 78.545, 78.5532, 78.5534, and 78.5538.

(c) In the event of a death that is due to an act in line of duty or is duty-related, the employer shall add a comment to the death notice indicating this and shall complete and submit a valid Form 6800, Application for Duty Related/In Line of Duty Death Benefits. The employer shall also provide to the deceased employee's beneficiary or representative of the deceased employees' estate or trust, or submit to the agency:

1. The employer death investigation report;

2. A detailed position description or a valid Form 8030, Employer Job Description;

3. Certification or documentation of the employee's last day of paid employment; and

4. Any additional information requested by the agency or a third-party vendor on its behalf.

(2) In the event of an employee's claim for disability retirement benefits, the employer shall comply with the provisions of KRS 16.582, 61.600, 61.621, 61.665, 78.545, 78.5522, 78.5524, and 105 KAR 1:210, 105 KAR 1:310, and 105 KAR 1:455, and submit to the agency:

(a) A valid Form 8030, Employer Job Description and, if the employee was injured on the job, a copy of the incident report;

(b) Certification or documentation of the employee's last day of paid employment;

(c) Information regarding the employee's request for reasonable accommodations as required by KRS 61.665(2)(a), 61.665(2)(b), and 78.545; and

(d) Any additional information regarding the employee's job duties and reasonable accommodations upon request by the agency or a third-party vendor on its behalf.

Section 15. Retirement and Other Reporting Requirements for Participating Employers.

(1)

(a) The Form 6000, Notification of Retirement, Section H shall be completed by the employer when an employee files for retirement in accordance with KRS 16.582, 61.600, 61.590, 78.545, 78.5522, and 78.5524. The employer shall certify the employee's leave

balances and final salary, including any anticipated salary through the employee's termination date yet to be reported to the agency.

(b) The employer shall complete and provide the valid Form 6000, Section H, signed by the designated Agency Reporting Official, to the employee or through ESS.

(2) The employer shall submit personnel actions prior to September 15, 2011 on a valid Form 2020, Advice of Personnel Action.

(3) Each employer shall complete and file a valid Form 2023, Leave Without Pay Verification, when an employee begins and ends a period of leave without pay.

(4) If at any time the employee provides a Form 2035, Beneficiary Designation, to his or her employer, the employer shall forward the Form 2035 to the agency immediately upon receipt.

(5) If either of the following forms are provided to the employer, it shall submit the completed applicable form by the end of day thirty (30) calendar days from the date the form was provided:

(a) A Form 6487, Request for Member Pension Spiking Exemption Amounts in accordance with 105 KAR 1:142 Section 4; or

(b) A Form 6481, Employer Request for Post-Determination of Bona Fide Promotion or Career Advancement, in accordance with 105 KAR 1:142 Section 3.

(6) If the agency is notified or becomes aware of past employment for which a member did not receive service credit, the agency shall provide the employer with a Form 4225, Verification of Past Employment, to certify dates, hours, wages, and the position classification for the past employment. The employer shall complete and submit the valid Form 4225 by the end of day thirty (30) calendar days from the date the Form 4225 was provided.

(7) An employer shall submit any additional information requested by the agency, including a position description or any other documentation deemed necessary by the agency to ensure employer compliance with KRS 16.505 to 16.652, 61.510 to 61.705, and 78.510 to 78.852.

Section 16. Felony Charges Related to Employment. Employers shall notify the agency when an employee hired on or after August 1, 2000, is convicted of a felony related to his or her employment.

Section 17. Employer Cooperation with the Agency.

(1) If an ESS Employer or County Fee Employer refuses to provide the agency access to records or information requested in accordance with KRS 61.685 and 78.545, or does not respond to a request for information or records by the agency, the agency may, if appropriate, hold payments of:

(a) Any funds due to the employer; or

(b) Refunds or initial retirement allowances to an employee or former employee of the employer whose refund or retirement may be affected by the records or information requested by the agency.

(2) The agency may conduct an audit of the employer in accordance with KRS 61.675(2) and 78.625(5) to determine compliance with the provisions of KRS 16.505-16.652, 61.610-61.705, or 78.510-78.852.

[Section 7.]

~~[(1)] [For members retiring on or after January 1, 2014, but prior to July 1, 2017, the retirement systems shall determine if annual increases in a member's creditable compensation greater than ten (10) percent occurred over the member's last five (5) fiscal years of employment.]~~

~~[(a)] [For each of the member's last five (5) fiscal years of employment, the retirement systems shall multiply the member's creditable compensation for the previous fiscal year by 110 percent. If the member's creditable compensation in any of his or her last five (5) fiscal years of employment is greater than the member's creditable compensation from the previous fiscal year multiplied by 110 percent, the retirement systems shall determine that an annual increase in the member's creditable compensation greater than ten (10) percent has occurred.]~~

~~[(b)] [For purposes of performing the calculations in paragraph (a) of this subsection, the member's creditable compensation shall be annualized by dividing the member's creditable compensation for~~

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the fiscal year by the number of months of service credit, and multiplying by twelve (12).]

[(2)] [If the retirement systems determine that the member received annual increases in creditable compensation greater than ten (10) percent over his or her last five (5) fiscal years of employment, the retirement systems shall send written notice to the member's last participating employer of the retirement systems' determination that the member has experienced annual increases in creditable compensation greater than ten (10) percent over the member's last five (5) fiscal years of employment, and the amount of the additional actuarial cost to the retirement systems attributable to the increases.]

[(3)] [If the employer believes that the annual increases in creditable compensation greater than ten (10) percent over the member's last five (5) fiscal years of employment was due to a bona fide promotion or career advancement, the employer shall file a Form 6481, Employer Request for Post-Determination of Bona Fide Promotion or Career Advancement, for a determination that the annual increases in creditable compensation greater than ten (10) percent over the member's last five (5) fiscal years of employment were due to a bona fide promotion or career advancement. The Form 6481 shall be filed within sixty (60) days of the date on the notice. If the retirement systems had previously provided a determination that a change in position or hiring of the member would be a bona fide promotion or career advancement, the employer shall submit the determination and provide documentation that the increase in creditable compensation for that fiscal year was due to the employer implementing the proposed change in position or hiring.]

[(4)] [The employer shall provide any additional information requested by the retirement systems.]

[(5)] [The retirement systems may require the employer to make certifications regarding the information and documentation submitted.]

[(6)] [In determining if a change in position or hiring was a bona fide promotion or career advancement, the retirement systems shall consider the factors listed in KRS 61.598(1)(a).]

[(7)] [The retirement systems shall issue a final administrative decision in writing informing the employer whether the annual increases in creditable compensation greater than ten (10) percent over the member's last five (5) fiscal years of employment were due to a bona fide promotion or career advancement.]

[(8)] [If the employer fails to submit a Form 6481, Employer Request for Post-Determination of Bona Fide Promotion or Career Advancement, within sixty (60) days of the date on the notice, the employer shall pay the additional actuarial cost to the retirement systems attributable to annual increases in creditable compensation greater than ten (10) percent over the member's last five (5) fiscal years of employment.]

[(9)] [If the employer disagrees with the final administrative decision by the retirement systems, the employer shall file a written request for an administrative hearing pursuant to KRS Chapter 13B within thirty (30) days of the date on the final administrative decision. The hearing shall be limited to the issue of whether the retirement systems correctly determined that the annual increases in the member's creditable compensation greater than ten (10) percent were not due to a bona fide promotion or career advancement.]

[(10)] [If the employer fails to file a written request for administrative hearing within thirty (30) days of the date on the final administrative decision, the employer shall pay the additional actuarial cost to the retirement systems attributable to annual increases in creditable compensation greater than ten (10) percent over the member's last five (5) fiscal years of employment.]

[(11)] [The retirement systems shall issue an invoice to the last participating employer representing the actuarial cost to the retirement systems attributable to annual increases in creditable compensation greater than ten (10) percent over the member's last five (5) fiscal years of employment. The employer may request that the retirement systems allow the employer to pay the cost over a period, not to exceed one (1) year, without interest and the retirement systems shall establish a payment plan for the employer.]

[(12)] [If the member was employed by more than one (1) participating employer when the member retired, the actuarial cost

to the retirement systems attributable to annual increases in creditable compensation greater than ten (10) percent over the member's last five (5) fiscal years of employment shall be divided equally among the member's last participating employers.]

[(13)] [An employer who is required to pay the additional actuarial cost pursuant to KRS 61.598 shall be treated as a participating employer in the system to which the employer is required to pay the additional actuarial cost solely for purposes of making the payment required pursuant to KRS 61.598.]

[Section 8.]

[(1)] [For members retiring on or after January 1, 2018, the retirement systems shall determine if annual increases in a member's creditable compensation greater than ten (10) percent occurred over the member's last five (5) fiscal years of employment.]

[(a)] [For each of the member's last five (5) fiscal years of employment, the retirement systems shall multiply the member's creditable compensation for the previous fiscal year by 110 percent. If the member's creditable compensation in any of his or her last five (5) fiscal years of employment is greater than the member's creditable compensation from the previous fiscal year multiplied by 110 percent, the retirement systems shall determine that an annual increase in the member's creditable compensation greater than ten (10) percent has occurred.]

[(b)] [The fiscal year immediately preceding the member's last five (5) fiscal years shall be used for comparison to determine if an increase in creditable compensation greater than ten (10) percent occurred in the initial fiscal year of the member's last five (5) fiscal years.]

[(c)] [For purposes of performing the calculations in paragraph (a) of this subsection, the member's creditable compensation shall be annualized by dividing the member's creditable compensation for the fiscal year by the number of months of service credit, and multiplying by twelve (12).]

[(2)] [The member shall receive a refund of all pre-tax and post-tax member contributions and interest directly attributable to the reduction in creditable compensation.]

[(a)] [Pre-tax member contributions shall be refunded to the member by the employer who picked up the contributions.]

[(b)] [Post-tax member contributions shall be refunded to the member directly from the retirement systems.]

[(c)] [Interest earned on pre-tax and post-tax member contributions shall be refunded to the member directly from the retirement systems.]

[Section 9.]

[(1)] [If the retirement systems determine that the member received annual increases in creditable compensation greater than ten (10) percent over the member's last five (5) fiscal years of employment, the retirement systems shall send the member's employer the Form 6487, Request for Member Pension Spiking Exemption Amounts.]

[(a)] [Pursuant to KRS 16.646, 61.675, and 78.545, the employer shall furnish the information required by the retirement systems in the discharge of its duties. The employer shall complete the Form 6487 in its entirety and provide supporting documentation.]

[(b)] [The employer shall submit a completed Form 6487 at the retirement office within sixty (60) days from the date the Form 6487 was mailed. If the employer fails to submit a completed Form 6487 within that sixty (60) day time period, Kentucky Retirement Systems shall issue a final administrative decision and provide adjustment correspondence to the member.]

[(2)] [If the employer believes that the annual increases in creditable compensation greater than ten (10) percent over the member's last five (5) fiscal years of employment was not due to a bona fide promotion or career advancement, a lump-sum payment for compensatory time, a lump-sum payment made pursuant to alternate sick leave, leave without pay, overtime attributable to a state or federally funded grant, or overtime attributable to a state of emergency, the employer shall indicate on the Form 6487 that none of the listed exemptions are applicable.]

[(a)] [The employer shall report any increases in creditable compensation directly attributable to a lump-sum payment for

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compensatory time, a lump-sum payment made pursuant to alternate sick leave, or leave without pay during the employer's normal monthly reporting.]

~~[(b)] [If, upon review of the Form 6487, the employer believes that adjustments to the reported salaries are required, then the employer shall make those adjustments during the next monthly reporting cycle pursuant to KRS 16.645, 61.675, and 78.545.]~~

~~[(3)] [If the employer believes that the annual increases in creditable compensation greater than ten (10) percent over the member's last five (5) fiscal years of employment was due to a bona fide promotion or career advancement, overtime attributable to a state or federally funded grant, or overtime attributable to a state of emergency, the employer shall include the salary directly attributable to each exemption in Part 2 of the Form 6487.]~~

~~[(a)] [If the employer believes that any of the salary is directly attributable to a bona fide promotion or career advancement, the employer shall complete Part 3 of the Form 6487.]~~

~~[(b)] [The employer shall provide an explanation and documentation supporting the assertion that the increase in creditable compensation resulted from a bona fide promotion or career advancement.]~~

~~[(c)] [In determining if a change in position or hiring was a bona fide promotion or career advancement, the retirement systems shall consider the factors listed in KRS 61.598(1)(a).]~~

~~[(4)] [The employer shall provide any additional information requested by the retirement systems. The retirement systems may require the employer to make certifications regarding the information and documentation submitted.]~~

~~[(5)] [If the increases in creditable compensation are not directly attributable to any of the listed exemptions and no reporting information needs to be corrected, then any annual increase in creditable compensation greater than ten (10) percent shall not be used to calculate the member's retirement allowance.]~~

~~[(6)] [The retirement systems shall not issue a refund to the employer for the excess employer contributions. The retirement systems shall utilize any employer contributions directly attributable to the reduction in creditable compensation to pay the unfunded liability of the pension fund in which the retiring member participated.]~~

Section 18.~~[Section 10.]~~ Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Kentucky Public Pensions Authority Employer Reporting Manual", July 2021;

(b) Form 2012, "Election or Rejection of Participation for Mayors and Members of City Legislative Bodies", March 2024;

(c) Form 2020, "Advice of Personnel Action", March 2024;

(d) Form 2023, "Leave Without Pay Verification", March 2024;

(e) Form 2035, "Beneficiary Designation", March 2024;

(f) Form 4225, "Verification of Past Employment", March 2024;

(g) Form 6000, "Notification of Retirement", June 2023;

(h) Form 6800, "Application for Duty Related/In Line of Duty Death Benefits", June 2023;

(i) Form 7071, "Employer Self Service Employer Administrator Account Creation Request", March 2024;

(j) Form 7072, "Reporting/Balancing Employer Acknowledgment", April 2021;

(k) Form 7250, "Verification of Payments Outside Regular Wages", September 2024;

(l) Form 7851, "Data Use and Reporting Agreement", March 2024; and

(m) Form 8030, "Employer Job Description", June 2023.

~~[(a)] [Form 6481, "Employer Request for Post-Determination of Bona Fide Promotion or Career Advancement", July 2015; and]~~

~~[(b)] [Form 6487, "Request for Member Pension Spiking Exemption Amounts", February 2018.]~~

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Public Pensions Authority, [Kentucky Retirement Systems, Perimeter Park West,] 1260 Louisville Road, Frankfort, Kentucky 40601, Monday through Friday, from 8 a.m. to 4:30 p.m. This material is also available on the Kentucky Public Pensions Authority's Web site at kyret.ky.gov.

DAVID EAGER, Executive Director

APPROVED BY AGENCY: June 28, 2024

FILED WITH LRC: July 8, 2024 at 3:15 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing to allow for public comment on this administrative regulation shall be held on Wednesday, September 25, 2024, at 10:00 a.m. Eastern Time at the Kentucky Public Pensions Authority (KPPA), 1270 Louisville Road, Frankfort, Kentucky 40601. Individuals interested in presenting a public comment at this hearing shall notify this agency in writing no later than five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until September 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. KPPA shall file a response with the Regulations Compiler to any public comments received, whether at the public comment hearing or in writing, via a Statement of Consideration no later than the 15th day of the month following the end of the public comment period, or upon filing a written request for extension, no later than the 15th day of the second month following the end of the public comment period.

CONTACT PERSON: Jessica Beaubien, Policy Specialist, Kentucky Public Pensions Authority, 1260 Louisville Road, Frankfort, Kentucky 40601, phone (502) 696-8800 ext. 8570, fax (502) 696-8615, email Legal.Non-Advocacy@kyret.ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jessica Beaubien

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets out the administrative duties and reporting requirements for all participating employers in the State Police Retirement System, Kentucky Employees Retirement System, and County Employees Retirement System.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to allow the Kentucky Public Pensions Authority to effectively carry out the day-to-date operations required by KRS 16.505 to 16.652, 61.510 to 61.705, and 78.510 to 78.852.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 61.505(1)(g) authorizes the Kentucky Public Pensions Authority to promulgate administrative regulations on behalf of the Kentucky Retirement Systems and the County Employees Retirement System that are consistent with KRS 16.505 to 16.652, 61.505, 61.510 to 61.705, and 78.510 to 78.852. Employers participating in the Kentucky Employees Retirement System, County Employees Retirement System, and State Police Retirement System are required by KRS 16.645, 61.565, 61.675 78.625, and 78.635 to make contributions to the systems, report creditable compensation and other information that the systems may require to the Kentucky Public Pensions Authority, and perform other duties and responsibilities as participating employers.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists with the effective administration of the statutes by detailing the necessary steps that all participating employers in the State Police Retirement System, Kentucky Employees Retirement System, and County Employees Retirement System must take in order to conform with their statutory obligations.

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

(a) How the amendment will change this existing administrative regulation: This amendment adds details of the employers' administrative duties and reporting requirements.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to allow the Kentucky Public Pensions Authority to effectively carry out the day-to-date operations required by KRS 16.505 to 16.652, 61.510 to 61.705, and 78.510 to

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78.852.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 61.505(1)(g) authorizes the Kentucky Public Pensions Authority to promulgate administrative regulations on behalf of the Kentucky Retirement Systems and the County Employees Retirement System that are consistent with KRS 16.505 to 16.652, 61.505, 61.510 to 61.705, and 78.510 to 78.852. Employers participating in the Kentucky Employees Retirement System, County Employees Retirement System, and State Police Retirement System are required by KRS 16.645, 61.565, 61.675 78.625, and 78.635 to make contributions to the systems, report creditable compensation and other information that the systems may require to the Kentucky Public Pensions Authority, and perform other duties and responsibilities as participating employers.

(d) How the amendment will assist in the effective administration of the statutes: This amendment assists with the effective administration of the statutes by detailing the necessary steps that all participating employers in the State Police Retirement System, Kentucky Employees Retirement System, and County Employees Retirement System must take in order to conform with their statutory obligations.

(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 1,452 employers that participate in the State Police Retirement System, the Kentucky Employees Retirement System, and the County Employees Retirement System. This administrative regulation will also affect the Kentucky Public Pensions Authority and the three (3) systems for which it provides operations, the State Police Retirement System, the Kentucky Employees Retirement System, and the County Employees Retirement System.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Regulated entities will be minimally impacted by these changes as this administrative regulation is already being administered as written.

(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 compliance with this administrative regulation should be negligible, as this administrative regulation is already being administered as written.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The benefits should be negligible, as this administrative regulation is already being administered as written.

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

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

(a) Initially: The costs associated with the implementation of this amendment should be negligible.

(b) On a continuing basis: The continuing costs associated with this amendment should be negligible.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Administrative expenses of the Kentucky Public Pensions Authority are paid from the Retirement Allowance Account (trust and agency funds).

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

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

(9) TIERING: Is tiering applied? Tiering is not applied. All entities are subject to the same processes and procedures.

FISCAL IMPACT STATEMENT

(1) Identify each state statute, federal statute, or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 61.505(1)(g), 16.645, 61.565, 61.675 78.625, and 78.635.

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: The promulgating agency for this administrative regulation is the Kentucky Public Pensions Authority (KPPA). This administrative regulation will affect the KPPA and the systems for which the KPPA provides operations (the County Employees Retirement System, the State Police Retirement System and the Kentucky Employees Retirement System), and 333 state government employers that participate in the Kentucky Employees Retirement System and the State Police Retirement System.

(a) Estimate the following for the first year:

Expenditures: None.

Revenues: None.

Cost Savings: None.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? There should be no expenditures, revenue, or cost saving for this administrative regulation in subsequent years because this administrative regulation is being administered as written.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): The County Employees Retirement System and 1,120 county and local employers that participate in the County Employees Retirement System.

(a) Estimate the following for the first year:

Expenditures: None.

Revenues: None.

Cost Savings: None.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? There should be no expenditures, revenue, or cost saving for this administrative regulation in subsequent years because this administrative regulation is being administered as written.

(4) Identify additional regulated entities not listed in questions (2) or (3): None.

(a) Estimate the following for the first year:

Expenditures: N/A

Revenues: N/A

Cost Savings: N/A

(b) How will expenditures, revenues, or cost savings differ in subsequent years? There are no additional regulated entities not listed in questions (2) or (3).

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: The fiscal impact of this administrative regulation should be negligible because this administrative regulation is already being administered as written.

(b) Methodology and resources used to determine the fiscal impact: This administrative regulation is already being administered as written.

(6) Explain:

(a) Whether this administrative regulation will have an overall negative or adverse major economic impact to the entities identified in questions (2) - (4). (\$500,000 or more, in aggregate) This administrative regulation will not have a "major economic impact" because this administrative regulation is already being administered as written.

(b) The methodology and resources used to reach this conclusion: This administrative regulation is already being administered as written.

FINANCE AND ADMINISTRATION CABINET
Kentucky Public Pensions Authority
(Amendment)

105 KAR 1:451. Quasi-governmental employer reports on independent contractors and leased employees.

RELATES TO: KRS 61.5991, 61.510, 61.543, 61.552, 61.645, 61.675, 61.685

STATUTORY AUTHORITY: KRS 61.5991(1)(c), 61.645(9)(e)
 NECESSITY, FUNCTION, AND CONFORMITY: KRS 61.645(9)(e) requires the Board of Trustees of the Kentucky Retirement Systems to promulgate all administrative regulations necessary or proper in order to carry out the provisions of KRS 16.505 to 16.652 and 61.510 to 61.705, and to conform to federal statutes and regulations. KRS 61.5991 requires certain employers that participate in the Kentucky Employees Retirement System to report information to the Kentucky Public Pensions Authority on some persons providing services for the participating employer as an independent contractor, a leased employee, or via any other similar employment arrangement. This administrative regulation establishes quasi-governmental employer reports on independent contractors and leased employees.

Section 1. Definitions.

(1) "Contractor Wizard" means an online interactive form that guides employers to certify their non-contributing service providers by answering a series of questions broken into small, manageable steps. ~~"Complete" means all required sections of a form are filled out, the form has been fully executed by an agency head, appointing authority, or authorized designee (such as the reporting official), and all supporting documentation required by the form is included with the form.~~

(2) "Core services independent contractor" means a person, either personally or through a company or other legal entity, who provides services for a quasi-governmental employer as an independent contractor, other than as a non-core services independent contractor.

(3) "Core services leased employee" means a person who provides services for a quasi-governmental employer as a leased employee through a staffing company, other than as a non-core services independent contractor.

(4) "Direct employment" means employees reported by the quasi-governmental employer in accordance with KRS 61.675 and 105 KAR 1:140.

(5) ~~"Employee" is defined by KRS 61.510(5).~~

(6) ~~"File" means a form has been received at the retirement office by mail, fax, secure email, or in person delivery or via Employer Self Service on the Web site maintained by the agency (if available).~~

(7) ~~"Fiscal year" is defined by KRS 61.510(19).~~

(8) ~~"KPPA" means the administrative staff of the Kentucky Public Pensions Authority.~~

(9) "Noncompliant" means the quasi-governmental employer falsifies, fails to provide, or withholds all, or a portion of, the required documentation or information within the time periods prescribed by this administrative regulation.

(6)(40) "Non-core services independent contractor" is defined by KRS 61.5991(9).

(7)(44) "Other employment arrangement" means:

(a) ~~Means~~ any written agreement between a quasi-governmental employer and a third party (including a person, company, or other legal entity) for one (1) or more persons to provide services for the quasi-governmental employer in exchange for the third party receiving monetary compensation, remuneration, or profit that is not:

(a) ~~Direct~~; and

(b) ~~Does not mean direct~~ employment; ~~any written agreement for one (1) or more persons to provide services for a quasi-governmental employer as~~

(b) A ~~a~~ non-core services independent contractor or a non-core service leased employee agreement; or

(c) A person that would be considered ~~any written agreement~~

~~for one (1) or more persons to provide services to a quasi-governmental employer if the persons would not be~~ in a regular full-time position if the ~~person~~[persons] were directly employed by the quasi-governmental employer.

(8)(42) "Prior fiscal year" means the fiscal year beginning July 1 that is immediately prior to the fiscal year in which the ~~agency~~[KPPA] provides the report to the state budget director's office and the Legislative Research Commission required by KRS 61.5991(3).

(9)(43) "Quasi-governmental employer":

(a) Means an employer participating in the Kentucky Employees Retirement System that is a local or district health department governed by KRS Chapter 212, state-supported university or community college, mental health/mental retardation board, domestic violence shelter, rape crisis center, child advocacy center, or any other employer that is eligible to voluntarily cease participation in the Kentucky Employees Retirement System as provided by KRS 61.522; and

(b) Does not include county attorneys, the Council on State Governments (CSG), the Kentucky Educational Television (KET) Foundation, Association of Commonwealth's Attorneys, the Kentucky High School Athletic Association (KHSAA), the Municipal Power Association of Kentucky, the Kentucky Office of Bar Admissions, the Nursing Home Ombudsman, the Kentucky Association of Regional Programs (KARP), and the Kentucky Association of Sexual Assault Programs.

(14) ~~"Regular full-time position" is defined by KRS 61.510(21-).]~~

Section 2. Required ~~Form for~~ Annual Reporting.

(1)

(a) ~~Quasi-governmental~~[For the fiscal year beginning July 1, 2024, ~~quasi-governmental~~] employers shall report all persons providing services as core services independent contractors, core services leased employees, or through any other employment arrangement:

1. For fiscal years July 1, 2021 through June 30, 2023, by completing and submitting a[the] Form 6756, Annual Employer Certification of Non-Contributing Service Providers, on or before the applicable deadline of the fiscal year in which the Form 6756 was required;

2. For fiscal year July 1, 2023 through June 30, 2024, by completing and submitting the initial Form 6756, Annual Employer Certification of Non-Contributing Service Providers, or the initial Contractor Wizard on or before April 15, 2024; and ~~filing the Form 6756 at the retirement office on or before May 2, 2022.]~~

3. ~~(b) Effective with the fiscal year beginning July 1, 2025~~[2022], and for each fiscal year thereafter, ~~quasi-governmental employers shall report all persons providing services as core services independent contractors, core services leased employees, or through any other employment arrangement~~ by completing and submitting the initial Contractor Wizard[the Form 6756, Annual Employer Certification of Non-Contributing Service Providers, and filing the Form 6756 at the retirement office. ~~For each fiscal year beginning on or after July 1, 2022, the Form 6756 shall be filed at the retirement office~~] on or before April 15 of the fiscal year in which the Contractor Wizard[~~Form 6756~~] is required.

(b)(e) If a quasi-governmental employer contracts ~~with~~[for] any additional persons to provide services as core services independent contractors, core services leased employees, or through any other employment arrangement after the submission of a completed Contractor Wizard or Form 6756, Annual Employer Certification of Non-Contributing Service Providers, as applicable in accordance with paragraph (a) ~~or paragraph (b)~~ of this subsection, ~~but prior to the end of the fiscal year,~~ the quasi-governmental employer shall:

1. For fiscal year July 1, 2023 to June 30, 2024, submit ~~file~~ at the retirement office a completed supplemental Form 6756 or Contractor Wizard reflecting only those persons not previously reported on the initial Form 6756 or Contractor Wizard. The supplemental Form 6756 or Contractor Wizard shall be submitted[filed at the retirement office] on or before June 30, 2024 of the fiscal year in which the Form 6756 is required].

2. Effective with the fiscal year beginning July 1, 2024, submit a

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~~completed supplemental Contractor Wizard reflecting only those persons not previously reported on the initial Contractor Wizard. The supplemental Contractor Wizard shall be submitted on or before June 30 of the fiscal year in which the Contractor Wizard is required.~~

~~(c) All documentation required by the initial or supplemental Form 6756 or Contractor Wizard shall be submitted with the Form 6756 or Contractor Wizard.~~

~~(2)~~

~~(a) The following persons providing services as core services independent contractors, core services leased employees, or through any other employment arrangement [Persons exempted under Sections 5 and 6 of this administrative regulation] shall not be required to be listed on an initial or supplemental Contractor Wizard: [the Form 6756, Annual Employer Certification of Non-Contributing Service Providers.]~~

~~1. [(b)] Persons [providing services as core services independent contractors, core services leased employees, or through any other employment arrangement] who would not qualify as an employee in a regular full-time position if directly employed by the quasi-governmental employer; and [shall not be listed on the Form 6756, Annual Employer Certification of Non-Contributing Service Providers.]~~

~~2. [(c)] Persons [providing services as core services independent contractors, core services leased employees, or through any other employment arrangement] who would be in a position reported to another state-administered retirement system if directly employed by the quasi-governmental employer [shall not be listed on the Form 6756, Annual Employer Certification of Non-Contributing Service Providers].~~

~~(b) [(d)]~~

~~[4.] On the initial or supplemental Contractor Wizard, Quasi-governmental employers:~~

~~1. Shall indicate the number of people who meet a reporting exemption as provided in Section 5 of this administrative regulation;~~

~~2. May [may] choose to report persons who meet a reporting exemption as provided in Section 5 of this administrative regulation, and those [providing services as a non-core services independent contractor on an initial or supplemental Form 6756, Annual Employer Certification of Non-Contributing Service Providers.]~~

~~[2.] [All] persons [providing services to a quasi-governmental employer as a non-core services independent contractor who are included on an initial or supplemental Form 6756, Annual Employer Certification of Non-Contributing Service Providers,] shall be treated in the same manner as all other persons listed on the Contractor Wizard [Form 6756], including determinations by the agency [KPPA] under Section 3 of this administrative regulation; and~~

~~3. Provide documentation required by the Contractor Wizard for persons marked as meeting a reporting exemption.~~

~~[(3)]~~

~~[(a)] [For the fiscal year beginning July 1, 2021, quasi-governmental employers that do not file at the retirement office a completed Form 6756, Annual Employer Certification of Non-Contributing Service Providers, on or before May 2, 2022 shall be reported as noncompliant to the state budget director's office and the Legislative Research Commission in accordance with KRS 61.5991(2)(c) and 61.5991(3)(d).]~~

~~[(b)] [For each fiscal year beginning on or after July 1, 2022, quasi-governmental employers that do not file at the retirement office a completed Form 6756, Annual Employer Certification of Non-Contributing Service Providers, as required by subsection (1)(b) of this section shall be reported as noncompliant to the state budget director's office and the Legislative Research Commission in accordance with KRS 61.5991(2)(c) and 61.5991(3)(d).]~~

~~[(4)] [If a quasi-governmental employer files at the retirement office an initial or supplemental Form 6756, Annual Employer Certification of Non-Contributing Service Providers, without the documentation required by the Form 6756, the Form 6756 shall not be complete and the quasi-governmental employer shall be noncompliant in accordance with KRS 61.5991(2)(c) and 61.5991(3)(d) unless a completed Form 6756 is later filed at the retirement office by the appropriate deadline established in subsections (1), (2), and (5) of this section.]~~

~~[(3)] [(5)]~~

~~(a) After receiving an initial or supplemental Contractor Wizard [Form 6756, Annual Employer Certification of Non-Contributing Service Providers], the agency [KPPA] may notify the quasi-governmental employer that additional information is required.~~

~~(b) If additional information is required [by the KPPA], the agency [KPPA] shall notify the quasi-governmental employer in writing to the attention of the agency head, appointing authority, or authorized designee, such as the reporting official, and shall include the following in its notification:~~

~~1. A detailed description of the additional information required; and~~

~~2. A deadline by which the additional information required shall [must] be submitted [filed at the retirement office], which shall not be less than fourteen (14) calendar days, but may be longer than fourteen (14) calendar days.~~

~~(c) An initial or supplemental Contractor Wizard [Form 6756, Annual Employer Certification of Non-Contributing Service Providers,] shall not be considered complete until all additional information requested by the agency is submitted [KPPA is on file at the retirement office].~~

~~(4)~~

~~[(d)] Except as indicated in paragraph (b) of this subsection, a [if a quasi-governmental employer fails to provide the additional information to the KPPA by the deadline listed in the notification described in paragraph (b) of this subsection or by the deadline agreed upon by the KPPA and the quasi-governmental employer, then the] quasi-governmental employer shall be reported as noncompliant to the state budget director's office and the Legislative Research Commission in accordance with KRS 61.5991(2)(c) and 61.5991(3)(d) if:~~

~~1. It fails to submit a valid Contractor Wizard as required by subsection (1) through (2) of this section;~~

~~2. It submits an initial or supplemental Contractor Wizard without the documentation required by the Contractor Wizard; or~~

~~3. It fails to submit additional information requested in accordance with subsection (4) of this section.~~

~~(b) The quasi-governmental employer shall not be reported as noncompliant if, by the appropriate deadline provided in this section, it provides all missing information or documentation, including as applicable:~~

~~1. A completed valid Contractor Wizard in accordance with subsections (1) and (2) of this section;~~

~~2. The documentation required by the Contractor Wizard in accordance with subsections (1) and (2) of this section; or~~

~~3. Additional information requested in accordance with subsection (3) of this section.~~

~~[(5)] [(6)] During an audit of the quasi-governmental employer conducted in accordance with KRS 61.5991(2)(a)2., 61.675, and 61.685:~~

~~(a) If the agency [KPPA] discovers that a quasi-governmental employer has failed to list all persons [on a Form 6756, Annual Employer Certification of Non-Contributing Service Providers,] as required by this administrative regulation on the Contractor Wizard, or for reporting prior to fiscal year 2025, a Form 6756, Annual Employer Certification of Non-Contributing Service Providers, then the quasi-governmental employer shall be reported as noncompliant to the state budget director's office and the Legislative Research Commission in accordance with KRS 61.5991(2)(c) and 61.5991(3)(d).~~

~~(b) If the agency [KPPA] discovers persons performing services as an independent contractor or leased employee for a quasi-governmental employer in multiple part-time positions that, if combined, constitute a regular full-time position [regular full-time position], then the agency [KPPA] shall make a determination of employee or independent contractor status in accordance with Section 3 of this administrative regulation.~~

Section 3. Determination of Employee or Independent Contractor.

(1) The agency [KPPA] shall have the authority to determine which persons listed on an initial and supplemental Contractor Wizard [Forms 6756, Annual Employer Certification of Non-Contributing Service Providers, should]

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~~(a) Shall be reported as employees in regular full-time positions; or [and which persons listed on the initial and supplemental Forms 6756, Annual Employer Certification of Non-Contributing Service Providers, are]~~

~~(b) Are independent contractors.~~

~~(2) In determining whether a person listed on the initial and supplemental Contractor Wizard is an employee of the quasi-governmental employer or an independent contractor of the quasi-governmental employer, the agency:~~

~~(a) Shall [The KPPA shall] apply common law factors used by the Internal Revenue Service (IRS), in accordance with IRS Publication 1779; and~~

~~(b) May consider rules issued by the United States Department of Labor under federal wage and hour law[, to determine whether a person listed on the initial and supplemental Forms 6756, Annual Employer Certification of Non-Contributing Service Providers, is an employee of the quasi-governmental employer or an independent contractor of the quasi-governmental employer].~~

~~(3)~~

~~[(a)] If the agency [KPPA] determines that a person listed on an initial or supplemental Contractor Wizard [Form 6756, Annual Employer Certification of Non-Contributing Service Providers,] is an employee of the quasi-governmental employer in a regular full-time position, then the quasi-governmental employer shall:~~

~~(a) Remit [remit] all reports, records, contributions, and reimbursements for that person as an employee in a regular full-time position in accordance with KRS 61.675 and 105 KAR 1:140 effective the calendar month after the agency [KPPA] has notified the quasi-governmental employer of its determination in accordance with Section 4 of this administrative regulation; and[.]~~

~~(b) For all periods during which the person was providing services to the quasi-governmental employer, submit:~~

~~1. A valid Form 4225, Verification of Past Employment, for that person; and [If the KPPA determines that a person listed on an initial or supplemental Form 6756, Annual Employer Certification of Non-Contributing Service Providers, is an employee of the quasi-governmental employer in a regular full-time position, then the quasi-governmental employer shall complete and file at the retirement office a Form 4225, Verification of Past Employment, for that person for all periods during which the person was providing services to the quasi-governmental employer.]~~

~~2. All relevant contracts and other documentation demonstrating the relationship between the quasi-governmental employer and the person. [If the KPPA determines that a person listed on an initial or supplemental Form 6756, Annual Employer Certification of Non-Contributing Service Providers, is an employee of the quasi-governmental employer in a regular full-time position, then the quasi-governmental employer also shall submit all relevant contracts and other documentation demonstrating the relationship between the quasi-governmental employer and the person for all periods during which the person was providing services to the quasi-governmental employer.]~~

~~(4) [(e)]~~

~~[1.] After reviewing the information from the quasi-governmental employer required by subsection [paragraph] (3) (b) of this section [subsection], if the agency [KPPA] determines that a [the] person listed on an initial or supplemental Contractor Wizard was an employee of the quasi-governmental employer in a regular full-time position for previous periods that were not reported by the quasi-governmental employer in accordance with KRS 61.543, KRS 61.675, and 105 KAR 1:140, then:~~

~~(a) The [the] person shall be eligible to purchase omitted service in accordance with KRS 61.552(2) for the periods of his or her [their] previous employment by the quasi-governmental employer in a regular full-time position; and[.]~~

~~(b) [2.] The [After reviewing the information from the quasi-governmental employer required by paragraph (b) of this subsection, if the KPPA determines that the person was an employee in a regular full-time position for previous periods that were not reported by the quasi-governmental employer in accordance with KRS 61.543, KRS 61.675, and 105 KAR 1:140, then the] quasi-governmental employer shall be responsible for payment of delinquent omitted employer contributions in accordance~~

with KRS 61.552(2) and 61.675(3)(b) for all periods of the person's previous employment by the quasi-governmental employer in a regular full-time position.

Section 4. Notification to Employers of Determination of Employment Relationship.

(1) ~~Each [For the] fiscal year [beginning July 1, 2021, and for each fiscal year thereafter,] quasi-governmental employers shall be notified by the agency [KPPA] of the determination of which persons shall [should] be reported as employees in regular full-time positions no later than September 30 of the subsequent fiscal year.~~

~~(2)~~

~~(a) The agency [KPPA] shall notify the quasi-governmental employer of the determination of which persons listed on an initial or supplemental Contractor Wizard shall [Form 6756, Annual Employer Certification of Non-Contributing Service Providers, should] be reported as employees in regular full-time positions in one (1) notification letter.~~

~~(b) The notification shall be sent to the agency head, appointing authority, or authorized designee, such as the reporting official.~~

~~(c) The notification shall include:~~

~~1. The name of each person who shall [should] be reported as an employee in regular full-time position in accordance with KRS 61.675 and 105 KAR 1:140;~~

~~2. A description of the contract or other documents for [pursuant to which] each person who shall [should] be reported as an employee in a regular full-time position who are providing or have provided services to the quasi-governmental employer; and~~

~~3. A statement that all other persons listed on the initial or supplemental Contractor Wizard shall [Form 6756, Annual Employer Certification of Non-Contributing Service Providers, should] not be reported as employees in regular full-time positions.~~

Section 5. Reporting Exemptions [Contracts for Professional Services That Have Not Historically Been Provided by Employees].

(1) A person shall meet a reporting exemption if the [quasi-governmental employer shall not be required to report a person on the Form 6756, Annual Employer Certification of Non-Contributing Service Providers, if:]

[(a)] [The] person is providing professional services as a core services independent contractor, core services leased employee, or through any other employment arrangement if the person provides services:

~~(a) As a non-core services independent contractor or non-core services leased employee;~~

~~(b) That [that] have not been performed by direct employees of the quasi-governmental employer since January 1, 2000[;] and~~

~~[(b)] [The professional services] have been or are being performed [or are being performed] for the quasi-governmental employer under a contract on file [filed] at the retirement office and determined by the agency [KPPA] or the Kentucky Retirement Systems to represent services provided by an independent contractor[.]~~

~~[(2)] [Quasi-governmental employers may choose to report a person on the Form 6756, Annual Employer Certification of Non-Contributing Service Providers, even if the person is providing professional services under a contract that have not historically been provided by employees.]~~

~~[Section 6.] [Original Contracts Entered Prior to January 1, 2021.]~~

~~[(1)] [A quasi-governmental employer shall not be required to report a person on the Form 6756, Annual Employer Certification of Non-Contributing Service Providers, if the person is providing services to the quasi-governmental employer as a core services independent contractor, core services leased employee, or through any other employment arrangement]; or~~

~~(c) That are under an original contract with the person or a company entered into prior to January 1, 2021 if:~~

~~1. The[, unless one of the exceptions in subsections (2), (3), or (4) of this section applies.]~~

~~[(2)] [A quasi-governmental employer shall report a person on the Form 6756, Annual Employer Certification of Non-Contributing~~

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Service Providers, if the person is providing services to the quasi-governmental employer as a core services independent contractor, core services leased employee, or through any other employment arrangement under an original contract with the person or a company entered into prior to January 1, 2021 if the term of the original contract has not expired, and the contract has not been renewed or continued;[-]

~~2. [(3)] [A quasi-governmental employer shall report a person on the Form 6756, Annual Employer Certification of Non-Contributing Service Providers, if the person is providing services to the quasi-governmental employer as a core services independent contractor, core services leased employee, or through any other employment arrangement under an original contract with the person or a company entered into prior to January 1, 2021 if the] The contract has not been modified to encompass different services; and [-]~~

~~3. [(4)] [A quasi-governmental employer shall report a person on the Form 6756, Annual Employer Certification of Non-Contributing Service Providers, if the person is providing services to the quasi-governmental employer as a core services independent contractor, core services leased employee, or through any other employment arrangement under an original contract with a company entered into prior to January 1, 2021 if the] The person was [not-] included in the original contract.~~

~~[(5)] [Quasi-governmental employers may choose to report a person on the Form 6756, Annual Employer Certification of Non-Contributing Service Providers, even if the person is providing services to the quasi-governmental employer as a core services independent contractor, core services leased employee, or through any other employment arrangement under an original contract with the person or a company entered into prior to January 1, 2021.]~~

~~(2)~~

~~(a) When a quasi-governmental employer submits its Contractor Wizard in accordance with Subsection (2) of this administrative regulation, it shall also submit the employment contract for people indicated as a reporting exemption, except as provided in paragraph (b)1. of this subsection.~~

~~(b) The agency shall review the contracts and determine if the person meets the requirements of a reporting exemption.~~

~~1. If a person is determined by the agency to meet a reporting exemption, the quasi-governmental employer shall not submit the contract in subsequent fiscal years as long as all terms and conditions of the approved contract remain unchanged.~~

~~2. If a person is determined by the agency to not meet a reporting exemption, the agency shall make a determination of employment status in accordance with Section 3 of this administrative regulation.~~

~~Section 6. [Section 7.] Report to the State Budget Director's Office and the Legislative Research Commission.~~

~~(1)~~

~~(a) To determine the number of employees of the quasi-governmental employer reported for the prior fiscal year in accordance with KRS 61.5991(3)(a), the agency[KPPA] shall add together all employees in regular full-time positions reported by the quasi-governmental employer pursuant to KRS 61.675 and 105 KAR 1:140 in the prior fiscal year.~~

~~(b) Persons listed on an initial or supplemental Contractor Wizard[Form 6756, Annual Employer Certification of Non-Contributing Service Providers,] for the prior fiscal year who are ultimately determined by the agency[KPPA] to be employees of the quasi-governmental employer in regular full-time positions shall not be included in the number of employees of the quasi-governmental employer for the prior fiscal year. These persons shall[may] be included in the number of employees of the quasi-governmental employer in a regular full-time position for a subsequent fiscal year if the person is reported by the quasi-governmental employer in the subsequent fiscal year as an employee in a regular full-time position in accordance with KRS 61.675 and 105 KAR 1:140.~~

~~(2) To determine the number of persons providing services to the quasi-governmental employer who were not reported for the prior fiscal year in accordance with KRS 61.5991(3)(b), the agency[KPPA] shall use the total number of persons listed on initial and supplemental Contractor Wizards[Forms 6756, Annual~~

~~Employer Certification of Non-Contributing Service Providers,] for the prior fiscal year.~~

~~(3) The agency[KPPA] shall report the following information for each quasi-governmental employer determined to have falsified data or been noncompliant in accordance with KRS 61.5991(3)(d):~~

~~(a) The name of the quasi-governmental employer;~~

~~(b) A description of the type of data falsified and the support the agency[KPPA] has for believing the data to be falsified, if applicable; and~~

~~(c) A description of the nature of the noncompliance, if applicable.~~

~~Section 7. Retired Reemployed. A retired member who is reemployed with a quasi-governmental employer providing services through an independent contractor, leased employee, or through any other employment arrangement shall also comply with KRS 61.637, 78.5540, and 105 KAR 1:390, including employees:~~

~~(1) In participating positions and non-participating positions; and~~

~~(2) Not reported on the Contractor Wizard.~~

~~Section 8. Incorporation by Reference.~~

~~(1) The following material is incorporated by reference:~~

~~(a) "Contractor Wizard", May 2024[Form 6756, "Annual Employer Certification of Non-Contributing Service Providers", September 2024];~~

~~(b) Internal Revenue Service Publication 1779, "Independent Contractor or Employee", March 2023[2012]; and]~~

~~(c) Form 4225, "Verification of Past Employment", March 2024:[April 2021.] and~~

~~(d) Form 6756, "Annual Employer Certification of Non-Contributing Service Providers", September 2021.~~

~~(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Public Pensions Authority, 1260 Louisville Road, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m. This material is also available on the agency's[Kentucky Public Pensions Authority's] Web site at kyret.ky.gov.~~

JOHN CHILTON, CEO

APPROVED BY AGENCY: June 28, 2024

FILED WITH LRC: July 8, 2024 at 2:25 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing to allow for public comment on this administrative regulation shall be held on Wednesday, September 25, 2024, at 10:00 a.m. Eastern Time at the Kentucky Public Pensions Authority (KPPA), 1270 Louisville Road, Frankfort, Kentucky 40601. Individuals interested in presenting a public comment at this hearing shall notify this agency in writing no later than five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until September 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. KPPA shall file a response with the Regulations Compiler to any public comments received, whether at the public comment hearing or in writing, via a Statement of Consideration no later than the 15th day of the month following the end of the public comment period, or upon filing a written request for extension, no later than the 15th day of the second month following the end of the public comment period.

CONTACT PERSON: Jessica Beaubien, Policy Specialist, Kentucky Public Pensions Authority, 1260 Louisville Road, Frankfort, Kentucky 40601, phone (502) 696-8800 ext. 8570, fax (502) 696-8615, email Legal.Non-Advocacy@kyret.ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jessica Beaubien

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the forms, procedures, and requirements for

certain quasi-governmental employers in the Kentucky Employees Retirement System that must provide information to the Kentucky Public Pensions Authority (KPPA) on some independent contractors, leased employees, and other persons providing services for the quasi-governmental employer under similar arrangements.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the forms, procedures, and requirements for certain quasi-governmental employers in the Kentucky Employees Retirement System that must provide information to the KPPA on some independent contractors, leased employees, and other persons providing services for the quasi-governmental employer under similar arrangements.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the authorizing statute by establishing the forms, procedures, and requirements for certain quasi-governmental employers in the Kentucky Employees Retirement System that must provide information to the KPPA on some independent contractors, leased employees, and other persons providing services for the quasi-governmental employer under similar arrangements in accordance with KRS 61.5991 and 61.645(9)(e). In particular, KRS 61.5591(1)(c) authorizes the promulgation of an administrative regulation to implement KRS 61.5991.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing the forms, procedures, and requirements for certain quasi-governmental employers in the Kentucky Employees Retirement System that must provide information to the KPPA on some independent contractors, leased employees, and other persons providing services for the quasi-governmental employer under similar arrangements.

(2) If 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 the Contractor Wizard that is required for certain employers to report independent contractors and leased employees. This amendment also updates language used throughout to be consistent with 105 KAR 1:001.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to update the language used throughout to be consistent with 105 KAR 1:001. Additionally, the amendment is necessary to incorporate the Contractor Wizard that is required for employers to report independent contractors and leased employees.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment to this administrative regulation conforms to the authorizing statute by detailing the forms, procedures, and requirements for certain quasi-governmental employers in the Kentucky Employees Retirement System that must provide information to the KPPA on some independent contractors, leased employees, and other persons providing services for the quasi-governmental employer under similar arrangements in accordance with KRS 61.5991 and 61.645(9)(e). In particular, KRS 61.5591(1)(c) authorizes the promulgation of an administrative regulation to implement KRS 61.5991.

(d) How the amendment will assist in the effective administration of the statutes: This amendment assists with the effective administration of the statutes by incorporating the Contractor Wizard that is required for certain employers to report independent contractors and leased employees in accordance with KRS 61.5991 and 61.645(9)(e).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: One (1) entity that provides day-to-day operations for the Kentucky Employees Retirement System: the KPPA. One (1) public pension system: the Kentucky Employees Retirement System. Approximately 100 quasi-governmental employers, including local and district health departments governed by KRS Chapter 212, state-supported universities and community colleges, mental health/mental retardation boards, domestic violence shelters, rape crisis centers, child advocacy centers, and other

employers that are eligible to voluntarily cease participation in the Kentucky Employees Retirement System as provided by KRS 61.522 (excluding county attorneys, the Council on State Governments, the Kentucky Educational Television Foundation, Association of Commonwealth's Attorneys, the Kentucky High School Athletic Association, the Municipal Power Association of Kentucky, the Kentucky Office of Bar Admissions, the Nursing Home Ombudsman, the Kentucky Association of Regional Programs, and the Kentucky Association of Sexual Assault Programs). The number of individuals affected by this administrative regulation is unknown.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The affected quasi-governmental employers will be required to provide the KPPA with information concerning some persons that are providing services for the quasi-governmental employer as independent contractors, leased employees, or through another similar arrangement. If such persons are determined to be employees in regular full-time positions under KRS 61.510(5) and 61.510(21), the affected quasi-governmental employers will be required to prospectively treat the persons as "employees" in accordance with KRS Chapter 61, including reporting employee and employer contributions as required by KRS 61.675 and 105 KAR 1:140. Additionally, in the event of such a determination, the affected employers may be required to remit past delinquent employer contributions as required by KRS 61.552 and 61.675. Finally, the information provided by the KPPA to the state budget director's office and the Legislative Research Commission on the affected quasi-governmental employers may affect subsidies for retirement costs that a quasi-governmental employer may receive pursuant to KRS 61.5991(5) and 61.5991(6).

(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 compliance with this administrative regulation for regulated entities is unknown.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Regulated entities are eligible to receive subsidies for retirement costs pursuant to KRS 61.5991(5) and 61.5991(6). (5) Provide an estimate of how much it will cost to implement this administrative regulation:

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

(a) Initially: The costs associated with the implementation of this administrative regulation should be minimal.

(b) On a continuing basis: The costs associated with the implementation of this administrative regulation should be negligible.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Administrative expenses of the KPPA, which will carry out the implementation and enforcement of this regulation pursuant to KRS 61.505 and 61.5991, are paid from the Retirement Allowance Account (trust and agency funds).

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

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

(9) TIERING: Is tiering applied? Tiering is not applied. All affected quasi-governmental employers are subject to the same processes and procedures.

FISCAL IMPACT STATEMENT

(1) Identify each state statute, federal statute, or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 61.5991 and 61.645.

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: The promulgating agency is the Kentucky

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Public Pensions Authority (KPPA). Affected state units, parts, or divisions include the Kentucky Employees Retirement System.

(a) Estimate the following for the first year:

Expenditures: The effect of this administrative regulation on the expenditures and revenues of state government agencies in the first full year the administrative regulation is to be in effect is unknown.

Revenues: The effect of this administrative regulation on revenues of state government agencies in the first year the administrative regulation is to be in effect is unknown.

Cost Savings: The cost savings to the KPPA to administer this amendment to the administrative regulation in the first year should be minimal.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? The expenditures, revenues, or cost to the KPPA to administer this administrative regulation in subsequent years should be minimal.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): Local government agencies are not affected by this administrative regulation.

(a) Estimate the following for the first year:

Expenditures: Local government agencies are not affected by this administrative regulation.

Revenues: Local government agencies are not affected by this administrative regulation.

Cost Savings:

(b) How will expenditures, revenues, or cost savings differ in subsequent years? Local government agencies are not affected by this administrative regulation.

(4) Identify additional regulated entities not listed in questions (2) or (3): Additional regulated entities include approximately 100 quasi-governmental employers, including local and district health departments governed by KRS Chapter 212, state-supported universities and community colleges, mental health/mental retardation boards, domestic violence shelters, rape crisis centers, child advocacy centers, and other employers that are eligible to voluntarily cease participation in the Kentucky Employees Retirement System as provided by KRS 61.522 (excluding county attorneys, the Council on State Governments, the Kentucky Educational Television Foundation, Association of Commonwealth's Attorneys, the Kentucky High School Athletic Association, the Municipal Power Association of Kentucky, the Kentucky Office of Bar Admissions, the Nursing Home Ombudsman, the Kentucky Association of Regional Programs, and the Kentucky Association of Sexual Assault Programs).

(a) Estimate the following for the first year:

Expenditures: The effect of this administrative regulation on the expenditures and revenues of these regulated agencies in the first full year the administrative regulation is to be in effect is unknown.

Revenues: The effect of this administrative regulation on the expenditures and revenues of these regulated agencies in the first full year the administrative regulation is to be in effect is unknown.

Cost Savings: The effect of this administrative regulation on the cost savings of these regulated agencies in the first full year the administrative regulation is to be in effect is unknown.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? The expenditures, revenues, or cost to the KPPA to administer this administrative regulation in subsequent years should be minimal.

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: The fiscal impact of this administrative regulation should be negligible because this administrative regulation is already being administered as written with only a change in the method the independent contractors and leased employees are reported.

(b) Methodology and resources used to determine the fiscal impact: This administrative regulation is already being administered as written with only a change in the method the independent contractors and leased employees are reported.

(6) Explain:

(a) Whether this administrative regulation will have an overall negative or adverse major economic impact to the entities identified in questions (2) - (4). (\$500,000 or more, in aggregate) This administrative regulation will not have an overall negative or adverse economic impact on regulated entities (quasi-governmental

employers), as the regulated entities that comply with this administrative regulation and KRS 61.5991 are eligible to receive subsidies for retirement costs.

(b) The methodology and resources used to reach this conclusion: This regulation is already being administered as written with only a change in the method the independent contractors and leased employees are reported.

BOARDS AND COMMISSIONS Board of Licensure for Professional Engineers and Land Surveyors (Amendment)

201 KAR 18:010. Classes of applicants.

RELATES TO: KRS 322.010, 322.040, 322.045, 322.120
STATUTORY AUTHORITY: KRS 322.040, 322.045, 322.120, 322.290(4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 322.040 and 322.045 establish[establishe] the criteria for credentialing persons under the jurisdiction of the board. KRS 322.120 establishes the requirements for licensure by endorsement[reciprocity]. This administrative regulation establishes the classes of applicants for professional engineer[engineers] and professional land surveyor licensure[surveyors] for convenience in discussing and processing applications for licensure[licenses], certification, and examination.

Section 1. Classes of Applicants.

[(4)] For convenience in discussing and processing applications for licensure[licenses], certification, and examinations, there are hereby established the following four (4) classes of applicants: [.]

(1)[(2)] Professional engineer. This class includes those applying for an engineering license[licenses] pursuant to KRS 322.040(1) and [.] (2) [and (4)] for 322.120.

(2)[(3)] Engineer in training[Engineer-in-training]. This class includes those applying for certification as an engineer in training[engineers-in-training] pursuant to 201 KAR 18:030.

(3)[(4)] Professional land surveyor. This class includes those applying for a land surveying license pursuant to KRS 322.045(1)[322.040(3) and (4)] or 322.120.

(4)[(5)] Land surveyor in training[surveyor-in-training]. This class includes those applying for certification as a land surveyor in training[surveyors-in-training] pursuant to 201 KAR 18:030.

KYLE L. ELLIOTT, Executive Director

APPROVED BY AGENCY: April 19, 2024

FILED WITH LRC: June 27, 2024 at 10:55 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 24, 2024, at 2:00 p.m., Eastern Standard Time, at the Kentucky Engineering Center, 160 Democrat Drive Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through September 30, 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: Kyle L. Elliott, Executive Director, Kentucky State Board of Licensure for Professional Engineers and Land Surveyors, 160 Democrat Drive Frankfort, Kentucky 40601, phone (502) 573-2680, fax (502) 573-6687, email kyle.elliott@ky.gov.

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REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kyle L. Elliott

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the classes of applicant for professional engineer and professional land surveyor licensure for convenience in discussing and processing applications for licensure, certification, and examination.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the criteria for credentialing persons that seek licensure as a professional engineer and/or professional land surveyor in the Commonwealth of Kentucky.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation, authorized by KRS 322.040, KRS 322.045, KRS 322.120, and KRS 322.290(4), establishes the classes of applicants for professional engineer and professional land surveyor licensure for convenience in discussing and processing applications for licensure, certification, and examination. This administrative regulation conforms to the authorizing statutes because the authorizing statutes give the board authority to promulgate administrative regulations reasonably necessary for the performance of its duties.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation ensures those seeking licensure are informed of the classes of applicants for licensure when discussing applications for licensure, certification, and examination with the board.

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

(a) How the amendment will change this existing administrative regulation: This amendment makes minor changes in wording to enhance clarity of the regulation. Additionally, to correct statute citations in this administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to provide clarity to makes minor changes in wording to enhance clarity of the regulation, and to improve formatting of the regulation. Additionally, to correct statute citations in this administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment to an existing administrative regulation, authorized by KRS 322.040, KRS 322.045, KRS 322.120, and KRS 322.290(4), establishes the classes of applicants for professional engineer and professional land surveyor licensure. This amendment to an existing administrative regulation conforms to the authorizing statutes because the authorizing statutes give the board authority to promulgate administrative regulations reasonably necessary for the performance of its duties.

(d) How the amendment will assist in the effective administration of the statutes: This amendment to an existing administrative regulation will clarify the classes of applicants for professional engineer and professional land surveyor licensure.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Applicants for licensure as a professional engineer or professional land surveyor will be impacted by this regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The board will help educate identified entities of this amendment to an existing administrative regulation.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The applicants for licensure will

have the benefit of practicing engineering or land surveying in the Commonwealth of Kentucky.

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

(a) Initially: 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: Restricted agency funds from pre-existing fees provide the funding to enforce the regulation. The Board receives no general or federal funds.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied because the regulation is applicable to all engineers and land surveyors seeking licensure.

FISCAL IMPACT STATEMENT

(1) Identify each state statute, federal statute, or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 322.040; 322.045; 322.120; 322.290(4)

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: The Kentucky State Board of Licensure for Professional Engineers and Land Surveyors.

(a) Estimate the following for the first year:

Expenditures: None.

Revenues: None.

Cost Savings: None.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? There will be no expenditures or cost savings.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): None, only the Kentucky State Board of Licensure for Professional Engineers and Land Surveyors is impacted.

(a) Estimate the following for the first year:

Expenditures: None.

Revenues: None.

Cost Savings: None.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? This regulation does not create expenditures, revenues, or cost savings.

(4) Identify additional regulated entities not listed in questions (2) or (3): None.

(a) Estimate the following for the first year:

Expenditures: None.

Revenues: None.

Cost Savings: None.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? This regulation does not create expenditures, revenues, or cost savings.

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: There is no fiscal impact from this regulation.

(b) Methodology and resources used to determine the fiscal impact: There are no fees or costs associated with this regulation.

(6) Explain:

(a) Whether this administrative regulation will have an overall negative or adverse major economic impact to the entities identified in questions (2) - (4). (\$500,000 or more, in aggregate) This administrative regulation will not have an overall negative or adverse major economic impact to the entities identified.

(b) The methodology and resources used to reach this conclusion: There are no costs, expenditures, or revenues from this regulation.

BOARDS AND COMMISSIONS
Board of Licensure for Professional Engineers and Land Surveyors
(Amendment)

201 KAR 18:030. ~~In training~~[In-training] certificates

RELATES TO: KRS 322.010, 322.040, 322.045[~~–322.047~~], 322.120

STATUTORY AUTHORITY: KRS 322.010, 322.040, 322.045[~~–322.047~~], 322.120, 322.290(4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 322.010 defines engineer in training and land surveyor in training. KRS 322.290(4) provides the board with the authority to promulgate administrative regulations necessary to perform its duties. This administrative regulation outlines the requirements for the testing of basic sciences and fundamentals of engineering and land surveying for the application for engineer in training and land surveyor in training certificates~~[under the certification program for in-training engineers and land surveyors under which the board has provided for early testing of basic sciences and fundamentals of engineering and land surveying].~~

Section 1. Examinations are offered in the fundamentals of engineering (FE) and fundamentals of ~~land-~~surveying (FS)~~(FLS)]~~ provided by the National Council of Examiners for Engineering~~[Engineers]~~ and Surveying~~[Land-Surveyors]~~.

Section 2. Pursuant to KRS 322.040 and 322.045, the final year shall begin upon completion of at least 105 semester credit hours in the program.

Section 3. The executive director is authorized to approve applications for the FE and FS examinations, and for engineer in training and land surveyor in training certificates.~~[A qualified applicant who passes the examination shall be issued a certificate of recognition as engineer in training or land surveyor in training. The certificate shall be valid indefinitely with no renewal fees.]~~

Section 4. A qualified individual who passes the examination and applies to the board shall be issued an engineer in training or land surveyor in training certificate. The certificate shall be valid indefinitely with no renewal fees.~~[The executive director is authorized to approve applications for the FE and FLS examinations.]~~

KYLE L. ELLIOTT, Executive Director

APPROVED BY AGENCY: April 19, 2024

FILED WITH LRC: June 27, 2024 at 10:55 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 24, 2024, at 2:00 p.m., Eastern Standard Time, at the Kentucky Engineering Center, 160 Democrat Drive Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through September 30, 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: Kyle L. Elliott, Executive Director, Kentucky State Board of Licensure for Professional Engineers and Land Surveyors, 160 Democrat Drive Frankfort, Kentucky 40601, phone (502) 573-2680, fax (502) 573-6687, email kyle.elliott@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kyle L. Elliott

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation outlines the requirements for the testing of basic sciences and fundamentals of engineering and land surveying for the application for engineer in training and land surveyor in training certificates.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to outline the requirements for the testing of those seeking licensure as a professional engineer and/or professional land surveyor in the Commonwealth of Kentucky.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation, authorized by KRS 322.010, KRS 322.040, KRS 322.045, KRS 322.120, and KRS 322.290(4), outlines the requirements for the testing of basic sciences and fundamentals of engineering and land surveying for the application for engineer in training and land surveyor in training certificates. This administrative regulation conforms to the authorizing statutes because the authorizing statutes give the board authority to promulgate administrative regulations reasonably necessary for the performance of its duties.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation ensures those seeking licensure are informed of testing basic sciences and fundamentals for engineering and land surveying for the application for engineer in training and land surveyor in training 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: This amendment makes minor changes in wording to enhance clarity of the regulation. Additionally, this amendment corrects the name of the examination provided by the National Council of Examiners for Engineering and Surveying necessary for licensure as an engineer in training or a land surveyor in training.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to provide clarity to makes minor changes in wording to enhance clarity of the regulation, and to improve formatting of the regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment to an existing administrative regulation, authorized by KRS 322.010, KRS 322.040, KRS 322.045, KRS 322.120, and KRS 322.290(4), outlines the requirements for the testing of basic sciences and fundamentals of engineering and land surveying for the application for engineer in training and land surveyor in training certificates. This amendment to an existing administrative regulation conforms to the authorizing statutes because the authorizing statutes give the board authority to promulgate administrative regulations reasonably necessary for the performance of its duties.

(d) How the amendment will assist in the effective administration of the statutes: This amendment to an existing administrative regulation will clarify the requirements for the testing of basic science and fundamentals of engineering and land surveying for the application for engineer in training and land surveyor in training certificates.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Applicants for licensure as a professional engineer, engineer in training, professional land surveyor, or land surveyor in training will be impacted by this regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The board will help educate identified entities of this amendment to an existing administrative regulation.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The applicants for licensure will have the benefit of practicing engineering or land surveying in the Commonwealth of Kentucky.

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

(a) Initially: 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: Restricted agency funds from pre-existing fees provide the funding to enforce the regulation. The Board receives no general or federal funds.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied because the regulation is applicable to all engineers and land surveyors seeking licensure.

FISCAL IMPACT STATEMENT

(1) Identify each state statute, federal statute, or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 322.010; 322.040; 322.045; 322.120; 322.290(4)

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: The Kentucky State Board of Licensure for Professional Engineers and Land Surveyors.

(a) Estimate the following for the first year:

Expenditures: None.

Revenues: None.

Cost Savings: None.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? There will be no expenditures or cost savings.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): None, only the Kentucky State Board of Licensure for Professional Engineers and Land Surveyors is impacted.

(a) Estimate the following for the first year:

Expenditures: None.

Revenues: None.

Cost Savings: None.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? This regulation does not create expenditures, revenues, or cost savings.

(4) Identify additional regulated entities not listed in questions (2) or (3): None.

(a) Estimate the following for the first year:

Expenditures: None.

Revenues: None.

Cost Savings: None.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? This regulation does not create expenditures, revenues, or cost savings.

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: There is no fiscal impact from this regulation.

(b) Methodology and resources used to determine the fiscal impact: There are no fees or costs associated with this regulation.

(6) Explain:

(a) Whether this administrative regulation will have an overall negative or adverse major economic impact to the entities identified

in questions (2) - (4). (\$500,000 or more, in aggregate) This administrative regulation will not have an overall negative or adverse major economic impact to the entities identified.

(b) The methodology and resources used to reach this conclusion: There are no costs, expenditures, or revenues from this regulation.

BOARDS AND COMMISSIONS

Board of Licensure for Professional Engineers and Land Surveyors (Amendment)

201 KAR 18:192. Continuing professional development for professional land surveyors

RELATES TO: KRS 322.180(3), 322.190, [322.270, 322.290(15)]

STATUTORY AUTHORITY: KRS 322.290(4), (15)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 322.290(15) requires the board to adopt a program of continuing education for professional land surveyors. This administrative regulation establishes requirements for [implements] the continuing professional development program mandated by KRS 322.290(15) for professional land surveyors.

Section 1. Definitions.

(1) "Calendar year" means a one-year period of time beginning on January 1 and ending on December 31. ["Completion" means the professional land surveyor has satisfactorily met specific requirements of an offering by taking and passing a university course or attending a seminar.]

(2) "Contact hour" means a minimum of fifty (50) minutes of instruction or presentation.

(3) [(2)] "Continuing professional development" or "CPD" means participation in activities, beyond the basic educational requirements, that:

(a) Provide specific content planned and evaluated to improve the professional land surveyor's [professional-]competence;

(b) Encourage acquisition of new skills and knowledge required to maintain competence;

(c) Strengthen the professional land surveyor's critical inquiry and balanced judgment;

(d) Raise the ethical standards within the professional community; and

(e) Meet the requirements established by this administrative regulation.

(4) "Dual Licensee" means a person licensed as both a professional land surveyor and a professional engineer.

(5) [(3)] "Licensee" means a person licensed as a professional land surveyor. ["CPDC" means the Continuing Professional Development Committee.]

(6) [(4)] "Professional development hour" or "PDH" means one (1) nominal contact hour [not less than fifty (50) minutes] of instruction or presentation that meets the requirements of this administrative regulation.

(7) [(5)] "Provider" means a person, school, association, company, corporation, or group who has developed a CPD activity and participates directly in the presentation.

(8) [(6)] "Reporting period" means the two (2) calendar years preceding the June 30 deadline for renewal of license. ["Sponsor" means a group, organization, or professional society, offering activities by providers.]

(9) "Surveying Committee" means the Surveying Committee of the State Board of Licensure for Professional Engineers and Land Surveyors.

[Section 2.] [Continuing Professional Development Committee.]

[(1)] [The chair of the State Board of Licensure for Professional Engineers and Land Surveyors shall appoint a Continuing Professional Development Committee and name its chair.]

[(2)] [The CPDC shall consist of five (5) board of licensure members of which at least three (3) are professional land surveyors.]

[(3)] [Work of the CPDC shall be considered work of the board,

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and compensation shall be given as provided by KRS 322.270.]

~~[(4)] [The CPDC shall hold regular meetings, and a record of its action shall be maintained.]~~

~~[(5)] [The CPDC may rule on all matters concerning continuing professional development for professional land surveyors.]~~

~~[(a)] [In order to be binding, a decision of the CPDC shall be ratified by the board.]~~

~~[(b)] [A licensee who disagrees with a decision of the CPDC may direct his or her concerns to the board for consideration at a subsequent meeting of the board.]~~

Section 2. ~~[Section 3.]~~ Program Structure.

~~(1) Except as provided in [by] Section 5[6(1) and (2)] of this administrative regulation [and subsection (3) of this section], a licensee [professional land surveyor] shall complete [and report to the board a minimum of eight (8) professional development hours for each calendar year, for a total of] a minimum of sixteen (16) PDH units [professional development hours for] each reporting period.~~

~~(2) The requirement for continuing professional development [hours] shall include a four (4) PDH [hour] course, pre-approved by the Surveying Committee [CPDC], in standards of practice for professional land surveyors, professional ethics, and the code of professional practice and conduct, taken once every four (4) years. This [in the year that this] course [is taken, it] shall count as four (4) of the required sixteen (16) PDH for the reporting period in which it is taken [eight (8) hours].~~

~~(3) If a licensee exceeds the requirement, a [A] maximum of eight (8) PDH units [four (4) hours in excess of the sixteen (16) professional development hours required to be earned in a reporting period] may be carried forward to the next reporting period.~~

~~(4) PDH units earned by a dual licensee under this administrative regulation may also be used to meet the professional engineer requirements under 201 KAR 18:196 if the PDH units also meet the requirements of 201 KAR 18:196.~~

~~(5) [(4)] Failure to earn the required PDH units [sixteen (16) professional development hours per reporting period] shall constitute unprofessional conduct [make the licensee ineligible for licensure renewal].~~

Section 3. ~~[Section 4.]~~ Criteria for Professional Development.

~~(1) Continuing professional development activities applicable to the renewal of the license shall be directly related to the professional growth and development of the professional land surveyor.~~

~~(2) [(4)] PDH units [Professional development hours] may be earned upon [by] successful completion of the following activities:~~

~~(a) College or university courses;~~

~~(b) Continuing education courses [Seminars];~~

~~(c) Short courses, tutorials, webinars, and distance education courses offered as face-to-face programs, live internet-based programs, archived prerecorded programs, or archived correspondence programs [Tutorials];~~

~~(d) Presenting or attending qualifying seminars, in-house courses, workshops, or professional or technical presentations made at meetings, conventions, conferences, or educational institutions [in-house programs sponsored by corporations or other organizations];~~

~~(e) [Correspondence courses;]~~

~~[(f)] [Televised or videotaped courses;]~~

~~[(g)] [Distance learning courses;]~~

~~[(h)] Teaching or instructing activities [courses, programs, or items] specified in paragraphs (a) through (d) [(g)] of this subsection. [-]~~

~~[1.] [This credit may be claimed at twice the number of hours permitted participants.]~~

~~[2.] [The credit shall not be claimed more than once for teaching or instructing the same or substantially similar course, program, or item;]~~

~~[(i)] [Making or attending approved presentations at technical or professional meetings; or]~~

~~[(j)] [Authoring published [Publication of] papers, articles, [or] books, or accepted licensing examination items related to the practice of land surveying; or [-]~~

~~(g) Active participation in professional or technical societies as~~

~~authorized in subsection (5)(g) of this section.~~

~~(3) [(2)] To qualify for credit, activities [Activities] described in subsections [subsection] (1) and (2) of this section shall:~~

~~(a) Be relevant to the practice of land surveying;~~

~~(b) Contain technical, ethical, or managerial subjects;~~

~~(c) Be an organized program of learning;~~

~~(d) Be conducted by individuals with education, training, or expertise; and~~

~~[(e)] [Be offered for the number of professional development hours recommended by the program author, subject to review and acceptance or adjustment by the CPDC; and]~~

~~[(f)] Not include:~~

~~1. In-service training;~~

~~2. Orientation to specific institutional policies and practices; or~~

~~3. Time used to sell or advertise a product; or [-]~~

~~4. Self-study.~~

~~(4) [(3)] CPD activities shall earn credit only if substantially different from a course for which credit was claimed or granted in the current reporting period [calendar year or previous two (2) calendar years].~~

~~(5) [(4)] PDH units [Professional development hours] shall be converted as follows: [established in paragraphs (a) through (e) of this subsection.]~~

~~(a) Credit for college or university courses shall be based upon course credit established by the college or university.~~

~~1. [(a)] One (1) university semester hour shall equal forty-five (45) PDH units [fifteen (15) professional development hours].~~

~~2. [(b)] One (1) university quarter hour shall equal thirty (30) PDH units [ten (10) professional development hours].~~

~~(b) [(e)] One (1) continuing education unit shall equal ten (10) PDH units [professional development hours].~~

~~(c) One (1) nominal contact hour of professional development in coursework, seminars, or professional or technical presentations made at meetings, conventions, or conferences shall equal one (1) PDH unit. The total number of hours allowed for an activity cannot exceed the actual number of clock hours.~~

~~(d) Credit for correspondence, televised, videotaped, distance learning, and other short courses or tutorials shall be the equivalent PDH units recommended by the program author subject to board review.~~

~~(e) For teaching an activity described in paragraphs (a) through (d) of Section 3(2), multiply the number of PDH units earned by participants for that activity by two (2). Teaching credit shall only be valid for the first time the activity is taught.~~

~~(f) Each published paper, article, or book shall equal ten (10) PDH units.~~

~~(g) Active participation in a professional or technical society shall equal two (2) PDH units for each organization.~~

~~1. Credit for active participation in professional or technical societies shall require that the licensee serve as an officer or committee chair of the organization.~~

~~2. PDH units shall not be earned until the end of each year of service is completed.~~

Section 4. Recordkeeping.

~~(1) The licensee shall be responsible for maintaining records used to support PDH units claimed.~~

~~(2) Records required include:~~

~~(a) A log showing the date of the activity, provider, location, activity title, description, presenter's name, and PDH units earned; and~~

~~(b) Attendance certification records in the form of completion certificates or other documents supporting evidence of attendance.~~

~~[Section 5.] [Approval of a Continuing Professional Development Activity. Activity approvals may be granted for sponsors, providers, or individual professional land surveyors.]~~

~~[(1)] [Approval of activities shall be valid for a specified approval period or until alteration of the activity is approved by the CPDC.]~~

~~[(2)] [Failure to notify the CPDC of a change in an activity, including a change in the instructor, may render approval of the activity null and void.]~~

~~[(3)] [Prior to approval, an activity shall not be advertised as~~

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approved for Kentucky professional land surveyors but may be advertised that the activity has been "submitted for consideration."

~~[(4)] [If prior or post approval is desired, a written request for approval of the activity shall be submitted to and received by the CPDC on the Continuing Professional Development Course Approval Form at least forty-five (45) days prior to the meeting date of the CPDC at which the request will be considered.]~~

~~[(5)] [All requests for approval of an activity shall be accompanied by:]~~

~~[(a)] [A detailed outline and objectives;]~~

~~[(b)] [A time outline including registration, introductions, welcomes, breaks, and meals;]~~

~~[(c)] [Handouts or reference materials needed to evaluate the activity; and]~~

~~[(d)] [A resume for each instructor or speaker in the activity.]~~

~~[(6)] [The CPDC or board may send a representative to monitor an activity.]~~

~~[(a)] [The provider or sponsor shall waive all fees for the CPDC or board representative.]~~

~~[(b)] [Approval for the activity may be withdrawn for subsequent iterations of the activity, if significant variation is observed from the approved activity.]~~

~~[(7)] [An evaluation form shall be made available for participants at each presentation.]~~

~~[(8)] [An individual under disciplinary action from the board or a business entity with a principal who is under disciplinary action from the board shall not present a CPD activity for credit without prior, written approval from the board.]~~

~~[(9)] [If a provider fails to obtain prior approval, a professional land surveyor may request credit for an activity by making a written request for post approval to the CPDC and including in that request, the items listed in subsection (5) of this section.]~~

~~[(10)] [Upon approval, an activity shall receive a CPD number, which shall be used to identify the activity.]~~

~~[(11)] [If an activity is not approved by the CPDC, the requestor shall be sent notice of nonapproval within two (2) weeks of its decision. This decision shall be presented to the board at its next meeting for consideration of ratification.]~~

~~Section 5.[Section 6.] Exemptions and Extensions.—A professional land surveyor may be exempted from the requirements of this administrative regulation by submitting a written request to the CPDC with supporting documentation for the exemption if a requirement established in this section is met.]~~

~~(1) A licensee[professional land surveyor] shall be exempted from continuing professional development requirements for the [reporting period containing the] calendar year in which the licensee[he or she] is initially licensed by the board. If the licensee is initially licensed in the first calendar year of the reporting period, the number of PDH units required for that reporting period shall be eight (8) PDH units.~~

~~(2) A licensee who is on active duty in the Armed Forces of the United States shall be exempted from continuing professional development requirements for those years in which the licensee was on active duty.~~

~~(3) An individual who has selected inactive or retired status shall be exempted from continuing professional development requirements.~~

~~(4)[(2)] A licensee[professional land surveyor] who is unable to[cannot] satisfy the CPD requirement because of physical disability, illness, or other extenuating circumstance may be granted an extension[exempted] for the calendar year in which the disability, illness, or extenuating circumstance occurs.~~

~~(5) The board[CPDC] may grant an extension of time to fulfill the [yearly]CPD requirement for an extenuating circumstance.~~

~~(6)[(3)] An exemption or extension request shall be made in writing, with supporting documentation, to the board during the calendar year in which the exemption or extension is requested[for each calendar year], and the exemption or extension shall only be valid for that calendar year.~~

~~Section 6.[Section 7.] Reinstatement. Before a license is reinstated by the board under 201 KAR 18:115, a former licensee[professional land surveyor] shall earn the PDH units[continuing professional development hours] required for each reporting period[year] the license was revoked, suspended, [or expired, or in inactive or retired status up to a maximum of thirty-two (32) PDH units[professional development hours].~~

~~Section 7.[Section 8.] Reporting.~~

~~[(1)] A licensee[professional land surveyor] shall certify whether or not the licensee[he or she] has complied with the requirements of this administrative regulation during the biennial renewal of license[on the Electronic License Renewal Application, available at www.kyboels.ky.gov]. The failure to truthfully report compliance with this administrative regulation shall constitute unprofessional conduct.~~

~~[(2)] [Biennial renewal forms received after September 1 shall be subject to the audit process in Section 9 of this administrative regulation.]~~

~~Section 8.[Section 9.] Audits.~~

~~(1) Compliance with the [annual]CPD requirements shall be determined through an audit process.~~

~~(2) Four (4) percent of licensees who have completed their biennial renewals before September 1 of their renewal year shall be selected for audit through a random selection process[Professional land surveyors shall be audited through a random selection process or as the result of information provided to the board].~~

~~(3) All licensees who complete their biennial renewals on or after September 1 of their renewal year shall be subjected to the audit process.~~

~~(4) A licensee who is the subject of an investigation pursuant to KRS 322.190 shall be subjected to the audit process.~~

~~(5)[(3)] A licensee[Individuals] selected for audit shall provide the board with documentation as described in Section 4 of this administrative regulation within thirty (30) days of the board's request[, provide the board with documentation of the CPD activities claimed for the renewal period. Appropriate documentation shall include:]~~

~~[(a)] [Verification records in the form of transcripts, completion certificates, or other documents supporting evidence of participation; or]~~

~~[(b)] [Information regarding seminar or course content, instructors, and sponsoring organizations.]~~

~~(4) [Individual licensees shall maintain verification records and documentation for audit purposes for the current reporting period and at least the two (2) previous reporting periods.]~~

~~(6)[(5)] If continuing professional development credit is disallowed, the licensee[a professional land surveyor] shall have sixty (60)[480] calendar days after notification to substantiate the original claim or earn other PDH units[credit] to meet the requirement.~~

~~(7)[(6)] Failure to comply with the CPD requirements shall constitute[be considered] a violation of KRS 322.180[(3)] subjecting the licensee[professional land surveyor] to disciplinary action.~~

~~(8)[(7)] An audit resulting in a determination of noncompliance shall subject the licensee[professional land surveyor] to an automatic audit for the next reporting period and each subsequent reporting period until an audit results in a determination of compliance.~~

~~(8) [A professional land surveyor who is under investigation pursuant to KRS 322.190 shall be subject to the audit requirements of this section.]~~

~~Section 9. Approval for a Standards of Practice, Professional Ethics, and Code of Professional Practice and Conduct course.~~

~~(1) The Surveying Committee shall pre-approve instructors for a four (4) PDH course in standards of practice for professional land surveyors, professional ethics, and the code of professional practice and conduct.~~

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(2) Approval of the course shall be valid for three (3) years.

(3) Failure to notify the board of a change in the course, including a change in the instructor, may render approval of the course null and void.

(4) A written request for approval of the course shall be submitted to and received by the board at least sixty (60) days prior to the meeting date of the Surveying Committee at which the request will be considered.

(5) All requests for approval of the course shall be accompanied by:

(a) A detailed outline and objectives;

(b) A time outline including registration, introductions, welcomes, breaks, and meals;

(c) All presentation materials, handouts, and reference materials; and

(d) A resume for instructor.

(6) The board may send a representative to monitor live presentations of the course.

(a) The provider shall notify the board at least sixty (60) days prior to providing a live presentation of the course.

(b) The provider shall waive all fees for the board representative and reimburse costs, if any, of attending the course.

(c) Approval for the course may be withdrawn for subsequent iterations of the course if significant variation is observed from the approved course.

(7) An evaluation form shall be made available for participants at each presentation.

(8) An individual under disciplinary action from the board or a business entity with a principal who is under disciplinary action from the board shall not present the course without prior, written approval from the board.

(9) Upon approval, an activity shall receive a CPD number, which shall be used to identify the course.

(10) If a course is not approved by the Surveying Committee, the requestor shall be sent notice of disapproval within two (2) weeks of its decision. This decision shall be presented to the board at its next meeting for consideration of ratification.

[Section 10.] [Incorporation by Reference.]

[(1)] [The following material is incorporated by reference:]

[(a)] [“Continuing Professional Development Course Approval Form”, November 1999, State Board of Licensure for Professional Engineers and Land Surveyors; and]

[(b)] [“Electronic License Renewal Application”, 2012.]

[(2)] [This material may be inspected, copied, or obtained, subject to applicable copyright law, at Kentucky State Board of Licensure for Professional Engineers and Land Surveyors, 160 Democrat Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.]

KYLE L. ELLIOTT, Executive Director

APPROVED BY AGENCY: October 27, 2023

FILED WITH LRC: June 27, 2024 at 10:55 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 24, 2024, at 2:00 p.m., Eastern Standard Time, at the Kentucky Engineering Center, 160 Democrat Drive Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through September 30, 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: Kyle L. Elliott, Executive Director, Kentucky State Board of Licensure for Professional Engineers and Land Surveyors, 160 Democrat Drive Frankfort, Kentucky 40601, phone

(502) 573-2680, fax (502) 573-6687, email kyle.elliott@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kyle L. Elliott

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the continuing education requirements for professional land surveyors.

(b) The necessity of this administrative regulation: KRS 322.290(15) requires the board to adopt a program of continuing education for professional land surveyors.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation contains the details and requirements for mandated continuing education for professional land surveyors.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Professional land surveyors will understand continuing education requirements necessary for renewal of licensure.

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

(a) How the amendment will change this existing administrative regulation: This amendment addresses the following main areas of refinement: removes the process for pre-approval of continuing professional development, with the exception of the required 4 professional development hour (PDH) course in standards of practice for professional land surveyors, ethics, and the code of professional practice and conduct; places responsibility for pre-approval of the 4 PDH required course with the Surveying Committee of the Board; eliminates the necessity of the Continuing Professional Development Committee, which will no longer be preapproving continuing professional development; simplifies language regarding the number of professional development units to be completed per reporting period; changes carryover from 4 professional development hours to 8 professional development hours per reporting period to be consistent with the original intent of the regulation; defines the number of professional land surveyors audited as 4% to be consistent with proposed changes to 201 KAR 18:196 (continuing professional education of professional engineers); decreases the number of professional land surveyors audited to 4% so as to streamline the audit process; helps streamline a professional land surveyor’s ability to track continuing education in line with the requirements in other states; clarifies the reporting period for continuing education and defines calendar year; and makes changes to be more consistent with the continuing education program for professional engineers (201 KAR 18:196). Additionally, it makes some minor changes in wording to enhance clarity in other parts of the regulation.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to provide clarity to the requirements for continuing education compliance, to the audit process, to provide time and cost savings with regard to the process of approval of programs for continuing education requirements, and to assist professional land surveyors in tracking their continuing education requirement for Kentucky.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to KRS 322.290(15) since said statute requires a continuing education program for professional land surveyors.

(d) How the amendment will assist in the effective administration of the statutes: This amendment enhances the clarity of the requirements of the professional development program and provides the supporting regulatory language for the board to enforce the requirement of KRS 322.290(15).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Licensed professional land surveyors and continuing professional development providers will be impacted by this regulation.

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

(a) List the actions that each of the regulated entities identified in

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question (3) will have to take to comply with this administrative regulation or amendment: Professional land surveyors will need to ensure they familiarize themselves with the clarifying language to the regulation. Continuing professional development providers will no longer be able to seek pre-approval of continuing professional development courses, with the exception of the required 4 professional development hour course in the standards of practice for professional land surveyors, ethics, and the code of professional practice and conduct. The continuing professional development providers wishing to provide the standards of practice for professional land surveyors, ethics, and the code of professional practice and conduct will need to comply with the requirements for seeking approval with the Board's Surveying Committee.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Professional land surveyors will receive continuing education credit required for renewal, be allowed to carryover more professional education hours to the following reporting period, and guidance for completing continuing professional development credit for renewal will be clarified.

(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: Restricted agency funds from pre-existing fees provide the funding to enforce the regulation. The Board receives no general or federal funds.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied because the regulation is applicable to all professional land surveyors.

FISCAL IMPACT STATEMENT

(1) Identify each state statute, federal statute, or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 322.290(4); KRS 322.290(15)

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: The Kentucky State Board of Licensure for Professional Engineers and Land Surveyors.

(a) Estimate the following for the first year:

Expenditures: None.

Revenues: None.

Cost Savings: None.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? There will be no expenditures or cost savings.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): None, only the Kentucky State Board of Licensure for Professional Engineers and Land Surveyors is impacted.

(a) Estimate the following for the first year:

Expenditures: None.

Revenues: None.

Cost Savings: None.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? This regulation does not create expenditures, revenues, or cost savings.

(4) Identify additional regulated entities not listed in questions (2) or (3): None.

(a) Estimate the following for the first year:

Expenditures: None.

Revenues: None.

Cost Savings: None.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? This regulation does not create expenditures, revenues, or cost savings.

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: There is no fiscal impact from this regulation.

(b) Methodology and resources used to determine the fiscal impact: There are no fees or costs associated with this regulation.

(6) Explain:

(a) Whether this administrative regulation will have an overall negative or adverse major economic impact to the entities identified in questions (2) - (4). (\$500,000 or more, in aggregate) This administrative regulation will not have an overall negative or adverse major economic impact to the entities identified.

(b) The methodology and resources used to reach this conclusion: There are no costs, expenditures, or revenues from this regulation.

BOARDS AND COMMISSIONS

Board of Licensure for Professional Engineers and Land Surveyors (Amendment)

201 KAR 18:196. Continuing professional development for professional engineers

RELATES TO: KRS 322.180(3), 322.190, 322.290(16)

STATUTORY AUTHORITY: KRS 322.290(16)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 322.290(16) requires the board to adopt a program of continuing education for professional engineers. This administrative regulation establishes requirements for the continuing professional development program mandated by KRS 322.290(16) for professional engineers.

Section 1. Definitions.

(1) "Calendar year" means a one (1) year period of time beginning on January 1 and ending on December 31.

(2) "Contact hour" means a minimum of fifty (50) minutes of instruction or presentation.

(3)[(4)] "Continuing professional development" or "CPD" means participation in activities, beyond the basic educational requirements, that:

(a) Provide specific content to improve the professional engineer's competence;

(b) Encourage acquisition of new skills and knowledge required to maintain competence;

(c) Strengthen the professional engineer's critical inquiry and balanced judgment;

(d) Raise the ethical standards within the professional community; and

(e) Meet the requirements established by [the provisions of] this administrative regulation.

(4)[(2)] "Dual licensee" means a person licensed as both a professional engineer and a professional land surveyor.

(5)[(3)] "Licensee" means a person licensed as a professional engineer.

(6)[(4)] "Professional development hour" or "PDH" means one (1) nominal contact hour [not less than fifty (50) minutes] of instruction or presentation that meets the requirements of this administrative regulation.

(7) "Provider" means a person, school, association, company, corporation, or group who has developed a CPD activity and participates directly in the presentation.

(8)[(5)] "Reporting period" means the two (2) calendar years preceding the June 30 deadline for renewal of license.

Section 2. Program Structure.

(1) Except as provided in Section 5[6] of this administrative regulation, a licensee shall complete a minimum of thirty (30) PDH units each reporting period.

(2) If a licensee exceeds the requirement, a maximum of fifteen (15) PDH units may be carried forward to the next reporting period.

(3) PDH units earned by a dual licensee under this

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administrative regulation may also be used to meet the professional land surveyor requirements under 201 KAR 18:192 if the PDH units also meet the requirements of 201 KAR 18:192~~[that administrative regulation]~~.

(4) Failure to earn the required PDH units shall constitute unprofessional conduct.

Section 3. Criteria for Professional Development.

(1) Continuing professional development activities~~[education hours]~~ applicable to the renewal of the license shall be directly related to the professional growth and development of the professional engineer.

(2) PDH units may be earned upon~~[by]~~ successful completion of the following activities:

(a) College or university courses;

(b) Continuing education courses;

(c) Short courses, tutorials, webinars, and distance-education courses offered as face-to-face programs, live internet-based programs, archived prerecorded programs, or archived correspondence programs~~[Correspondence, televised, videotaped, distance learning, and other short course or tutorials]~~;

(d) Presenting or attending qualifying seminars, in-house courses, workshops, or professional or technical presentations made at meetings, conventions, ~~[or]~~conferences, or educational institutions;

(e) Teaching or instructing activities specified in paragraphs (a) through (d) of this subsection;

(f) Authoring published papers, articles, books, or accepted licensing examination items related to the practice of engineering; ~~or~~and

(g) Active participation in professional or technical societies as authorized in subsection (5)(g) of this section~~[Section 4(6)]~~.

(3) ~~To~~~~[in order to]~~ qualify for credit, activities described in subsections (1) and (2) of this section shall:

(a) Be relevant to the practice of engineering;

(b) Contain technical, ethical, or managerial subjects;

(c) Be an organized program of learning;

(d) Be conducted by individuals with education, training, or expertise; and

(e) Not include:

1. In-service~~[in-service]~~ training;~~[-]~~

2. Orientation~~[orientation]~~ to specific institutional policies and practices;~~[-, or]~~

3. Time~~[time]~~ used to sell or advertise a product; ~~or~~~~[-]~~

4. Self-study.

(4) CPD activities shall earn credit only if substantially different from a course for which credit was claimed or granted in the current reporting period~~[previous two (2) calendar years]~~.

(5) PDH units shall be converted as follows:

(a) Credit for college or university courses shall be based upon course credit established by the college or university.

1.~~[(a)]~~ One (1) university semester hour shall equal forty-five (45) PDH units.

2.~~[(b)]~~ One (1) university quarter hour shall equal thirty (30) PDH units.

(b) One (1) continuing education unit shall equal ten (10) PDH units.

(c) One (1) nominal contact hour of professional development in coursework, seminars, or professional or technical presentations made at meetings, conventions, or conferences shall equal one (1) PDH unit. The total number of hours allowed for an activity cannot exceed the actual number of clock hours.

(d) Credit for correspondence, televised, videotaped, distance learning, and other short courses or tutorials shall be the equivalent PDH units recommended by the program author subject to board review.

(e)~~[(e)]~~ For teaching an activity described~~[established]~~ in paragraphs (a) through (d) of Section 3(2), multiply the number of PDH units earned by participants for that activity by two (2). Teaching credit shall only be valid for the first time the activity is taught.

(f)~~[(f)]~~ Each published paper, article, or book shall equal ten (10) PDH units.

(g)~~[(e)]~~ Active participation in professional or technical societies~~[society]~~ shall equal two (2) PDH units for each organization.

1. Credit for active participation in professional or technical societies shall require that the licensee serve as an officer or committee chair of the organization.

2. PDH units shall not be earned until the end of each year of service is completed.

~~[Section 4.] [Determination of Credit.]~~

~~[(1)] [Credit for college or university courses shall be based upon course credit established by the college or university.]~~

~~[(2)] [Credit for qualifying seminars and workshops shall be based upon one (1) PDH for each fifty (50) minutes of instruction or presentation.]~~

~~[(3)] [Attendance at qualifying programs presented at professional or technical society meetings shall earn PDH units for the actual time of each program.]~~

~~[(4)] [Credit for correspondence, televised, videotaped, distance learning, and other short courses or tutorials shall be the equivalent PDH units recommended by the program author subject to board review.]~~

~~[(5)] [Teaching credit shall be valid for teaching a course or seminar for the first time only.]~~

~~[(6)]~~

~~[(a)] [Credit for active participation in professional or technical societies shall require that the licensee serve as an officer or committee chair of the organization.]~~

~~[(b)] [PDH units shall not be earned until the end of each year of service is completed.]~~

~~Section 4.] [Section 5.] Recordkeeping.~~

(1) The licensee shall be responsible for maintaining records used to support PDH units claimed.

(2) Records required include:

(a) A log showing the date of the activity, provider~~[sponsoring organization]~~, location, activity title, description, presenter's name, and PDH units earned; and

(b) Attendance certification records in the form of completion certificates or other documents supporting evidence of attendance.

~~Section 5.] [Section 6.] Exemptions and Extensions.~~

(1) A licensee shall be exempted from continuing professional development requirements for the calendar year in which the licensee is initially licensed by the board. If a licensee is initially licensed in the first calendar year of the reporting period, the number of PDH units required for that reporting period shall be fifteen (15) PDH units.

(2) A licensee who is on active duty in the Armed Forces of the United States shall be exempted from continuing professional development requirements for those years in which the licensee was on active duty.

(3) A licensee who was licensed prior to January 1, 1972, and has kept the license in good standing since becoming licensed shall be exempted from continuing professional development requirements.

~~[(2)]~~ An individual who has selected inactive or retired status shall be exempted~~[exempt]~~ from continuing professional development~~[the]~~ requirements~~[of this administrative regulation]~~.

~~[(3)]~~ A licensee who is unable to satisfy the CPD requirement because of physical disability, illness, or other extenuating circumstance may~~[shall]~~ be granted an extension~~[exempted]~~ for the reporting period in which the disability, illness, or extenuating circumstance occurs.

~~[(4)]~~ The board may~~[shall]~~ grant an extension of time to fulfill the CPD requirement for an extenuating circumstance.

~~[(5)]~~ An exemption or extension request shall be made in writing, with supporting documentation, to the board during the calendar year in which the exemption or extension is requested, and the exemption or extension shall only be valid for that calendar year.

~~Section 6.] [Section 7.] Reinstatement. Before a license shall be reinstated by the board under 201 KAR 18:115, a former licensee shall earn the PDH units required for each reporting period the~~

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license was revoked, suspended, ~~or expired, or in inactive or retired status up to a maximum of sixty (60) PDH units.~~

~~Section 7. [Section 8-] Reporting.~~

~~[(1)] A [On the biennial renewal form, a] licensee shall certify whether or not the licensee has complied with [met] the requirements of this administrative regulation during the biennial renewal of license. The failure to truthfully report compliance with this administrative regulation shall constitute unprofessional conduct.~~

~~[(2)] Biennial renewal forms received after September 1 shall be subject to the audit process established in Section 9 of this administrative regulation.~~

~~Section 8. [Section 9-] Audits.~~

~~(1) Compliance with the CPD requirements shall be determined through an audit process [a random selection process in which a computer program shall select five (5) percent of the licensees filing biennial renewal forms on or before September 1 of that year.]~~

~~(2) Four (4) percent of licensees who have completed their biennial renewals before September 1 of their renewal year shall be selected for audit through a random selection process.~~

~~(3) All licensees who complete their biennial renewals on or after September 1 of their renewal year shall be subjected to the audit process.~~

~~[(4)] [(2)] A licensee who is the subject of an investigation pursuant to KRS 322.190 shall be subjected to the audit process [requirements of this section].~~

~~[(5)] [(3)] A licensee selected for audit shall provide the board with documentation as described in Section 4 [5] of this administrative regulation within thirty (30) days of the board's request.~~

~~[(6)] [(4)] If continuing professional development [the board disallows] credit is disallowed [due to the activity not meeting the requirements of Section 3(2) of this administrative regulation, or if the PDH units reported are less than thirty (30)], the licensee shall have sixty (60) [180] calendar days after notification to substantiate the original claim or earn other PDH units to meet the requirement.~~

~~[(7)] [(5)] Failure to comply with the CPD requirements shall constitute [be considered] a violation of KRS 322.180 [(3)] subjecting the licensee to disciplinary action.~~

~~[(8)] [(6)] An audit resulting in a determination of noncompliance shall subject the licensee to an automatic audit for the next reporting period and each subsequent reporting period until an audit results in a determination of compliance.~~

KYLE L. ELLIOTT, Executive Director

APPROVED BY AGENCY: October 23, 2023

FILED WITH LRC: June 27, 2024 at 10:55 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 24, 2024, at 2:00 p.m., Eastern Standard Time, at the Kentucky Engineering Center, 160 Democrat Drive Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through September 30, 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: Kyle L. Elliott, Executive Director, Kentucky State Board of Licensure for Professional Engineers and Land Surveyors, 160 Democrat Drive Frankfort, Kentucky 40601, phone (502) 573-2680, fax (502) 573-6687, email kyle.elliott@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kyle L. Elliott

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative

regulation establishes the continuing education requirements for professional engineers.

(b) The necessity of this administrative regulation: KRS 322.290(16) requires the board to adopt a program of continuing education for professional engineers.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation contains the details and requirements for mandated continuing education for professional engineers.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Professional engineers will understand continuing education requirements necessary for renewal of licensure.

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

(a) How the amendment will change this existing administrative regulation: This amendment addresses four main areas of refinement: it decreases the number of professional engineers audited to 4% so as to streamline the audit process; helps streamline a professional engineer's ability to track continuing education in line with the requirements in other states; clarifies the reporting period for continuing education and defines calendar year; and makes changes to be more consistent with the continuing education program for professional land surveyors (201 KAR 18:192). Additionally, it makes some minor changes in wording to enhance clarity in other parts of the regulation.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to provide clarity to the requirements for continuing education compliance, to the audit process, and to assist professional engineers in tracking their continuing education requirement for Kentucky.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to KRS 322.290(16) since said statute requires a continuing education program for professional engineers.

(d) How the amendment will assist in the effective administration of the statutes: This amendment enhances the clarity of the requirements of the professional development program and provides the supporting regulatory language for the board to enforce the requirement of KRS 322.290(16).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Only licensed professional engineers will be impacted by this regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Professional engineers will need to ensure they familiarize themselves with the clarifying language to the regulation.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Professional engineers will receive continuing education credit required for renewal.

(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: Restricted agency funds from pre-existing fees provide the funding to enforce the regulation. The Board receives no general or federal funds.

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

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

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regulation does not establish fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering is not applied because the regulation is applicable to all professional engineers.

FISCAL IMPACT STATEMENT

(1) Identify each state statute, federal statute, or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 322.290(4); KRS 322.290(16)

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: The Kentucky State Board of Licensure for Professional Engineers and Land Surveyors.

(a) Estimate the following for the first year:

Expenditures: None.

Revenues: None.

Cost Savings: None.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? There will be no expenditures or cost savings.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): None, only the Kentucky State Board of Licensure for Professional Engineers and Land Surveyors is impacted.

(a) Estimate the following for the first year:

Expenditures: None.

Revenues: None.

Cost Savings: None.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? This regulation does not create expenditures, revenues, or cost savings.

(4) Identify additional regulated entities not listed in questions (2) or (3): None.

(a) Estimate the following for the first year:

Expenditures: None.

Revenues: None.

Cost Savings: None.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? This regulation does not create expenditures, revenues, or cost savings.

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: There is no fiscal impact from this regulation.

(b) Methodology and resources used to determine the fiscal impact: There are no fees or costs associated with this regulation.

(6) Explain:

(a) Whether this administrative regulation will have an overall negative or adverse major economic impact to the entities identified in questions (2) - (4). (\$500,000 or more, in aggregate) This administrative regulation will not have an overall negative or adverse major economic impact to the entities identified.

(b) The methodology and resources used to reach this conclusion: There are no costs, expenditures, or revenues from this regulation.

BOARDS AND COMMISSIONS

Board of Nursing (Amendment)

201 KAR 20:056. Advanced practice registered nurse licensure and certification requirements.

RELATES TO: KRS 218A.205(3)(h), (8), 314.011, 314.042, 314.091, 314.103, 314.109, 314.161, 314.475

STATUTORY AUTHORITY: KRS 218A.205(3)(h), (8), 314.042, 314.103, 314.131(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 218A.205(3)(h) requires the board to establish by administrative regulation for licensees authorized to dispense or prescribe controlled substances the process for submitting a query on each applicant to the National Practitioner Data Bank. KRS 218A.205(8) requires the board to require for any applicant for an initial licensure that authorizes the prescribing or dispensing of controlled substances to complete a state and national criminal records check. KRS 314.131(1) authorizes the Board of Nursing to promulgate

administrative regulations necessary to enable it to carry into effect the provisions of KRS Chapter 314. KRS 314.042 requires the licensure of an advanced practice registered nurse and authorizes the board to promulgate administrative regulations establishing licensing requirements. KRS 314.103 authorizes the board to require a criminal background investigation of an applicant or a nurse. This administrative regulation establishes the requirements for licensure, renewal, and reinstatement, education, and recognition of a national certifying organization.

Section 1. An applicant for licensure as an advanced practice registered nurse in Kentucky shall:

(1)

(a) Complete an Application for Licensure as an Advanced Practice Registered Nurse as required by 201 KAR 20:370, Section 1(1);

(b) Provide a copy of a current active registered nurse license or validation of registered nurse licensure if the state of licensure does not issue licensure cards;

(c) Submit the fee required by 201 KAR 20:240, Section 1(2)(j); and

(d) Comply with the requirements established in KRS 314.042 and this administrative regulation.

(2) If the applicant is applying only for a license as an advanced practice registered nurse, the applicant shall also:

(a) Provide a criminal record check by the Department of Kentucky State Police (KSP) and the Federal Bureau of Investigation (FBI);

(b) Use the FBI Applicant Fingerprint Card;

(c) Pay any required fee to the KSP and the FBI;

(d) Complete the criminal record check within six (6) months of the date of the application; and

(e) If there are any misdemeanor or felony convictions, provide:

1. A certified or attested copy of the court record as required by 201 KAR 20:370, Section 1(3); and

2. A letter of explanation that addresses each conviction.

(3) An applicant shall not be licensed until:

(a) A report is received from the FBI pursuant to the request submitted under subsection (2) of this section and any conviction is addressed by the board; and

(b) A query is completed to the board's reporting agent to the National Practitioner Data Bank of the United States Department of Health and Human Services pursuant to KRS 218A.205(3)(h) and any relevant data on the applicant is received.

(4) An applicant shall provide evidence of completion of the jurisprudence examination required by KRS 314.042(1)(d).

Section 2. Education and Clinical Experience.

(1) An applicant for licensure as an advanced practice registered nurse shall complete an accredited education program that prepares a registered nurse for one (1) of the four (4) APRN roles established under Section 12(5) of this administrative regulation and clinical experience. This program shall conform to 201 KAR 20:062 or its substantial equivalence if from an out of state program.

(2)

(a) If the applicant for licensure as an advanced practice registered nurse completed a program of study after January 1, 2005, the applicant shall hold a master's degree, doctorate, or postmaster's certificate awarding academic credit by a college or university related to the advanced practice registered nurse designation.

(b) If the applicant for licensure as an advanced practice registered nurse completed a program of study before January 1, 2005, the program shall be evaluated by the board on an individual basis to find if the program sufficiently prepares a student for advanced practice registered nursing by complying with the requirements of 201 KAR 20:062.

Section 3. National Certifying Organizations.

(1) A nationally established organization or agency which certifies registered nurses for advanced practice registered nursing shall be recognized by the board if it meets the following criteria:

(a) The certifying body is an established national nursing

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organization or a subdivision of this type of organization;

(b) Eligibility requirements for certification are delineated;

(c) Certification is offered in a role as defined by KRS 314.042(2)(a) and in a population focus as defined by KRS 314.011 and with primary or acute care competencies;

(d) Scope and standards of practice statements are promulgated;

(e) Mechanism for determining continuing competency is established; and

(f) The certifying body is accredited by the American Board of Nursing Specialties or the National Commission for Certifying Agencies.

(2) The board recognizes the following national certifying organizations:

(a) American Nurses Credentialing Center;

(b) American Midwifery Certification Board;

(c) National Board of Certification and Recertification for Nurse Anesthetists;

(d) Pediatric Nursing Certification Board;

(e) National Certification Corporation;

(f) American Academy of Nurse Practitioners Certification Board; and

(g) American Association of Critical-Care Nurses Certification Corporation.

(3) The board recognizes the Oncology Nursing Certification Corporation only for an individual who has received certification prior to December 15, 2010 and who has continually renewed his or her Kentucky advanced practice registered nurse license since that date.

Section 4. Practice Pending Licensure.

(1) A registered nurse who meets all the requirements for practice as an advanced practice registered nurse, and who holds a registered nurse temporary work permit issued pursuant to 201 KAR 20:110 pending licensure by endorsement or a privilege to practice as a registered nurse, shall be authorized to practice as an advanced practice registered nurse for a period of time not to exceed the expiration date of the temporary work permit.

(2) Authorization to practice pursuant to this section shall be in the form of a letter from the board acknowledging that the applicant has met all the requirements of this section. An applicant shall not practice until the authorization letter has been issued.

(3) An individual authorized to practice pursuant to subsection (1) of this section may use the title "advanced practice registered nurse" or "APRN[-Applicant" or "APRN-App-]".

Section 5. Provisional License.

(1) An applicant who meets the requirements of KRS 314.042(2) may request a provisional license by completing the application for licensure required by Section 1 of this administrative regulation.

(2)

(a) The board shall issue the provisional license to the applicant after Section 1(1) of this administrative regulation are met, but not until the report is received from the FBI and any conviction is addressed by the board.

(b) In the case of a graduate of a foreign nursing school, the board shall issue the provisional license after the requirements of 201 KAR 20:480 are met.

(3) The applicant shall not prescribe medications and shall only practice under a mentorship with an advanced practice registered nurse or a physician.

(a) To qualify as mentorship pursuant to KRS 314.042(3), the APRN or physician responsible for the applicant shall be physically present and immediately available to the applicant during work hours while the applicant holds a provisional license; and

(b) The APRN or physician mentoring the applicant shall be currently licensed in Kentucky.

(4) Upon notification to the board that the applicant has failed the national certification exam after two (2) attempts, the provisional license shall be voided. The applicant shall:

(a) Notify the Board within forty-eight (48) hours.

(b) Cease practicing under the provisional license provided by this section.

(5) An individual authorized to practice pursuant to subsection (1) of this section may use the title "advanced practice registered nurse applicant" or "APRNA".

(6) A provisional license shall be valid for a period not to exceed six (6) months.

Section 6. [~~Section 5.~~] License Renewal.

(1) The advanced practice registered nurse license shall expire or lapse when the registered nurse license or privilege expires or lapses.

(2) To be eligible for renewal of the license as an advanced practice registered nurse, the applicant shall:

(a) Renew the registered nurse license or privilege on an active status;

(b) Submit a completed Annual Licensure Renewal Application: RN and APRN or a completed Annual Licensure Renewal Application: APRN with RN Compact License (not Kentucky) form, as applicable, and as required by 201 KAR 20:370, Section 1(1);

(c) Submit the current renewal application fee, as established in 201 KAR 20:240, Section 1(2)(k); and

(d) Maintain current certification by a recognized national certifying organization.

(3) An advanced practice registered nurse who fails to renew the registered nurse license or privilege or is otherwise unable to legally practice as a registered nurse shall not practice as or use the title of advanced practice registered nurse until:

(a) A current active license has been issued by the board or a privilege is recognized by the board; and

(b) The advanced practice registered nurse license has been reinstated.

(4) An advanced practice registered nurse shall provide to the board evidence of current certification by a recognized national certifying organization upon recertification or at the request of the board.

Section 7. [~~Section 6.~~] License Reinstatement.

(1) If a nurse fails to renew the advanced practice registered nurse license as prescribed by KRS 314.042 and this administrative regulation, the license shall lapse on the last day of the licensure period.

(2) To be eligible for reinstatement of the advanced practice registered nurse license, the applicant shall:

(a) Submit a completed Application for Licensure as an Advanced Practice Registered Nurse form as required by 201 KAR 20:370, Section 1(1);

(b) Submit the current reinstatement application fee, as established in 201 KAR 20:240, Section 1(2)(l); and

(c) Maintain and submit evidence of current certification by a recognized national certifying organization.

(3) If the applicant is applying for reinstatement of a license as an advanced practice registered nurse, the applicant shall also:

(a) Provide a criminal record check by the KSP and the FBI;

(b) Use the FBI Applicant Fingerprint Card;

(c) Pay any required fee to the KSP and the FBI;

(d) Complete the criminal record check within six (6) months of the date of the application; and

(e) If there are any misdemeanor or felony convictions, provide:

1. A certified or attested copy of the court record of any misdemeanor or felony conviction as required by 201 KAR 20:370, Section 1(3); and

2. A letter of explanation that addresses each conviction, if applicable.

(4) The license shall not be issued until a report is received from the FBI and any conviction is addressed by the board.

Section 8. [~~Section 7.~~] Certification or Recertification.

(1)

(a) An advanced practice registered nurse (APRN) shall maintain current certification or recertification from one (1) of the national organizations recognized in Section 3 of this administrative regulation throughout the licensure period.

(b) The APRN shall notify the board if current certification or recertification has been obtained and provide evidence of the

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certification or recertification prior to the expiration date.

(2)

(a) A nurse who fails to attain current, active certification or recertification from one (1) of the national organizations recognized in Section 3 of this administrative regulation shall not practice or use the title of advanced practice registered nurse (APRN) until current certification or recertification is obtained.

(b)

1. An APRN who does not provide evidence of current certification or recertification prior to its expiration date shall have the APRN license voided. This action shall not be considered to be a disciplinary action. The board shall send written notice to the APRN if the license has been voided.

2. The APRN may request a hearing on this action by submitting the request in writing. If a hearing is requested and the order of the board is adverse to the APRN, the board may impose the costs pursuant to 201 KAR 20:162, Section 7. If the action is upheld or not challenged, the APRN may seek reinstatement of the license in accordance with Section 6 of this administrative regulation, except as provided in subparagraph 3 of this paragraph.

3. If, after the APRN license has been voided, the APRN provides evidence of current certification acquired before the certification expiration date and there are no complaints pending against the APRN pursuant to 201 KAR 20:161 that indicate that reinstatement would create an immediate danger to the public health, safety, or welfare, then the APRN shall meet the requirements of Section 6 of this administrative regulation except for Section 6(4) of this administrative regulation. A license may be issued prior to receipt of the FBI report in such cases.

(3) An advanced practice registered nurse whose certification lapses or is not renewed by the appropriate national organization shall:

(a) Notify the board of that fact; and

(b) Not practice as or use the title of advanced practice registered nurse during the period of decertification.

Section 9.~~[Section 8.]~~

(1) An application shall be valid for a period of one (1) year from the date of submission to the board.

(2) After one (1) year from the date of application, the applicant shall be required to reapply.

Section 10.~~[Section 9.]~~ The requirements of this administrative regulation shall not prohibit the supervised practice of a nurse enrolled in:

(1) An accredited educational program for preparation for advanced practice registered nursing; or

(2) An advanced practice registered nurse refresher course.

Section 11.~~[Section 10.]~~ A registered nurse who holds himself or herself out as a clinical nurse specialist or is known as a clinical nurse specialist shall be required to be licensed as an advanced practice registered nurse if his or her practice includes the performance of advanced practice registered nursing.

Section 12.~~[Section 11.]~~ A nurse practicing as an advanced practice registered nurse who is not licensed as an advanced practice registered nurse by the board, an advanced practice registered nurse whose practice is inconsistent with the population focus to which he or she has been designated, or an advanced practice registered nurse who does not recertify and continues to practice as an advanced practice registered nurse shall be subject to the disciplinary procedures established in KRS 314.091.

Section 13.~~[Section 12.]~~ Dual Designations.

(1) An advanced practice registered nurse who wishes to practice in more than one (1) role designation shall complete an accredited educational program of study and clinical experience for each desired designation in compliance with the educational requirements established in KRS Chapter 314 and 201 KAR 20:062 and meet all the requirements for licensure for each designation.

(2) To apply for licensure for more than one (1) role designation, the applicant shall submit a separate application and fee for each desired designation.

(3) To renew each role designation, the APRN shall pay a separate licensure fee as set forth in 201 KAR 20:240, Section 1(2)(k).

(4) For the purposes of Section 7(2)(b) of this administrative regulation, if the APRN does not provide evidence of current recertification in a role designation, then that role designation shall be voided. The license shall not be voided if the other role designation is maintained. All other provisions of Section 7(2)(b) of this administrative regulation shall apply to the voided designation.

(5) Role designations shall be the Certified Registered Nurse Anesthetist, Certified Nurse Midwife, Certified Nurse Practitioner, and Clinical Nurse Specialist pursuant to KRS 314.042.

AUDRIA DENKER, President, Board of Nursing

APPROVED BY AGENCY: June 20, 2024

FILED WITH LRC: July 9, 2024 at 10:05 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 23, 2024 at 10:00 AM at Kentucky Board of Nursing, 312 Whittington Parkway, Ste 300, Louisville, Kentucky 40222. Individuals interested in being heard at this hearing shall notify this agency in writing by September 16, 2024, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through September 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: Jeffrey R. Prather, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, (502) 338-2851, Jeffrey.Prather@ky.gov. Or submit a comment at: <https://secure.kentucky.gov/formservices/Nursing/PendReg>

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jeffrey Prather

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements to obtain an Advanced Practice Registered Nurse (APRN) license.

(b) The necessity of this administrative regulation: This administrative regulation is necessary because of KRS 314.042.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 314.042 and KRS 314.131(1), which require the Board to promulgate an administrative regulation concerning obtaining an APRN license.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by setting the standards and process for obtaining an APRN license.

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

(a) How the amendment will change this existing administrative regulation: During the 2024 Regular Session the General Assembly passed House Bill (HB) 459, which amended KRS 314.042 to provide for provisional licensure of APRNs who have not passed their national certification exams. The amendments to this regulation are in accordance with HB 459: upon request, an APRN applicant who meets the regulatory requirements may be issued a 6-month provisional license; the applicant may use the title "advanced practice registered nurse applicant" and the abbreviation "APRNA"; and may function as an APRN under the mentorship of another APRN or physician, except for prescribing medications. The APRNA shall take and pass the national certification exam, but if the APRNA fails to take and pass the national certification exam after two attempts twice, the provisional license is terminated.

(b) The necessity of the amendment to this administrative

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regulation: The amendments are necessary by the passage of HB 459.

(c) How the amendment conforms to the content of the authorizing statutes: The Board is authorized to make these changes under KRS 314.042 and KRS 314.131(1).

(d) How the amendment will assist in the effective administration of the statutes: The amendments provide the clear regulatory requirements to effectuate the changes to KRS 314.042.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Kentucky APRN applicants, approximately 2,200 per year.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: APRNs applicants will need to request the provisional license, meet regulatory requirements, and pass the national exam within two attempts in 6 months.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no additional cost beyond application fees.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The applicants will be following statutory and regulatory requirements and be allowed to join the workforce as a practicing APRNA, with restrictions.

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

(a) Initially: There is no additional cost.

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

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency funds.

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

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

(9) TIERING: Is tiering applied? Tiering is not applicable.

FISCAL IMPACT STATEMENT

(1) Identify each state statute, federal statute, or federal regulation that requires or authorizes the action taken by the administrative regulation. Kentucky Revised Statutes 218A.205(3)(h), (8), 314.042, 314.103, 314.131(1).

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: The Kentucky Board of Nursing.

(a) Estimate the following for the first year:

Expenditures: No expenditures to estimate.

Revenues: No revenues to estimate.

Cost Savings: No cost savings.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? There will be no difference to expenditures, revenues, or cost savings.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): None.

(a) Estimate the following for the first year:

Expenditures: N/A

Revenues: N/A

Cost Savings: N/A

(b) How will expenditures, revenues, or cost savings differ in subsequent years? N/A

(4) Identify additional regulated entities not listed in questions (2) or (3): Advanced Practice Registered Nurses.

(a) Estimate the following for the first year:

Expenditures: No expenditures to estimate.

Revenues: APRNs may join the workforce before passing the national certification exam, revenues unknown.

Cost Savings: No cost savings.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? There will be no difference to expenditures, revenues, or cost savings.

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: APRNs may join the workforce with their advanced degree, and they will not be required to pass the national certification exam before doing so. The actual revenues unknown.

(b) Methodology and resources used to determine the fiscal impact: None.

(6) Explain:

(a) Whether this administrative regulation will have an overall negative or adverse major economic impact to the entities identified in questions (2) - (4). (\$500,000 or more, in aggregate) This administrative regulation will not have a major economic impact.

(b) The methodology and resources used to reach this conclusion: N/A.

BOARDS AND COMMISSIONS Board of Nursing (Amendment)

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

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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)

(a) 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) shall earn a minimum of five (5) contact hours in pharmacology, as required by KRS 314.073(8).

(b) An APRN who is registered with the DEA and has a PDMP account, as defined by 201 KAR 20:057, Section 1(7), shall earn a minimum of five (5) contact hours in pharmacology, including at least three (3) contact hours on either pain management or addiction disorders.

(c) 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) 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 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:

(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. 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 count towards an APRN meeting this requirement, including past DATA-Waiver trainings.

(b) 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.

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

(5) ~~[Registered nurses and licensed practical nurses]~~ Nurses shall earn, ~~the following one (1) time continuing education requirements: [within three (3) years of licensure],~~

~~(a) A~~ [a] minimum of one and one-half (1.5) contact hours in pediatric abusive head trauma as required by KRS 314.073(6); ~~and~~

~~(b) A~~ [a] minimum of three (3) contact hours on domestic violence, and elder abuse, neglect, and exploitation as required by KRS 194A.540(9)(d);

~~(c) A minimum of one (1) contact hour on Alzheimer's disease and other forms of dementia as required by KRS 314.073(7).~~

~~[(6)] [Registered nurses, licensed practical nurses, and advanced practice registered nurses who hold an active nursing~~

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~~license on July 1, 2022, shall satisfy the continuing competency requirement in subsection (8) of this section on or before July 1, 2023.]~~

~~[(7)] [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 in subsection (8) of this section within three (3) years of licensure.]~~

~~(d)[(8)] [Nurses shall earn a]~~ 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:

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

~~2.[(b)]~~ 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;

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

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

~~(6) Nurses who have satisfied each of the continuing education requirements in subsection (5) of this section on or before July 15, 2024, shall not be required to complete them again.~~

~~(7) Registered nurses, licensed practical nurses, and advanced practice registered nurses who hold an active nursing license on July 15, 2024, shall satisfy the continuing competency requirement in subsection (5)(c) of this section on or before October 31, 2027.~~

~~(8) The following licensees shall satisfy the continuing competency requirement in subsection (5) of this section within three (3) years of licensure:~~

~~(a) Registered nurses and licensed practical nurses who graduated from a Kentucky program of nursing that did not include the curriculum additions in 201 KAR 20:320, Section 6 and obtain licensure by examination or reinstatement after July 15, 2024;~~

~~(b) Advanced practice registered nurses who hold a privilege to practice as a registered nurse and obtain initial licensure after July 15, 2024; and~~

~~(c) Registered nurses and licensed practical nurses who have graduated from an out-of-state program of nursing and obtain licensure through examination, endorsement, or reinstatement after July 15, 2024.~~

~~(9) Medicinal cannabis practitioners and medicinal cannabis practitioner applicants shall earn the continuing education required by 201 KAR 20:067, Section 6.~~

Section 6.

(1)

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;

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

(c) "Preceptor Continuing Education Verification Form", 9/2023.

(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 40222-5172, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available on the board's Web site at <https://kbn.ky.gov/document-library/Pages/default.aspx>.

AUDRIA DENKER, President

APPROVED BY AGENCY: June 20, 2024

FILED WITH LRC: July 9, 2024 at 12:05 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 23, 2024 at 10:00 AM at Kentucky Board of Nursing, 312 Whittington Parkway, Ste 300, Louisville, Kentucky 40222. Individuals interested in being heard at this hearing shall notify this agency in writing by September 16, 2024, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through September 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.

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CONTACT PERSON: Jeffrey R. Prather, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, (502) 338-2851, Jeffrey.Prather@ky.gov. Or submit a comment at: [HTTPS://secure.kentucky.gov/formservices/Nursing/PendReg](https://secure.kentucky.gov/formservices/Nursing/PendReg)

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jeffrey Prather

(1) Provide a brief summary of:

(a) What this administrative regulation does: Establishes Continuing Education (CE) requirements for nurses, as required by KRS 314.073 and 314.131.

(b) The necessity of this administrative regulation: CEs are mandated by KRS 314.073 and 314.131.

(c) How this administrative regulation conforms to the content of the authorizing statutes: By setting CE requirements.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By setting CEs for required training on subjects to maintain competency.

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

(a) How the amendment will change this existing administrative regulation: During the 2024 Regular Session the General Assembly passed House Bill (HB) 459, which amended KRS 314.073 to include a one-time continuing education (CE) requirement on the topics of dementia and Alzheimer's. The regulation further clears up timing requirements for one-time CEs.

(b) The necessity of the amendment to this administrative regulation: To set regulatory standards for the training.

(c) How the amendment conforms to the content of the authorizing statutes: By setting CE standards in accordance with KRS 314.073 and 314.131.

(d) How the amendment will assist in the effective administration of the statutes: By assisting with the administration of KRS 314.073 and 314.131.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All nurses licensed by the Board, approximately 90,000.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: If audited, nurses will need to provide evidence of meeting CE requirements.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): It is impossible to determine the amount, each CE may be obtained for free or a cost.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Compliance with statutes and regulations and continued competency regarding needs of the senior population.

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

(a) Initially: There is no additional cost.

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

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency funds.

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

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

(9) TIERING: Is tiering applied? Tiering is not applicable.

FISCAL IMPACT STATEMENT

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

regulation. Kentucky Revised Statutes 314.073, 314.131(1), (2).

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: The Kentucky Board of Nursing.

(a) Estimate the following for the first year:

Expenditures: No expenditures to estimate.

Revenues: No revenues to estimate.

Cost Savings: No cost savings.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? There will be no difference to expenditures, revenues, or cost savings.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): None.

(a) Estimate the following for the first year:

Expenditures: N/A

Revenues: N/A

Cost Savings: N/A

(b) How will expenditures, revenues, or cost savings differ in subsequent years? N/A

(4) Identify additional regulated entities not listed in questions (2) or (3): Nurses and Continuing Education (CE) Providers.

(a) Estimate the following for the first year:

Expenditures: Nurses may have to pay a fee to the CE provider to take the new training. However, expenditures are unknown.

Revenues: Revenues to CE Providers are unknown.

Cost Savings: No cost savings.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? There will be no difference to revenues, or cost savings. Expenditures may lower after a CE Provider creates a course the complies with the regulation.

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: CE Providers may offer courses for a fee that comply with the amendments to the regulation. However, the potential revenues are unknown.

(b) Methodology and resources used to determine the fiscal impact: None.

(6) Explain:

(a) Whether this administrative regulation will have an overall negative or adverse major economic impact to the entities identified in questions (2) - (4). (\$500,000 or more, in aggregate) This administrative regulation will not have a major economic impact.

(b) The methodology and resources used to reach this conclusion: N/A.

BOARDS AND COMMISSIONS

Board of Nursing

(Amendment)

201 KAR 20:230. Renewal of licenses.

RELATES TO: KRS 314.041, 314.051, 314.071, 314.073

STATUTORY AUTHORITY: KRS 314.131(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.131(1) authorizes the board to promulgate administrative regulations to implement the provisions of KRS Chapter 314. This administrative regulation establishes requirements and procedures for the renewal of nursing licenses.

Section 1. Eligibility for Renewal of Licenses. To be eligible for renewal of licenses, applicants shall:

(1) Hold a valid and current license issued by the board;

(2) Submit a completed application form as required by 201 KAR 20:370 to the board[-office];

(3) Submit the current fee required by 201 KAR 20:240;

(4) Have met requirements of 201 KAR 20:215, if applicable;

(5) Submit certified copies of court records of any misdemeanor or felony convictions with a letter of explanation;

(6) Submit certified copies of any disciplinary actions taken in other jurisdictions with a letter of explanation or report any disciplinary action pending on nursing or other professional or business licenses in other jurisdictions; and

(7) Have paid all monies due to the board.

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Section 2. The licensure period for renewal of licenses shall be as established in 201 KAR 20:085.

Section 3.

(1) ~~The [If the] application [form is submitted on-line, it] shall be submitted online to [received by] the board prior to midnight on the last day of the licensure period.~~

(2) ~~[If a paper application is submitted, it shall be received no later than the last day of the licensure period. If the application is not received by the board until after the last day of the licensure period, the application shall have been postmarked at least seven (7) days prior to the last day of the licensure period.]~~

~~[(3)] All information needed to determine that an applicant meets the requirements for renewal of licensure shall be submitted online to [received by] the board no later than midnight eastern time on the last day of the licensure period. ~~[If the information is not received by the board until after the last day of the licensure period, in order to be considered by the board for the current renewal, the information shall have been postmarked at least seven (7) days prior to the last day of the licensure period].~~~~

~~[(3)]~~(4) Failure to comply with these requirements shall result in the license lapsing. A person whose license has lapsed shall comply with 201 KAR 20:225 to reinstate the license.

AUDRIA DENKER, President

APPROVED BY AGENCY: June 20, 2024

FILED WITH LRC: July 9, 2024 at 12:05 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 23, 2024 at 10:00 AM at Kentucky Board of Nursing, 312 Whittington Parkway, Ste 300, Louisville, Kentucky 40222. Individuals interested in being heard at this hearing shall notify this agency in writing by September 16, 2024, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through September 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: Jeffrey R. Prather, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, (502) 338-2851, Jeffrey.Prather@ky.gov. Or submit a comment at: <https://secure.kentucky.gov/formservices/Nursing/PendReg>

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jeffrey Prather

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets requirements for renewal of a nurse's license.

(b) The necessity of this administrative regulation: This administrative regulation is necessary because of KRS 314.071.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by setting requirements for license renewal.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by setting requirements for license renewal.

(2) If 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 clarifies the deadline for renewal applications that must be submitted online.

(b) The necessity of the amendment to this administrative regulation: The administrative regulation is necessary to specifically set the deadlines.

(c) How the amendment conforms to the content of the authorizing statutes: By setting clear deadlines and submission

requirements.

(d) How the amendment will assist in the effective administration of the statutes: Nurses will know the method and deadlines to renew their licenses.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All licensed nurses, approximately 90,000.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: They will have to submit their renewal application within the renewal period.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): They will pay the renewal fee set in 201 KAR 20:240.

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

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

(a) Initially: No additional cost.

(b) On a continuing basis: No additional cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency funds.

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

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

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

FISCAL IMPACT STATEMENT

(1) Identify each state statute, federal statute, or federal regulation that requires or authorizes the action taken by the administrative regulation. Kentucky Revised Statutes 314.071 and 314.131(1).

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: The Kentucky Board of Nursing.

(a) Estimate the following for the first year:

Expenditures: No expenditures to estimate.

Revenues: No revenues to estimate.

Cost Savings: No additional cost savings.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? There will be no difference to expenditures, revenues, or cost savings.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): None.

(a) Estimate the following for the first year:

Expenditures: N/A

Revenues: N/A

Cost Savings: N/A

(b) How will expenditures, revenues, or cost savings differ in subsequent years? N/A

(4) Identify additional regulated entities not listed in questions (2) or (3): Nurses licensed by the Board.

(a) Estimate the following for the first year:

Expenditures: No expenditures.

Revenues: No revenues.

Cost Savings: No cost savings, are minimal regarding the cost of mailing applications to the Board. But they are difficult to estimate.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? There will be no difference to expenditures, revenues, or cost savings.

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: The renewal

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process is online through the nurse portal and the Optimal Regulatory Board System (ORBS), which is provided by the National Council of State Boards of Nursing. Nurses no longer mail paper renewal applications.

(b) Methodology and resources used to determine the fiscal impact: N/A

(6) Explain:

(a) Whether this administrative regulation will have an overall negative or adverse major economic impact to the entities identified in questions (2) - (4). (\$500,000 or more, in aggregate) This administrative regulation will not have a major economic impact.

(b) The methodology and resources used to reach this conclusion: N/A.

BOARDS AND COMMISSIONS Board of Nursing (Amendment)

201 KAR 20:390. Nursing Incentive Scholarship Fund.

RELATES TO: KRS 314.011, 314.025, 314.026, 314.027

STATUTORY AUTHORITY: KRS 314.026(1), 314.131(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.025 through 314.027 authorize the Kentucky Nursing Incentive Scholarship Fund for Kentucky residents. KRS 314.026(1) requires the Board of Nursing to promulgate administrative regulations to implement and administer the scholarship fund. This administrative regulation implements the Kentucky Nursing Incentive Scholarship Fund Program and establishes the requirements relating to the program.

Section 1. Definitions.

(1) "Academic year" means[;]

[a] [~~For a registered nursing or graduate nursing program,; a twelve (12) month period beginning with a fall session[; and~~

[b] [~~For a practical nursing program, the completion of the required program.~~

(2) "Board" is defined by KRS 314.011(1).

(3) "Graduate nursing education" means the pursuit of a master's degree, post-master's certificate, or doctoral degree.

(4) "Initial year award" means the first Nursing Incentive Scholarship Fund award received by an individual.

(5) "Kentucky resident" is defined by 13 KAR 2:045, Section 1(10).

(6)[(5)] "Program of nursing" means a prelicensure, BSN completion, or graduate program of nursing[; program].

(7)[(6)] "Subsequent year award" means any Nursing Incentive Scholarship Fund award other than an initial year award.["Successful academic progression" means, except during the last academic year preceding graduation:]

[a] [~~For a prelicensure or BSN completion nursing program, the completion of a minimum of twelve (12) credit hours per academic year of published requirements for the program of nursing and maintenance of a minimum grade point average, which would allow continuation in a program of nursing; or]~~

[b] [~~For a graduate nursing program, the completion of a minimum of nine (9) credit hours per academic year of published requirements for the program of nursing and maintenance of a minimum grade point average, which would allow continuation in the graduate program.]~~

Section 2. Application.

(1) To be eligible for a nursing incentive scholarship, an applicant shall:

(a) Be a Kentucky resident[; and]

(b) Have been accepted for admission to a program of nursing[;];

(c) Have attained a sufficient point ranking under Section 3 of this regulation for initial year award eligibility; and

(d) Have met the requirements in Section 4 of this regulation for subsequent year award eligibility.

(2) An applicant shall submit:

(a) A completed Nursing Incentive Scholarship Fund Application on or before ~~[June 8]~~ May 1;

(b) For initial year award applicants, a[A] copy of the [Student Aid Report from the]Free Application for Federal Student Aid (FAFSA) Submission Summary for the current year, listing the applicant's Student Aid Index calculation, if requesting preference for financial need;

(c) A copy of the program of nursing acceptance letter verifying initial enrollment;

(d) For initial year award[~~newly enrolled nursing~~] applicants, an official transcript from the last academic institution in which the applicant was enrolled for verification of GPA or copy of a GED; and

(e) For subsequent year award applicants, a document issued by the program of nursing verifying[~~applicants enrolled in a program of nursing, a copy of an official transcript to verify continued~~] enrollment.

Section 3. Criteria for an Initial Year Award[Awards]. The board shall consider the following criteria in evaluating an application for an initial year award and shall allocate[award] points as follows:

(1) Preference categories as established in KRS 314.025(2):

(a) Licensed practical nurses, fifteen (15) points;

(b) Registered nurses pursuing a bachelor's degree or graduate nursing education, fifteen (15) points;

(c) [~~Prelicensure nursing~~]Nursing students who have not been issued a nursing license, ten (10) points; and

(d) Financially needy Kentucky residents, up to thirty-five (35) points. Financial need shall be determined by the Student Aid Index (SAI) calculation listed on the applicant's Free Application for Federal Student Aid (FAFSA) Submission Summary for the current year, [estimated Federal Expected Family Contribution (EFC) as calculated by the annual FAFSA] and points shall be awarded based on need-based aid eligibility as follows:

1. SAI[EFC] of negative \$1,500[\$0] to \$3,500[\$5000], thirty-five (35) points;

2. SAI[EFC] of \$3,501[5004] to \$8,500[10,000], thirty (30) points; and

3. SAI[EFC] of \$8,501[10,004] to \$18,500[20,000], twenty-five (25) points;

(2) Potential for academic success, as follows: high school, vocational school, college, or university grade point average for whichever institution the applicant most recently attended:

(a) Three and five-tenths (3.5) to four (4.0), twenty-five (25) points;

(b) Three (3) to three and four-tenths (3.4), twenty (20) points; and

(c) Two and five-tenths (2.5) to two and nine-tenths (2.9), fifteen (15) points; and

(3) Potential for academic success when GED is earned in place of a high school diploma:

(a) A GED score of 601 to 800, twenty-five (25) points;

(b) A GED score of 501 to 600, twenty (20) points; and

(c) A GED score of 401 to 500, fifteen (15) points.

Section 4. Criteria for a Subsequent Year Award.

(1) Except as established in subsection (2) of this section, a past recipient of a Nursing Incentive Scholarship Fund award shall be eligible to receive a subsequent year award if the recipient:

(a) Is enrolled in a program of nursing;

(b) Is not in default as to a prior Nursing Incentive Scholarship award; and

(c) Submits to the board a completed Nursing Incentive Scholarship Fund Application on or before May 1.

(2) If combined awards to past recipients are projected to exceed the current fund balance, past recipient eligibility shall be based on level of education of the program of nursing in which the applicant is enrolled, first being a prelicensure LPN program of nursing, second being a prelicensure non-BSN RN program of nursing, third being a BSN program of nursing, and fourth being a graduate degree program of nursing.

Section 5.[Section 4.] Amount of Award.

(1) The board shall be notified by the board's fiscal officer as to the current fund balance prior to making an award.

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(2)

- (a) The board shall first make awards to those recipients who:
1. Received an award ~~previously~~~~in the previous year~~; and
 2. Remain eligible to receive an award pursuant to ~~Sections~~~~Section~~2 and 4~~6~~ of this administrative regulation in the current year.

(b) If funds remain available after the awards are made pursuant to paragraph (a) of this subsection, the board shall make an award to other eligible applicants.

Section 6.~~[Section 5.]~~ Procedure for Disbursement of Awards.

~~(1) Prior to disbursement of funds, each year that funds are disbursed, the recipient shall sign a Nursing Incentive Scholarship Fund Contract and Promissory Note.~~

~~(2) Disbursement of funds shall be made directly to the recipient's [recipient] bank account via automated clearing house electronic funds transfer.~~

~~(3)~~~~(2)~~ Disbursement shall be made annually.

~~(3) [Each educational institution in which a student receiving a nursing incentive scholarship award is enrolled shall certify to the board no later than thirty (30) days from the beginning of each semester, that the recipient:]~~

~~[(a)] [Has enrolled; and]~~

~~[(b)] [Is in good standing in the nursing program.]~~

~~[Section 6.] [Continuing Eligibility Criteria.]~~

~~[(1)] [Except as established in subsection (3) of this section, a recipient of a nursing incentive scholarship shall be eligible to continue to receive an award if the recipient:]~~

~~[(a)] [Maintains successful academic progression through the program; and]~~

~~[(b)] [Submits to the board a completed Nursing Incentive Scholarship Fund Application on or before June 8.]~~

~~[(2)] [The educational institution shall immediately notify the board of a change in a recipient's enrollment status.]~~

~~[(3)] [An award recipient in a practical nursing program shall not be eligible for further awards from the Nursing Incentive Scholarship Fund while enrolled in that program.]~~

~~[Section 7.] [Disbursement Contract.]~~

~~[(1)] [Prior to disbursement of initial funds, the recipient shall sign a Nursing Incentive Scholarship Fund Contract.]~~

~~[(2)] [The recipient shall sign a Nursing Incentive Scholarship Fund Promissory Note for each year in which funds are disbursed.]~~

Section 7.~~[Section 8.]~~ Repayment and Deferral.

(1) A recipient shall immediately become liable to the board to pay the sum of all scholarships received and the accrued interest on the scholarships if the recipient fails to complete the:

- (a) Nursing program in which he or she is enrolled within the time established by the program of nursing; or
- (b) Required employment as established in the contract.

(2) Written notification of demand for repayment shall be sent by the board to the scholarship recipient's last known address and shall be effective upon mailing.

(a) The board may agree to accept repayment in installments in accordance with a schedule established by the board.

(b) Payments shall first be applied to interest and then to principal on the earliest unpaid contracts.

(3) Repayment may be deferred in the case of disability, major illness, or accident that prevents a recipient from completing a program of nursing or being employed as a nurse in Kentucky.

(4) A student who ceases to be enrolled in a program of nursing prior to graduation may defer repayment for one (1) academic year if the student fails to achieve successful academic progression.

(a) ~~[This deferment shall apply for one (1) academic year.]~~

~~[(b)] If the student fails to resume enrollment~~[achieve successful academic progression]~~ after one (1) academic year, monetary~~[that time]~~, repayment shall be due.~~

~~[(b)]~~~~(e)~~ If the student resumes enrollment~~[achieves successful academic progression]~~ within one (1) academic year~~[the allotted time]~~, he or she may apply for a continuation award pursuant to Section 4~~[Section 6]~~ of this administrative regulation.

(5)

(a) If a deferment is requested, the recipient shall submit the request to the board on a Nursing Incentive Scholarship Fund Request for Deferral form.

(b) If the request for deferment is submitted pursuant to subsection (3) of this section, the Nursing Incentive Scholarship Fund Request for Deferral form shall be accompanied by a statement by a physician, advanced practice registered nurse, or physician's assistant.

(6) If a recipient fails to pass the licensure examination within two (2) years of graduation, the sum of all nursing incentive scholarships received by the recipient, and the accrued interest, shall become due and payable.

(7) If a court of competent jurisdiction determines that the recipient has defaulted and the funds are due and owing to the board, then the provisions of 201 KAR 20:370, Section 1(5), shall apply.

(8) An individual who has defaulted on a scholarship shall not be eligible to receive another scholarship until the defaulted scholarship has been repaid.

(9) The board may utilize the services of a third party for collection of sums owed pursuant to a Nursing Incentive Scholarship Fund Contract and Nursing Incentive Scholarship Fund Promissory Note, including reasonable attorney fees.

(10) After the board refers a debt to a third party for collection, a recipient shall not be eligible for deferment or to otherwise cure the recipient's breach, other than through payment of all sums owed to the board.

(11) Employment and repayment requirements specified in the contract and promissory note are not tolled or deferred as a consequence of a continuation of nursing education in a different degree program than was specified in the recipient's Nursing Incentive Scholarship Fund application; however, employment and repayment requirements are not activated when a recipient transfers to the same degree program at a different school.

Section 8.~~[Section 9.]~~ Verification.

(1) Verification of employment as a nurse in Kentucky pursuant to the contract shall be submitted to the board when the recipient's employment commitment begins and when it is completed. A termination of employment prior to completion shall be reported to the board within thirty (30) days by the ~~[employer and the]~~ recipient.

(2) A recipient shall notify the board immediately of a change of name,~~[er]~~ address, school, or enrollment status in school.

Section 9.~~[Section 10.]~~ Incorporation by Reference.

(1) The following are incorporated by reference:

(a) "Nursing Incentive Scholarship Fund Application", 06/24~~05/23~~;

(b) "Nursing Incentive Scholarship Fund Request for Deferral", 06/24~~10/96~~;

(c) "Nursing Incentive Scholarship Fund Contract", 06/24~~10/13~~; and

(d) "Nursing Incentive Scholarship Fund Promissory Note", 06/24~~10/13~~.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, Monday through Friday, 8:30 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>.

AUDRIA DENKER, President

APPROVED BY AGENCY: June 20, 2024

FILED WITH LRC: July 9, 2024 at 12:05 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 23, 2024 at 10:00 AM at Kentucky Board of Nursing, 312 Whittington Parkway, Ste 300, Louisville, Kentucky 40222. Individuals interested in being heard at this hearing shall notify this agency in writing by September 16, 2024, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a

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transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through September 30, 2024. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Jeffrey R. Prather, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, (502) 338-2851, Jeffrey.Prather@ky.gov. Or submit a comment at: <https://secure.kentucky.gov/formservices/Nursing/PendReg>.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jeffrey Prather

(1) Provide a brief summary of:

(a) What this administrative regulation does: It regulates a scholarship program under which eligible nursing students receive money in exchange for an agreement to work as nurses in Kentucky following their graduation. Recipients who accept the money but fail to work as a nurse in Kentucky must repay it. More specifically, the regulation sets application processes, award criteria, required terms, deferral requirements, and remedies in the event of breach by an award recipient for a Kentucky Nursing Incentive Scholarship (NISF).

(b) The necessity of this administrative regulation: It is required by statute.

(c) How this administrative regulation conforms to the content of the authorizing statutes: By setting processes and standards for NISF applications, awards, required terms, deferral requirements, and remedies in the event of breach by an award recipient.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By setting the processes and criteria applicable to awards, the terms required of recipients, and the procedures and standards applicable to deferral and noncompliance with the NISF contract.

(2) If 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 eliminates the collection of transcripts of award recipients, and instead requires proof of continued enrollment and graduation. All award recipients will receive the same sum, conditioned upon proof of enrollment during the academic year. Part-time enrollment will now be allowed, if permitted by the program of nursing. The elimination of a requirement for "full time" credit hours triggers the removal of the one year cap on NISF eligibility for students in LPN prelicensure programs. The amendment clarifies the priority of past recipients during the selection process, already stated in §4(2) and §6(1) of the existing regulation, as applicable to all past recipients. Per this clarification, the §3 award selection criteria will only apply to applicants who have not previously received an award. Terminology and financial need ranking is adjusted pursuant to corresponding changes to the FAFSA Simplification Act of 2020. The amendments and corresponding MIR revisions clarify that, upon graduation, no deferral exists for recipients who enroll in another more advanced nursing program; however, the amendment recognizes part-time employment will satisfy work requirements. This approach furthers the goal of getting NISF recipients into Kentucky's nursing workforce, and clarifies recordkeeping and monitoring processes.

(b) The necessity of the amendment to this administrative regulation: It is required in light of corresponding changes to the FAFSA Simplification Act of 2020, to correct ambiguities in the existing regulation, and the need for process improvements.

(c) How the amendment conforms to the content of the authorizing statutes: The modifications simplify the scholarship award process and provide greater opportunities for nursing students and nurses to continue their nursing education while satisfying their scholarship commitment by working as nurses in the Commonwealth.

(d) How the amendment will assist in the effective administration of the statutes: The existing regulation requires the collection of transcripts of award recipients and the monitoring of credit hours to verify both full time enrollment and "successful academic progression." This work is redundant, as it is already performed by the nursing schools as a component of their ongoing enrollment criteria.

Per the amendment, award recipients will simply need to verify ongoing enrollment, graduation, passing the NCLEX, licensure, and their nursing work in the Commonwealth or deferral criteria.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The number of Kentucky Nursing Incentive Scholarships awarded each year depends upon funding levels: (a) FY24, 131; (b) FY23, 148; (c) FY22, 149; (d) FY21, 97; (e) FY20, 148.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Under the existing regulation, award recipients must sign an NISF contract and promissory note when they receive their initial award payment, and are only required to sign a new promissory note when receiving a subsequent year payment. Per the amendment, award recipients will be asked to sign both a contract and a promissory note in conjunction with each annual award payment. Overall, the amendment provides NISF applicants and recipients greater flexibility by allowing part time enrollment and by allowing work obligations to be satisfied by part time employment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The amendment does not alter the cost imposed upon award recipients. The only cost to scholarship recipients occurs in instances of breach or default, and the amendment does not alter such costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Compliant scholarship applicants may be eligible for scholarship funds.

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

(a) Initially: There are not monetary costs associated with the implementation of the amendment, either initially or on an ongoing basis.

(b) On a continuing basis: There are not monetary costs associated with the implementation of the amendment, either initially or on an ongoing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Restricted funds obtained pursuant to KRS 314.027.

(7) Provide an assessment of whether an 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 fee increase is necessary.

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

(9) TIERING: Is tiering applied? While ranking of all NISF applicants seeking an initial award occurs under §3 of the regulation, such ranking applies equally to all initial applicants. Tiering applies only in the unlikely instance that combined awards to past recipients are projected to exceed the current fund balance. In such instances, past recipient eligibility shall be based on level of education of the program of nursing in which the applicant is enrolled, first being a prelicensure LPN program of nursing, second being a prelicensure non-BSN RN program of nursing, third being a BSN program of nursing, and fourth being a graduate degree program of nursing. This tiering accounts for higher earning potential and lower need as students advance their nursing education.

FISCAL IMPACT STATEMENT

(1) Identify each state statute, federal statute, or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 314.025, KRS 314.026, KRS 314.027. Additionally, the FAFSA Simplification Act of 2020 was passed by Congress on Dec. 27, 2020, as Title VII within the consolidated appropriations for the fiscal year ending September 30, 2021, amending 20 U.S.C. Ch. 18 1087kk-1087vv to alter need analysis thresholds and terminology under the Higher Education Act of 1965. As financial need criteria and terminology in 201 KAR 20:390 are premised upon federal law, the revisions in the FAFSA Simplification Act trigger corresponding changes in 201 KAR 20:390.

**PUBLIC PROTECTION CABINET
Department of Financial Institutions
Division of Depository Institutions
(Amendment)**

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: The Kentucky Board of Nursing.

(a) Estimate the following for the first year:

Expenditures: Each year, the agency seeks to disburse all restricted scholarship funds. The amendment will not impact expenditures.

Revenues: Deposits into the NISF restricted funds tied primarily to the total number of annual nursing license renewals. See, KRS 314.027(2). The amendment will not impact revenues.

Cost Savings: The reduction of personnel costs attained through the process streamlining achieved via the amendment will result in a corresponding increase in scholarship disbursements; however, the precise amount of the savings is not known.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? The impact on expenditures, revenues, or cost savings is the same in future years as in FY26.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): None.

(a) Estimate the following for the first year:

Expenditures: N/A.

Revenues: N/A.

Cost Savings: N/A.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? N/A.

(4) Identify additional regulated entities not listed in questions (2) or (3): Scholarship applicants and recipients.

(a) Estimate the following for the first year:

Expenditures: Scholarship award recipients do not make expenditures pursuant to the regulation, except were default triggers repayment obligations. The amendment does not materially alter repayment obligations.

Revenues: Scholarship award recipients receive funding pursuant to the regulation, which helps defray the cost of obtaining a nursing degree. The amendment will positively impact the total amount of scholarship funding available, by reducing personnel costs though the streamlining of monitoring requirements.

Cost Savings: The reduction of personnel costs will result in a corresponding increase in scholarship disbursements; however, the precise amount of the savings is not known.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? The impact on expenditures, revenues, or cost savings is the same in future years as in FY26.

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: The passage of KRS 314.025-27 in 1990, and the corresponding promulgation of 201 KAR 20:390 in 1991 had a net zero impact on the Kentucky Board of Nursing, because they created a new revenue stream, and committed such funds entirely to eligible NISF scholarship award applicants to defray the costs of their nursing education. The only other withdrawals from the restricted funds are for NISF personnel costs and operating expenses. The amendment does not alter the fiscal impact of the regulation.

(b) Methodology and resources used to determine the fiscal impact: Provided below is a statement of the operational costs, personnel costs, and total scholarship funds awarded for each of the past five fiscal years; however, the FY24 figures are subject to change as the fiscal year has not ended as of the filing of the amendment. FY2024 - Total scholarship disbursements 369,000; Operational costs 9,459.10; Personnel costs 60,332.44. FY2023 - Total scholarship disbursements 376,500; Operational costs 10,505.87; Personnel costs 99,937.98. FY2022 - Total scholarship disbursements 258,000; Operational costs 10,666.61; Personnel costs 21,335.37. FY2021 - Total scholarship disbursements 379,500; Operational costs 11,360.81; Personnel costs 23,032.16. FY2020 - Total scholarship disbursements 393,000; Operational costs 12,577.01; Personnel costs 14,435.91.

(6) Explain:

(a) Whether this administrative regulation will have an overall negative or adverse major economic impact to the entities identified in questions (2) - (4). (\$500,000 or more, in aggregate) This administrative regulation will not have a major economic impact.

(b) The methodology and resources used to reach this conclusion: N/A.

808 KAR 3:050. Conduct of credit unions.

RELATES TO: KRS 286.6-095, 286.6-100, 286.6-225, 286.6-585, 286.6-715, 12 C.F.R. Part 701, 702, 704, 705, 723, 20 U.S.C. 1071.

STATUTORY AUTHORITY: KRS 286.1-020, 286.6-070, 286.6-095, 286.6-100

NECESSITY, FUNCTION, AND CONFORMITY: KRS 286.6-070 authorizes the Department of Financial Institutions to promulgate administrative regulations necessary for the proper conduct and regulation of credit unions. This administrative regulation establishes requirements to ensure the proper conduct of credit unions. KRS 286.6-095 states that, notwithstanding any other provision of law, the commissioner may make reasonable rules authorizing credit unions to exercise any of the powers conferred upon federal credit unions if the commissioner deems it reasonably necessary for the well-being of such credit unions. This administrative regulation enables the Department of Financial Institutions to recognize the National Credit Union Administration's low-income designation of state-chartered credit unions and affirms the ability of these credit unions to avail themselves of the low-income designation benefit of accepting non-member deposits.

Section 1. Definition. A "corporate credit union" means a credit union that:

- (1) Is operated primarily for the purpose of serving other credit unions;
- (2) Is designated by the National Credit Union Administration as a corporate credit union; and
- (3) Limits natural person members to the minimum required by state or federal law to charter and operate the credit union.

Section 2. Refund of Interest. When an interest refund is authorized by the board of directors under KRS 286.6-225(3), it shall be recorded in the books of the credit union as a reduction of interest income from loans for that year or period.

Section 3. Fidelity Bond.

(1) The minimum blanket fidelity bond required by KRS 286.6-225(2) shall be as follows:

Assets	Minimum Bond
\$0 to \$10,000	Amount equal to the credit union's assets
\$10,001 to \$1,000,000	\$10,000 for each \$100,000 or fraction thereof
\$1,000,001 to \$50,000,000	\$100,000 plus \$50,000 for each million or fraction thereof over \$1,000,000
\$50,000,001 to \$295,000,000	\$2,550,000 plus \$10,000 for each million or fraction thereof over \$50,000,000
Over \$295,000,000	\$5,000,000

(2) The board of directors of every credit union shall review their blanket fidelity bond coverage at least once each year to ascertain its adequacy.

Section 4. Stocks and Bonds. A credit union may invest a maximum of five (5) percent of members' shares in:

- (1) Stock of a corporation rated A+ by Standard and Poor's at the date of acquisition of the stock; and
- (2) A corporate bond rated AAA or higher by Standard and Poor's, or rated AAA by Moody's at the date of acquisition of the bond.

Section 5. State-chartered credit unions may invest their funds in any investment that is permissible for a federally chartered credit union under 12 C.F.R. Part 703.

Section 6. Risk Asset. For the purpose of establishing the regular reserve, an asset shall be a risk asset except for the

following:

- (1) Cash on hand;
- (2) A share or deposit in a federally or state-insured bank, savings and loan association, or credit union that has a remaining maturity of five (5) years or less;
- (3) An asset, including a collateralized mortgage obligation that is comprised of government guaranteed mortgage loans, that has a remaining maturity of five (5) years or less and is insured by, is fully guaranteed as to principal and interest by, or is due from the U.S. Government, its agencies, the Federal National Mortgage Association, Federal Home Loan Mortgage Corporation, or the Government National Mortgage Association;
- (4) A loan to another credit union that has a remaining maturity of five (5) years or less;
- (5) A student loan that has a remaining maturity of five (5) years or less and that is insured under the provisions of Title IV, Part B of the Higher Education Act of 1965 (20 U.S.C. 1071, et seq.) or similar state insurance programs;
- (6) A loan that has a remaining maturity of five (5) years or less and that is fully insured or guaranteed by the federal or a state government or any agency of either;
- (7) A share or deposit in a corporate credit union that has a remaining maturity of five (5) years or less, other than a Membership Capital Share Deposit account as defined in 12 C.F.R. Part 704;
- (8) A common trust investment, including a mutual fund, which deals exclusively in investments authorized by the Federal Credit Union Act, 12 U.S.C. 1751 et seq., that are either carried at the lower cost or market, or are marked to market value monthly;
- (9) A prepaid expense;
- (10) Accrued interest on a non-risk investment;
- (11) A loan fully secured by a pledge of shares in the lending credit union, equal to and maintained to at least the amount of the loan outstanding;
- (12) A loan purchased from a liquidating credit union and guaranteed by the National Credit Union Administration;
- (13) A National Credit Union Share Insurance Fund Guaranty Account established with the authorization of the National Credit Union Administration under the authority of Section 203(a)(1) of the Federal Credit Union Act;
- (14) An investment in shares of the National Credit Union Administration Central Liquidity Facility;
- (15) An asset included in subsections (2), (3), (4), (5), (6), and (7) of this section with a maturity greater than five (5) years, is not a risk asset if the asset is being carried on the credit union's records at the lower of cost or market, or is being marked to market value monthly;
- (16) An asset included in subsections (2), (3), (4), (5), (6), and (7) of this section, with a remaining maturity of greater than five (5) years, is not a risk asset, whether or not the asset is being carried on the credit union's records at the lower of cost or market or is being marked to market value monthly, provided the asset meets the criteria established in paragraphs (a) through (c) of this subsection.
 - (a) The interest rate shall be reset at least annually.
 - (b) The interest rate of the instrument shall be less than the maximum allowable interest rate for the instrument on the date of the required reserve transfer.
 - (c) The interest rate of the instrument varies directly (not inversely) with the index upon which it is based and is not reset as a multiple of the change in the related index;
- (17) A fixed asset that includes an office, branch office, suboffice, service center, parking lot, or real estate in which the credit union transacts or will transact business; and office furnishing, office machine, computer hardware and software, automated terminal, and heating and cooling equipment; and
- (18) A deposit in the National Credit Union Share Insurance Fund representing a federally insured credit union's capitalization account balance of one (1) percent of insured shares.

Section 7. Charitable Contribution. Only the board of directors shall have the power to authorize a contribution to a civic, charitable, or service organization.

Section 8. Conversion. A state-chartered credit union may

convert to another charter.

(1) The board of directors shall first put the question of conversion to a vote of the members. Written notice of the proposed conversion shall be given to all members, which shall include a statement including the reasons for the proposed conversion. The notice shall be mailed to the last known address or hand delivered to the members. The notice shall state the date and place for the meeting called to vote on the proposed conversion, which shall be at least fifteen (15) days after the date of the notice.

(2) Approval of the proposed conversion shall be by a vote of the majority of the members who vote on the proposed conversion, in person or by absentee ballot if the bylaws of the credit union allow voting by absentee ballot.

(3) A statement of the results of the vote, verified by the president and secretary, shall be filed with the commissioner.

(4) The commissioner shall issue an order to the effect that, on the effective date of the conversion, the credit union is no longer incorporated under the laws of Kentucky. A copy of the order shall be forwarded to the Secretary of State.

Section 9. Low-Income Designation.

(1) A credit union chartered by the Commonwealth of Kentucky that is made up of a simple majority of low-income members, as defined in 12 C.F.R Part 701.34(a)(2), may obtain low-income designation from the National Credit Union Administration and concurrence in that designation from the Kentucky Department of Financial Institutions. In order to obtain that designation, a credit union shall receive approval from the National Credit Union Administration, either via notification or through the request process prescribed in 12 C.F.R Part 701.34(3). Following this approval by the National Credit Union Administration, a credit union shall submit a written request for concurrence of its low-income designation to the Kentucky Department of Financial Institutions along with documentation of its low-income designation approval from the National Credit Union Administration. The Kentucky Department of Financial Institutions shall issue a concurrence within thirty (30) days of a credit union's completed submission, if the credit union has demonstrated it has received approval as a low-income designated credit union from the National Credit Union Administration.

(2) A credit union that has obtained a low-income designation from the National Credit Union Administration and subsequent concurrence from the Department of Financial Institutions may accept non-member deposits from any source except for "public funds" as defined by KRS 446.010(41).

(3) A low-income designated credit union that accepts non-member deposits shall be subject to the non-member share limitations stated in 12 C.F.R Part 701.32(b).

(4) A low-income designated credit union that accepts non-member deposits shall maintain eligibility for its low-income designation through continued fulfillment of the requirements stated in 12 C.F.R Part 701.34.

(5) A low-income designated credit union that does not maintain eligibility for its low-income designation shall not be permitted to accept non-member deposits during the time it is ineligible for a low-income designation.

(6) A credit union that has obtained low-income designation may:

(a) Offer secondary capital accounts and include these accounts in the credit union's net worth subject to the requirements set forth under 12 C.F.R Part 702, Subpart D.

(b) Qualify for the exception from the aggregate member business loan limit outlined in 12 C.F.R Part 723.8(d); and

(c) Participate in the Community Development Revolving Loan Fund for Credit Unions subject to the requirements in 12 C.F.R Part 705.

MARNI R. GIBSON, Commissioner
RAY PERRY, Secretary

APPROVED BY AGENCY: July 15, 2024

FILED WITH LRC: July 15, 2024 at 10:05 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 23rd, 2024, at 3:00 p.m., at 500 Mero Street, Frankfort Kentucky

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40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through September 30th, 2024. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact persons.

CONTACT PERSON: Kathryn Adams-Cornett, Staff Attorney, and Marni Gibson, Commissioner, Dept. of Financial Institutions, 500 Mero Street, 2SW19, Frankfort, Kentucky 40601, phone 502-782-9065, fax 502-573-8787, email katie.adams@ky.gov, Marni.Gibson@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kathryn Adams-Cornett

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation creates a process by which Kentucky state-chartered credit unions may obtain approval from the Kentucky Department of Financial Institutions (the "Department") to accept non-member deposits if these credit unions have obtained Low-income Designation ("LID") through the National Credit Union Association's ("NCUA"). Currently, nine (9) state-charted Kentucky credit unions have obtained LID through the NCUA. However, these credit unions are currently not able to take advantage of the LID benefit of accepting non-member deposits, as this is not specified as an allowable activity under KRS 286.6. This regulation enables the Department to acknowledge the NCUA's LID designation of a Kentucky state-chartered credit union and affirms the ability of these credit unions to accept non-member deposits.

(b) The necessity of this administrative regulation: Nine (9) Kentucky state-charted credit unions have obtained LID through the NCUA. These credit unions are not currently able to take advantage of the LID benefit of accepting non-member deposits as KRS 286.6 does not expressly permit them to do so. This regulation enables the Department to acknowledge the NCUA's LID designation of a state-chartered credit union and affirms the ability of these credit unions to accept non-member deposits.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 286.6-070 authorizes the Department to promulgate administrative regulations necessary for the proper conduct and regulation of credit unions. This administrative regulation establishes requirements to ensure the proper conduct of credit unions. KRS 286.6-095 states that, notwithstanding any other provision of law, the Commissioner may make reasonable rules authorizing credit unions to exercise any of the powers conferred upon federal credit unions if the commissioner deems it reasonably necessary for the well-being of such credit unions. This regulation enables the Department to acknowledge the NCUA's LID designation of state-chartered credit unions and allows Kentucky state-chartered credit unions to fully participate in the federal LID program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation assists in the effective administration of the statutes by setting forth rules and regulations for the proper conduct of credit unions.

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

(a) How the amendment will change this existing administrative regulation: This administrative regulation adds a provision affirming that Kentucky state-chartered credit unions may fully participate in the NCUA's LID program, thus allowing these credit unions to take advantage of certain benefits available to the credit unions that participate in the LID program. This administrative regulation creates a process by which state-chartered credit unions may receive acknowledgment by the Department of their NCUA LID designation and may then accept non-member deposits.

(b) The necessity of the amendment to this administrative regulation: Currently, Kentucky state-chartered credit unions are

unable to fully avail themselves of the benefits of LID program participation and are therefore at a competitive disadvantage when compared to federally chartered credit unions and credit unions chartered in other states. This regulation will also encourage state-chartered credit unions to offer financial products and services in economically disadvantaged areas of Kentucky.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 286.6-070 authorizes the Department to promulgate administrative regulations necessary for the proper conduct and regulation of credit unions. This amendment establishes requirements to ensure the proper conduct of credit unions. KRS 286.6-095 states that, notwithstanding any other provision of law, the commissioner may make reasonable rules authorizing credit unions to exercise any of the powers conferred upon federal credit unions if the commissioner deems it reasonably necessary for the well-being of such credit unions. This regulation enables the Department to acknowledge the NCUA's LID designation of a Kentucky state-chartered credit union and affirms the ability of these credit unions to accept non-member deposits.

(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: This amendment would affirm the ability of eighteen (18) state-chartered credit unions to fully participate in the federal LID 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: This amendment creates an entirely optional process by which state-chartered credit unions may seek Department concurrence of their federal LID designation and affirmation from the Department that they may accept non-member deposits under the LID program.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): LID designation is entirely optional. If a credit union wishes to request a LID from the NCUA, the cost to the applicant will be minimal. These entities would possibly incur minimal costs in completing their request to the Department to recognize their LID designation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): State-chartered credit union that obtain a LID from the NCUA, and concurrence from the Department, will be able to avail themselves of benefits of LID designation including the ability to accept non-member deposits.

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

(a) Initially: Costs to implement this regulation amendment are minimal, if any.

(b) On a continuing basis: Costs for subsequent years are minimal, if any.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Current Department resources.

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

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

(9) TIERING: Is tiering applied? Tiering was not applied. The regulation did not require tiering to be applied to implement.

FISCAL IMPACT STATEMENT

(1) Identify each state statute, federal statute, or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 286.6-070 and KRS 286.6-095 authorize this regulation.

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(2) Identify the promulgating agency and any other affected state units, parts, or divisions: The Department of Financial Institutions (the "Department").

(a) Estimate the following for the first year:

Expenditures: see statement below

Revenues: see statement below

Cost Savings: see statement below The effect on overall revenue for the Department will be minimal; this regulation will not have a substantial impact on the Department's budget.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? The effect on overall revenue for the Department will be minimal; this regulation will not have a substantial impact on the Department's budget.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): This regulation will not impact any local entities.

(a) Estimate the following for the first year:

Expenditures: see statement below

Revenues: see statement below

Cost Savings: see statement below: This regulation will not impact local entities.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? This regulation will not impact regulated local entities.

(4) Identify additional regulated entities not listed in questions (2) or (3): This regulation will not impact any additional regulated entities.

(a) Estimate the following for the first year:

Expenditures: see statement below

Revenues: see statement below

Cost Savings: see statement below: This regulation will not impact additional regulated entities.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? This regulation will not impact any additional regulated entities.

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: There will be minimal fiscal impact from this regulation on the Department of Financial Institutions and on regulated entities. It is unclear how much cost savings this administrative regulation will generate for regulated credit unions, however this optional program will allow these credit unions to take advantage of economically advantageous benefits as part of the LID program.

(b) Methodology and resources used to determine the fiscal impact: Requirements put in place by this regulation were examined and found to create negligible financial burden or revenue in regard to the Department of Financial Institutions or regulated entities.

(6) Explain:

(a) Whether this administrative regulation will have an overall negative or adverse major economic impact to the entities identified in questions (2) - (4). (\$500,000 or more, in aggregate) The amended regulation will not have a major economic impact on the regulated entities or the Department. Further, LID designation is entirely optional.

(b) The methodology and resources used to reach this conclusion: Requirements put in place by this regulation were examined and found to create negligible financial burden as to the impacted entities.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Public Health Protection and Safety
(Amendment)

902 KAR 10:120. Kentucky public swimming and bathing facility operations[facilities].

RELATES TO: KRS Chapter 13B, 211.015, 211.205, [211.090, 211.210, 211.220,] 211.990(2), [322.110, 323.020, 29 C.F.R. 4910.119, 15 U.S.C. 8003]

STATUTORY AUTHORITY: KRS 194A.050[4], 211.180(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) authorizes the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to protect, develop, and maintain the health, personal dignity,

integrity, and sufficiency of Kentucky citizens and to operate programs and fulfill the responsibilities vested in the cabinet[. KRS 194A.050(2) authorizes the secretary to promulgate regulations to establish a fee schedule for permitting and annual inspection of efforts regarding compliance with program standards administered by the cabinet. KRS 211.180 authorizes the cabinet to adopt administrative regulations relating to public facilities and their operation and maintenance in a safe and sanitary manner to protect public health and prevent health hazards. This administrative regulation establishes uniform standards for public swimming pools and bathing facilities.

Section 1. Definitions.

(1) [~~"Accessible" means having access to a fixture, connection, appliance or equipment, even if it is necessary to remove an access panel, door, or similar obstruction.~~]

(2) [~~"Agitation" means the mechanical or manual movement to dislodge the filter aid and dirt from the filter element.~~]

(3) [~~"Air gap" means the unobstructed vertical distance through the free atmosphere between the lowest opening from any pipe or faucet conveying water or waste to a tank, plumbing fixture, receptor, or other device, and the flood level rim of the receptacle.~~]

(4) [~~"Alkalinity" or "total alkalinity" means the amount of carbonates or bicarbonate present in water solution as expressed in parts per million (ppm).~~]

(2)[~~(5)] "Approved" means that which is acceptable to the cabinet.~~

(3)[~~(6)] "Backwash" means the flow of water through the filter element or media in the reverse direction sufficient to dislodge the accumulated dirt and filter aid and remove them from the filter tank.~~

(4)[~~(7)] [~~"Backwash cycle" means the time required to backwash the filter system thoroughly.~~]~~

(8) [~~"Backwash rate" means the rate of application of water through a filter during the backwash cycle expressed in gallons per minute per square foot of effective filter area.~~]

(9) [~~"Bather" means a person using a public swimming and bathing facility.~~]

(5)[~~(10)] "Cabinet" is defined by KRS 211.015(1)(a).~~

(6)[~~(11)] [~~"Cartridge filter" means a filter that utilizes a porous cartridge as its filter media.~~]~~

(12) [~~"Diatomaceous earth (DE) filter" means a filter that utilizes a thin layer of diatomaceous earth as its filter media that will need to be periodically replaced.~~]

(7)[~~(13)] "Disinfectant" means an approved chemical compound designed for the destruction of pathogenic organisms in bathing facilities and includes chlorine and bromine.~~

(8)[~~(14)] [~~"Equalizer line" means the connection from the skimmer housing to the pool, spa, or hot tub below the weir box, which:~~]~~

(a) [~~Is sized to satisfy pump demand and prevent air lock or loss of prime; and~~]

(b) [~~Contains a float valve assembly and pop-up valve.~~]

(15) [~~"Facility operator" means a person or employee of that person who is responsible for the proper operation and maintenance of the facility.~~]

(9)[~~(16)] "Filter" means a device that separates solid particles from water by recirculating it through a porous substance.~~

(10)[~~(17)] "Filter aid" means an enhancement to the efficiency of the filter media.~~

(11)[~~(18)] "Filter cycle" means the operating time between cleaning or replacing the filter media or backwash cycles.~~

(12)[~~(19)] "Filter element" means a device within a filter tank designed to entrap solids and conduct water to a manifold, collection header, pipe, or similar conduit.~~

(13)[~~(20)] [~~"Filtration rate" means the rate of water flow through a filter while in operation.~~]~~

(21) [~~"Float valve assembly" means a mechanism designed to disengage the skimmer in order to prevent air from entering the pump if the water level drops below the skimmer level.~~]

(22) [~~"Flow meter" means a device that measures the flow of water through piping.~~]

(14)[~~(23)] [~~"Head loss" means the total pressure drop between the inlet and the outlet of a component.~~]~~

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~~[(24)]~~ "Holding tank" means a storage vessel to retain water for a spray pad recirculation system.

~~[(15)]~~~~[(25)]~~ ["Hydrojet" means a fitting which blends air and water, creating a high-velocity, turbulent stream of air-enriched water.]

~~[(26)]~~ "Inlet" means a fitting or fixture through which filtered water returns to a pool or spa.

~~[(16)]~~~~[(27)]~~ "Main outlet" means an outlet fitting at the deepest point of the horizontal bottom of a pool through which water passes to a recirculating pump or surge tank, and is often referred to as a "main drain".

~~[(17)]~~~~[(28)]~~ ["Modulating valve" means a valve that automatically regulates the flow of water from the main drain through the use of a float ball.]

~~[(29)]~~ "Perimeter overflow system" means a channel at normal water level that extends completely around the pool perimeter and is used to remove surface debris, also known as an overflow or scum gutter.

~~[(18)]~~~~[(30)]~~ ["Perlite filter" means a filter that utilizes a thin layer of perlite as its filter media deposited on a septum that must be periodically replaced.]

~~[(31)]~~ "Play feature" means a structure or feature that is added to a pool for the purpose of entertainment.

~~[(19)]~~~~[(32)]~~ "Plunge pool" means a pool or area within a pool designed as the termination point for a water slide or water ride.

~~[(20)]~~~~[(33)]~~ ["Pop-up valve" means a mechanism located under the float valve assembly that opens to allow water to reach the pump when the float valve is activated.]

~~[(34)]~~ ["Positive shutoff valve" means a valve that completely stops the flow of water.]

~~[(35)]~~ "Precoat" means the process of depositing a layer of diatomaceous earth or perlite on the filter element at the start of a filter cycle.

~~[(21)]~~~~[(36)]~~ "Public swimming and bathing facility" or "facility" means a natural or artificial body or basin of water that is modified, improved, constructed, or installed for the purpose of swimming or bathing, except for a pool at a private single family residence intended only for the use of the occupant~~[owner]~~ and guests.

~~[(22)]~~ "Public swimming and bathing facility enclosure" means an enclosure that surrounds and secures the public swimming and bathing facility which includes decking and pool.

~~[(23)]~~~~[(37)]~~ "Readily accessible" means direct access without the necessity of removing any panel, door, or similar obstruction.

~~[(24)]~~~~[(38)]~~ "Septum" means that part of the filter element consisting of cloth, closely woven fabric, or other porous material on which the filter cake is deposited.

~~[(25)]~~~~[(39)]~~ "Skimmer" means a device designed to continuously remove surface film and water and return it through the filter.

~~[(26)]~~~~[(40)]~~ "Splash pad" means a public swimming and bathing facility that~~["Spray pad"]~~~~[means an area that]:~~

(a) Has aquatic play features that spray or drop water for the purpose of wetting people;

(b) Is designed so that there is no accumulation or ponding of water on the ground; ~~[and]~~

(c) Includes both recirculating and non-recirculating water systems; ~~and~~

(d) Includes splash pads operated by local governments as defined in KRS 211.205.

~~[(27)]~~~~[(41)]~~ ["State Building Code" means the requirements established in 815 KAR Chapter 7.]

~~[(42)]~~ ["State Plumbing Code" means the requirements established in 815 KAR Chapter 20.]

~~[(43)]~~ "Strainer" means a device used to remove hair, lint, leaves, or other coarse material on the suction side of a pump.

~~[(28)]~~~~[(44)]~~ ["Suction piping" means that portion of the circulation piping located between the facility structure and the inlet side of a pump.]

~~[(45)]~~ "Superchlorinate" means the addition to the public swimming and bathing facility water of an amount of chlorine sufficient to produce a free available chlorine that is at least equal to ten (10) times the amount of combined chlorine plus the required minimum level of free available chlorine in order to oxidize the ammonia and nitrogenous materials which may be dissolved in the facility water.

~~[(29)]~~~~[(46)]~~ ["Surge tank" means a storage vessel within the pool recirculation system used to retain the water displaced by bathers.]

~~[(47)]~~ ["Total discharge head" means the amount of water that a pump will raise water above its center line.]

~~[(48)]~~ ["Total dynamic head" means the arithmetical difference between the total discharge head and total suction head (a vacuum reading is considered as a negative pressure). This value is used to develop the published performance curve.]

~~[(49)]~~ "Total residual chlorine" means the arithmetical sum of free available chlorine and combined chlorine, which is composed of the following components:

(a) Free available chlorine, which is the amount of chlorine available to inactivate microorganisms and that has not reacted with ammonia, nitrogenous material, and other contaminants in facility water; and

(b) Combined chlorine (also called "chloramine"), which is the amount of chlorine that has reacted and combined with ammonia and other nitrogenous material to form chloro-ammonia compounds.

~~[(30)]~~~~[(50)]~~ ["Total suction head" means the amount of water that a pump will lift by suction.]

~~[(51)]~~ ["Turnover rate" means the time requirements, in hours or minutes, for the circulation system to filter and recirculate a volume of water equal to the facility volume.]

~~[(52)]~~ "Wading pool" means a pool or area within a pool where the water depth is twenty-four (24) inches or less.

~~[(53)]~~ ["Weir box" means an overflow system placed at normal operating water surface level to remove surface debris and does not form a continuous loop around the pool perimeter.]

Section 2. Submission of Plans, Annual Permit Fee, and Inspection Fees.

(1) Submission of Plans.

(a) All new construction, changes in construction and equipment shall be in accordance with the requirements set forth in 902 KAR 10:123.

(b) New facilities shall receive final construction approval inspections by the cabinet, and other affected state and local regulatory agencies, prior to placing the facility in operation. It shall be the owner or operator's responsibility to notify the cabinet and other involved agencies of construction completion and call for inspection.

(2) Annual Permit Fee.

(a) An annual permit fee of \$110 for all public swimming and bathing facilities shall be:

1. Paid no later than May 1 each year; and
2. Paid to the Kentucky Department for Public Health by check or money order made payable to the Kentucky State Treasurer.

(b) A late payment fee of fifty-five (55) dollars shall be assessed on all annual permits not received by May 1 each year.

(c) Permits shall not be transferable.

(3) A fee shall be required for inspections conducted by the cabinet or the local health department to determine compliance with this administrative regulation for public swimming and bathing facilities.

(4) For public swimming and bathing facilities the annual inspection fee shall be:

(a) Assessed according to the total square footage of the water surface area;

(b) Calculated as established in this paragraph:

1. 1,000 square feet or less, the fee shall be ninety-nine (99) dollars;

2. 1,001 to 1,500 square feet, the fee shall be \$165;

3. 1,501 to 2,000 square feet, the fee shall be \$220; and

4. 2,001 and above, the fee shall be \$220 plus fifty-five (55) dollars for each additional 500 square feet of water surface area; and

(c) Include eighty-two (82.50) dollars and fifty cents for interactive water features.

(5) For splash pads, the annual inspection fee shall be \$275 per year.

(6) For spas and hot tubs, the annual inspection fee shall be \$165 per year.

(7) The inspection fee required by this section shall be:

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(a) Paid to the local health department having jurisdiction by check or money order made payable to the Kentucky State Treasurer;

(b) Deposited in the environmental fee account; and

(c) Sent to the Department for Public Health for deposit with the Kentucky State Treasury [and Specifications for Approval.]

~~[(1)] [A person shall not construct, alter, or reconstruct a public swimming and bathing facility until approval of detailed plans and specifications, with supporting design data as required in this administrative regulation, is granted in writing by the state or local agency having jurisdiction.]~~

~~[(2)] [The original plans and five (5) copies shall be submitted to the local health department with payment pursuant to 902 KAR 10:121.]~~

~~[(3)] [The front page of the plans submitted for review and approval shall contain the:]~~

~~[(a)] [Name of the swimming and bathing facility;]~~

~~[(b)] [Location by city and county;]~~

~~[(c)] [Name and contact information for the facility owner;]~~

~~[(d)] [Name of the installer; and]~~

~~[(e)] [Name of the engineer, architect, or person preparing the plans.]~~

~~[(4)] [Plans submitted by an engineer or architect shall bear the individual's official seal.]~~

~~[(5)] [Plans and specifications on public swimming and bathing facilities constructed by the state or local government, or for a facility with surface area greater than 1,600 square feet, shall be prepared by an engineer or architect registered in the State of Kentucky.]~~

~~[(6)] [The plans shall be:]~~

~~[(a)] [Drawn to scale;]~~

~~[(b)] [Accompanied by proper specifications to permit a comprehensive review of the plans, including the piping and hydraulic details; and]~~

~~[(c)] [Include:]~~

~~[1.] [A site plan of the general area with a plan and sectional view of the facility complex with all necessary dimensions;]~~

~~[2.] [A piping diagram showing all appurtenances including treatment facilities in sufficient detail, as well as pertinent elevation data, to permit a hydraulic analysis of the system;]~~

~~[3.] [The specifications on all treatment equipment, including performance ranges of pumps, disinfecting equipment, chemical feeders, filters, strainers, lights, skimmers, suction outlets or return inlets, diving boards, safety equipment, and other related equipment; and]~~

~~[4.] [Drawing of equipment room showing placement of equipment.]~~

~~[(7)] [One (1) set of approved plans shall be kept at the job site and available for inspection.]~~

~~[(8)] [Upon completion of recirculation piping system construction and prior to the piping being tested for air pressure at ten (10) pounds per square inch of pressure for fifteen (15) minutes and covered, the owner or builder shall contact the cabinet for inspection.]~~

~~[(9)] [Upon completion of construction, a notarized statement certifying the facility was constructed in accordance with the approved plans and this administrative regulation shall be submitted to the cabinet.]~~

~~[(10)] [The facility shall not be used before receiving a final inspection and written approval from the cabinet.]~~

~~[(11)] [Unless construction is begun within one (1) year from the date of approval, the approval shall expire. Extension of approval may be considered upon written request to the cabinet.]~~

~~[(12)] [No change in location, construction, design, materials, or equipment shall be made to approved plans or the facility without the written approval of the cabinet.]~~

Section 3. Water Supplies.

(1) Potable water from an approved municipal water system or water district shall be supplied to all public swimming and bathing facilities. If these supplies are not available, a potable water supply meeting the approval of the Energy and Environment Cabinet shall be provided.

(2) The water supply shall be capable of providing:

(a) Sufficient quantities of water under pressure to all water-using fixtures and equipment at the facility; and

(b) Enough water to raise the water level by at least one (1) inch in three (3) hours in:

1. Swimming, diving, or wave pools; and
2. Water slide plunge pools.

Section 4. [Water Quality and Sanitary Requirements for Bathing Beaches.]

~~[(1)] [Prior to the issuance of plan and construction approval, the cabinet shall conduct a sanitary survey of the proposed beach. This survey shall include an evaluation of the physical, chemical, and bacteriological characteristics of the bathing beach area and the watershed.]~~

~~[(2)] [Physical quality. The following characteristics shall not be present in the beach area or watershed:]~~

~~[(a)] [Sludge deposits, solid refuse, floating waste solids, oils, grease, and scum; or]~~

~~[(b)] [Hazardous substances being discharged into bathing beach water or watershed.]~~

~~[(3)] [Bacteriological quality. The bacteriological quality of water at bathing beaches shall comply with the following criteria:]~~

~~[(a)] [It shall meet the requirements of 401 KAR 10:031. Satisfactory bacteriological results shall be obtained before approval for construction is considered; and]~~

~~[(b)] [There shall not be any sanitary or combined sewer discharges or other raw or partially treated sewage discharges to the bathing beach area or immediate watershed.]~~

~~[(4)] [Chemical quality. There shall not be any discharges of chemical substances, other than disinfecting agents, capable of creating toxic reactions, or irritations to the skin or mucous membranes of a bather.]~~

[Section 5.] Sewage and Wastewater Disposal.

(1) Sewage or wastewater generated from the operation of a public swimming and bathing facility shall discharge to a public sanitary sewer.

(2) If a public sanitary sewer is not available, sewage or wastewater shall be discharged to a system which complies with 902 KAR 10:085.

(3) Outdoor deck or surface area drainage water may be discharged directly to storm sewers, natural drainage areas, or to the ground surface without additional treatment. This drainage shall not result in nuisance conditions that create an offensive odor, a stagnant wet area, or an environment for the breeding of insects.

(4) Filter backwash shall be discharged to public sanitary sewers, or if unavailable, to a system approved by the cabinet.

Section 5.[Section 6.] Refuse Disposal.

(1) All refuse at a public swimming and bathing facility shall be disposed of in a manner approved by the Energy and Environment Cabinet in KAR Title 401.

(2) An adequate number of refuse containers with tight fitting lids shall be provided at readily accessible locations at all public swimming and bathing facilities.

(3) Refuse containers in women's restrooms shall be kept covered.

(4) Bulk refuse storage areas shall be designed and maintained to prevent rodent harborage.

(5) Bulk refuse containers shall be:

(a) Of approved design and construction;

(b) Kept closed; and

(c) Placed upon an impervious surface within a suitable enclosure to prevent access by animals.

Section 6.[Section 7.] Facility Design and Construction.

(1) All public swimming and bathing facilities, and attendant structures, such as bathhouses, dressing rooms, or restrooms[, except for beach areas at bathing beaches,] shall meet the design, materials, fixture, and construction requirements of 815 KAR 7:120 and 815 KAR Chapter 20.

(2) Bathhouses, restrooms, and drinking fountains shall not be required for the design and construction of splash pads. [The wading and swimming areas at beaches where the water is less than five

(5) feet deep shall be separated from swimming and diving areas by lines securely anchored and buoyed. Safe limits of swimming shall be marked by buoys, poles, or other markers located not over 100 feet apart and visible to bathers from a distance of at least 100 feet. Within these limits of safe swimming there shall not be any boating, underwater obstructions, or other hazards that may be dangerous or cause injury to swimmers. Signs shall be provided on the beach describing these markers and stating that they indicate the limits of safe bathing. The bottom of the swimming area shall consist of sand or gravel and be of a uniform slope.]

[(3)] [If diving facilities are provided at beaches, the design and layout of the facilities and associated unobstructed water depths shall be in accordance with the State Building Code requirements for swimming and diving pools. The water surrounding any floats or inflatable features where diving is permitted shall be at least nine (9) and one-half (1/2) feet deep.]

[(4)] [Depth markings and lane lines.]

[(a)] [On all facilities other than beaches, the depth of the water shall be marked plainly at or above the water surface on the vertical wall of the facility, if possible, and on the edge of the deck next to the facility. Depth markers shall be placed at the following locations:]

[1.] [At the points of maximum and minimum depths;]

[2.] [At the point of change of slope between deep and shallow portions or transition point;]

[3.] [At intermediate two (2) feet increments of water depth; and]

[4.] [If the facility is designed for diving, at appropriate points to denote the water depths in the diving area.]

[(b)] [Depth markers shall be spaced so that the distance between adjacent markers is not greater than twenty-five (25) feet as measured peripherally.]

[(c)] [Depth markers shall be in Arabic numerals at least four (4) inches high and of a color contrasting with the background. If depth markers cannot be placed on the vertical walls at or above the water level, other means shall be used, so that markings shall be plainly visible to persons in the facility.]

[(d)] [Lane lines or other markings on the bottom of the facility shall be a minimum of ten (10) inches in width and be of a contrasting color.]

[(e)] [A safety line supported by buoys shall be provided across the section of the pool where the break between the shallow and deep water occurs (five (5) feet) except when the pool is being used for organized activities or during operation as a wave pool. The line shall be placed one (1) foot toward the shallow end from where the break occurs.]

Section 7. [Section 8.] Facility Water Treatment Systems.

(1)

[(a)] A recirculation system, consisting of pumps, piping, filters, water conditioning, disinfection equipment, and other accessory equipment shall be provided to clarify, chemically balance, and disinfect the water for all swimming and bathing facilities[, except bathing beaches].

[(2)] [(b)] The recirculation system shall comply with the requirements set forth in 902 KAR 10:123. [All system components, including piping, shall bear the NSF International (NSF) potable water (NSF-pw) mark.]

[(c)] [Pumps greater than seven and five-tenths (7.5) horse power that are not required to meet NSF testing standards shall be considered on a case-by-case basis.]

[(2)] [Pumping equipment.]

[(a)] [The recirculation pump and motor shall deliver the flow necessary to obtain the turnover required in the table below. A valve for flow control and a flow meter shall be provided in the recirculation pump discharge piping.]

[(b)] [The turnover rate shall be:]

[Type of Facility]	[Turnover Required]
[Diving pools]	[8 hours or less]
[Wading pools, Spas, Therapy pools, Spray pad holding tanks, Facility equipped with a spray feature not providing additional filtered and disinfected water to the spray feature]	[30 minutes or less]

[Wave pools, Lazy rivers, Water rides]	[2 hours or less]
[Vortex pools, Plunge pools]	[1 hour or less]
[All other pools]	[6 hours or less]

[(c)] [Higher flow rates may be necessary in pools with skimmers so that each skimmer will have a minimum flow rate of thirty (30) gallons per minute.]

[(d)] [The pump shall be of sufficient capacity to provide a minimum backwash rate of fifteen (15) gallons per square foot of filter area per minute in sand filter systems.]

[(e)] [The pump or pumps shall supply the required recirculation rate of flow to obtain the turnover rate required at a total dynamic head of at least:]

[1.] [Fifty (50) feet for all vacuum filters;]

[2.] [Seventy (70) feet for pressure sand or cartridge filters; or]

[3.] [Eighty (80) feet for pressure diatomaceous earth filters and perlite filters.]

[(f)] [If the pump is located at an elevation higher than the facility water line, it shall be self-priming.]

[(g)] [If vacuum filters are used, a vacuum limit control shall be provided on the pump suction line. The vacuum limit switch shall be set for a maximum vacuum of eighteen (18) inches of mercury.]

[(h)] [A compound vacuum-pressure gauge or vacuum gauge shall be installed on the suction side of the pump.]

[(i)] [A pressure gauge shall be installed on the pump discharge line adjacent to the pump.]

[(j)] [Valves shall be installed to allow the flow to be shut off during cleaning, switching baskets, or inspection of hair and lint strainers.]

[(k)] [A hair or lint strainer with openings no more than one-eighth (1/8) inch is required except for pumps that are used with vacuum filter systems.]

[(3)] [Water heaters shall be installed at all indoor swimming and bathing facilities, and shall comply with the following:]

[(a)] [A water heater piping system shall be equipped with a bypass. A valve shall be provided at the bypass and on the influent and effluent heater piping. The influent and effluent heater piping shall be metallic and installed in accordance with heater manufacturer's recommendations;]

[(b)] [A heating coil, pipe, or steam hose shall not be installed in any swimming and bathing facility;]

[(c)] [Thermometers shall be provided in the piping to check the temperature of the water returning from the facility and the temperature of the blended water returning to the facility;]

[(d)] [An automatic temperature limiting device with thermostatic control that prevents the introduction of water in excess of 100 degrees Fahrenheit to swimming and diving pools and in excess of 104 degrees Fahrenheit for spas shall be provided and shall be accessible only to the facility operator;]

[(e)] [A pressure relief valve shall be provided and shall be piped to within six (6) inches of the floor;]

[(f)] [Venting of gas or other fuel burning water heaters shall be provided in accordance with the State Building Code;]

[(g)] [Heaters for indoor swimming and diving pools shall be capable of maintaining an overall pool water temperature between seventy-six (76) degrees Fahrenheit and eighty-four (84) degrees Fahrenheit;]

[(h)] [Combustion and ventilation air shall be provided for fuel burning water heaters in accordance with manufacturer recommendations or the State Building Code;]

[(i)] [Heaters for indoor swimming and diving pools shall be sized on a basis of 150 British Thermal Units per hour input per square foot of pool water surface area; and]

[(j)] [All heaters shall meet the latest standards of applicable recognized testing agencies.]

[(4)] [A flow meter shall be:]

[(a)] [Located so that the rate of recirculation may be easily read;]

[(b)] [Installed on a straight length of pipe at a distance of at least ten (10) pipe diameters downstream, and five (5) pipe diameters upstream from any valve, elbow, or other source of turbulence, except for those specifically designed without separation parameters; and]

[(c)] [Installed on each recirculation system, spray pad feature,

waterslide, any other type of spray feature, and on multiple filtration units.]

[(5)] [Vacuum cleaning system.]

[(a)] [A vacuum cleaning system shall be:]

[1.] [Provided for all facilities except beaches; and]

[2.] [Capable of reaching all parts of the facility bottom.]

[(b)] [A vacuum system that utilizes the attachment of a vacuum hose to the suction piping through the skimmer may be provided.]

[(c)]

[1.] [If the vacuum cleaning system is an integral part of the facility recirculation system, a wall fitting shall be provided:]

[a.] [Eight (8) to twelve (12) inches below the normal water level; and]

[b.] [With a cap or plug that is not removable by bathers.]

[2.] [Piping from this connection shall be:]

[a.] [To the suction side of the pump ahead of the hair and lint strainer;]

[b.] [At least one and one-half (1 1/2) inches in diameter; and]

[c.] [Equipped with a control valve near the junction with the pump suction line.]

[3.] [The size of the vacuum hose shall be at least one and one-half (1 1/2) inches in diameter and be of sufficient strength to prevent collapsing and allow adequate flow for proper cleaning.]

[(d)] [Automatic vacuum systems may be used to supplement the built-in vacuum system provided they are capable of removing all debris from the facility bottom.]

[(e)] [Vacuum systems shall only be used when the facility is closed to bathers.]

[(6)] [Piping, skimmer, and overflow system:]

[(a)] [Piping shall comply with the material specifications listed in the Kentucky State Plumbing Code for potable water.]

[(b)] [All piping, valves, and fittings shall be color coded, suitably labeled, or marked to denote its purpose within the facility water treatment system.]

[(c)] [The piping shall be designed to carry the required quantities of water at velocities not exceeding five (5) feet per second in suction piping and ten (10) feet per second in pressure piping.]

[(d)] [Gravity piping shall be sized so that the head loss in piping, fittings, and valves does not exceed the difference in water levels between the facility and the maximum operating level in the surge or filter tank.]

[(e)] [The following waste lines shall be provided with six (6) inch air gaps at their points of discharge to the waste pump or sewer:]

[1.] [Main outlet bypass or other connections to waste;]

[2.] [Surge tank drain and overflow lines;]

[3.] [Pump discharge to waste lines; and]

[4.] [Gutter bypass to waste lines.]

[(7)] [Inlets.]

[(a)] [Each inlet shall be directionally adjustable.]

[(b)] [The velocity of flow through any inlet orifice shall be in the range of five (5) to twenty (20) feet per second, except that facilities equipped with skimmers shall have a velocity of flow in the range of ten (10) to twenty (20) feet per second.]

[(c)] [Inlets shall be located and directed to produce uniform circulation of water to facilitate the maintenance of a uniform disinfectant residual throughout the entire facility without the existence of dead spots.]

[(d)] [Inlets in facilities with skimmers shall be twelve (12) inches below the midpoint on the skimmer throat.]

[(e)] [Inlets in facilities with a prefabricated perimeter overflow system shall be eight (8) inches or more below the lip of the gutter.]

[(f)] [Inlets shall be placed completely around the pool with each serving a linear distance of not more than fifteen (15) feet on center. The pipe serving the inlets shall form a loop completely around the pool.]

[(g)] [The number of inlets shall be determined by dividing the perimeter of the pool measured in feet, by fifteen (15). Any fraction thereof would represent one (1) additional inlet.]

[(h)] [Pools greater than forty-five (45) feet wide shall be equipped with floor inlets in a grid pattern located no more than seven and five-tenths (7.5) feet from a wall and no more than fifteen (15) feet apart. The grid shall form a continuous loop with no

reduction in loop pipe sizing.]

[(i)] [A minimum of two (2) inlets is required on all pools, holding tanks, and bathing facilities, regardless of size.]

[(j)] [At least one (1) inlet shall be located in each recessed stairwell or other space where water circulation might be impaired.]

[(k)] [Prefabricated perimeter overflow systems shall be approved on a case-by-case basis by the cabinet.]

[(8)] [Outlets:]

[(a)] [All facilities, including holding tanks, shall be provided with a minimum of two (2) main outlets at the deepest horizontal point plumbed in parallel to permit the facility to be completely and easily drained.]

[(b)] [Openings and grates shall:]

[1.] [Conform to 15 U.S.C. 8003;]

[2.] [Be covered by a proper grating that is not removable by bathers;]

[3.] [Be at least four (4) times the area of the main outlet pipe;]

[4.] [Have sufficient area so that the maximum velocity of the water passing through the grate does not exceed one and one-half (1 1/2) feet per second at maximum flow; and]

[5.] [Have a maximum grate opening width of one-fourth (1/4) inch.]

[(c)] [Additional outlets shall be provided in all facilities where the width of the facility is more than sixty (60) feet. In these cases, outlets shall be spaced not more than thirty (30) feet apart, nor more than fifteen (15) feet from side walls, and shall be connected in parallel, not series.]

[(d)] [A hydrostatic relief valve may be provided for in-ground swimming and diving pools. Subsurface drainage, if provided, shall not be directly connected to a sanitary sewer.]

[(e)] [Main outlet piping shall be sized for water removal at a rate of at least 100 percent of the design recirculation flow rate and at velocities specified in subsection (6)(c) of this section. It shall function as a part of the recirculation system. The piping system shall be valved to permit adjustment of flow through it.]

[(9)] [Perimeter overflow systems:]

[(a)] [Swimming and bathing facilities with a water surface area greater than 1,600 square feet shall have a continuous perimeter overflow system.]

[(b)] [A perimeter overflow system shall:]

[1.] [Extend completely around the facility;]

[2.] [Permit inspection, cleaning, and repair;]

[3.] [Be designed so that no ponding or retention of water occurs within any portion of the system;]

[4.] [Be designed to prevent entrapment of bathers or the passage of small children into an enclosed chamber;]

[5.] [Have an overflow lip which is rounded, provides a good handhold, and is level within two-tenths (0.2) inch;]

[6.] [Provide for the rapid removal of all water and debris skimmed from the pool's surface;]

[7.] [Be designed for removal of water from the pool's upper surface at a rate equal to 100 percent of the design turnover flow rate;]

[8.] [Discharge to the recirculation system;]

[9.] [Be provided with a minimum of two (2) outlet pipes that will not allow the overflow channel to become flooded when the facility is in normal use;]

[10.] [Require additional outlet pipes provided at one (1) per 150 lineal feet of perimeter overflow system or fraction thereof; and]

[11.] [Have drain gratings with surface area at least equal to two (2) times the area of the outlet pipe.]

[(10)] [All facilities that have perimeter overflow systems shall have a net surge capacity of at least one (1.0) gallon per square foot of water surface area. Surge capacity shall be provided either in a vacuum filter tank, surge tank, or a combination of these. Main drain piping shall terminate eighteen (18) inches above the surge tank floor and be equipped with a modulating valve and a positive shutoff valve. Surge capacity for a diatomaceous earth (DE) filter is measured eighteen (18) inches above the filter media and the bottom of the gutter pipe.]

[(11)] [Skimmers are permitted on facilities whose width does not exceed thirty (30) feet and whose water surface area is 1,600 square feet or less. If skimmers are used, the following shall be met:]

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[(a)] [At least one (1) skimmer shall be provided for each 500 square feet of water surface area or fraction thereof with a minimum of two (2) skimmers provided, except for spas, holding tanks, or wading pools with a water surface area of 144 square feet or less, where a minimum of one (1) skimmer shall be required.]

[(b)] [Skimmers shall be located to minimize interference with each other.]

[(c)] [The rate of flow per skimmer shall not be less than thirty (30) gallons per minute, and all skimmers shall be capable of handling at least eighty (80) percent of required flow rate.]

[(d)] [Surface skimmer piping shall have a separate valve in the equipment room to permit adjustment of flow.]

[(e)] [Each skimmer shall be provided with an equalizer line at least one and one-half (1 1/2) inches in diameter, located at least one (1) foot below the lowest overflow level of the skimmer, and be provided with a self-closing valve and cover that conforms to 15 U.S.C. 8003.]

[(f)] [All overflow water shall pass through a basket that can be removed without the use of tools.]

[(g)] [All pools not equipped with a perimeter overflow system shall have a smoothly contoured handhold coping not over two and one-half (2 1/2) inches thick for the outer two (2) inches or an equivalent approved handhold. The handhold shall be no more than nine (9) inches above the normal water line.]

[(12)] [All facilities shall be equipped for the addition of make-up water from a potable water source pursuant to the following:]

[(a)] [Discharge through an air gap of at least six (6) inches to a surge tank or a vacuum filter tank. If make-up water is added directly to the facility, the fill spout shall be located under or immediately adjacent to a ladder rail, grab rail, or lifeguard platform. If added to a surge tank or vacuum filter tank, the six (6) inch air gap shall be measured above the top lip of the tank; and]

[(b)] [Through piping with vacuum breaker, antisiphon, or other protection as specified by the State Plumbing Code.]

[(13)] [Filtration:]

[(a)] [Filters shall comply with the following:]

[1.] [Pressure filters shall have:]

[a.] [Pressure gauges;]

[b.] [An observable free fall, or a sight glass installed on the backwash discharge line; and]

[c.] [A manual air-relief valve at the high point;]

[2.] [The filter backwash disposal facility shall have sufficient capacity to prevent flooding during the backwash cycle;]

[3.] [All filters shall be designed so that they can be completely drained. Filters shall be drained through a six (6) inch air gap to a pump or sanitary sewer; and]

[4.] [Filter media shall be listed as NSF approved.]

[(b)] [Each facility shall have separate filtration and treatment systems.]

[(c)] [Filter equipment and treatment systems shall operate continuously twenty-four (24) hours per day, except if the facility is closed for repairs or at the end of the swimming season.]

[(d)] [Rapid sand or gravity sand filters shall be designed for a filter rate not to exceed three (3) gallons per minute per square foot of bed area at time of maximum head loss with sufficient area to meet the design rate of flow required by the prescribed turnover.]

[(e)] [At least eighteen (18) inches of freeboard shall be provided between the upper surface of the filter media and the lowest portion of the pipes or drains that serve as overflows during backwashing.]

[(f)] [The filter system shall be designed with necessary valves and piping to permit filtering to the pool.]

[(g)] [High rate sand filters. The design filtration rate shall be a minimum of five (5) gallons per minute per square foot of filter area. The maximum design filtration rate shall be the lesser of fifteen (15) gallons per minute per square foot of filter area or seventy-five (75) percent of the NSF listed filtration rate. The backwash rate shall be fifteen (15) gallons per minute per square foot of filter area.]

[(h)] [Diatomaceous earth filters shall comply with the following requirements:]

[1.] [The design filtration rate shall not exceed one and one-half (1 1/2) gallons per minute per square foot of filter area on diatomaceous earth filters, except that the rate of filtration may be increased to two (2) gallons per minute per square foot of filter area

if continuous feeding of diatomaceous earth is employed;]

[2.] [A precoat pot shall be provided on the pump suction line for pressure diatomaceous earth systems. All diatomaceous earth filter systems shall have piping arranged to allow recycling of the filter effluent during precoating;]

[3.] [If equipment is provided for the continuous feeding of diatomaceous earth to the filter influent, the equipment shall have a capacity to feed at least one and one-half (1 1/2) ounces of this material per square foot of filter area per day;]

[4.] [Overflow piping on vacuum diatomaceous earth filters shall be provided on the filter tank to discharge overflow water;]

[5.] [All filters shall be equipped for cleaning by one (1) or more of the following methods:]

[a.] [Backwashing;]

[b.] [Air pump assist backwashing;]

[c.] [Spray wash;]

[d.] [Water pressure to wash vacuum filter; or]

[e.] [Agitation; and]

[6.] [Perlite may be used in filters listed by NSF for perlite, but it may not be substituted for diatomaceous earth without NSF listing.]

[(i)] [Vacuum sand filters shall comply with the following requirements:]

[1.] [The design filtration rate shall be seventy-five (75) percent of that listed by NSF or fifteen (15) gallons per minute, whichever is lesser. The backwash rate shall be at fifteen (15) gallons per minute per square foot of filter area; and]

[2.] [Overflow piping shall be provided in order to drain overflow water.]

[(j)] [Cartridge filters shall comply with the following requirements:]

[1.] [Cartridge filters shall not be used on facilities with a capacity larger than 80,000 gallons;]

[2.] [Cartridge filters shall only be used on indoor pools;]

[3.] [The design filtration rate shall not exceed fifteen hundredths (0.15) gallons per minute per square foot of filter surface area; and]

[4.] [A clean duplicate set of cartridges shall be maintained at the facility.]

[(14)] [Disinfectant and chemical feeders.]

[(a)] [The minimum chemical feed equipment required at any facility shall include a unit for feed of a disinfectant and a unit for feed of a chemical for pH control.]

[(b)] [Equipment capacity.]

[1.] [Equipment for supplying chlorine or compounds of chlorine shall be of sufficient capacity to feed the chlorine at a rate of:]

[a.] [Eight (8) ppm or two and seven tenths (2.7) pounds per day chlorine gas or its equivalent for each 10,000 gallons of pool volume for outdoor facilities; or]

[b.] [Three (3) ppm or one (1) pound per day for chlorine gas or its equivalent for each 10,000 gallons of pool volume for indoor facilities based on the turnover rates specified in subsection (2)(b) of this section.]

[2.] [The equipment for supplying chlorine shall not be controlled by a day-date clock.]

[3.] [The injection point for chlorine shall be placed on the discharge side of the pump and downstream of the flow meter unless the chlorine injection point is located within the surge tank.]

[4.] [Pot feeders for supplying bromochlorodimethylhydantoin sticks shall contain at least five tenths (0.50) a pound of bromochlorodimethylhydantoin per thousand gallons of facility capacity, or fraction thereof. The feeder shall have a method of feed rate adjustment.]

[5.] [Supplemental NSF listed ultraviolet (UV) light disinfection systems:]

[a.] [Shall be provided on all splash pads with a recirculating water system;]

[b.] [Shall be installed on a bypass line; and]

[c.] [Shall be equipped with a flow indicator; and]

[d.] [May be used on other facilities as supplemental disinfection.]

[6.] [Ozone may be used as a supplement to chlorination or bromination. Ozonation equipment will be considered by the cabinet on a case-by-case basis.]

[7.] [No more than one (1) gram per day of ozone per ten (10)

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gallons per minute of flow rate will be allowed. The ambient air ozone concentration shall be less than five hundredths (.05) ppm at all times either in the vicinity of the ozonator or at the pool water surface.]

~~[(c) [If positive displacement pumps, or hypochlorinators, are used to inject the disinfectant solution into the recirculation line, they shall be of variable flow type and shall be of sufficient capacity to feed the amount of disinfectant required by paragraph (b)1 of this subsection. If calcium hypochlorite is used, the concentration of calcium hypochlorite in the solution shall not exceed five (5) percent. The solution container shall have a minimum capacity equal to the volume of solution required per day at the feed rate required in paragraph (b)1 of this subsection.]~~

~~[(d) [Gas chlorinators shall only be used in a pre-existing facility and shall comply with applicable sections of 29 C.F.R. 1910.119.]~~

~~[(e) [pH control feeders. All facilities shall install a chemical feeder of positive displacement type for the purpose of applying chemicals to maintain pH of facility water within the range of seven and two-tenths (7.2) to seven and eight-tenths (7.8). A solution tank of adequate capacity shall be provided.]~~

~~[(15)]~~

~~[(a) [Testing equipment shall be provided at all swimming and bathing facilities, maintained with fresh reagents, and consist of a DPD (Diethyl-P-Phenylene-Diamine) colorimetric test kit used to determine free disinfectant residual, combined disinfectant residual, total alkalinity, and pH of the facility water. Test kits using orthotolidine reagents shall not be acceptable.]~~

~~[(b) [Test kits shall be used to determine the total residual chlorine either directly or by summation of free chlorine and combined chlorine test results. Chlorine standards shall range from one-tenth (0.1) to five (5.0) ppm.]~~

~~[(c) [pH standards shall range from six and eight-tenths (6.8) to eight and four-tenths (8.4).]~~

~~[(d) [Both tests shall be accurate to within two-tenths (0.2) units.]~~

~~[(e) [Facilities using cyanurates for stabilization shall have a test kit to measure the cyanuric acid concentration. The cyanuric acid test kit shall permit readings up to 100 ppm.]~~

Section 8.~~[Section 9.]~~ Operational Water Quality Standards.

(1) Disinfectant residuals for swimming and diving pools, holding tanks, wading pools, water slides, and wave pools:

(a) Chlorine residual shall be maintained between one (1) and five (5) ppm as free available chlorine.

(b) Bromine residual shall be maintained between two (2) and six (6) ppm as free available disinfectant.

(c) Pools stabilized with cyanuric acid shall meet the following criteria:

1. Be an outdoor facility;

2. Maintain one and five-tenths (1.5) to five (5) ppm free available chlorine residual; and

3. Cyanuric acid concentration not to exceed fifty (50) ppm.

(d) If the presence of chloramines is determined, superchlorination is required, and the chloramine level shall not exceed two-tenths (0.2) ppm.

(2) Disinfectant residuals for spas:

(a) Chlorine residual shall be maintained between two (2)~~one (1)]~~ and five (5) ppm as free available chlorine;

(b) Bromine residual shall be maintained between two (2) and six (6) ppm as free available disinfectant; and

(c) If the level of chloramines exceeds two-tenths (0.2) ppm, superchlorination is required. During the superchlorination process and until the time that free chlorine levels return to five (5) ppm or less, the facility shall be closed.

(3) The pH of the facility water shall be maintained in a range of seven and two-tenths (7.2) to seven and eight-tenths (7.8). For corrosive water supplies, the alkalinity level shall be suitably adjusted to allow maintenance of the pH level.

(4) Turbidity. Facility water shall have sufficient clarity at all times so that:

(a) A black disc, six (6) inches in diameter, is readily visible when placed on a white field at the deepest point of the pool; and

(b) The openings of the main outlet grate are clearly visible by

an observer on the deck.

(5) Total alkalinity. The alkalinity of the facility water shall not be less than fifty (50) nor more than 180 ppm, as determined by suitable test kits.

(6) Temperature.

(a) The water temperature for indoor swimming and bathing facilities other than spas shall not be less than seventy-six (76) degrees Fahrenheit nor more than eighty-four (84) degrees Fahrenheit. The cabinet may allow variances from the above temperature limits for special use purposes as competition, physical therapy, or instruction of children. Variances may be approved if proof is presented showing that a variance from the temperature requirements is necessary for the special uses stated and that the variance will not jeopardize public health.

(b) Air temperature at an indoor facility shall be higher than the water temperature, except for spas.

(c) Water temperatures for any facility including spas shall not exceed 104 degrees Fahrenheit.

(d) All facilities with heated water shall have at least one (1) break proof thermometer located within the facility water in a conspicuous location. The thermometer shall be securely mounted to prevent tampering by bathers.

(7) Testing Equipment.

(a) Testing equipment shall be provided at all swimming and bathing facilities, maintained with fresh reagents, and consist of a DPD (Diethyl-P-Phenylene-Diamine) colorimetric test kit used to determine free disinfectant residual, combined disinfectant residual, total alkalinity, and pH of the facility water. Test kits using orthotolidine reagents shall be prohibited.

(b) Test kits shall be used to determine the total residual chlorine either directly or by summation of free chlorine and combined chlorine test results. Chlorine standards shall range from one-tenth (0.1) to five (5.0) ppm.

(c) pH standards shall range from six and eight-tenths (6.8) to eight and four-tenths (8.4).

(d) Both tests shall be accurate to within two-tenths (0.2) units.

(e) Facilities using cyanurates for stabilization shall have a test kit to measure the cyanuric acid concentration. The cyanuric acid test kit shall permit readings up to 100 ppm.

(8) The facility operator shall perform tests for each of the above water quality characteristics before opening and during all hours of operation based on the frequency schedule listed below, and record all test results on a daily operational log sheet:

(a) Disinfectant residual, temperature, and pH shall be checked at least three (3) times daily with a greater frequency if bather load or climatic conditions warrant.

(b) Turbidity shall be checked daily, or more often as needed.

(c) The following shall be checked weekly, or more often as needed:

1. Alkalinity; and

2. Cyanuric acid, if used.

(9) [(8)] All spas shall be completely drained, thoroughly cleaned, and refilled with potable water at least once per week. Cleaners used shall be compatible with facility wall and bottom finishes.

Section 9.~~[Section 10.]~~ General Facility Operation and Maintenance.

(1) All facilities shall be maintained:

(a) Free from sediment and debris; and

(b) In good repair.

(2) Decks shall be kept clean. Indoor decks shall be disinfected at least weekly.

(3) Perimeter overflow and skimmers. The perimeter overflow system or automatic surface skimmers shall be clean and free of leaves or other debris. The strainer baskets for skimmers shall be cleaned daily. The flow through each skimmer shall be adjusted as often as necessary to maintain a vigorous skimming action. The facility water shall be maintained at an elevation so that effective surface skimming is accomplished. The flow returning from the facility shall be balanced or valved so that the majority of flow is returned through the perimeter overflow or skimmer system.

(4) Inlet fittings. Inlets shall be checked frequently to ensure~~[insure]~~ that the rate of flow through each inlet is correct so

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that a uniform distribution pattern is established.

(5) Bather preparation facilities.

(a) The floors of dressing rooms, shower stalls, and other interior rooms shall be cleaned and disinfected daily.

(b) Toilet rooms and fixtures shall be kept clean, free of dirt and debris, and in good repair.

(c) Floors shall be maintained in a nonslip condition.

(d) Soap dispensers shall be filled and operable.

(e) Adequate supplies of toilet tissue, disposable hand drying towels, or suitable hand drying devices shall be maintained.

(6) Street attire. Street shoes shall not be worn on the facility decks or wet areas of the bather preparation facilities, except for those persons engaged in official duties.

(7) Safety.

(a) All public swimming and bathing facility enclosures ~~shall~~ ~~facilities shall have adequate enclosures that~~ meet the specifications of Department of Housing, Buildings and Construction. Doors or gates in the facility enclosure shall be kept closed and locked if the facility is closed.

(b) Facility enclosures shall not be required for splash pads.

(8) Electrical systems. Repairs to any electrical system shall be made by an electrician. All repairs shall be in accordance with the National Electrical Code and shall be approved by a certified electrical inspector.

(9) Diving equipment, ladders, hand rails, and other similar equipment, shall be maintained in good repair, be securely anchored, and have a nonslip surface.

(10) Operation of mechanical equipment.

(a) Manufacturers' instructions for operation and maintenance of mechanical and electrical equipment, as well as pump performance curves, shall be kept available at the facility.

(b) Pumps, filters, disinfectant feeders, pH controls, flow indicators, gauges, and all related components of the facility water recirculation system shall be kept in continuous operation twenty-four (24) hours a day.

(c) Recirculation pumps. The pump shall not be throttled on the suction side during normal operation, except for the bottom drain valve, and shall be kept in good repair and condition. The flow control valve on the discharge side shall be adjusted as necessary to maintain the design flow rate.

(11) Filtration.

(a) Sand filters.

1. The filter air release valve shall be opened, as necessary, to remove air which collects in the filter and following each backwash.

2. The filter shall be backwashed if the design flow rate can no longer be achieved, or as specified by the filter manufacturer, whichever occurs first.

(b) Diatomaceous earth filters.

1. The dosage of diatomaceous earth precoat shall be at least one and one-half (1 1/2) ounces per square foot of element surface area. Pressure diatomaceous earth filters shall be backwashed if the design flow rate can no longer be achieved or as specified by the filter manufacturer, whichever occurs first. If the recirculation pump stops or is shut off, the filter shall be thoroughly backwashed and the elements shall be precoated before placing the pump back into operation. Vacuum diatomaceous earth filters shall be washed if the design flow rate can no longer be achieved or as specified by the filter manufacturer, whichever occurs first;

2. Following the precoating operation, the initial filter effluent shall be either recirculated through the filter until the filter effluent is clear, or the initial filter effluent shall be discharged to waste until properly clarified water is produced; and

3. If continuous diatomaceous earth feed is required (filter loading rate exceeds one and five-tenths (1.5) gallons per minute per square foot of filter surface area), it shall be applied at a rate of one-half (1/2) to one and one-half (1 1/2) ounces per square foot of surface area per day, or as needed to extend filter cycles.

(12) Hair and lint strainers. Hair and lint strainers shall be cleaned to prevent clogging of the suction line and cavitation. The pump shall be stopped before the strainer is opened. In all cases, the hair strainer basket shall be cleaned during the time the filter is being backwashed.

(13) Flow meters. Flow meters shall be maintained in an

accurate operating condition and readily accessible. The glass and the connecting tubes shall be kept clean.

(14) Vacuum and pressure gauges. The lines leading to the gauges shall be bled occasionally to prevent blockage.

(15) Positive displacement feeders.

(a) Positive displacement feeders shall be periodically inspected and serviced;

(b) To minimize sludge accumulation in the unit, the lowest practicable concentration of solution shall be used. If liquid chlorine solution is used, the dilution with water is not critical to the operation of the unit; and

(c) Sludge accumulations shall be cleaned periodically from the unit.

(16) Chlorinated cyanurates. The use of chlorinated cyanurates shall be prohibited.

(17) pH adjustment.

(a) Soda ash or caustic soda may be used to raise the facility water pH.

(b) Caustic soda shall only be used in accordance with the manufacturer's instructions. If caustic soda is intended for use, the cabinet shall be notified in writing. Protective equipment and clothing, including rubber gloves and goggles, shall be available for the handling and use of this chemical.

(c) Sodium bisulfate or muriatic acid may be used to lower pool water pH.

(d) Hydrochloric (muriatic) acid may only be used with proper supervision and care. Protective equipment and clothing, including rubber gloves and goggles, shall be available for handling this chemical.

(e) The cabinet shall be consulted if there are unusual pH problems including corrosion, scaling, or wide fluctuations in pH.

(18) Algae control.

(a) The development of algae shall be eliminated by superchlorinating. The facility shall not be open for use during this treatment. If superchlorination fails to eliminate the algae, the cabinet shall be consulted for further advice.

(b) Treated algae which cling to the bottom and sides of the facility shall be brushed loose and removed by the suction cleaner and filtration system.

(19) Miscellaneous chemicals.

(a) Chemicals other than approved disinfectants shall be used only with the advice and under the supervision of the cabinet.

(b) Chemicals shall be kept covered and stored in the original container, away from flammables and heat, and in a clean, dry, and well-ventilated place that prevents unauthorized access to the chemicals.

(c) The chemicals used in controlling the quality of water shall be used only in accordance with the manufacturer's instructions.

(d) If polyphosphates are used for sequestering iron, the concentration of polyphosphates shall not exceed ten (10) ppm.

(20) Equipment rooms shall comply with the following requirements:

(a) Equipment necessary for facility operation shall be housed in a lighted, ventilated room that affords protection from the weather ~~and~~ prevents unauthorized access.

~~(b) [has ceilings of at least seven (7) feet in height, and is of sufficient size for operation and inspection;]~~

~~[(b)] [The equipment room floor shall slope toward drains and shall have a nonslip finish;]~~

~~[(c)] [A hose bib with a vacuum breaker shall be installed in the equipment room;]~~

~~[(d)] Suitable space, if not provided in the equipment room, shall be provided for storage of chemicals, tools, equipment, supplies, and records where they can be acquired by the facility operator without leaving the premises. The storage space shall be dry and protected from unauthorized access; and~~

~~[(c)] [(e)] The equipment room and all other storage areas shall be maintained in a clean, uncluttered condition, and shall not be used for storage of materials not essential to operation and maintenance of the facility.~~

~~[(21)] [Maintenance of bathing beaches;]~~

~~[(a)] [Beach areas shall be maintained free of litter and water borne debris. Beverage containers of glass or metal containers with~~

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detachable pull tabs shall be prohibited.]

[(b)] [A layer of sand or gravel of sufficient depth to prevent the creation of mud holes or slicks and to reduce shallow water turbidity shall be maintained on all beach areas and shall extend beneath the water of all wading and swimming areas.]

[(c)] [Wading, swimming, and diving areas shall be examined by the facility operator on a routine basis and immediately after high water conditions for floating or sunken debris, obstructions at diving areas, and high water turbidity, which may present safety hazards to bathers.]

Section 10.[Section 44.] Facility Records.

(1) The operator of each facility shall keep a daily record of information regarding operation of the facility on the DFS-352, Swimming Pool Log Sheet. This data shall be kept on file by the operator and submitted to the cabinet as requested. Proper operating records shall be kept showing daily or weekly results, as applicable, for:

(a) Disinfectant residuals;

(b) pH readings, total alkalinity, cyanuric acid level, if applicable; and

(c) Equipment malfunctions.

(2) If two (2) or more facilities are operated on the same site, separate records shall be maintained for each facility.

Section 11.[Section 12.] Safety.[Personnel.]

(1) Operator. A facility operator shall be responsible for the operation and maintenance of all swimming and bathing facilities. The operator shall be available at all times when the facility is open for use.

(2) Lifeguards shall comply with the requirements set forth in 902 KAR 10:125 Section 2.

(3) Safety equipment shall comply with the requirements set forth in 902 KAR 10:125 Section 3.[Lifeguards.]

[(a)] [Lifeguards shall be on duty at a facility that has 2,000 square feet or greater of water surface area at a rate of one (1) per 2,000 square feet or fraction thereof.]

[(b)] [Lifeguards shall be provided at all facilities, regardless of water surface area, that allow bathers seventeen (17) years of age or under to enter the facility area without a responsible adult present at a rate of one (1) lifeguard per 2,000 square feet of water surface area or fraction thereof.]

[(c)] [All facilities that are not required to provide lifeguards shall post and enforce the following rules at all entrance points: "No Lifeguard on Duty" and "No person may enter the facility area alone or swim alone."]

[(d)] [Additional lifeguards shall be provided if necessary depending on bather load, bather activities, size, and configuration of the facility, and the amount of surface area for shallow and deep water areas, emergencies, and the lifeguard's ability to see bathers.]

[(e)] [A facility may submit an alternative lifeguard staffing plan that:]

[1.] [Has been certified by an independent third-party compliance specialist;]

[2.] [Designates the number of lifeguards necessary to ensure each lifeguard is capable of viewing the entire area of the assigned zone of patron surveillance; and]

[3.] [Ensures the lifeguard is able to reach the furthest extent of the assigned zone of patron surveillance within twenty (20) seconds.]

[(f)] [The alternative lifeguard staffing plan shall be:]

[1.] [On file with the Public Safety Branch within the Department for Public Health;]

[2.] [Submitted to the local health department of jurisdiction; and]

[3.] [Resubmitted if there is a change in:]

[a.] [The shape or size of the swimming pool;]

[b.] [The surrounding areas that would obstruct the lifeguard's view of the bottom of the pool; or]

[c.] [Ownership of the facility.]

[(g)] [Lifeguards shall be provided at all bathing beaches that allow bathers seventeen (17) years of age or younger without a responsible adult at a rate of one (1) per 100 linear feet of beach front or a fraction thereof. Bathing beaches that do not provide

lifeguards shall post the following warnings: "No lifeguard on duty. Swim at your own risk. No person seventeen (17) years of age or younger may swim without a responsible adult present."]

[(h)] [A bathing beach that has an inflatable water attraction shall have a minimum of one (1) lifeguard per attraction, with additional lifeguards provided to ensure all areas surrounding the attraction are clearly visible at all times.]

[(3)] [Lifeguards shall comply with the following:]

[(a)] [Lifeguards shall have a current lifesaving certificate. Current training as a lifesaver or water safety instructor by the American Red Cross or equivalent shall satisfy this requirement. The certificate of competency shall be prominently posted;]

[(b)] [Lifeguards shall be dressed in swimming attire; and]

[(c)] [Lifeguards assigned to the supervision of the facility shall not be subject to duties that would:]

[1.] [Distract their attention from proper observation of persons in the facility area; or]

[2.] [Prevent immediate assistance to persons in distress in the water.]

[Section 13.] [Safety Equipment.]

[(1)] [Facilities requiring lifeguards shall have a minimum of one (1) elevated lifeguard chair per on-duty lifeguard. A lifeguard chair shall be provided for each 2,000 square feet of water surface area or major fraction more than half thereof. They shall be located to provide a clear view of the facility bottom in the area under surveillance.]

[(2)] [Beaches requiring lifeguards shall provide an elevated lifeguard chair for each 100 linear feet of beach front, with an additional lifeguard chair for each additional 100 linear feet of beach front or fraction thereof. The chairs shall be located on the beach to provide a clear view of all areas under surveillance and to provide the quickest response time.]

[(3)] [One (1) unit consisting of the following lifesaving equipment shall be provided for 2,000 square feet of water surface area and an additional unit for each additional 2,000 square feet or fraction thereof:]

[(a)] [A U.S. Coast Guard approved ring buoy no more than fifteen (15) inches in diameter with a three-sixteenths (3/16) inch rope attached that measures one and one-half (1 1/2) times the maximum pool width;]

[(b)] [Rescue tubes may be used when lifeguards are present;]

[(c)] [A shepherd's hook securely attached to a one (1) piece pole not less than twelve (12) feet in length; and]

[(d)] [One (1) backboard with head immobilizer and at least three (3) straps, for back and neck injuries.]

[(4)] [Facilities limited to small spas, with less than 144 square feet of water surface area, shall not be required to provide the equipment listed in subsection (3) of this section, but shall meet the requirements of subsections (7), (10), and (11) of this section.]

[(5)] [In addition to subsection (3) of this section, a beach shall provide the following lifesaving equipment:]

[(a)] [Paddle board or surfboard;]

[(b)] [At least one (1) lifeboat and one (1) unit of lifesaving equipment; and]

[(c)] [A torpedo shaped buoy.]

[(6)] [All facilities shall be equipped with a minimum of one (1) standard twenty-four (24) unit first aid kit or its equivalent that is kept filled and ready for use. Additional units shall be provided for each additional 2,000 square feet of facility area or major fraction thereof.]

[(7)] [Lifesaving equipment shall be mounted in conspicuous places at lifeguard chairs or other readily accessible locations. Its function shall be plainly marked, and this equipment shall be kept in repair and ready condition. Bathers or other persons shall not be permitted to tamper with, use for any purpose other than its intended use, or remove this equipment from its established location. This equipment at beaches shall be centrally located in a conspicuous place that is readily accessible, with the lifeboat required by subsection (5)(b) of this section being located in the most central location.]

[(8)] [The hydrojet auxiliary air or water pump for a spa shall be controlled by an on-off switch with a fifteen (15) minute timer located and labeled at least five (5) feet away from the spa.]

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~~[(9)] [All facilities shall provide an emergency automatic pump shut off located adjacent to the telephone.]~~

~~[(10)]~~

~~[(a)] [All facilities shall have a non-pay landline telephone, continuously connected to a power source and operational at all times, capable of direct dialing 911 without going through a switchboard located on the deck that is readily accessible and conspicuously located. A cordless telephone shall be prohibited.]~~

~~[(b)] [A two (2) way radio communication system to a manned telephone system may be substituted at an isolated beach facility.]~~

~~[(c)] [The address of the facility and the telephone number of the police department, fire department, emergency medical service, or a hospital shall be posted in a conspicuous place near the telephone.]~~

~~[(11)] [All drownings and injuries requiring hospitalization shall be immediately reported to the local health department and the Department for Public Health.]~~

~~[(12)]~~

~~[(a)] [A facility submitting an alternative lifeguard staffing plan pursuant to Section 12(2)(e) of this administrative regulation may submit a request for a variance to the safety equipment requirements of this section to the Environmental Management Branch in the Department for Public Health.]~~

~~[(b)] [The variance requested shall not affect the safe and healthful operation of the facility.]~~

~~[(c)] [Before granting a variance, the cabinet shall require adequate proof from the applicant that the requested variance will comply with the basic intent of this section and that no safety or health hazard would be created if the variance is granted.]~~

Section 12.~~[Section 14.]~~ Spectator and Bather Administrative Regulations.

(1) Management of each facility shall adopt rules for controlling of food, drink, and smoking in the facility and surrounding areas.

(2) Rules governing the use of the facility and instructions to bathers shall be displayed on placards at the entrance to dressing rooms and enforced by the facility operator. Posting of rules and other instructions shall provide that:

(a) Admission to the facility shall be refused to a person:

1. Having any contagious disease or infectious conditions, such as colds, fever, ringworm, foot infections, skin lesions, carbuncles, boils, inflamed eyes, ear discharges, or any other condition that has the appearance of being infectious;

2. Having excessive sunburn, abrasions that have not healed, corn plasters, bunion pads, adhesive tape, rubber bandages, or other bandages of any kind; and

3. Under the influence of alcohol, illegal substances, or exhibiting erratic behavior;

(b) Food, drink, gum, tobacco, or vapor producing products shall not be allowed, other than in specially designated and controlled sections of the facility area;

(c) Personal conduct within the facility shall assure that the safety of self and others is not jeopardized;

(d) Running and boisterous or rough play shall not be permitted, except for supervised water sports;

(e) Spitting, spouting of water, blowing the nose, or otherwise introducing contaminants into the facility water shall not be permitted;

(f) Glass, soap, or other material that creates hazardous conditions or interferes with efficient operation of the facility shall not be permitted in the facility or on the deck;

(g) All apparel worn in the facility shall be clean;

(h) Diving in shallow water shall not be permitted;

(i) Caution shall be exercised in the use of diving boards; and

(j) Service animals may be allowed in the deck area but shall be excluded from the water.

(3) Due to the nature of splash pads, animals shall be excluded from the splash pad and deck area~~[bathing beaches, subsection (2)(c), and (f) of this section shall not apply].~~

(4) In addition to the requirements of subsection (2) of this section, a caution sign shall be mounted adjacent to all spas and contain the following warnings:

"CAUTION

Pregnant women, elderly persons, and persons suffering from any heart condition or disease, diabetes, or high or low blood pressure should not enter the spa without prior medical consultation and permission from their doctor.

Do not use the spa while under the influence of alcohol, tranquilizers, or other drugs that cause drowsiness, or that raise or lower blood pressure.

Do not use at water temperatures greater than 104 degrees Fahrenheit.

Do not use alone.

Unsupervised use by children is prohibited.

Enter and exit slowly.

Observe reasonable time limits (that is, ten (10) to fifteen (15) minutes), then leave the water and cool down before returning for another brief stay.

Long exposure may result in nausea, dizziness, fainting, or death.

Keep all breakable objects out of the area.

Shower before entering the spa."

(5) A sign shall be posted in the immediate vicinity of the spa stating the location of the nearest telephone and indicating that emergency telephone numbers are posted at that location.

Section 13.~~[Section 15.]~~ Swimming Suits and Towels Furnished by Management. All swimming suits and towels used by swimmers and maintained for public use shall be cleaned after each use. These items shall be handled in a sanitary manner.

Section 14.~~[Section 16.]~~ Facility Inspection.

(1) Seasonal facilities.

(a) All owners or operators of seasonal facilities, prior to opening to the public, shall certify to the cabinet, in writing, that the facility is in compliance with the requirements of this administrative regulation, except in instances where the cabinet has made an inspection prior to its opening. For seasonal facilities, the cabinet shall make at least two (2) full facility inspections during the operating season. The cabinet may require one (1) of the full facility inspections to be performed prior to a facility's opening.

(b) The facility owner or operator shall be responsible for notifying the cabinet of the proposed opening date.

(2) Continuous operation indoor facilities shall receive a full facility inspection by the cabinet at least once each six (6) months.

(3) Facilities~~[New facilities shall receive final construction approval inspections by the cabinet, and other affected state and local regulatory agencies, prior to placing the facility in operation. It shall be the owner or operator's responsibility to notify the cabinet and other involved agencies of construction completion and call for inspection.]~~

~~[(4)] [Facilities other than beaches]~~ shall be inspected at a minimum of once each thirty (30) day period by the cabinet on a monitoring basis. The monitoring inspection shall consist of:

(a) Disinfectant residual testing and combined disinfectant in ppm;

(b) pH testing;

(c) Total alkalinity testing;

(d) Cyanuric acid testing, if cyanuric acid stabilizers are used;

(e) Turbidity assessment;

(f) Temperature testing, if heated water facility;

(g) Review of operator's daily log;

(h) Visual scanning for algae or debris; and

(i) Other checks as necessary.

~~[(4)] [(5)] [Beaches shall be monitored once each month or anytime immediately after periods of heavy rainfall. Monitoring inspections for beaches shall include general sanitation, bacteriological water sampling, and safety checks as necessary.]~~

~~[(6)]~~ The cabinet may make as many additional inspections and reinspections as necessary for the enforcement of this administrative regulation.

~~[(7)] [(7)]~~ When an agent of the cabinet makes an inspection of a public swimming and bathing facility, the findings shall be recorded on the DFS-349, Public Swimming and Bathing Facilities Inspection Report~~[, or DFS-350, Public Swimming and Bathing Facilities Beach~~

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Inspection Report,] and a copy provided to the facility owner or operator. The inspection report shall:

- (a) Set forth any violation observed;
- (b) Establish a specific and reasonable period of time for the correction of the violation observed; and
- (c) State that failure to comply with any notice issued pursuant to the provisions of this administrative regulation may result in closure of the facility.

Section 15.[Section 17.] Water Sampling and Testing.

(1) A water sample may be collected from facilities if inspections or monitoring indicates water quality standards are not being maintained, or there is a suspected water borne disease outbreak. These samples shall be submitted to the Division of Laboratory Services in an approved container and by approved sampling procedures for analysis.

(2) Samples shall be collected and analyzed for any of the following or other contaminants:

- (a) Total coliform;
- (b) E. coli; and
- (c) Pseudomonad organisms.

(3) ~~[Multiple samples shall be collected at beaches to assure adequate representation of the entire facility water area.]~~

~~[(4)]~~ If a sample tests positive for a contaminant, the test shall be repeated within one (1) to seven (7) days.

~~[(4)]~~~~[(5)]~~ For a facility~~[other than a bathing beach]~~, no more than two (2) consecutive samples shall be positive for:

- (a) More than two (2) coliform organisms per 100 milliliter (mL);
- (b) Pseudomonas organisms; or
- (c) E. coli.

~~[(5)]~~~~[(6)]~~ ~~[Beaches shall comply with the requirements of Section 4 of this administrative regulation prior to opening for the season and during the operating season.]~~

~~[(7)]~~ Additional samples may be requested to ensure compliance with this administrative regulation.

Section 16.[Section 18.] Bacteriological Quality of Facility Water.

~~[(1)]~~ For facilities~~[other than beaches]~~, No more than two (2) consecutive samples shall:

~~[(1)]~~~~[(a)]~~ Contain more than 200 bacteria per mL;

~~[(2)]~~~~[(b)]~~ Have a positive confirmatory test for coliform organisms in any of the five (5) ten (10) mL portions of a sample or more than two (2) coliform organisms per 100 mL when the membrane filter test is used;

~~[(3)]~~~~[(c)]~~ Have a positive confirmatory test for pseudomonas organisms; or

~~[(4)]~~~~[(d)]~~ Have a positive test for fecal coliform organisms.

~~[(2)]~~ ~~[Beaches shall comply with the standards established in Section 4(3)(a) of this administrative regulation.]~~

Section 17.[Section 19.] Conditions requiring Closure of a Facility and Enforcement Provisions.

(1) The cabinet shall immediately order the closure of a facility and prohibit any person from using the facility by written notice to the facility owner or operator if:

- (a) There is an immediate danger to health or safety;
- (b) Violations of the Virginia Graham Baker Act;
- (c) The water does not conform to the bacteriological standards contained in this administrative regulation;

~~[(d)]~~ ~~[An environmental survey of the area shows evidence of sewage, other pollutants, or toxic materials being discharged to waters tributary to a beach;]~~

~~[(e)]~~ Turbidity levels of facility water do not meet the requirements of Section 8~~[(9)]~~(4) of this administrative regulation;

~~[(e)]~~~~[(f)]~~ The disinfectant residual is outside the range prescribed in this administrative regulation;

~~[(f)]~~~~[(g)]~~ The pH is outside the range prescribed by this administrative regulation;

~~[(g)]~~~~[(h)]~~ The cyanuric acid level exceeds fifty (50) ppm;

~~[(h)]~~~~[(i)]~~ There is no pool operator available;

~~[(i)]~~~~[(j)]~~ There has been a fecal accident in the pool;

~~[(j)]~~~~[(k)]~~ The owner, operator, an employee, or representative of the owner interferes with duly authorized agents of the cabinet who

bear proper identification, in the performance of their duties;

~~[(k)]~~~~[(4)]~~ If recirculation systems, filtration systems, or disinfectant systems are not in operation, with exceptions for maintenance and seasonal shut down; or

~~[(l)]~~~~[(m)]~~ If serious or repeated violations of any of the requirements of the administrative regulations are found.

(2) The notice shall state the reasons prompting the closing of the facility, and a copy of the notice shall be posted conspicuously at the facility by the owner or operator.

(3) Any owner or operator affected by an order may request an administrative conference in accordance with 902 KAR 1:400.

(4) If the conditions rendering closure are abated or further analyses prove to not render closure, the cabinet may authorize reopening the facility.

~~[(5)]~~ ~~[If a source of sewage, pollution, or toxic material discovered as a result of an environmental survey is eliminated, the cabinet may authorize the reopening of a beach.]~~

~~[(6)]~~ In all other instances of a violation of the provisions of this administrative regulation~~[, or]~~~~[(902 KAR 10:121 for the nonpayment of fees)]~~, the cabinet shall serve upon the owner or operator a written notice specifying the violation in question and afford a reasonable opportunity to correct the violation. An owner or operator who fails to comply with any written notice issued under the provisions of this administrative regulation ~~[or 902 KAR 10:121]~~ shall be notified in writing that the facility shall be closed at the end of ten (10) days following service of the notice, unless a written request for a conference pursuant to 902 KAR 1:400 is filed with the cabinet by the owner or operator within the ten (10) day period.

~~[(6)]~~~~[(7)]~~ All administrative hearings shall be conducted in accordance with KRS Chapter 13B.

~~[(7)]~~~~[(8)]~~ Any person whose facility has been closed may, at any time, make application for a reinspection for the purpose of reopening the facility. Within ten (10) days following receipt of a written request, including a statement signed by the applicant that in his or her opinion the conditions causing closure of the facility have been corrected, the cabinet shall make a reinspection. If the facility is found to be in compliance with the requirements of this administrative regulation, the facility shall be reopened.

~~[(8)]~~~~[(9)]~~

(a) For serious or repeated violations of any of the requirements of this administrative regulation, or for interference with the agents of the cabinet in the performance of their duties, the facility may be permanently closed after an opportunity for a conference has been provided in accordance with 902 KAR 1:400.

(b) Prior to the action, the cabinet shall notify the owner or operator, in writing, stating the reasons for which the facility is subject to closure and advising that the facility shall be permanently closed at the end of ten (10) days following service of the notice unless a request for a conference is filed with the cabinet by the owner or operator, within the ten (10) day period.

Section 18.[Section 20.] Existing Facilities and Equipment. ~~[(1)]~~ Existing facilities and equipment being used prior to the effective date of this administrative regulation~~[August 1, 1996]~~, that do not fully meet the design, construction, and materials requirements of this administrative regulation, may continue to be used if the facilities and equipment:

~~[(1)]~~~~[(a)]~~ Are in good repair;

~~[(2)]~~~~[(b)]~~ Are capable of being maintained in a sanitary condition;

~~[(3)]~~~~[(c)]~~ Meet facility water quality standards; and

~~[(4)]~~~~[(d)]~~ Create no health or safety hazard.

~~[(2)]~~ ~~[If existing equipment, components, piping, or fittings involved in the facility water treatment system are replaced to effect repairs, the replacement equipment, components, piping, or fittings shall meet the requirements of this administrative regulation. If replacement occurs, it shall be the owner's or operator's responsibility to notify the cabinet as to what was replaced and what was used for a replacement.]~~

Section 19.[Section 24.] Effect on Local Administrative Regulations. Compliance with this administrative regulation shall not relieve any person from compliance with any other state or local laws dealing with pool operation and maintenance matters or zoning

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requirements that may also be applicable.

~~[Section 22.] [Variances for Construction Requirements.]~~

~~[(1)] [All facilities shall be constructed or remodeled in compliance with the provisions of this administrative regulation, except that an applicant may request a variance if the cabinet determines that the variance would not affect seriously the safe and healthful operation of the facility.]~~

~~[(2)] [Before granting a variance, the cabinet shall require proof from the applicant documenting that the requested variance will comply with the basic intent of these administrative regulations and that no safety or health hazard would be created if the variance is granted.]~~

~~Section 20.~~[Section 23.] Incorporated by Reference.

(1) The following material is incorporated by reference:

(a) "DFS-349, Public Swimming and Bathing Facilities Inspection Report", 3/2024; and

(b) [5/2021;]

~~[(b)] ["DFS-350 Public Swimming and Bathing Facilities Beach Inspection Report", 5/2021; and]~~

~~[(c)] "DFS-352 Swimming Pool Log Sheet", 5/2021.~~

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Public Health Protection and Safety, Department for Public Health, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m. and online at <https://chfs.ky.gov/agencies/dph/dphps/emb/Pages/pools.aspx>.

STEVEN J. STACK, MD, MBA, Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: July 2, 2024

FILED WITH LRC: July 11, 2024 at 11:30 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on September 23, 2024, at 9:00 a.m. using the CHFS Office of Legislative and Regulatory Affairs Zoom meeting room. The Zoom invitation will be emailed to each requestor the week prior to the scheduled hearing. Individuals interested in attending this virtual hearing shall notify this agency in writing by September 16, 2024, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends virtually will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until September 30, 2024. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

CONTACT PERSON: Krista Quarles, Policy Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-7476; fax 502-564-7091; email CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Julie Brooks or Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the operational requirements for public swimming and bathing facilities.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to ensure all public swimming and bathing facilities operate in a safe and sanitary manner to reduce the incidence of recreational water related illnesses and outbreaks and reduce pool chemical-associated health events.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 194A.050(1) authorizes the secretary of the Cabinet for Health and Family Services to promulgate

administrative regulations necessary to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of Kentucky citizens and to operate programs and fulfill the responsibilities vested in the cabinet. KRS 211.180 authorizes the cabinet to adopt administrative regulations relating to public facilities, public and semipublic recreational areas, and their operation and maintenance in a safe and sanitary manner to protect public health and prevent health hazards.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will ensure public swimming and bathing facilities operate in a safe and sanitary manner, ensure the water quality standard of these facilities to control for contamination, ensure proper disinfection of water and facilities, and ensure all equipment utilized is fully operational.

(2) If 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 removes the engineering, personnel, and safety requirements as those requirements are incorporated into new administrative regulations and adds the fee structure for permitting and inspection from 902 KAR 10:121.

(b) The necessity of the amendment to this administrative regulation: 2024 Ky Acts ch. 116 creates a new section of KRS Chapter 211 to define class A and B pools and to establish exceptions for when a lifeguard is required to staff these classes of pools. The amendment to this administrative regulation is necessary to address the requirements of 2024 Ky Acts ch. 116.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 194A.050(1) authorizes the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of Kentucky citizens and to operate programs and fulfill the responsibilities vested in the cabinet. KRS 194A.050(2) authorizes the secretary to promulgate regulations to establish a fee schedule for permitting and annual inspection of efforts regarding compliance with program standards administered by the cabinet. KRS 211.180 authorizes the cabinet to adopt administrative regulations relating to public facilities, public and semipublic recreational areas, and their operation and maintenance in a safe and sanitary manner to protect public health and prevent health hazards.

(d) How the amendment will assist in the effective administration of the statutes: The amendment to this administrative regulation will ensure public swimming and bathing facilities operate in a safe and sanitary manner.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are currently 2,254 public swimming pools, bathing facilities, and spas regulated by the department. The department receives approximately 115 requests for plan review each year. There are sixty-one (61) local health departments that perform the routine inspection activities to ensure compliance with 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: Pool operators and owners will need to be aware of the updated requirements and ensure their facilities are in compliance.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Regulated facilities are already currently required to be in compliance with these operational standards. There will be no added costs to facilities to be in compliance.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Regulated facilities will be able to operate public swimming and bathing facilities in a manner that protects all bathers and reduces the probability of a waterborne

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disease outbreak at the facility.

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

(a) Initially: This is an ongoing program, there is no additional cost.

(b) On a continuing basis: This is an ongoing program, the costs associated with this administrative regulation will be absorbed by current program funding.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This program is funded by a mix of state general fund dollars and fees collected for plan review and inspection activities.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The fee structure added to this administrative regulation represents a ten (10) percent increase in the current permitting and inspection fees in 902 KAR 10:121.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: While the amendment to this administrative regulation includes permitting and inspection fees, these are not new fees. The current permitting and inspection fee structure is in 902 KAR 10:121 and that administrative regulation will be repealed per 902 KAR 10:122 to be filed at the same time as this regulation. This will allow the regulated community to have all operational information, including required fees, in one administrative regulation. This administrative regulation proposes to increase the current fees by ten (10) percent.

(9) TIERING: Is tiering applied? Tiering is not applied. All regulated entities are required to comply with the provisions of this administrative regulation.

FISCAL IMPACT STATEMENT

(1) Identify each state statute, federal statute, or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050, 211.180, and 2024 Ky Acts ch. 116.

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: The Department for Public Health, Division of Public Health Protection and Safety, is the promulgating agency. The amendment to this administrative regulation will impact Kentucky state parks that have a swimming pool available for guests.

(a) Estimate the following for the first year:

Expenditures: The costs associated with administering the permitting and inspection program is \$2,376,885. This is a shared cost between the state and local health departments.

Revenues: The total revenue generated by the amendment to this administrative regulation will be \$576,631.

Cost Savings: This administrative regulation does not generate cost savings.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? Expenditures may be impacted by changes in salary, fringe benefits and travel cost for state and local health department employees. These changes cannot be determined at this time. The revenues received will not change in subsequent years without an amendment to this administrative regulation.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): This administrative regulation impacts local health departments who inspect the regulated entities and local governments who operate a public swimming or bathing facility.

(a) Estimate the following for the first year:

Expenditures: The costs associated with administering the permitting and inspection program is \$2,376,885. This is a shared cost between the state and local health departments.

Revenues: The total revenue generated by the amendment to this administrative regulation will be \$576,631.

Cost Savings: This administrative regulation does not generate cost savings.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? Expenditures may be impacted by changes in

salary, fringe benefits and travel cost for state and local health department employees. These changes cannot be determined at this time. The revenues received will not change in subsequent years without an amendment to this administrative regulation.

(4) Identify additional regulated entities not listed in questions (2) or (3): Additional regulated entities include hotels, and recreational facilities, such as water parks, health facilities and athletic clubs, schools including colleges and universities, swim clubs and country clubs, youth camps, and any other entity that provides a public swimming and bathing facility.

(a) Estimate the following for the first year:

Expenditures: The expenditures for the regulated entities will be the costs associated with the annual permit fee as well as the required inspection fees.

Revenues: This administrative regulation does not generate revenue for the regulated entities listed in (4).

Cost Savings: This administrative regulation does not generate cost savings.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? The expenditures for the regulated entities listed in (4) will not change without an amendment to this administrative regulation.

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: The fees associated with this administrative regulation are not new fees. They are currently listed in 902 KAR 10:121 and that administrative regulation will be repealed per 902 KAR 10:122 to be filed at the same time as this regulation. The proposed fee structure for public swimming and bathing facilities is a ten (10) percent increase of the current fee. The estimated total revenue for this administrative regulation will be \$576,631. The total expenditure of \$2,376,885 to implement this administrative regulation is a shared cost between the state and local health departments.

(b) Methodology and resources used to determine the fiscal impact: The estimated total revenue was determined by multiplying the number of current permitted public swimming and bathing facilities in each category by the proposed fee increase. Each public swimming and bathing facility will be assessed an annual permit fee. That estimate was determined by multiplying the total number of permitted facilities by the proposed fee. The estimated inspection fee total and the permit fee total were added together to calculate the total revenue.

Public and Semi-public Swimming Pools	Proposed Inspection Fee Structure			
	Size of the pool	Number of pools	Proposed fee	Potential Revenue
	1,000 or less square feet of surface water	1,350	\$99	\$133,650
	1,001 to 1,500 square feet of surface water	419	\$165	\$69,135
	1,501 to 2,000 square feet of surface water	143	\$220	\$31,460
	2,001 or more square feet of surface water	342	\$220+\$55 for each additional 500 square fee	\$94,050 (at a minimum)
TOTAL		2,254		\$328,295
Annual Permit Fee				
TOTAL		2,254	\$110	\$247,940

(6) Explain:

(a) Whether this administrative regulation will have an overall negative or adverse major economic impact to the entities identified

in questions (2) - (4). (\$500,000 or more, in aggregate) While the total potential revenue for this administrative regulation is \$576,631, no one entity will have an overall negative or adverse major economic impact.

(b) The methodology and resources used to reach this conclusion: The methodology and resources used to reach this conclusion: The above chart of the proposed fee structure shows that potential revenue is the combined total for all regulated entities.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Maternal and Child Health
(Amendment)

902 KAR 30:200. Coverage and payment for services.

RELATES TO: KRS ~~[200.654,]~~200.672, 34 C.F.R. 303.120-122, 303.220-226, 303.500, 303.520, 303.521[, 20 U.S.C. 1438, 1440]

STATUTORY AUTHORITY: KRS 194A.050, 200.654, 200.660(3), (7), (8)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) authorizes the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to implement programs mandated by federal law, or to qualify for the receipt of federal funds. KRS 200.660 requires the Cabinet for Health and Family Services to administer funds appropriated to implement the provisions of KRS 200.650 to 200.676, to enter into contracts with early intervention service providers, and to promulgate administrative regulations necessary to implement KRS 200.650 to 200.676. This administrative regulation establishes the provisions relating to early intervention services for which payment shall be made on behalf of eligible recipients.

Section 1. Participation Requirements. An approved Kentucky Early Intervention System (KEIS) early intervention service provider or agency shall[that requests to participate as an approved First Steps provider shall comply with the following]:

(1) Submit to an ongoing review by the Department for Public Health, or its agent, for compliance with 902 KAR Chapter 30;

(2)

(a) Meet the qualifications for a professional or paraprofessional established in 902 KAR 30:150; or

(b) Employ or contract with a professional or paraprofessional who meets the qualifications established in 902 KAR 30:150;

(3) Ensure that a professional or paraprofessional employed by the provider who provides a service in the KEIS[First Steps] program shall complete training on KEIS[First Steps] philosophy, practices, and procedures provided by Department for Public Health[First Steps] representatives before[prior to] providing [First Steps] services;

(4) Agree to provide KEIS[First Steps] services as authorized by an Individualized Family Service Plan (IFSP) as required by 902 KAR 30:130;

(5) Agree to maintain and ~~[to]~~submit, as requested by the Department for Public Health, required information, records, and reports to ensure compliance with 902 KAR Chapter 30;

(6) Establish a contractual arrangement directly with the Cabinet for Health and Family Services for the provision of KEIS[First Steps] services; and

(7) Agree to provide upon request information necessary for reimbursement for services by the Cabinet for Health and Family Services in accordance with this administrative regulation[, which shall include the tax identification number and usual and customary charges].

Section 2. Reimbursement.

(1) The Department for Public Health shall reimburse a participating KEIS[First Steps] provider or agency;

(a) The lower of the actual billed charge for the service; or

(b) The fixed upper limit established in this section for the service being provided.

(2)[(1)] A charge submitted to the Department for Public Health shall be the provider's usual and customary charge for the same

service.

(3)[(2)] The fixed upper limit for services shall be as established in this subsection.

(a) Initial evaluation. The developmental component of the initial evaluation for an infant or toddler[a child] without an established risk condition shall be provided by face-to-face contact with the infant or toddler[child] and parent. Payment

[1.] [~~In the office or center-based site, the fee~~] shall be \$311 for a completed evaluation as a single unit of service[~~\$270 per service event.~~]

[2.] [~~In the home or community site, the fee shall be \$270 per service event.~~]

(b) Five (5) Area Assessment. The developmental component of the initial evaluation for an infant or toddler[the child] with an established risk condition shall be provided by face-to-face contact with the infant or toddler[child] and parent. Payment

[1.] [~~In the office or center-based site, the fee~~] shall be \$201 for a completed assessment as a single unit of service[~~\$175 per service event.~~]

[2.] [~~In the home or community-based site, the fee shall be \$175 per service event.~~]

(c) Annual or exit assessment. The annual or exit assessment shall be provided by face-to-face contact with the infant or toddler[child] and parent. Payment

[1.] [~~In the office or center-based site, the fee~~] shall be \$201 for a completed assessment as a single unit of service[~~\$175 per service event.~~]

[2.] [~~In the home or community-based site, the fee shall be \$175 per service event.~~]

(d) Discipline-specific[~~Discipline specific~~] assessment. The discipline-specific[~~discipline specific~~] assessment conducted by an early intervention[a direct] service provider shall be provided by face-to-face contact with the infant or toddler[child] and parent. Payment

[1.] [~~In the office or center-based site, the fee~~] shall be \$201 for a completed assessment as a single unit of service[~~\$175 per service event.~~]

[2.] [~~In the home or community-based site, the fee shall be \$175 per service event.~~]

(e) Record review. A record review shall be provided by a Department for Public Health approved team and paid at the contracted amount.

(f) Intensive clinic evaluation. The intensive level evaluation shall be provided by a Department for Public Health approved team and shall include face-to-face contact with the infant or toddler[child] and parent. A board-certified physician shall be included on the team. Payment

[1.] [~~In the office or center-based site, which involves a board certified physician, the fee~~] shall be \$1,100 for a completed evaluation as a single unit of service. An individual provider shall not be reimbursed for participation on the intensive evaluation team[~~per service event.~~]

[2.] [~~In the community site, which involves a board certified physician, the fee shall be \$1,100 per service event.~~]

(g) Early intervention or collateral services in accordance with Section 4[3](1), (2), (4) and (5) of this administrative regulation shall be[~~have~~] the fixed upper limits established in this paragraph.

1. The fee for collateral service or an early intervention service, including cotreatment, shall be:

a. Seventy-two (72) dollars per hour of service in an office, clinic, or center-based site;

b. \$102 per hour of service in a home or community-based site, including childcare settings; or

c. Eighty-nine (89) dollars per hour for a tele-intervention service, when the service is provided by:

(i) An audiologist;

(ii) A certified social worker;

(iii) Cued language transliterator;

(iv) A developmental interventionist;

(v) A dietitian;

(vi) A licensed clinical social worker;

(vii) A licensed marriage and family therapist;

(viii) A licensed psychologist, licensed psychological

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practitioner, licensed professional clinical counselor, or a certified psychologist with autonomous functioning;

- (ix) An occupational therapist;
- (x) An orientation and mobility specialist;
- (xi) A physical therapist;
- (xii) A registered nurse;
- (xiii) A sign language specialist;
- (xiv) A speech therapist;
- (xv) A teacher of the deaf and hard of hearing; or
- (xvi) A teacher of the visually impaired.

2.

a. Early intervention service providers listed in subparagraph 1. of paragraph (g) of this subsection shall be eligible for a one-time payment of \$500 once they obtain initial fidelity in the KEIS coaching program; and

b. An additional payment of \$102 shall be made to eligible early intervention service providers for the submission of a required video for fidelity authentication that successfully demonstrates fidelity.

3. The fee for collateral service or an early intervention service, including cotreatment, shall be:

a. Seventy (70) dollars per hour of service in an office, clinic, or center-based site;

b. Ninety-three (93) dollars per hour of service in a home or community-based site, including childcare settings; or

c. Eighty-one (81) dollars per hour for a tele-intervention service, when the service is provided by:

- (i) An assistive technology specialist;
- (ii) A cued language transliterator paraprofessional;
- (iii) A licensed psychological associate or a certified psychologist; or

(iv) A sign language and cued language paraprofessional.

4. The fee for collateral service or an early intervention service, including cotreatment, shall be:

a. Fifty-three (53) dollars per hour of service in an office, clinic, or center-based site;

b. Eighty-one (81) dollars per hour of service in a home or community-based site, including childcare settings; or

c. Seventy (70) dollars per hour of service for tele-intervention service, when the service is provided by:

- (i) An occupational therapy assistant; or
- (ii) A physical therapy assistant.

5. The fee for collateral service shall be eighty-seven (87) dollars per hour of service in an office, clinic, or center-based site, when the service is provided by:

a. A nurse practitioner;

b. An ophthalmologist;

c. An optometrist; or

d. A physician

[4.] [For an audiologist:]

[a.] [In the office or center based site, the fee for a collateral service or an early intervention service including cotreatment shall be sixty-three (63) dollars per hour of service; or]

[b.] [In the home or community site, the fee for a collateral service or an early intervention service including cotreatment shall be eighty-nine (89) dollars per hour of service.]

[2.] [For a marriage and family therapist:]

[a.] [In the office or center based site, the fee for a collateral service or an early intervention service including cotreatment shall be sixty-three (63) per hour of service; or]

[b.] [In the home or community site, the fee for a collateral service or an early intervention service including cotreatment shall be eighty-nine (89) per hour of service.]

[3.] [For a licensed psychologist, a licensed psychological practitioner, a licensed professional clinical counselor, or certified psychologist with autonomous functioning:]

[a.] [In the office or center based site, the fee for a collateral service or an early intervention service including cotreatment shall be sixty-three (63) dollars per hour of service; or]

[b.] [In the home or community site, the fee for a collateral service or an early intervention service including cotreatment shall be eighty-nine (89) dollars per hour of service.]

[4.] [For a licensed psychological associate or a certified psychologist:]

[a.] [In the office or center-based site, the fee for a collateral service or an early intervention service including cotreatment shall be sixty-one (61) dollars per hour of service; or]

[b.] [In the home or community site, the fee for a collateral service or an early intervention service including cotreatment shall be eighty-one (81) dollars per hour of service.]

[5.] [For a developmental interventionist:]

[a.] [In the office or center based site, the fee for a collateral service or an early intervention service including cotreatment shall be sixty-three (63) dollars per hour of service; or]

[b.] [In the home or community site, the fee for a collateral service or an early intervention service including cotreatment shall be eighty-nine (89) dollars per hour of service.]

[6.] [For a registered nurse:]

[a.] [In the office or center based site, the fee for a collateral service or an early intervention service including cotreatment shall be sixty-three (63) dollars per hour of service; or]

[b.] [In the home or community site, the fee for a collateral service or an early intervention service including cotreatment shall be eighty-nine (89) dollars per hour of service.]

[7.] [For a dietitian:]

[a.] [In the office or center based site, the fee for a collateral service or an early intervention service including cotreatment shall be sixty-three (63) dollars per hour of service; or]

[b.] [In the home or community site, the fee for a collateral service or an early intervention service including cotreatment shall be eighty-nine (89) dollars per hour of service.]

[8.] [For an occupational therapist:]

[a.] [In the office or center based site, the fee for a collateral service or an early intervention service including cotreatment shall be sixty-three (63) dollars per hour of service; or]

[b.] [In the home or community site, the fee for a collateral service or an early intervention service including cotreatment shall be eighty-nine (89) dollars per hour of service.]

[9.] [For an occupational therapy assistant:]

[a.] [In the office or center based site, the fee for a collateral service or an early intervention service including cotreatment shall be forty-six (46) dollars per hour of service; or]

[b.] [In the home or community site, the fee for a collateral service or an early intervention service including cotreatment shall be seventy (70) dollars per hour of service.]

[10.] [For an orientation and mobility specialist:]

[a.] [In the office or center based site, the fee for a collateral service or an early intervention service including cotreatment shall be sixty-three (63) dollars per hour of service; or]

[b.] [In the home or community site, the fee for a collateral service or an early intervention service including cotreatment shall be eighty-nine (89) dollars per hour of service.]

[11.] [For a physical therapist:]

[a.] [In the office or center based site, the fee for a collateral service or an early intervention service including cotreatment shall be sixty-three (63) dollars per hour of service; or]

[b.] [In the home or community site, the fee for a collateral service or an early intervention service including cotreatment shall be eighty-nine (89) dollars per hour of service.]

[12.] [For a physical therapist assistant:]

[a.] [In the office or center based site, the fee for a collateral service or an early intervention service including cotreatment shall be forty-six (46) dollars per hour of service; or]

[b.] [In the home or community site, the fee for a collateral service or an early intervention service including cotreatment shall be seventy (70) dollars per hour of service.]

[13.] [For a speech therapist:]

[a.] [In the office or center based site, the fee for a collateral service or an early intervention service including cotreatment shall be sixty-three (63) dollars per hour of service; or]

[b.] [In the home or community site, the fee for a collateral service or an early intervention service including cotreatment shall be eighty-nine (89) dollars per hour of service.]

[14.] [For a social worker:]

[a.] [In the office or center based site, the fee for a collateral service or an early intervention service including cotreatment shall be sixty-one (61) dollars per hour of service; or]

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[b.] [In the home or community site, the fee for a collateral service or an early intervention service including cotreatment shall be eighty-one (81) dollars per hour of service.]

[15.] [For a teacher of the deaf and hard of hearing:]

[a.] [In the office or center based site, the fee for a collateral service or an early intervention service including cotreatment shall be sixty-three (63) dollars per hour of service; or]

[b.] [In the home or community site, the fee for a collateral service or an early intervention service including cotreatment shall be eighty-nine (89) dollars per hour of service.]

[16.] [For a teacher of the visually impaired:]

[a.] [In the office or center based site, the fee for a collateral service or an early intervention service including cotreatment shall be sixty-three (63) dollars per hour of service; or]

[b.] [In the home or community site, the fee for a collateral service or an early intervention service including cotreatment shall be eighty-nine (89) dollars per hour of service.]

[17.] [For a physician or a nurse practitioner providing a collateral service in the office or center based site, the fee shall be seventy-six (76) dollars per hour of service. A physician or a nurse practitioner shall not receive reimbursement for early intervention.]

[18.] [For an assistive technology specialist:]

[a.] [In the office or center based site, the fee for a collateral service or an early intervention service including cotreatment shall be sixty-one (61) dollars per hour of service; or]

[b.] [In the home or community site, the fee for a collateral service or an early intervention service including cotreatment shall be eighty-one (81) dollars per hour of service.]

[19.] [For a sign language and cued language specialist:]

[a.] [In the office or center based site, the fee for a collateral service or an early intervention service including cotreatment shall be sixty-three (63) dollars per hour of service; or]

[b.] [In the home or community site, the fee for a collateral service or an early intervention service including cotreatment shall be eighty-nine (89) dollars per hour of service.]

[20.] [For an optometrist or ophthalmologist providing collateral service in an office or center based site, the fee shall be sixty-three (63) dollars per hour of service. An optometrist or ophthalmologist shall not receive reimbursement for early intervention.]

(h) Respite shall be nine (9)~~[seven (7)]~~ dollars ~~[and sixty (60) cents]~~ per hour.

~~(4)~~~~(3)~~

(a) For early intervention or collateral services, hours shall be determined using the beginning and ending time for a service.

1. The hours shall be computed as follows:

a. Fifteen (15) to twenty-nine (29) minutes shall equal 0.25 hours;

b. Thirty (30) to forty-four (44) minutes shall equal 0.50 hours;

c. Forty-five (45) to fifty-nine (59) minutes shall equal 0.75 hours; and

d. Sixty (60) to seventy-four (74) minutes shall equal one (1) hour.

2. Services shall be documented in the KEIS~~[First Steps]~~ data management system and shall include:

a. A service note describing the intervention provided during the session;

b. A list of participants present during the early intervention session;

c. The caregiver's report of ~~[the child's]~~ progress since the last session, including any modifications to the suggested intervention or barriers to implementing the intervention;

d. The parent's and child's response to intervention that describes the skill level of the parent and child and if the skill has increased, decreased, or stayed the same and the method used to measure progress; and

e. The plan for the next visit, based on the family's and child's response to intervention and the IFSP outcome.

(b) Service documentation shall be entered within ten (10) calendar days of the service delivery date. Documentation entered after ten (10) calendar days from the date of service shall be immediately disapproved for payment.

(c) Once the provider has entered a corrected service log, a payment adjustment shall be made. Payment shall be prorated on

the following scale:

1. Correction entered within one (1) to five (5) calendar days, claim paid at a ten (10)~~[three (3)]~~ dollar reduction;

2. Correction entered within six (6) to ten (10) calendar days, claim paid at a fifteen (15)~~[an eight (8)]~~ dollar reduction;

3. Correction entered within eleven (11) to fifteen (15) calendar days, claim paid at a twenty-five (25) dollar reduction;

4. Correction entered within sixteen (16) to thirty (30) calendar days, claim paid at one half the maximum KEIS payment; and

5. Correction entered after thirty (30) calendar days or beyond shall be disapproved and not adjusted for payment.

(d) For service coordination services, hours shall be determined using the beginning and ending time for a service documented in staff notes in accordance with 902 KAR 30:110, Section 2(10).

1. The hours shall be computed as follows:

a. One (1) to twenty-two (22) minutes shall equal 0.25 hours;

b. Twenty-three (23) to thirty-seven (37) minutes shall equal 0.50 hours;

c. Thirty-eight (38) to fifty-two (52) minutes shall equal 0.75 hours; and

d. Fifty-three (53) to sixty-seven (67) minutes shall equal one (1) hour.

2. Service coordination minutes spent over the course of a day for an individual infant, toddler~~[on a child]~~ or family shall be accumulated at the end of the day in order to determine the total number of hours spent.

~~(5)~~~~(4)~~ [A payment for a discipline specific assessment, five (5) area assessment, annual or exit assessment, initial or intensive evaluation listed in subsection (2) of this section shall be based on a complete evaluation as a single unit of service. An individual provider shall not be reimbursed for participation on the intensive evaluation team.]

~~(5)~~ Payment for assistive technology devices shall be made in accordance with 902 KAR 30:130, Section 4~~[3]~~.

(a) The total rental cost of an assistive technology device shall not exceed the purchase price of that device. The length of rental shall be based on the purchase price of the device and shall not exceed ten (10) months in length.

(b) The total purchase cost of an assistive technology device shall include the actual cost of the item being purchased, all related shipping charges, and an administrative fee not to exceed ten (10) percent.

~~(6)~~ Transportation costs may be reimbursed when the service is necessary to enable an eligible infant or toddler to receive early intervention services. Reimbursement and related cost of travel~~[Payment for transportation]~~ shall be the lesser of the billed charge or:

(a) For a commercial transportation carrier, an amount derived by multiplying one (1) dollar by the actual number of loaded miles using the most direct route;

(b) For a private automobile carrier, an amount equal to twenty-five (25) cents per loaded mile transported; or

(c) For a noncommercial group carrier, an amount equal to fifty (50) cents per eligible infant or toddler~~[child]~~ per mile transported.

(7) [A] Payment for a group intervention service shall be thirty-two (32) dollars per infant or toddler~~[child]~~ per hour of direct contact service for each infant or toddler~~[child]~~ in the group with a limit of three (3) eligible children per professional or paraprofessional who can practice without direct supervision.

Section 3. Tele-intervention Services.

(1) Tele-intervention services shall be:

(a) Documented and authorized on the IFSP; and

(b) Provided with the same processes and standards as face-to-face services.

(2) The written informed consent for tele-intervention services signed by the parent may include electronic signatures and transmission.

(3) Tele-intervention shall be based on:

(a) A shortage of a provider discipline needed to address the needs of the infant or toddler; or

(b) The unique needs of the infant or toddler and their family.

Section 4. Limitations.

(1) Service Assessments.

(a) Payment for a discipline specific assessment shall be limited to three (3) assessments per discipline per infant or toddler[child], unless additional hours are necessary based on the reasons listed in paragraph (b) and documented in accordance with 902 KAR 30:130, Section 1(7) ~~[from birth to the age of three (3)]~~ unless preauthorized by the Department for Public Health in accordance with Section 5[4] of this administrative regulation.

(b)

1. A service assessment payment shall not be made for the provision of routine early intervention services by a discipline in the general practice of that discipline.

2. Payment for a service assessment shall be restricted to the need for additional testing due to new concerns or significant change in the infant's or toddler's[child's] status that impacts the early intervention services authorized on the IFSP.

3. Routine activity of assessing progress and outcomes shall be billed as early intervention.

(2) ~~[For early intervention,]~~ Unless prior authorized by the Department for Public Health in accordance with Section 5[4] of this administrative regulation, limitations for payment of early intervention services shall be as established in this subsection.

(a) For office, center, or home and community-based sites:

1. Payment shall be limited to no more than one (1) hour per day per infant or toddler[child] per discipline by a:

a. Professional meeting the qualifications established in 902 KAR 30:150; or

b. Paraprofessional meeting the qualifications established in 902 KAR 30:150.

2. Payment shall be limited to no more than twenty-four (24) hours for a single discipline and thirty-six (36) hours for more than one (1) discipline during a six (6) month period and for group shall be limited to an additional forty-eight (48) hours during a six (6) month period.

(b) Group intervention shall include the provision of early intervention services by KEIS qualified personnel, with two (2) or more eligible infants or toddlers, at an early intervention professional's office, center, or other community-based setting where infants and toddlers typically spend their time:

1. The group may also include infants and toddlers without disabilities as long as a three (3) to one (1) ratio of children to staff is maintained; and

2. Infants and toddlers[For group:]

[1-] ~~[Children]~~ shall not be eligible for both group and individual early intervention services by the same discipline concurrently on the ~~IFSP[Individualized Family Services Plan.]~~

[2-] ~~[Group service shall be provided by enrolled First Steps providers in accordance with 902 KAR 30:150, Section 1(11). The ratio of staff to children in group early intervention shall be limited to a maximum of three (3) children per professional and paraprofessional per group.]~~

(c) Payment for siblings seen at the same time shall be calculated by dividing the total time spent by the number of siblings to get the amount of time to bill per infant or toddler[child].

(d) Payment for a service shall be limited to a service that is authorized by the IFSP team in accordance with 902 KAR 30:130, Section 3(3).

(e)

1. Except as provided in subparagraph 2. of this paragraph, payment shall be limited to a service provided as a face-to-face contact or tele-intervention with the infant or toddler[child] and either the ~~[child's]~~parent or caregiver.

2. Early intervention family services authorized by KRS 200.654(7) may be provided without the infant or toddler[child] present if the reason the infant's or toddler's[child's] presence is clinically contraindicated is documented in the session note.

(3) Respite shall be a service provided to the family of an eligible infant or toddler for the purpose of providing relief from the care of the infant or toddler in order to strengthen the family's ability to attend to the child's developmental needs.[For respite,] Payment shall:

(a) Be limited to no more than eight (8) hours of respite per

month, per eligible infant or toddler[child];

(b) Not be allowed to accumulate beyond each month; and

(c) Be limited to families in crisis, or strong potential for crisis without the provision of respite.

(4) ~~[For collateral services,]~~ Payment for collateral services shall be a billable service for the enrolled KEIS[First Steps] providers[.] who are providing early intervention services for the eligible infant or toddler[child] through an IFSP and paid by KEIS[the First Steps system].

(a) Payment for attending the[The length of an] IFSP meeting shall be limited to no more than one (1) hour.

(b) Payment for attendance at one (1) Admissions and Release Committee (ARC) meeting held prior to a toddler's[child's] third birthday shall be limited to the service coordinator and primary coach[service] provider selected by the IFSP team.

(c) Participation at an initial IFSP meeting by an initial evaluator shall be limited to an evaluator who conducted the initial evaluation in accordance with 902 KAR 30:120, Section 2(5)(a). Payment shall be at the collateral services rate for the discipline that the evaluator represents.

(5)

(a) Cotreatment shall occur if more than one (1) provider is present and providing early intervention services at the same time. Each provider's service log shall document:

1. Why the cotreatment approach was used; and

2. A description of the intervention strategies and coaching suggestions.

(b) ~~[For cotreatment,]~~ Payment shall be limited to three (3) disciplines providing services concurrently.

(6) Unless prior authorized by the Department for Public Health due to a shortage of direct service providers, an initial evaluator shall not be eligible to provide early intervention to an infant or toddler[a child] whom the evaluator evaluated and that[which] resulted in the infant or toddler[child] becoming eligible.

Section 5.[Section 4-] Prior Authorization Process.

(1) Authorization for payment for early intervention services beyond the limits established in Section 4[3] of this administrative regulation shall be submitted to the cabinet or its designee, as determined by the Department for Public Health, [and] approved prior to the service being delivered, and shall include [the following]:

(a) A service exception request completed in the KEIS[First Steps] data management system; and

(b) ~~[The Record Review.]~~Supporting documentation.

(2) The record review team shall issue a written recommendation for the IFSP team to consider within ten (10) calendar days of receipt of the request.

(3) If the IFSP team is not in agreement with the recommendation of the record review team:

(a) A request for further review shall be submitted to the Department for Public Health; and

(b) A three (3) person team from the Department for Public Health, Division of Maternal and Child Health, including the division director, shall render a recommendation.

(4) If the IFSP team is not in agreement with the three (3) person team recommendation established in subsection (3)(b) of this section:

(a) The infant's or toddler's[child's] IFSP team shall be asked to reconvene for an IFSP meeting with a representative from the record review team and a representative from the three (3) member team; and

(b) If the IFSP team concludes at that IFSP meeting that the services are still needed, payment for the service shall be authorized for the duration of the current IFSP.

Section 6.[Section 5-] System of Payment and Fees.

(1) All families enrolling in KEIS[the First Steps system] shall be assessed for the family's ability to pay a participation fee for early intervention services in accordance with KRS 200.654 (7)(f) to (m). Families with private or public insurance shall not be charged disproportionately more than families without insurance.

(2) A charge to the family shall not be made for ~~[the following functions]:~~

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- (a) Child find activities;
- (b) Evaluation and assessment of the infant, toddler, [child] and family;
- (c) Service coordination;
- (d) Administrative ~~[and coordinative]~~ activities supporting the [including] development, review, and evaluation of individualized family service plans; and
- (e) The implementation of procedural safeguards.

(3) Families shall be notified of the KEIS system of payments~~[receive a copy of the First Steps System of Payment notice]~~ during the intake meeting, at the initial IFSP meeting, and at each subsequent IFSP meeting.

(4) Payment of fees shall be for the purpose of [:]

~~[(a)]~~ maximizing available sources of funding for early intervention services; ~~and~~

~~[(b)] [Giving families an opportunity to assist with the cost of services if there is a means to do so, in a family share approach].~~

(5) The family share payment shall:

(a) Be based on a sliding fee scale;

(b) Be explained to the family by the point of entry [POE] staff; and

(c) Begin with the provision of an early intervention service, and continue for the duration of participation in early intervention services.

(6) The ability to pay shall:

(a) Be based on the level of the family gross income identified on the last Federal Internal Revenue Service statement or check stubs from the four (4) most recent consecutive pay periods, as reported by the family; and

(b) The level of income matched with the level of poverty, utilizing the federal poverty guidelines as published annually by the Federal Department of Health and Human Services, based on the following scale:

1. Below 249 percent of poverty, there shall be no payment;

2. From 250 percent of poverty to 299 percent, the payment shall be five (5) dollars per month of participation;

3. From 300 percent of poverty to 349 percent, the payment shall be ten (10) dollars per month of participation;

4. From 350 percent of poverty to 399 percent, the payment shall be twenty-five (25) dollars per month of participation;

5. From 400 percent of poverty to 449 percent, the payment shall be seventy-five (75) dollars per month of participation;

6. From 450 percent of poverty to 499 percent, the payment shall be \$150 per month of participation;

7. From 500 percent of poverty to 549 percent, the payment shall be \$200 per month of participation;

8. From 550 percent of poverty to 599 percent, the payment shall be \$300 per month of participation; and

9. ~~At [From]~~ 600 percent of poverty and above, the payment shall be \$400 per month of participation.

(7) The family share participation fee shall not:

(a) Exceed the cost of the actual monthly Part C service;

(b) Apply to a family whose infant or toddler [child] is covered by public insurance benefits (Medicaid); or

(c) Prevent or delay an infant or toddler [a child] from receiving services.

(8) The family may request a reduction or waiver of the family share fee if the family shows to the satisfaction of the Department for Public Health an inability to pay, in accordance with the following:

(a) The service coordinator shall submit the request to the Department for Public Health, KEIS [First Steps] Family Share Administrator, on behalf of the family, ~~[a Family Share Extraordinary Expenses Worksheet (FS-24)]~~ to have the amount of the family share payment reduced or eliminated for a period not to exceed three (3) calendar months. A request shall not be submitted for a retroactive period unless extenuating circumstances, such as an unexpected hospitalization, occurs; and

(b) The family shall undergo a financial review by the Department for Public Health that may:

1. Adjust the gross household income by subtracting extraordinary expenses; and

2.

a. Result in a calculation of a new family share payment amount

based on the family's adjusted income compared to the percentage of the poverty level established in subsection (6)(b) of this section. If a recalculation is completed, the Department for Public Health shall conduct a review at least quarterly; or

b. Suspend or reduce the family share payment, based on a verified financial crisis that would be exacerbated by their obligated family share payment. The Department for Public Health shall conduct a review at least quarterly.

(9) In accordance with 902 KAR 30:180, the family may contest the imposition of a fee or the determination of their ability to pay by filing:

(a) A request for mediation;

(b) A request for a due process hearing;

(c) A written state~~[An administrative]~~ complaint; or

(d) An appeal to the Part C Coordinator for final resolution.

(10) Income shall be verified during the intake process and at six (6) month intervals, and more often if changes in household income will result in a change in the amount of the obligated family share payment.

(11) A family that refuses to have its income verified shall be assessed a family share payment of \$400 per month of participation.

(12) If multiple children in a family receive early intervention services, the family share payment shall be the same as if there were one (1) child receiving services.

~~[(13)]~~

~~[(a)] [If a family has the ability to pay the family share but refuses to do so for three (3) consecutive months, the family shall receive service coordination, IFSP development, procedural safeguards, and assessment services only until discharged from the program or the family share balance is paid in full, whichever occurs first.]~~

~~[(b)] [The service coordinator shall provide the family a financial notice of action at thirty (30) calendar days prior to the suspension of ongoing IFSP services.]~~

Section 7. [Section 6.] Use of Insurance.

(1) Public Insurance.

(a) The state lead agency shall be the enrolled Medicaid provider for early intervention services. A contracted provider or agency shall not bill Medicaid directly for early intervention services provided in accordance with the IFSP.

(b) Written notification in accordance with 34 C.F.R. 303.520 ~~(a)(3)(i)-(iv)~~ shall be provided to the infant's or toddler's [child's] parent or guardian before the use of public benefits or insurance to pay for early intervention services.

(c) A parent or guardian shall not be required to sign up for or enroll in public benefits or insurance programs as a condition of receiving early intervention services.

(2) Private Insurance.

(a) Parent or guardian written consent shall be obtained:

1. For the use of private insurance to pay for the initial provision of an early intervention service on the IFSP; and

2. Each time written consent for services is required due to an increase in the frequency, length, duration, or intensity in the provision of service in the child's IFSP.

(b) A family who chooses to use private insurance for payment of KEIS [a First Steps] service shall not be responsible for payment of insurance deductibles or copayments related to this service.

(c) The fee paid to the early intervention provider by KEIS shall be the full reimbursement from KEIS and the provider shall not charge the family any co-pay or deductible associated with the services.

(d) Families shall be responsible for payment of their insurance premiums.

(e) Federal Part C funds may be used to pay the cost of insurance premiums when obtaining insurance for the infant or toddler [child] is the most cost-effective [cost-effective] method for KEIS to pay for early intervention services. [:]

(f) A family who has the ability to pay and gives consent for the use of private insurance may waive the family share fee. If the consent to bill private insurance is revoked by the family, the family shall be assessed the corresponding family share fee. [:]

(g) A family who has the ability to pay and does not give consent for the use of private insurance shall be assessed a family share fee

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as described in Section 6[5](6)(b) of this administrative regulation.

(h) If a family is assessed as having an inability to pay and does not give consent for the use of private insurance, this lack of consent shall not prevent or delay an infant or toddler[a child] from receiving services.

(i) If a family receives payment from insurance, these funds shall be surrendered to the early intervention provider for services rendered. Failure to surrender the payment shall result in the amount of the insurance payment being added to the family share balance due.

(j) A provider shall bill a third-party insurance for an early intervention service prior to billing KEIS[First Steps]. Documentation regarding the billing, the third-party insurance representative's response, and payment, if any, shall be maintained in the early intervention[child's] record and submitted through the KEIS[First Steps] data management system.

Section 8.[~~Section 7.~~] Use of funds.

(1) Consistent with 34 C.F.R. 303.120 through 303.122 and 303.220 through 303.226, the state lead agency may use the federal Part C funds for activities or expenses that are reasonable and necessary for implementing the KEIS[Kentucky Early Intervention System] program for infants and toddlers with disabilities including:

(a)[(4)] For direct early intervention services for infants and toddlers with disabilities and their families that are not otherwise funded through other public or private sources;

(b)[(2)] To expand and improve services for infants and toddlers with disabilities and their families; and

(c)[(3)] To strengthen the statewide system by initiating, expanding, or improving collaborative efforts related to at-risk infants and toddlers, including establishing linkages with appropriate public and private community-based organizations, service, and personnel for the purposes of:

1.[(a)] Identifying and evaluating at-risk infants and toddlers;

2.[(b)] Making referrals for the infants and toddlers identified and evaluated under subparagraph 1.[~~paragraph (a)~~] of this subsection; and

3.[(c)] Conducting periodic follow-up on each referral, to determine if the status of the infant or toddler involved has changed with respect to eligibility [of the infant or toddler] for services.

(2) In accordance with 34 C.F.R. 303.500, Part C funds shall be the payor of last resort.

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

~~[(1)] [The following material is incorporated by reference:]~~

~~[(a)] ["Record Review Supporting Documentation", July 2012;]~~

~~[(b)] ["System of Payment Notice", April 2014; and]~~

~~[(c)] ["Family Share—Extraordinary Expenses—Worksheet", December 2013;]~~

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

STEVEN J. STACK, MD, MBA, Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: July 9, 2024

FILED WITH LRC: July 11, 2024 at 11:30 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on September 23, 2024, at 9:00 a.m. using the CHFS Office of Legislative and Regulatory Affairs Zoom meeting room. The Zoom invitation will be emailed to each requestor the week prior to the scheduled hearing. Individuals interested in attending this virtual hearing shall notify this agency in writing by September 16, 2024, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends virtually will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation

until September 30, 2024. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

CONTACT PERSON: Krista Quarles, Policy Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-7476; fax 502-564-7091; email CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Julie Brooks or Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for coverage and payment for early intervention services, including the early intervention provider reimbursement rate, the family share costs, and the requirements for the use of federal funds.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to ensure coverage and payment for early intervention services.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 194A.050 authorizes the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to implement programs required by federal law and to receive federal funds. KRS 200.660(2) requires the cabinet to identify and coordinate all available financial resources for early intervention services. Available financial resources include federal and state funds, and private sources. KRS 200.660(3) authorizes the cabinet to establish a sliding fee scale for families, and to include the circumstances when no fee is required.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation ensures all early intervention providers are aware of the payment requirements and service limitations, and ensures families are aware of family share participation fee.

(2) If 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 provides a fifteen (15) percent increase in the reimbursement rate for providers, excluding the reimbursement for an intensive level evaluation and group intervention service, adds the requirements for tele-intervention service delivery, establishes that part C funds are the payor of last resort, and makes other technical changes to comply with KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: The early intervention reimbursement rate has not been amended since 2003. The amendment in 2003 lowered the early intervention provider reimbursement to the current rate. The increase in reimbursement will provide the early intervention service providers with a much-needed increase in reimbursement and may potentially attract new providers. The addition of requirements for tele-intervention services is necessary to provide a more modern method of providing early intervention services in hard to service areas where there may be a lack of available providers. The assurance that federal part C funds will be considered the payor of last resort is necessary to comply with federal statute.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 200.660(2) requires the cabinet to identify and coordinate all available financial resources for early intervention services. Available financial resources include federal and state funds, and private sources. 34 C.F.R. 303.500 requires the state to have written policies for the use of federal part C funds, to establish a system of payments for early intervention services including a schedule of sliding fees, and to ensure part C funds are utilized as the payor of last resort.

(d) How the amendment will assist in the effective administration of the statutes: The amendment to this administrative regulation will ensure early intervention providers receive timely reimbursement for services provided to eligible infants and toddlers and their families,

including when providing services through tele-intervention methods, and will ensure state written policies are consistent with federal requirements.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are currently 694 enrolled early intervention service providers.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Early intervention providers will need to be aware of the requirements for reimbursement for services, including the limitations for providing services through tele-intervention methods.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Early intervention providers will incur no additional business costs to comply with this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Early intervention providers receive a fifteen (15) percent increase in their reimbursement rate.

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

(a) Initially: The amendment to this administrative regulation will initially cost the administrative body approximately \$256,202 per month.

(b) On a continuing basis: The ongoing cost to the administrative body to implement the amendment to this administrative regulation will be approximately \$256,202 per month. This amount could increase if the increased reimbursement rate attracts new early intervention providers which would require additional provider enrollment team staff.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The implementation and enforcement of this administrative regulation is funded through a mix of federal dollars, state general fund dollars, Medicaid reimbursement, and family share cost participation fees.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does contain the family share cost participation fee structure. The amendment to this administrative regulation does not propose to change this fee structure.

(9) TIERING: Is tiering applied? Tiering is not applied. While there are separate reimbursement rates based on the professional's level of qualifications as well as the location of the service, the requirements of this administrative regulation are equally applied to all enrolled early intervention providers.

FISCAL IMPACT STATEMENT

(1) Identify each state statute, federal statute, or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050, 200.654, and 200.660(3), (7), (8).

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: The Kentucky Early Intervention System in the Division of Maternal and Child Health, Department for Public Health is the promulgating agency.

(a) Estimate the following for the first year:

Expenditures: The amendment to this administrative regulation may result in an increase of \$3,074,424 in the initial year.

Revenues: The Kentucky Early Intervention System receives between \$50,000 to \$60,000 annually in revenue from family share cost participation fees.

Cost Savings: This administrative regulation does not generate cost savings.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? The changes to expenditures or revenues in subsequent years will be dependent on the number of early intervention services provided and the total number of children and families enrolled each year. There will be no change in cost savings.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): This administrative regulation does not impact any affected local entities.

(a) Estimate the following for the first year:

Expenditures: No applicable.

Revenues: Not applicable.

Cost Savings: Not applicable.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? Not applicable.

(4) Identify additional regulated entities not listed in questions (2) or (3): Additional regulated entities include the current 694 contracted early intervention providers.

(a) Estimate the following for the first year:

Expenditures: This administrative regulation will not impact the expenditures for contracted early intervention providers.

Revenues: The amendment to this administrative regulation will result in a fifteen (15) percent increase in revenue for contracted early intervention providers.

Cost Savings: This administrative regulation will not result in cost savings for the contracted early intervention providers.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? There will be no change in expenditures, revenues, or cost savings in subsequent years.

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: This administrative regulation will increase the expenditures of the department by an estimated \$3,074,424 per year.

(b) Methodology and resources used to determine the fiscal impact: The current estimated provider payment is \$1,708,012 per month. The fifteen (15) percent increase in the reimbursement rate will increase the monthly payment by an estimated \$256,202 per month. $\$256,202 \times 12 = \$3,074,424$.

(6) Explain:

(a) Whether this administrative regulation will have an overall negative or adverse major economic impact to the entities identified in questions (2) - (4). (\$500,000 or more, in aggregate) This administrative regulation will have a major economic impact to the Kentucky Early Intervention System program.

(b) The methodology and resources used to reach this conclusion: While the increase in provider reimbursement by fifteen (15) percent of their current rate will not exceed \$500,000 per month it will exceed that amount per year. $\$256,202 \times 12 = \$3,074,424$.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 34 C.F.R. 303.1(b), 303.2(b), 303.22, and 303.102.

(2) State compliance standards. KRS 194A.050(1) authorizes the secretary of the Cabinet for Health and Family Services to promulgate, administer, and enforce those administrative regulations necessary to implement programs mandated by federal law, or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. KRS 200.660 requires the Cabinet for Health and Family Services to administer funds appropriated to implement the provisions of KRS 200.650 to 200.676, to enter into contracts with early intervention service providers, and to promulgate administrative regulations necessary to implement KRS 200.650 to 200.676.

(3) Minimum or uniform standards contained in the federal mandate. 34 C.F.R. 303.1(b) establishes that the purpose of part C of the Act is to facilitate the coordination of payment for early intervention services (EIS) from Federal, State, local, and private sources (including public and private insurance coverage). 34 C.F.R. 303.2(b) establishes that the provisions of part C of the Act apply to the State lead agency and any EIS provider that is part of

the statewide system of early intervention, regardless of whether the EIS provider receives funds under part C of the Act. 34 C.F.R. 303.22 defines a lead agency as the agency designated by the State's Governor to receive funds and administer the State's responsibilities under part C of the Act. 34 C.F.R. 303.102 requires each state that receives funds under part C of the Act to ensure state regulations conform to the purposes and requirements of part C.

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No, this administrative regulation does not impose stricter requirements, or additional, or different responsibilities or requirements, than those required by the federal mandate.

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Protection and Permanency
(Amendment)

922 KAR 1:350. Requirements for public child welfare agency foster parents, adoptive parents, and respite care providers.

RELATES TO: KRS 2.015, 61.870-61.884, 194A.005(1), 194A.060, ~~189.125~~, 199.011, ~~199.430(3)~~, ~~199.802~~, 258.015, 258.035, 311.720(12), 311.840(3), 314.011(5), (7), ~~[(9),]~~ 527.100, 527.110, 600.020, 605.090, 610.110, 620.030, 620.050, 620.140(1)(d), 620.360, 620.363, ~~[Chapter 625,]~~ 16 C.F.R. 1219-1220, 1632-1633, 42 C.F.R. 435.407, 45 C.F.R. Parts 160, 164, 8 U.S.C. 1151, 1181, 42 U.S.C. 671, 672

STATUTORY AUTHORITY: KRS 194A.050(1), 199.472(1), 605.100(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate programs and fulfill the responsibilities vested in the cabinet and to implement programs mandated by federal law or to qualify for the receipt of federal funds. KRS 605.100(1) requires the cabinet to arrange programs designed to provide for classification, segregation, and specialized treatment of children according to their respective problems, needs, and characteristics. KRS 199.472(1) requires the cabinet to promulgate administrative regulations to establish the process of determining an applicant's capacity for foster or adoptive parenthood. This administrative regulation

Section 1. Definitions.

(1) "Adoptive home" means a home in which a parent is approved by the cabinet to provide services as specified in Section 2(11)~~[(42)]~~ of this administrative regulation.

(2) "Applicant" means an individual or family subject to approval by the cabinet as a foster or adoptive home.

(3) "Cabinet" is defined by KRS 194A.005(1) and 600.020(7).

(4) "Care Plus" means a foster care program for a child who is determined to have specialized care needs as specified in Section ~~7~~~~[(5)]~~ of this administrative regulation.

(5) "Child" means:

(a) A child as defined by KRS 199.011(4) and 600.020(9);

(b) A person age eighteen (18) or older whose commitment to the cabinet has been extended or reinstated by a court in accordance with KRS 610.110(6) or 620.140(1)(d); or

(c) A person under age twenty-one (21) who meets the exceptions to the age of majority in accordance with KRS 2.015.

(6) ~~["Child-specific foster home" means an individual or family subject to approval by the cabinet as a foster family home for a relative or fictive kin placement.]~~

~~[(7)]~~ "Child with medical complexity" means a child who has a medical condition in accordance with Section ~~6~~~~[(4)]~~(1)(b) of this administrative regulation.

~~[(7)]~~~~[(9)]~~ "Commissioner" means commissioner of the Department for Community Based Services.

~~[(8)]~~~~[(9)]~~ "Department" means the Department for Community Based Services.

~~[(9)]~~ "Fictive kin" is defined by KRS 199.011(9) and 600.020(28).

(10) "Foster home" means:

(a) A "foster family home" as defined by KRS 199.011(10) and 600.020(30), if referring to a physical structure; or

(b) If referring to an individual, any individual approved as a foster parent by the cabinet to provide services as specified in Section 2(11)~~[(42)]~~ of this administrative regulation.

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

(a) Physician as defined by KRS 311.720(12);

(b) Physician assistant as defined by KRS 311.840(3);

(c) Advanced practice registered nurse as defined by KRS 314.011(7); or

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

(12) "Home study" means an assessment done on a prospective foster or adoptive home by a social services worker.

(13) "Independent living services" means services provided to an eligible child to assist the child in the natural progression from adolescence to adulthood.

(14) "Nonfamilial" means:

(a) Not related; and

(b) Not fictive kin.

(15) "Placement" means the physical change in the location and living arrangement of a child in the custody of the cabinet removed from the child's home of origin.

(16) "Relative" means an individual related to a child by blood, marriage, or adoption.

~~[(17)]~~~~[(45)]~~ "Respite care" means temporary care provided by a provider, as specified in Section ~~19~~~~[(17)]~~ of this administrative regulation, to meet the needs of the child or provide relief to the foster or adoptive parents with the expectation of a child's return to the current foster or adoptive home.

Section 2. General Requirements for a Nonfamilial Foster or Adoptive Parent.

(1) This section establishes the requirements for a foster or adoptive parent applicant who is nonfamilial to a child in state custody.

~~[(2)]~~~~[(a)]~~ ~~[Unless an exception is approved pursuant to paragraph (b) of this subsection by designated cabinet staff, a] foster or adoptive parent applicant shall be at least twenty-one (21) years of age.~~

~~[(3)]~~~~[(b)]~~ ~~[A foster or adoptive parent applicant between eighteen (18) and twenty-one (21) years of age may be approved as a foster or adoptive parent if:]~~

~~[1.] [The foster or adoptive parent applicant is related to the child under the custodial control of the cabinet;]~~

~~[2.] [The foster or adoptive parent applicant can meet the needs of the child; and]~~

~~[3.] [Cabinet staff determines the placement is in the best interest of the child.]~~

~~[(2)]~~ A foster or adoptive parent applicant shall provide proof of the applicant's United States citizenship or legal immigrant status, as described in 8 U.S.C. 1151, 8 U.S.C. 1181, and 42 C.F.R. 435.407.

~~[(3)]~~ ~~[A department employee who provides protection and permanency services may apply to adopt a child in the care and custody of the cabinet if the commissioner approves the employee to adopt and the adoption is in the best interest of the child.]~~

~~(4)~~

~~(a)~~ ~~[A department employee who provides protection and permanency services shall be approved as a respite care provider or foster parent for a child in the care and custody of the cabinet if prior approval by the commissioner or designee is granted in writing through the service region administrator in the region of employment.]~~

~~[(b)]~~ ~~[If approval is granted, the department shall:]~~

~~[1.] [Ensure the employee completes pre-service training outside the region of employment;]~~

~~[2.] [Assign a social services worker outside of the applicant~~

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employee's region of employment to complete the home study;]

~~[3.] [Maintain the case outside of the applicant employee's region of employment; and]~~

~~[4.] [Ensure that the employee shall not accept the placement of a child from within the region of employment unless:]~~

~~[a.] [The employee is related to the child; or]~~

~~[b.] [The employee is determined to be fictive kin as the result of a relationship developed outside of employment prior to the child being placed in the custody of the cabinet.]~~

~~(5) A married couple may apply to become foster or adoptive parents; or:]~~

~~(b)(6) A single, unmarried person may apply to become a foster or adoptive parent.~~

~~(5)(7) The decision to foster or adopt a child shall be agreed to by each adult member of the applicant's household.~~

(6) A foster or adoptive applicant shall participate in the home study process and complete required questionnaires, screening, and individual interviews and may be required to provide additional documentation in order to mitigate needs or concerns identified in the home study process.

~~(7)(8)~~

(a) Each foster or adoptive applicant and adult member of the applicant's family shall submit a DPP-107, Health Information Required for Foster or Adoptive Parents, Applicants, or Adult Household Members, completed:

1. By a health professional who is not a member of the applicant's household, based upon health information within the past year, documenting:

a. The individual has no illness or condition that would present a health or safety risk to a child placed in the applicant's home, which may include a communicable disease; and

b. That there are no known health factors that would interfere with the applicant's ability to become a foster or adoptive parent;

2. As part of:

a. The initial application;

b. The reevaluation; or

c. A foster or adoptive home review pursuant to Section 15[43] of this administrative regulation; and

3. By all household members in which the household member discloses mental health and substance abuse issues, including any history of drug or alcohol abuse or treatment.

(b) The department shall require further documentation or evaluation to determine the suitability of the home if there is an indicator of current or past mental health or substance abuse issues in a household member.

~~(8)(9) Each foster or adoptive parent applicant shall submit a DPP-108, Health Information Required for Foster or Adoptive Parents or Applicants Regarding Dependent Children, for each child member of the applicant family.~~

~~(9)(10) A foster or adoptive parent applicant shall have a source of income:~~

(a) Sufficient to meet the applicant's household expenses; and

(b) Separate from:

1. Foster care reimbursement; or

2. Adoption assistance.

~~(10)(11) Unless specified in a contract between the cabinet and a child welfare agency that provides foster care services, a foster or adoptive parent shall accept a child for foster care only from the cabinet.~~

~~(11)(12) An approved foster or adoptive parent shall be willing to:~~

(a) Provide foster care services for a child placed in out-of-home care by the cabinet;

(b) Adopt a child:

1. Whose parent's parental rights have been terminated; and

2. Who is under the custodial control of the cabinet;

(c) Provide respite care for a child under the custodial control of the cabinet; or

(d) Provide any combination of the services described in paragraphs (a) through (c) of this subsection.

~~(12)(13) A foster or adoptive applicant shall provide to the cabinet:~~

(a)

1. The names of three (3) personal references including:

a. One (1) relative reference; and

b. Two (2) non-relative references.

2. The references required by subparagraph 1. of this paragraph shall:

a. Be interviewed by cabinet staff in person or by telephone; or

b. Provide letters of reference for the applicant; and

(b) Two (2) credit references or a credit report.

~~(13)(14) Unless a documented exception exists and is approved by designated cabinet staff due to inaccessibility, each adult child of the foster or adoptive parent applicant who does not live in the home shall be interviewed by cabinet staff in person or by telephone regarding the applicant's parenting history.~~

~~(14)(15) If applicable, verification shall be obtained from the foster or adoptive parent applicant regarding:~~

(a) Previous divorce;

(b) Death of a spouse; and

(c) Present marriage.

~~(15)(16) A foster or adoptive parent applicant who does not have custody of his or her own child shall provide:~~

(a) A copy of the visitation order, if applicable;

(b) A copy of the child support order, if applicable; and

(c) Proof of current payment of child support, if applicable.

~~(16)(17) A foster or adoptive parent applicant and any member of the applicant's household shall submit to the background checks required by 922 KAR 1:490.~~

~~(18) [The cabinet shall perform background checks in accordance with criteria established in 922 KAR 1:490.]~~

Section 3. General Requirements for a Relative or Fictive Kin Foster or Adoptive Parent.

(1) This section establishes the requirements for a foster or adoptive parent applicant who is a relative or fictive kin to a child in state custody.

(2)

(a) Unless an exception is approved pursuant to paragraph (b) of this subsection, a foster or adoptive parent applicant shall be at least twenty-one (21) years of age.

(b) A foster or adoptive parent applicant between eighteen (18) and twenty-one (21) years of age may be approved as a foster or adoptive parent if cabinet staff determine the placement is in the best interest of the child.

(3) A foster or adoptive parent applicant shall provide proof of the applicant's United States citizenship or legal immigrant status, as described in 8 U.S.C. 1151, 8 U.S.C. 1181, and 42 C.F.R. 435.407.

(4)

(a) A married couple may apply to become foster or adoptive parents; or

(b) A single, unmarried person may apply to become a foster or adoptive parent.

(5) The decision to foster or adopt a child shall be agreed to by each adult member of the applicant's household.

(6) Unless specified in a contract between the cabinet and a child welfare agency that provides foster care services, a foster or adoptive parent shall accept a child for foster care only from the cabinet.

(7) A foster or adoptive applicant shall participate in the home study process and complete required questionnaires, screening, and individual interviews and may be required to provide additional documentation to mitigate needs or concerns identified in the home study process.

(8) An approved foster or adoptive parent shall be willing to:

(a) Provide foster care services for a child placed in out-of-home care by the cabinet;

(b) Adopt a child:

1. Whose parent's parental rights have been terminated; and

2. Who is under the custodial control of the cabinet;

(c) Provide respite care for a child under the custodial control of the cabinet;

(d) Enter into a subsidized permanent custody agreement; or

(e) Provide any combination of the services described in paragraphs (a) through (d) of this subsection.

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(9) A foster or adoptive parent applicant who does not have custody of his or her own child shall provide:

- (a) A copy of the visitation order, if applicable;
- (b) A copy of the child support order, if applicable; and
- (c) Proof of current payment of child support, if applicable.

(10) A foster or adoptive parent applicant and any member of the applicant's household shall submit to the background checks required by 922 KAR 1:490.

Section 4. Department Staff Applying to be a Foster or Adoptive Parent.

(1) A department employee who provides protection and permanency services may apply to adopt a child in the care and custody of the cabinet pursuant to Section 2 or 3 of this administrative regulation if the commissioner or designee approves the employee to adopt and the adoption is in the best interest of the child.

(2)

(a) A department employee who provides protection and permanency services may apply to be a respite care provider or foster parent for a child in the care and custody of the cabinet pursuant to Section 2 or 3 of this administrative regulation and shall be approved if applicable requirements are met and prior approval by the commissioner or designee is granted in writing through the service region administrator in the region of employment.

(b) If approval is granted, the department shall:

- 1. Ensure the employee completes pre-service training outside the region of employment, as applicable pursuant to 922 KAR 1:495;
- 2. Assign a social services worker outside of the applicant employee's region of employment to complete the home study;
- 3. Maintain the case outside of the applicant employee's region of employment; and
- 4. Ensure that the employee shall not accept the placement of a child from within the region of employment unless:

a. The employee is related to the child; or

b. The employee is determined to be fictive kin as the result of a relationship developed outside of employment prior to the child being placed in the custody of the cabinet.

Section 5. Home Environment.

(1) The foster or adoptive parent shall request written approval from designated cabinet staff to provide services as a:

- (a) Certified provider of supports for community living in accordance with 907 KAR 12:010;
- (b) Certified family child care home in accordance with 922 KAR 2:100; or
- (c) Provider of child-care center services in accordance with 922 KAR 2:090.

(2) If the foster or adoptive home adjoins a place of business open to the public, potential negative impact on the family and the child shall be examined including the:

- (a) Hours of operation;
- (b) Type of business; and
- (c) Clientele.

(3) The foster or adoptive parent shall have access to:

- (a) Reliable transportation that meets the child's needs, including restraint requirements pursuant to KRS 189.125;
- (b) School;
- (c) Recreation;
- (d) Medical care; and
- (e) Community facilities.

(4) A foster or adoptive parent who drives shall:

- (a) Possess a valid driver's license;
- (b) Possess proof of liability insurance; and
- (c) Abide by passenger restraint laws.

(5)

(a) More than four (4) children, including the foster or adoptive parent's own children, shall not share a bedroom, with thorough consideration given to each child's age, gender, and background.

(b) Children of different genders over the age of five (5) shall not share a bedroom except as approved by designated department staff if:

- 1. Necessary to facilitate the placement of a sibling group or

children who are related and share a sibling-like relationship, such as cousins; and

- 2. There are no high-risk behaviors.

(6) Each child shall have:

- (a) A separate bed that is age and size appropriate for the child;

or

(b) If the child is under age one (1), a crib that meets Consumer Products Safety Commission standards pursuant to 16 C.F.R. 1219-1220.

(7) A child's mattress shall:

(a) Meet current Consumer Products Safety Commission Standards in 16 C.F.R. Parts 1632 and 1633;

(b) Be in good repair; and

(c) Have a clean fitted sheet that shall be changed:

- 1. Weekly; or
- 2. Immediately if it is soiled or wet.

(8) Except as approved by designated cabinet staff, a foster or adoptive parent shall not share a bedroom with a child under the custodial control of the cabinet unless necessary due to the needs of the child.

(9) A bedroom used by a child under the custodial control of the cabinet shall be comparable to other bedrooms in the house.

(10) The physical condition of the foster or adoptive home shall:

- (a) Not present a hazard to the safety and health of a child;
- (b) Be well heated and ventilated;
- (c) Comply with state and local health requirements regarding water and sanitation;

(d) Provide access to indoor and outdoor recreation space appropriate to the developmental needs of a child placed in the foster or adoptive home;

(e) Provide functioning kitchen facilities; and

(f) Provide a functioning bathroom, including a:

- 1. Toilet;
- 2. Sink; and
- 3. Bathtub or shower.

(11) The following shall be inaccessible to a child:

(a) Medication, unless an exception is granted pursuant to subsection (12) of this section;

(b) Alcoholic beverage;

(c) Poisonous or cleaning material;

(d) Ammunition; and

(e) Firearms in accordance with KRS 527.100 and 527.110.

(12) An exception may be provided by designated cabinet staff to subsection (11)(a) of this section if:

(a)

1. The child is approved by a health care professional to self-administer medicine under the supervision of the foster or adoptive parent; or

2. Emergency access to the medication may be necessary to save the child's life, such as in the case of severe allergic reaction or asthma attack; and

(b) Measures are taken to prevent unauthorized access by another child in the same home.

(13) Any household animal shall be vaccinated in accordance with KRS 258.015 and 258.035.

(14) A dangerous animal shall not be allowed near the child.

(15) First aid supplies shall be available and stored in a place easily accessible to an adult.

(16) A working telephone shall be accessible.

(17) The home shall be equipped with a working smoke alarm within ten (10) feet of each bedroom and on each floor of the home.

(18) A home with gas heating or appliances shall be equipped with a working carbon monoxide detector.

(19) Safety precautions related to an accessible swimming pool or body of water shall be documented, if applicable.

Section 6. [Section 4.] Medically Complex Foster or Adoptive Home.

(1) An applicant shall be approved by cabinet staff as a medically complex home if the foster or adoptive parent:

(a) Meets the requirements in Sections 2 ~~or~~ and 3 and 5 of this administrative regulation, except for Section 2(9) ~~(10)~~, which may be considered as an exclusion on a case-by-case basis by

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designated cabinet staff based on the best interests or needs of the child;

(b) Cares for a child in the custody of the cabinet who is determined to be medically complex by designated cabinet staff due to:

1. Significant medically oriented care needs related to a serious illness or condition diagnosed by a health professional that may become unstable or change abruptly, resulting in a life-threatening event;

2. A chronic condition that is expected to be life-long and progressive and to require extensive services;

3. An acute, time-limited condition requiring additional oversight; or

4. A severe disability that requires the routine use of medical devices or assistive technology to compensate for the loss of a vital body function needed to participate in activities of daily living and significant and sustained care to avert death or further disability;

(c) Is a primary caretaker who is not employed outside the home, except as approved by designated cabinet staff and based on the needs of the child;

(d) Completes training in accordance with 922 KAR 1:495, Section 4;

(e) Receives training with documentation of completion from a health professional or a previous caregiver that was trained by a health professional in how to care for the specific child with medical complexity who shall be placed in the foster or adoptive parent's care;

(f) Maintains current certification in:

1. Infant, child, and adult CPR; and

2. First aid; and

(g) Has a home within:

1. One (1) hour of a medical hospital with an emergency room; and

2. Thirty (30) minutes of a local medical facility.

(2) Except for a sibling group or unless approved by designated cabinet staff in accordance with Section 18[46] of this administrative regulation, more than four (4) children, including the foster or adoptive parent's own children, shall not reside in a medically complex foster or adoptive home.

(3) Unless an exception is approved pursuant to Section 18[46](2) of this administrative regulation and a medically complex foster or adoptive home has daily support staff to meet the needs of a child with medical complexity:

(a) A one (1) parent medically complex foster or adoptive home shall:

1. Not care for more than one (1) child with medical complexity; and

2. Demonstrate access to available support services; and

(b) A two (2) parent medically complex foster or adoptive home shall:

1. Not care for more than two (2) children with medical complexity; and

2. Demonstrate access to available support services.

(4) Unless an exception pursuant to Section 18[46](2) of this administrative regulation is approved, a child with medical complexity shall be placed in an approved medically complex foster or adoptive home.

(5) Unless the home is closed pursuant to Section 16[44] of this administrative regulation, an approved medically complex foster or adoptive parent shall receive reapproval by the cabinet as a medically complex home if the parent:

(a) Annually completes training specified in 922 KAR 1:495, Section 4; and

(b) Continues to meet the requirements of this section.

(6) An approved medically complex foster or adoptive parent shall cooperate in carrying out the child's health plan.

Section 7.[Section 5-] Care Plus Home.

(1) An applicant shall be approved by cabinet staff as a care plus parent if the foster or adoptive parent:

(a) Meets the requirements of Sections 2 ~~or~~ and 3 ~~and~~ 5 of this

administrative regulation, except for Section 2(9),~~(10)~~ which may be considered as an exclusion on a case-by-case basis by designated cabinet staff based on the best interests or needs of the child;

(b) Agrees to care for a child in the custody of the cabinet approved by cabinet staff as a care plus child. The child shall be approved as a care plus child if at least one (1) of the following criteria has been met: The child~~because the child~~:

1. Has a diagnosed emotional or behavioral problem;

2. Is due to be released from a treatment facility;

3. ~~Is aggressive~~Displays aggressive, destructive, or displays disruptive behavior;

4. Is at risk of being placed in a more restrictive setting;

5. Is at risk of institutionalization; or

6. Has experienced numerous placement failures;

(c) Is a primary caretaker who is not employed outside the home, unless the cabinet determines that the child's needs continue to be met;

(d) Completes training in accordance with 922 KAR 1:495, Section 6; and

(e) Agrees to maintain a weekly record of the care plus child's activities and behaviors~~;~~and

~~[(f) Agrees to attend case planning conferences].~~

(2) Unless an exception is approved pursuant to Section 18[46](2) of this administrative regulation and the care plus home parent can demonstrate access to available support services:

(a) No more than four (4) children, including the foster or adoptive parent's own children, shall reside in a care plus home;

(b) A one (1) parent care plus home shall not care for more than one (1) care plus child as described in subsection (1)(b) of this section; and

(c) A two (2) parent care plus home shall not care for more than two (2) care plus children as described in subsection (1)(b) of this section.

(3) Unless the home is closed pursuant to Section 16[44] of this administrative regulation, an approved care plus foster or adoptive parent shall receive reapproval by the cabinet as a care plus home, if the parent:

(a) Annually completes training in accordance with 922 KAR 1:495, Section 6;

(b) Submits to a review of the parent's:

1. Strengths and needs;

2. Records maintained on services provided to the child; and

3. Ability to meet the goals established for the child; and

(c) Continues to meet the requirements of this section.

Section 8.[Section 6-] Preparation and Selection of a Foster or Adoptive Home.

(1) The cabinet shall recruit a foster or adoptive home and approve the home prior to the placement of a child, except in the case of a ~~child-specific~~ placement with a relative or fictive kin caregiver.

(2) Upon recruitment of a foster home, the cabinet shall register the foster home in the foster care registry within fourteen (14) days.

(3) Prior to approval as a foster or adoptive parent, the cabinet shall check the foster care registry for information relating to a previous closure or corrective action.

(4) If an applicant previously approved to foster or adopt by a child-placing agency or the cabinet was:

(a) Closed pursuant to 922 KAR 1:310 or Section 16[44] of this administrative regulation, the home shall be reviewed by the cabinet, including reviewing agency records relating to the cause for closure, and may be approved and operated as a cabinet foster home; or

(b) Under a corrective action plan issued by a child-placing agency or the cabinet prior to closure, the cabinet shall review and approve the home study prior to the home being approved.

(5) Prior to approval as a foster or adoptive parent, an applicant shall complete training requirements in accordance with 922 KAR 1:495, if applicable.

(6) If a new adult moves into an approved foster or adoptive home where a child is already placed by the cabinet, the child may remain and additional children may be placed if the new adult:

(a) Completes training in accordance with subsection (5) of this

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section within six (6) months of entering the home; and

(b) Meets the applicable requirements [~~specified in Sections 2 and 3 of this administrative regulation.~~]

(7) An adult child or incapacitated person who resides in the foster or adoptive home shall not be required to complete training in accordance with 922 KAR 1:495 if that individual shall not be responsible for routine daily care of a child placed in the home by the cabinet.

(8) The cabinet shall not be obligated to grant foster or adoptive home approval or placement of a specific child to an individual or family that completes pre-service training.

(9) In addition to completion of training in accordance with 922 KAR 1:495, at least one ~~(1)~~~~(two)~~~~(2)~~ family consultation~~[consultations]~~ shall be conducted by cabinet staff in the home of an applicant, to include:

(a) Documentation that the applicable requirements [~~in Sections 2 and 3 of this administrative regulation have been met;~~]

(b) Documentation that a personal interview with each member of the applicant's household has been completed;

(c) Discussion of the attitude of each member of the applicant's household toward placement of a child;

(d) Observation of the functioning of the applicant's household, including interpersonal relationships and patterns of interaction; and

(e) Assurance that the applicant is willing to accept a child's relationship with the child's family of origin.

(10) An applicant approved as a foster or adoptive parent or respite care provider by another state or by a child-placing agency as defined in KRS 199.011(6) shall:

(a) Meet the applicable requirements established~~[provided]~~ within [~~Sections 2 and 3 of~~]this administrative regulation;

(b) Be assessed by cabinet staff to ascertain the applicant's level of skill as a potential Kentucky foster or adoptive parent;

(c) Provide verification of the closure and a statement to indicate whether the closure was at the request of the foster or adoptive parent, the other state, or the agency; and

(d) Not be required to complete training in accordance with 922 KAR 1:495 for approval as a Kentucky foster or adoptive parent if cabinet staff:

1. Determine that the applicant possesses the necessary skills for fostering; and

2. Obtain records and recommendation from the other state or child-placing agency.

(11) Following initial training as specified in 922 KAR 1:495, if cabinet staff determines that an applicant or adult household member lacks the necessary skills to become a foster or adoptive parent, an individualized training curriculum shall be developed to fulfill unmet training needs.

(12)

(a) A foster or adoptive parent shall request the recommendation of cabinet staff prior to enrolling in training specified in 922 KAR 1:495, Section 4(1) or 6(1); and

(b) Cabinet staff may recommend the foster or adoptive parent to receive training specified in 922 KAR 1:495, Section 4(1) or 6(1), if the parent possesses the aptitude to care for a child described in Section ~~6~~~~[4]~~(1)(b) or ~~7~~~~[5]~~(1)(b) of this administrative regulation.

Section 9~~[Section 7-]~~ Completion of the Foster or Adoptive Approval Process.

(1) Designated cabinet staff in a supervisory role shall approve a foster or adoptive applicant if:

(a) The applicant meets all applicable requirements of this administrative regulation~~[provides written and signed information pertaining to family history and background;]~~

~~[(b)] [The applicant completes training requirements as required by 922 KAR 1:495;]~~

~~[(c)] [The information required in Section 2(8) through (10) and (13) through (17) of this administrative regulation has been obtained, unless a waiver has been granted for a child-specific placement with a relative or fictive kin caregiver;]~~

~~[(d)] [Background checks have been completed pursuant to 922 KAR 1:490 and did not result in a disqualifying background check result;]~~

~~[(b)]~~~~[(e)]~~ Designated cabinet staff recommends approval; and

~~[(c)]~~~~[(f)]~~ The applicant's ability to provide a foster, adoptive, or respite care service is consistent with the:

1. Cabinet's minimum foster or adoptive home requirements established in this administrative regulation; and

2. Needs of the families and children served by the cabinet.

(2) If the designated cabinet staff determines that an applicant does not meet the minimum requirements for approval as a foster or adoptive parent, the cabinet shall:

(a)

1. Recommend that the applicant withdraw the application; or

2. Deny the application pursuant to Section ~~10~~~~[8]~~ of this administrative regulation; and

(b) Document the recommendation or denial in the foster care registry[].

Section 10~~[Section 8-]~~ Denial of a Foster or Adoptive Home Application[].

(1) Designated cabinet staff shall notify an applicant, in writing, if the application to become a foster or adoptive parent is not recommended or denied for one (1) of the following reasons:

(a) The applicant is unwilling to withdraw the application to become a foster or adoptive parent after receiving a recommendation to withdraw; or

(b) The applicant desires to adopt, but is unwilling to adopt a child under the custodial control of the cabinet.

(2) If the foster or adoptive applicant disagrees with the cabinet's recommendation to not accept the applicant as a foster or adoptive home or denial, designated cabinet staff shall review the application to become a foster or adoptive parent and issue a final written determination regarding the cabinet's recommendation or denial.

(3) Cabinet staff shall enter information regarding the recommendation, denial, and final determination, if written, into the foster care registry.

Section 11~~[Section 9-]~~ Expectations of a Foster or Adoptive Home. A foster or adoptive home providing services for a child in the custody of the cabinet shall:

(1) Provide a child placed by the cabinet with a family life, including:

(a) Nutritious food;

(b) Clothing comparable in quality and variety to that worn by other children with whom the child may associate;

(c) Affection;

(d) Life skills development;

(e) Recreational opportunities;

(f) Educational opportunities;

(g) Nonmedical transportation;

(h) Independent living services for a child age fourteen (14) and older;

(i) Opportunities for development consistent with their religious, ethnic, and cultural heritage;

(j) Adequate supervision; and

(k) Refraining from smoking in the direct presence of a child for whom the child's physician recommends, in writing, a smoke-free environment.

(2) Permit cabinet staff to visit;

(3) Share with cabinet staff pertinent information about a child placed by the cabinet;

(4) Comply with the general supervision and direction of the cabinet concerning the care of a child placed by the cabinet;

(5) Report immediately to the cabinet if there is a:

(a) Change of address;

(b) Hospitalization or life-threatening accident or illness of a child placed by the cabinet;

(c) Change in the number of people living in the home;

(d) Significant change in circumstances in the foster or adoptive home, such as income loss, marital separation, or other household stressor;

(e) Child placed in the home that is absent without official leave;

(f) Suicide attempt of a child placed by the cabinet; or

(g) Criminal activity by the child placed by the cabinet;

(6) Notify the cabinet if:

(a) Leaving the state with a child placed by the cabinet for more

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than twenty-four (24) hours; or

(b) A child placed by the cabinet is to be absent from the foster or adoptive home for more than twenty-four (24) hours;

(7) Cooperate with the cabinet if a contact is arranged by cabinet staff between a child placed by the cabinet and the child's birth family including:

(a) Visits;

(b) Telephone calls; ~~or~~

(c) Mail; or

(d) Other method approved by the cabinet.

(8) Surrender a child to the authorized representative of the cabinet upon request;

(9) Keep confidential all personal or protected health information as shared by the cabinet, in accordance with KRS 194A.060, 620.050, and 45 C.F.R. Parts 160 and 164 concerning a child placed by the cabinet or the child's birth family;

(10) Support an assessment of the service needs of a child placed by the cabinet;

(11) Participate in case-planning conferences concerning a child placed by the cabinet;

(12) Cooperate with the implementation of the permanency goal established for a child placed by the cabinet;

(13) Notify the cabinet at least fourteen (14) calendar days in advance of the home's intent to become certified to provide foster care or adoption services through a private child-placing agency in accordance with 922 KAR 1:310;

(14) Treat a child placed by the cabinet with dignity;

(15) Provide trauma-informed discipline;

(16) Arrange for respite care services in accordance with Section ~~12~~~~(40)~~(5) of this administrative regulation;

(17)~~(46)~~ Ensure that a child in the custody of the cabinet receives the child's designated per diem allowance;

(18)~~(47)~~ Facilitate the delivery of medical care to a child placed by the cabinet as needed, including:

(a) Administration of medication to the child and daily documentation of the medication's administration; and

(b) Physicals and examinations for the child;

(19)~~(48)~~ Report suspected incidents of child abuse, neglect, and exploitation in accordance with KRS 620.030;

(20)~~(49)~~ Comply with KRS 620.360(2);

(21)~~(20)~~ Be informed of and comply with KRS 620.363;

(22)~~(24)~~ Have appeal rights in accordance with 922 KAR 1:320; and

(23)~~(22)~~ Demonstrate functional literacy.

Section 12.~~[Section 10.]~~ Reimbursements for Foster Homes.

(1) Types of per diem reimbursement. ~~If the~~~~[The]~~ cabinet ~~approves~~~~[shall approve]~~ a foster home ~~pursuant to~~~~[as specified in Sections 2 and 3 of]~~ this administrative regulation, ~~it shall~~~~[-and]~~ authorize a per diem reimbursement as established in this subsection.

(a) ~~[A child-specific per diem reimbursement shall be made to a foster home that:]~~

~~[4.] [Has been approved pursuant to Section 7 of this administrative regulation; and]~~

~~[2.] [Meets initial training requirements for a child-specific foster home.]~~

~~[(b)]~~ A basic per diem reimbursement shall be:

1. Based on the age of a child placed by the cabinet in the foster home; and

2. Made to the foster home that meets annual training requirements in accordance with 922 KAR 1:495, Section 3.

(b)~~(c)~~ An advanced per diem reimbursement shall be:

1. Made to a foster home that has:

a. Been approved for two (2) years as a foster or adoptive parent; and

b. Met training requirements in accordance with 922 KAR 1:495, Section 3; and

2. Based on the age of the child placed by the cabinet.

(c)~~(d)~~ A basic medically complex per diem reimbursement shall be made to a foster parent who:

1. Meets criteria specified in Section ~~6~~~~[4]~~ of this administrative regulation; and

2. Provides for the care of a child with medical complexity.

(d)~~(e)~~ An advanced medically complex per diem reimbursement shall be made to a foster parent who:

1. Meets criteria specified in Section ~~6~~~~[4]~~ of this administrative regulation;

2. Has been approved for one (1) year as a medically complex foster or adoptive parent;

3. Has met training requirements in accordance with KRS 922 KAR 1:495, Section 3; and

4. Provides for the care of a child with medical complexity.

(e)~~(f)~~ A degreed medically complex per diem reimbursement shall be made to a foster parent who:

1. Meets criteria specified in Section ~~6~~~~[4]~~ of this administrative regulation;

2. Maintains a current license as a health professional; and

3. Provides for the care of a child with medical complexity.

(f)~~(g)~~ A basic care plus foster home per diem reimbursement shall be made to a foster parent who:

1. Meets criteria specified in Section ~~7~~~~[5]~~ of this administrative regulation; and

2. Provides for the care of a child described in Section ~~7~~~~[5]~~(1)(b) of this administrative regulation.

(g)~~(h)~~ An advanced care plus foster home per diem reimbursement shall be made to a foster parent who:

1. Meets criteria specified in Section ~~7~~~~[5]~~ of this administrative regulation;

2. Has been approved for one (1) year as a care plus foster or adoptive parent;

3. Has met training requirements in accordance with 922 KAR 1:495, Section 3(1); and

4. Provides for the care of a child described in Section ~~7~~~~[5]~~(1)(b) of this administrative regulation.

(h)~~(i)~~ A specialized medically complex per diem reimbursement shall be made to a foster parent who:

1. Meets criteria specified in Section ~~6~~~~[4]~~ of this administrative regulation; and

2. Provides for the care of a child with medical complexity determined by designated cabinet staff to meet specialized medically complex criteria due to a required higher level of medical care or oversight, which may also include behavioral or emotional needs related to the medical condition.

(i)~~(j)~~ A degreed specialized medically complex per diem reimbursement shall be made to a foster parent who:

1. Maintains a current license as a health professional;

2. Meets criteria specified in Section ~~6~~~~[4]~~ of this administrative regulation; and

3. Provides for the care of a child with medical complexity determined by designated cabinet staff to meet specialized medically complex criteria due to a required higher level of medical care or oversight, which may also include behavioral or emotional needs related to the medical condition.

(j)~~(k)~~ Upon placement of a child by the cabinet, a per diem reimbursement shall:

1. Be specified in a contract between an approved foster home and the cabinet; and

2. Provide for the care of a child placed by the cabinet, to include:

a. Housing expenses;

b. Food-related expenses;

c. Nonmedical transportation;

d. Clothing;

e. Allowance;

f. Incidentals;

g. Babysitting, excluding childcare authorized in subsection (4)(b) of this section;

h. Sports, recreation, and school activities;

i. One (1) day of respite care per child per month; and

j. School expenses.

(2) Medical coverage.

(a) Cabinet staff may authorize payment for medical expenses for a child in the custody of the cabinet after verification is provided that the child is not covered by health insurance, Medicaid, or the Kentucky Children's Health Insurance Program (K-CHIP).

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(b) Designated cabinet staff shall approve or deny authorization of payment for a medical treatment greater than \$500.

(3) Child care services.

(a) The cabinet shall review requests for child care services every six (6) months for a working foster parent.

(b) Designated cabinet staff may approve requests for child care services for a nonworking foster parent if:

1. A medical crisis affects the foster parent; or
2. The child care is appropriate to support the foster home or child.

(c) Designated cabinet staff shall review approved requests for child care services for a nonworking foster parent every three (3) months.

(d) Reimbursements shall not be made simultaneously to the same provider for foster care and child care services.

(e) A foster parent shall not simultaneously be used as a licensed or certified health care or social service provider for a child placed in the foster parent's care by the cabinet.

(4) Training. To the extent funds are available, the cabinet shall provide a reimbursement to an approved foster or adoptive home for ongoing training expenses commensurate with the foster or adoptive parent's training needs, including:

- (a) Mileage;
- (b) Babysitting; and
- (c) Tuition or fees up to the amount of:
 1. \$100 per parent per year; or
 2. \$200 per parent per year for a:
 - a. Medically complex foster or adoptive home; or
 - b. Care plus foster or adoptive home.

(5) Respite care.

(a) Respite care shall be available for a child placed by the cabinet in a foster home.

(b) A foster home shall be eligible for one (1) day of respite care per month per child.

(c) A foster home that cares for a child in the custody of the cabinet and meets criteria established in Sections ~~6~~[4] and ~~7~~[5] of this administrative regulation shall be eligible for three (3) days of respite care per month per child.

(d) Designated cabinet staff may extend a foster parent's respite care use to fourteen (14) days if designated cabinet staff document that the:

1. Foster parent requires the additional respite care:
 - a. To stabilize the child's placement in the foster home; or
 - b. Due to unforeseen circumstances that may occur, such as:
 - (i) Death in the family;
 - (ii) Surgery; or
 - (iii) Illness; or
2. Child placed in the foster home requires additional respite care to allow for a period of adjustment.

(e) The cost of respite care shall not exceed the per diem for the child.

(f) A respite care provider shall be approved in accordance with Section ~~19~~[47] of this administrative regulation.

(6) Appeals. A foster or adoptive parent may appeal the timeliness of reimbursement in accordance with 922 KAR 1:320.

Section 13.~~[Section 44.]~~ Home Study Requests.

(1) Upon receipt of a request from another state's Interstate Compact on the Placement of Children Administrator in the interest of a child in the legal custody of that state's public agency, the cabinet shall complete the foster or adoptive home approval process as specified in Section ~~9~~[7] of this administrative regulation.

(2) The cabinet shall share a previously approved home study in accordance with the Kentucky Open Records Act, KRS 61.870-61.884, and 42 U.S.C. 671(a)(23).

(3) An individual may request an administrative hearing in accordance with 922 KAR 1:320 for failure of the cabinet to act in accordance with subsections (1) and (2) of this section.

Section 14.~~[Section 42.]~~ Foster or Adoptive Home Reevaluation.

(1) Prior to or during the month of the anniversary date of the initial approval as a foster or adoptive parent, the foster or adoptive parent shall be required to complete annual training requirements as

specified in 922 KAR 1:495, if applicable.

(2)

(a) Failure to meet training requirements specified in subsection (1) of this section shall lead to closure unless an exception is granted by the designated cabinet staff for a foster parent caring for a child in the custody of the cabinet and it is determined that it is in the best interest of a child placed in the foster home.

(b) If an exception is approved as specified in paragraph (a) of this subsection, a new or additional child shall not be placed in the home until the foster parent has met the training requirement.

(3) A cabinet staff member shall conduct a personal, in-home interview with a foster or adoptive parent prior to or during the month of the anniversary date of the third year of the initial approval as a foster or adoptive home. The interviewer shall assess:

(a) Any change in the foster or adoptive home;

(b) The ability of the foster or adoptive home parent to meet the needs of a child placed in the home; and

(c) Continuing compliance with the applicable requirements of ~~Sections 2 and 3 of~~ this administrative regulation.

(4) The cabinet staff member shall document requirements of subsection (3) of this section to include:

(a) A list of persons residing in or frequently in the home since the initial approval or reevaluation;

(b) A list of all foster children placed in the home since the initial approval or reevaluation and exit reasons for the children no longer in the home;

(c) Use of formal and informal support systems including:

1. Respite;
2. Extended family support; and
3. Friends or community partners;

(d) Description of parenting and discipline strategies;

(e) Changes in the physical environment including:

1. Address change; and
2. School district change;

(f) Discussion of stressors within the home to include:

1. Pregnancy or birth;
2. Physical or mental health conditions;
3. Employment changes;
4. Financial changes;
5. Death, grief, or loss;
6. Childhood trauma; and
7. Divorce or personal relationship changes;

(g) Alcohol or drug use and any substance abuse treatment;

(h) Functioning of relationships within the household;

(i) Assessment of the family's ability to meet the needs of the children placed in the home;

(j) List of foster or adoptive home reviews;

(k) Areas of concern or actions to be addressed that may exist within the household; and

(l) Placement recommendations.

Section 15.~~[Section 43.]~~ Foster or Adoptive Home Reviews.

(1) Upon notification of a factor that may place unusual stress on the foster or adoptive home or create a situation that may place a child at risk, cabinet staff shall:

(a) Immediately assess the health and safety risk of the child; and

(b) Complete a review of the foster or adoptive home within thirty (30) calendar days.

(2) Factors that shall result in a review of a foster or adoptive home shall include:

(a) Death or disability of a family member;

(b) Sudden onset of a health condition that would impair a foster or adoptive parent's ability to care for a child placed in the home by the cabinet;

(c) Change in marital status or home address;

(d) Sudden, substantial decrease in, or loss of, income;

(e) Childbirth;

(f) Use of a form of punishment or discipline that includes at least one (1) of the following:

1. Cruel, severe, or humiliating actions;
2. Corporal punishment inflicted in any manner;
3. Denial of food, clothing, or shelter;

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4. Penalties for bedwetting or actions related to toilet training:

5. Withholding implementation of the child's treatment plan;
6.[5.] Denial of visits, telephone, or mail contacts with family members, unless authorized by a court of competent jurisdiction; or[and]

7.[6.] Assignment of extremely strenuous exercise or work;

(g) A report of abuse, neglect, or dependency that results in a finding that:

1. Is substantiated; or

2. Reveals concern relating to the health, safety, and well-being of the child;

(h) Termination of parental rights (including a voluntary action);

(i) If the foster or adoptive parent is cited with, charged with, or arrested due to a violation of law other than a minor traffic offense;

(j) Other factor identified by cabinet staff that jeopardizes the physical, mental, or emotional well-being of the child; or

(k) Failure to meet annual training requirements, if applicable.

(3) The narrative of the review shall contain:

(a) Identifying information;

(b) Current composition of the household;

(c) Description of the situation that initiated the review;

(d) An evaluation of the foster or adoptive home's family functioning to determine if the child's needs are met; and

(e) A plan for corrective action that may include a recommendation for closure of the foster or adoptive home.

Section 16.[~~Section 14.~~] Closure of an Approved Foster or Adoptive Home.

(1) A foster or adoptive home shall be closed if:

(a) Cabinet staff determines that the family does not meet the general requirements[, as specified in Sections 2 and 3] of this administrative regulation, for a foster or adoptive home;

(b) A situation exists that is not in the best interest of a child;

(c) Sexual abuse or exploitation by the foster or adoptive parent or by another resident of the household is substantiated;

(d) Substantiated child abuse or neglect by a resident of the household occurs that is serious in nature or warrants removal of a child;

(e) A serious physical or mental illness develops that may impair or preclude adequate care of the child by the foster or adoptive parent; or

(f) The cabinet has not placed a child in the home within the preceding twelve (12) months, unless a written exception is provided by the service region administrator or designee.

(2) A foster or adoptive home may be closed according to the terms of the contract between the cabinet and the foster or adoptive home.

(3) If it is necessary to close an approved foster or adoptive home, the reason shall be stated by cabinet staff in a personal interview with the family, unless the family refuses or declines the personal interview.

(4) The cabinet shall:

(a) Confirm, in a written notice to the foster or adoptive parent, the decision to close a home;

(b) Deliver the notice to the foster or adoptive home within fourteen (14) calendar days of the interview with a foster or adoptive parent; and

(c) Submit closure information, including the cause for closure pursuant to subsection (1) of this section, in the foster care registry.

(5) The written notice for closure of a foster or adoptive home shall include:

(a) Notice that the cabinet shall not place a child in the home; and

(b) The reason why the foster or adoptive home is being closed.

Section 17.[~~Section 15.~~] Reapplication.

(1) A former foster or adoptive home parent whose home was closed pursuant to Section 16[44](1)(a) through (f) of this administrative regulation may be considered for reapproval if the cause of closure has been resolved.

(2) To reapply, a former foster or adoptive parent shall:

(a) Make a formal inquiry to the cabinet[~~Attend an informational meeting~~]; and

(b) Meet the requirements of:

1. Section 2 or 3 of this administrative regulation; and

2. Section 5 of this administrative regulation[~~Submit the:~~]

[1.] [~~Names of references specified in Section 2(13) of this administrative regulation; and~~]

[2.] [~~Authorization for criminal records release specified in Section 2(17) of this administrative regulation.~~]

(3) A reapplying former foster or adoptive parent shall reenroll and complete training requirements, as specified in Section 8[6] of this administrative regulation, unless:

(a) The former foster or adoptive parent has previously completed training requirements, as specified in Section 8[6](5) of this administrative regulation; and

(b) An exception to reenrollment is provided by designated cabinet staff that have ascertained that the former foster or adoptive parent otherwise meets the necessary skill level.

(4) The foster care registry requirements of Section 8[6] of this administrative regulation shall be met.

Section 18.[~~Section 16.~~] Placement Considerations.

(1) Unless an exception is approved pursuant to subsections (2) or (3) of this section because a placement is in the best interest of the child and specific support services shall be provided, the requirements established by this subsection shall apply to foster homes.

(a) More than six (6) children, including children under the custodial control of the cabinet and the foster parent's own children living in the home, shall not reside in a foster home.

(b) More than two (2) children under age two (2), including children under the custodial control of the cabinet and the foster parent's own children living in the home, shall not reside in a foster home.

(c) A child with medical complexity shall be placed in an approved medically complex home.

(2) To request an exception to the criteria established by subsection (1) of this section, cabinet staff shall submit the DPP-112A, DCBS Placement Exception Request, to designated cabinet staff prior to the proposed placement documenting:

(a) The reason the placement is in the best interest of the child; and

(b) Specific support services to be provided.

(3) The number of foster children residing in a foster family home may exceed the limitation established in subsection (1)(a) of this section with documentation on the DPP-112A in order to allow:

(a) A parenting youth in foster care to remain with the child of the parenting youth;

(b) Siblings to remain together;

(c) A child with an established meaningful relationship with the family to remain with the family;

(d) A family with special training or skills to provide care to a child who has a severe disability; or

(e) Other circumstances noted in the DPP-112A and approved by the service region administrator or designee.

(4) If an exception to subsection (1) or (2) of this section is necessary for a placement to occur outside of normal business hours:

(a) Cabinet staff shall verbally provide all information contained within the DPP-112A to designated cabinet staff prior to the placement;

(b) A verbal approval from designated cabinet staff shall be required prior to the placement occurring; and

(c) The completed DPP-112A shall be submitted on the first business day following placement.

(5) Cabinet staff shall inform the foster parent of conditions related to the child in accordance with:

(a) KRS 605.090(1)(b); and

(b) KRS 605.090(6).

(6) Cabinet staff shall place a child with higher level needs in an advanced level home or above if a relative or fictive kin placement has not been identified.

(7) A foster or adoptive parent may adopt a child for whom parental rights have been terminated if:

(a) Foster or adoptive parent adoption is determined by cabinet

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staff to be in the best interest of the child;

- (b) The child resides in the foster or adoptive home; and
- (c) Criteria in 922 KAR 1:100 are met.

(8) If a foster or adoptive parent expresses interest in adopting a foster child currently placed in the home and an alternative permanent placement is in the child's best interest, cabinet staff shall meet with the foster or adoptive parent prior to selection of an adoptive home to explain:

(a) Why an alternative permanent placement is in the child's best interest; and

(b) The foster or adoptive parent's right to submit a request to the cabinet to reconsider the recommendation.

Section 19.~~[Section 17.]~~ Requirements for Respite Care Providers.

(1) A respite care provider shall:

(a) Be:

- 1. An approved foster or adoptive home; or
- 2. Approved in accordance with subsection (2) of this section; and

(b) Receive preparation for placement of a child, including information in accordance with:

- 1. KRS 605.090(1)(b); and
- 2. Section 6[4](1)(e) through (g) of this administrative regulation, if the child is designated as medically complex.

(2) If a foster or adoptive parent chooses a respite care provider who is not an approved foster or adoptive home, the respite care provider shall:

(a)

- 1. Be at least twenty-one (21) years of age;
- 2. Provide proof of the applicant's United States citizenship or legal immigrant status, as described in 8 U.S.C. 1151, 8 U.S.C. 1181, and 42 C.F.R. 435.407;
- 3. Meet the background check requirements established in 922 KAR 1:490 for the applicant and his or her household; and
- 4. Meet the requirements of Section 5[Meet criteria established in Sections 2(1), (2), (17), (18) and 3] of this administrative regulation if respite care is provided outside the home of the foster or adoptive parent[; or]

[2.] ~~[Meet criteria established in Section 2(1), (2), (17), and (18) of this administrative regulation if respite care is provided inside the home of the foster or adoptive parent]; and~~

(b)

1. If providing respite care for a child described in Section 7[5](1)(b) of this administrative regulation, have:

a. Child-specific training in the mental health treatment of children or their families; or

b. A certificate of completion for twelve (12) hours of care plus training specified in 922 KAR 1:495, Section 6(1); or

2. If providing respite care for a child with medical complexity or specialized medical complexity:

a. Meet training requirements in accordance with 922 KAR 1:495, Section 7;

b. Hold a current certificate in first aid;

c. Hold a current certificate in infant, child, and adult CPR; and

d. Receive child specific training from a health professional or a foster parent who has been trained by a health professional in how to care for the specific medical needs of the child.

(3) A respite care provider:

(a) May attend pre-service training as specified in Section 8[6] of this administrative regulation; and

(b) Shall comply with Sections 18[46] and 19[47] of this administrative regulation.

Section 20.~~[Section 18.]~~ [Waiver Review Process.]

~~[(1)] [The department may waive requirements for a relative or fictive kin seeking approval as a child specific foster home if the removal of those requirements does not jeopardize the health, safety, or welfare of the child being placed.]~~

~~[(2)] [The department shall not grant a waiver to the requirements established in the following sections of this administrative regulation:]~~

~~[(a)] [Section 2, subsections (1)(a) through (7), (10) through (12),~~

~~(16) through (18); or]~~

~~[(b)] [Section 3, subsections (1) through (5), (6)(b), (7) through (10)(c), (10)(e) through (10)(f), (11) through (18).]~~

~~[(3)] [An applicant may request a waiver of non-safety standards. A representative of the department shall submit a written request that states the:]~~

~~[(a)] [Specific provision(s) for which a waiver is requested; and]~~

~~[(b)] [Justification for the requested waiver.]~~

~~[(4)] [A child specific foster home that seeks approval as a basic foster home or higher level shall complete all prior waived training and meet the requirements established in Sections 2 and 3 of this administrative regulation.]~~

~~[Section 19.]~~ Emergency Preparedness. Each foster home shall submit an emergency preparedness plan to the department that would allow the department to identify, locate, and ensure continuity of services to children who are in the custody of the cabinet.

Section 21.~~[Section 20.]~~ Maintenance of a Foster Care Record.

(1) The cabinet shall maintain a record on each foster home, including medically complex foster homes and care plus foster care homes, if applicable.

(2) A foster home's record shall be maintained in conformity with existing laws and administrative regulations pertaining to confidentiality, pursuant to KRS 199.430(3), 199.802, and 45 C.F.R. Parts 160 and 164.

(3) A foster home may request and receive documentation from their record.

Section 22.~~[Section 21.]~~ Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "DPP-107, Health Information Required for Foster or Adoptive Parents, Applicants, or Adult Household Members", 10/15;

(b) "DPP-108, Health Information Required for Foster or Adoptive Parents or Applicants Regarding Dependent Children", 10/15; and

(c) "DPP-112A, DCBS Placement Exception Request", 11/22.

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

LESA DENNIS, Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: June 20, 2024

FILED WITH LRC: July 1, 2024 at 10:45 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on September 23, 2024, at 9:00 a.m. using the CHFS Office of Legislative and Regulatory Affairs Zoom meeting room. The Zoom invitation will be emailed to each requestor the week prior to the scheduled hearing. Individuals interested in attending this virtual hearing shall notify this agency in writing by September 16, 2024, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends virtually will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until September 30, 2024. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

CONTACT PERSON: Krista Quarles, Policy Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-7476; fax 502-564-7091; email CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes criteria for public agency foster homes, adoptive homes, and respite care providers caring for foster or adoptive children.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish standards for public agency foster parents, adoptive parents, and respite care providers who care for children in the custody of the cabinet.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 194A.050(1), 199.472(1), and 605.100(1) require the cabinet to promulgate administrative regulations necessary to operate programs to fulfill the responsibilities vested in the cabinet; arrange programs designed to provide for classification, segregation, and specialized treatment of children according to their respective needs; and promulgate administrative regulations to establish the process of determining an applicant's capacity for foster or adoptive parenthood.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing criteria for public agency foster parents, adoptive parents, and respite care providers.

(2) If 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 establishes separate standards for nonfamilial foster or adoptive parent applicants and relative or fictive kin foster or adoptive parent applicants. This will result in relative and fictive kin caregivers having a more streamlined process to becoming foster or adoptive homes. This will also result in a less burdensome process for department staff reviewing and approving applicants. Federal standards have waived non-safety requirements for relative or fictive kin applicants. "Child specific" language is also being deleted as these foster homes will be referred to as relative or fictive kin foster homes, consistent with other amended administrative regulations.

(b) The necessity of the amendment to this administrative regulation: 45 C.F.R. 1355.20 was amended to allow states to establish foster family home licensure or approval standards for relative or fictive kin foster family homes that are different from non-relative or nonfamiliar foster homes. Federal guidance was received and Kentucky submitted a state plan amendment to comply with federal rules. This amendment is necessary to comply with the state plan, be consistent with federal law, and streamline the foster home approval process for relative and fictive kin caregivers. This amendment is also necessary to update the administrative regulation for consistency with other regulatory actions that establish the new subsidized permanent custody permanency option.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 194A.050(1) requires the cabinet to promulgate, administer, and enforce programs mandated by federal law or to qualify for the receipt of federal funds. KRS 199.472(1) requires the cabinet to promulgate administrative regulations to establish the process of determining an applicant's capacity for foster or adoptive parenthood.

(d) How the amendment will assist in the effective administration of the statutes: The amendment ensures that cabinet staff are meeting state and federal requirements related to public foster and adoptive homes.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: As of April 7, 2024, there were 2,684 children placed in public (cabinet) foster homes, which was 33% of the children in the cabinet's custody. Of these, 428 children were placed in relative or fictive kin foster homes.

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

(a) List the actions that each of the regulated entities identified in

question (3) will have to take to comply with this administrative regulation or amendment: There will be no new or additional action required on the part of regulated entities as a result of this amendment.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This amendment does not negatively or positively impact foster or adoptive homes.

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

(a) Initially: Staff are already meeting the additional administrative requirements required by this amendment. There are no costs associated with this amendment.

(b) On a continuing basis: Staff are already meeting the additional administrative requirements required by this amendment. There are no costs associated with this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The administration of this program is partially reimbursable with federal Title IV-E dollars of the Social Security Act and otherwise funded by General Funds.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied as this administrative regulation is applied in a like manner statewide.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 16 C.F.R. 1219-1220, 45 C.F.R. Parts 160, 164, 8 U.S.C. 1151, 42 U.S.C. 671

(2) State compliance standards. KRS 194A.050(1), 199.472(1), 605.100(1)

(3) Minimum or uniform standards contained in the federal mandate. 16 C.F.R. 1219-1220, 45 C.F.R. Parts 160, 164, 8 U.S.C. 1151, 42 U.S.C. 671

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation does not impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate. This amendment is necessary for compliance with federal law.

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation does not impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate. This amendment is necessary for compliance with federal law.

FISCAL IMPACT STATEMENT

(1) Identify each state statute, federal statute, or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1), 199.472(1), 605.100(1), 16 C.F.R. 1219-1220, 45 C.F.R. Parts 160, 164, 8 U.S.C. 1151, 42 U.S.C. 671.

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: The Cabinet for Health and Family Services, Department for Community Based Services, is impacted by this administrative regulation and administers this program.

(a) Estimate the following for the first year:

Expenditures: No expenditures are expected.

Revenues: This administrative regulation does not generate revenue.

Cost Savings: No cost savings are expected.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? No difference is expected in subsequent years.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): None.

(a) Estimate the following for the first year:

Expenditures: No expenditures are expected. Additional training may be required.

Revenues: This administrative regulation does not generate revenue.

Cost Savings: No cost savings are expected.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? Expenditures, revenues, and cost savings will not differ in subsequent years.

(4) Identify additional regulated entities not listed in questions (2) or (3): Applicants to be public foster or adoptive homes.

(a) Estimate the following for the first year:

Expenditures: Not applicable. This amendment does not require expenditures, it waives non-safety requirements for relative or fictive kin foster or adoptive home applicants.

Revenues: Not applicable.

Cost Savings: Not applicable.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? These are not expected to differ in subsequent years.

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: The amendment waives non-safety requirements for foster or adoptive home applicants that are related or fictive kin to children in the custody of the cabinet. This will result in these caregivers having a more streamlined process to becoming foster or adoptive homes. This is consistent with recent federal standards. There are no costs associated with this amendment.

(b) Methodology and resources used to determine the fiscal impact: There are no costs associated with this amendment.

(6) Explain:

(a) Whether this administrative regulation will have an overall negative or adverse major economic impact to the entities identified in questions (2) - (4). (\$500,000 or more, in aggregate) This administrative regulation will not have an overall negative or adverse major economic impact to entities. It will result in relative or fictive kin foster or adoptive applicants having a more streamlined approval process.

(b) The methodology and resources used to reach this conclusion: There are no costs associated with this amendment.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Protection and Permanency
(Amendment)

922 KAR 1:490. Background checks for foster and adoptive parents and relative and fictive kin caregivers.

RELATES TO: KRS 17.500-17.580, 27A.090, 194A.005(1), 199.011(6), (9), (14), 199.462(1), 199.470(4), 211.684, 600.020(7), (28), (40), (61), (62), 605.090(1)(b), (6), 605.120, 605.130, 620.050(5), Chapter 625, 45 C.F.R. 1356.30, 42 U.S.C. 247d, 671(a)(20), 5106a, 5141

STATUTORY AUTHORITY: KRS 194A.050(1), 199.462(5), 199.640(5), 605.120(5), (6), 605.130(7), 605.150

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary to promulgate administrative regulations necessary to implement programs mandated by federal law, qualify for the receipt of federal funds, and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. KRS 199.462(5) requires the cabinet to promulgate an administrative regulation for the purpose of requiring a criminal background investigation on behalf of a foster or adoptive parent applicant, an adult member of the applicant's household, or a relative or fictive kin caregiver. KRS 605.150 authorizes the cabinet to promulgate administrative regulations to implement the provisions of KRS 605.130(7), by which the cabinet shall perform such other services as may be deemed necessary for the protection of children. KRS 199.640(5) authorizes the cabinet to promulgate administrative regulations establishing

basic standards of care and service for child-placing agencies relating to the health and safety of all children in the care of the agency. 45 C.F.R. 1356.30 requires criminal record checks be conducted for prospective foster and adoptive parents. This administrative regulation establishes background check requirements for relative and fictive kin caregivers, [or] applicants seeking to provide foster or adoptive services, or individuals seeking an independent adoption. Additionally, this administrative regulation imposes a stricter requirement than the federal mandate because the cabinet requires the denial of an applicant if: (1) a criminal record check conducted on behalf of an adult household member reveals physical abuse, battery, or a drug or alcohol-related felony within the previous five (5) year period or a felony involving a spouse, a child, sexual violence, or death; or (2) a child abuse or neglect check conducted by the cabinet reveals that a household member, twelve (12) years of age or older, committed sexual abuse or sexual exploitation of a child, has been responsible for a child fatality related to abuse or neglect, or has had parental rights terminated involuntarily.

Section 1. Definitions.

(1) "Address check" means a search of the Sex Offender Registry to determine if an address is a known address of a registered sex offender.

(2) "Administrative review" means that the status of the individual subject to the child abuse and neglect check is pending the outcome of an:

(a) Investigation or assessment in accordance with 922 KAR 1:330; or

(b) Appeal concerning a cabinet substantiated finding of child abuse or neglect.

(3) "Adolescent member of the household" means a youth who:

(a) Resides in the home of:

1. An individual who applies for approval or has been approved to provide foster or adoptive services; or

2. A relative or fictive kin caregiver;

(b) Is age twelve (12) through age seventeen (17); and

(c) Is not placed in the home by a state agency.

(4) "Adult member of the household" means an adult who:

(a) Resides in the home of:

1. An individual who applies for approval or has been approved to provide foster or adoptive services; [or]

2. A relative or fictive kin caregiver; or

3. An individual applying for an independent non-relative adoption as defined in 922 KAR 1:010 or an independent relative adoption petitioner who is exempt as defined in KRS 199.470(4); and

(b) Is eighteen (18) years of age or older.

(5) "Applicant" means an individual who applies for approval as a foster or adoptive parent of a child [in the custody of the state] under:

(a) 922 KAR 1:350, Requirements for public child welfare agency foster parents, adoptive parents, and respite care providers; [or]

(b) 922 KAR 1:310, Standards for child-placing agencies placing children who are in the custody of a state agency;

(c) 922 KAR 1:315, Standards for child-placing agencies placing children who are not in the custody of a state agency; or

(d) 922 KAR 1:010, Independent non-relative adoptions.

(6) "Cabinet" is defined by KRS 194A.005(1) and 600.020(7).

(7) "Child fatality" is defined by KRS 211.684.

(8) "Child-placing agency" is defined by KRS 199.011(6).

(9) "Fictive kin" is defined by KRS 199.011(9) and 600.020(28).

(10) "KARES system" means the cabinet's secure, web-based application used to access abuse and neglect registries and facilitate fingerprint-supported state and national criminal background checks for authorized users of the system.

(11) "Kentucky National Background Check Program" or "NBCP" means a background screening program administered by the cabinet in accordance with 906 KAR 1:190.

(12) "Near fatality" is defined by KRS 600.020(40) and 42 U.S.C. 5106a(b)(4)(A).

(13) "Rap back system" is defined by KRS 199.011(14).

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(14) "Relative caregiver" means a relative with whom the child is, or shall be, placed by the cabinet.

(15) "Sex Offender Registry" means the registration system for adults who have committed sex crimes or crimes against minors established in accordance with KRS 17.500 through 17.580.

(16) "Sexual abuse" is defined by KRS 600.020(61).

(17) "Sexual exploitation" is defined by KRS 600.020(62).

Section 2. Background Checks Required for Foster or Adoptive Parent Applicants.

(1) An applicant pursuant to 922 KAR 1:310 or 922 KAR 1:350, and each adult member of the household, shall submit to a background check in accordance with Section 4 of this administrative regulation, which shall include:

(a) An in-state criminal records check, conducted pursuant to KRS 199.462(1), by the:

1. Kentucky Justice and Public Safety Cabinet; or
2. Administrative Office of the Courts;

(b) A child abuse or neglect check conducted by the cabinet for each state of residence during the past five (5) years;

(c) A criminal records check conducted by means of a fingerprint check of the Criminal History Record Information administered by the Federal Bureau of Investigation; and

(d) An address check of the Sex Offender Registry.

(2) Prior to approval of an applicant pursuant to 922 KAR 1:310 or 922 KAR 1:350, each adolescent member of the household shall complete a DPP-157, Background Check Request for Foster or Adoptive Applicants and Adolescent or Adult Household Members, and submit to a child abuse or neglect check conducted by the cabinet.

(3) If a household member of the applicant is bedridden, homebound, or medically unable to appear for fingerprints, the agency shall submit a memo to designated cabinet staff.

Section 3. Background Checks for Foster or Adoptive Applicants Who Will Accept Placement of a Child Not in the Custody of the Cabinet.

(1) An individual applying to accept placement of a child not in the custody of or otherwise made the legal responsibility of the cabinet or the Department of Juvenile Justice, pursuant to 922 KAR 1:315[922 KAR 1:310], shall be exempt from enrollment in KARES and subject to the requirements established in Section 9(3)[8(3)] of this administrative regulation.

(2) An applicant pursuant to 922 KAR 1:315[922 KAR 1:310] and each adult and adolescent member of the household shall complete a separate DPP-157 and submit to:

(a) An in-state criminal records check, conducted pursuant to KRS 199.462(1), by the:

1. Kentucky Justice and Public Safety Cabinet; or
2. Administrative Office of the Courts;

(b) A child abuse or neglect check conducted by the cabinet pursuant to 922 KAR 1:470;

(c) A criminal records check conducted by means of a fingerprint check of the Criminal History Record Information administered by the Federal Bureau of Investigation; and

(d) An address check of the Sex Offender Registry.

(3) A Kentucky child abuse or neglect check conducted by the cabinet shall identify the name of each applicant, adolescent member of the household, or adult member of the household who has:

(a) Been found by the cabinet to have:

1. Committed sexual abuse or sexual exploitation of a child;
2. Been responsible for a child fatality or near fatality related to abuse or neglect;
3. Abused or neglected a child within the seven (7) year period immediately prior to the application; or
4. Had parental rights terminated; or

(b) A matter pending administrative review.

(4) An applicant shall not be approved if:

(a) A criminal records check reveals that the applicant, or adult member of the household, has a:

1. Felony conviction involving:
 - a. A spouse, a child, sexual violence, or death as described by

42 U.S.C. 671(a)(20); or

b. Physical abuse, battery, a drug, or alcohol within the five (5) year period prior to application;

2. Criminal conviction relating to child abuse or neglect; or

3. Civil judicial determination related to child abuse or neglect;

(b) A child abuse or neglect check reveals that the applicant, adolescent member of the household, or adult member of the household, has been found to have:

1. Committed sexual abuse or sexual exploitation of a child;

2. Been responsible for a child fatality or near fatality related to abuse or neglect; or

3. Had parental rights terminated involuntarily in accordance with KRS 625.050 through 625.120 or another state's laws; or

(c) An address check of the Sex Offender Registry and supporting documentation confirm that a sex offender resides at the applicant's home address.

(5) An individual identified in accordance with subsection (3) of this section may submit an open records request in accordance with 922 KAR 1:510.

Section 4. Fingerprint-Based Background Checks.

(1) Fingerprint-based background checks shall be conducted for the following individuals through the Kentucky National Background Check Program pursuant to 906 KAR 1:190, using the KARES system:

(a) An applicant pursuant to 922 KAR 1:310 or 922 KAR 1:350 and each adult member of the household;

(b) A relative or fictive kin caregiver who has lived outside of the state of Kentucky within the last five (5) years; and

(c) An applicant who was approved under the waiver for fingerprint-based background checks during the declared national emergency caused by the COVID-19 pandemic, with only a name-based criminal background check.

(2) An individual meeting the criteria of subsection (1) of this section shall provide to the cabinet or child-placing agency:

(a) A copy of his or her driver's license or other government-issued photo identification for verification that the photograph and name clearly match the individual submitting to the check; and

(b) A completed and signed:

1. DPP-162, Applicant Waiver Agreement and Statement; and

2. DPP-163, Disclosures to be Provided to and Signed by the Applicant and Adult Household Members.

(3) Cabinet or child-placing agency staff shall log on to the NBCP portal and enter the individual's information for a check of the:

(a) Child abuse and neglect central registry pursuant to 922 KAR 1:470;

(b) National Crime Information Center's National Sex Offender Registry in accordance with 34 U.S.C. 20921; and

(c) Sex Offender Registry in accordance with KRS 17.500 through 17.580.

(4)

(a) In accordance with KRS 199.462(2) and 42 U.S.C. 671(a)(20), the cabinet or child-placing agency shall submit payment via credit or debit card for a state and national fingerprint-supported criminal history background check performed by the Department of Kentucky State Police (KSP) and the Federal Bureau of Investigation (FBI), including the rap back system. If an applicant's rap back has not expired, a new fingerprint check shall not be required.

(b) A child-placing agency enrolled in the NBCP shall pay a fee not to exceed ~~thirty (30)~~~~twenty-five (25)~~ dollars in addition to any fees charged in accordance with paragraph (a) of this subsection for the actual cost of processing a fingerprint-supported state and national criminal background check and for providing rap back services for each applicant.

(5)

~~[(a)] [Upon submission of payment in accordance with subsection (4) of this section, cabinet or child-placing agency staff shall print a copy of the DPP-164, Applicant Live Scan Fingerprinting Form, from the NBCP portal and provide the form to the applicant, adult member of the household, or relative or fictive kin caregiver.]~~

~~[(b)] Cabinet or child-placing agency staff shall have:]~~

~~[1.] [Have] no more than ninety (90) calendar days from the date~~

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of payment pursuant to subsection (4) of this section to submit the applicant's fingerprints at an authorized collection site for NBCP[; and]

~~[2.] [Instruct the applicant or other individual to present the completed DPP-164 and copy of driver's license or other government-issued photo identification to the designated agent at an authorized collection site prior to fingerprint submission].~~

(6) Upon completion of the background check required by this section,~~[or] Section 6, or Section 7~~ of this administrative regulation, the cabinet shall provide notice to the requesting agency that the applicant or individual is:

(a) Approved; or

(b) Not approved due to a disqualifying background check result pursuant to subsection (7) of this section.

(7) An applicant or individual shall not be approved if the results of the background check indicate a:

(a) Felony conviction involving:

1. A spouse, a child, sexual violence, or death as established in 42 U.S.C. 671(a)(20); or

2. Physical abuse, battery, drugs, or alcohol within the five (5) year period prior to application;

(b) Criminal conviction relating to child abuse or neglect;

(c) Civil judicial determination related to child abuse or neglect;

(d) Result of a child abuse or neglect check in which the applicant, relative or fictive kin caregiver, adolescent member of the household, or adult member of the household, has been found to have:

1. Committed sexual abuse or sexual exploitation of a child;

2. Been responsible for a child fatality or near fatality related to abuse or neglect; or

3. Had parental rights terminated involuntarily pursuant to KRS 625.050 through 625.120 or another state's laws; or

(e) Result of an address check in the Sex Offender Registry and supporting documentation that a sex offender resides at the applicant's or individual's home address.

(8) An applicant or individual meeting the requirement of subsection (1) of this section may submit an open records request in accordance with 922 KAR 1:510.

Section 5. Request for a Child Abuse or Neglect Check from Another State.

(1) The cabinet shall conduct a child abuse or neglect check as required by 42 U.S.C. 671(a)(20) if a:

(a) Completed DPP-157 or DPP-159, Background Check Request for Relative and Fictive Kin Caregivers, or Adolescent and Adult Household Members, is submitted to the cabinet; or

(b) Request is received on agency letterhead and includes two (2) numeric identifiers.

(2) The cabinet shall:

(a) Protect the confidentiality of the information transmitted by the cabinet to a child welfare agency; and

(b) Waive the fee specified in 922 KAR 1:470.

Section 6. Background Checks Required for a Relative or Fictive Kin Caregiver.

(1) A relative or fictive kin caregiver, and each adult member of the household, shall complete a DPP-159 and submit to:

(a) An in-state criminal records check, conducted pursuant to KRS 199.462(1), by the:

1. Kentucky Justice and Public Safety Cabinet; or

2. Administrative Office of the Courts;

(b) A child abuse or neglect check conducted by the cabinet; and

(c) An address check of the Sex Offender Registry conducted by the cabinet;

(2) A relative or fictive kin caregiver, and each adult member of the household, who has lived outside the state of Kentucky during the past five (5) years shall complete a[and]

~~[(d)] [A] fingerprint-based background check conducted through the NBCP[, beginning July 1, 2021, if the relative or fictive kin caregiver, or adult household member, has lived outside the state of Kentucky during the past five (5) years].~~

~~(3)[(2)] An adolescent member of a relative or fictive kin~~

caregiver's household shall complete a DPP-159 and submit to a child abuse or neglect check conducted by the cabinet.

~~(4)[(3)] A child abuse or neglect check conducted by the cabinet shall identify the name of each applicant and adolescent and adult member of the household and include any finding consistent with Section 4(7) of this administrative regulation.~~

~~(5)[(4)] A relative or fictive kin caregiver shall not be approved if a criminal records check, a child abuse and neglect check, or an address check of the Sex Offender Registry reveals a finding consistent with Section 4(7) of this administrative regulation.~~

~~(6)[(5)] An individual meeting the requirement of subsection (1) of this section may submit an open records request in accordance with 922 KAR 1:510.~~

Section 7. Background Check Requirements for an Independent Relative or Non-Relative Adoption.

(1) An individual applying for an independent non-relative adoption pursuant to 922 KAR 1:010 or an independent relative adoption petitioner who is exempt as defined in KRS 199.470(4), and each adult member of the household, shall submit to a background check, which shall include:

(a) An in-state criminal records check, conducted pursuant to KRS 199.462(1), by the:

1. Kentucky Justice and Public Safety Cabinet; or

2. Administrative Office of the Courts;

(b) A child abuse or neglect check conducted by the cabinet for each state of residence during the past five (5) years; and

(c) An address check of the Sex Offender Registry conducted by the cabinet.

(2) An applicant, and each adult member of the household, who has lived outside the state of Kentucky during the past five (5) years shall complete a criminal records check conducted by means of a fingerprint check of the Criminal History Record Information administered by the Federal Bureau of Investigation.

(3) Prior to approval of an individual, each adolescent member of the household shall complete a DPP-157 and submit to a child abuse or neglect check conducted by the cabinet.

Section 8.~~[Section 7.] Approval.~~

(1) Except for the provisions of Section 4(7) or ~~6(5)[6(4)]~~ of this administrative regulation, approval of an applicant, including an applicant for an independent adoption, fictive kin, or relative caregiver who has been convicted of a nonviolent felony or misdemeanor, has been found by the cabinet or another child welfare agency to have abused or neglected a child, or whose parental rights have been terminated voluntarily, shall be handled on a case-by-case basis with consideration given to the:

(a) Nature of the offense;

(b) Length of time that has elapsed since the event; and

(c) Applicant's life experiences during the ensuing period of time.

(2) Except for the provisions of Section 4(7) or ~~6(5)[6(4)]~~ of this administrative regulation, an applicant, fictive kin, or relative caregiver may be approved on a case-by-case basis in accordance with the criteria described by subsection (1)(a) through (c) of this section if:

(a) An adolescent member of the household has:

1. Been found by the cabinet to have abused or neglected a child; or

2. Had parental rights terminated voluntarily in accordance with KRS 625.040 through 625.046 or another state's laws; or

(b) An adult member of the household has:

1. Been convicted of a nonviolent felony or misdemeanor;

2. Been found to have abused or neglected a child; or

3. Had parental rights terminated voluntarily in accordance with KRS 625.040 through 625.046 or another state's laws.

Section 9.~~[Section 8.]~~ Reevaluation.

(1) Once enrolled in KARES, an approved foster or adoptive parent and each adult member of the household shall maintain enrollment in KARES.

(2)

(a) An approved foster or adoptive parent and each adult member of the household enrolled in KARES shall annually, prior to

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or during the anniversary month of initial KARES determination, undergo:

1. A child abuse or neglect check conducted by the cabinet; and
2. An address check of the Sex Offender Registry conducted by the cabinet.

(b) An active foster or adoptive home shall be closed if an individual undergoing an annual check pursuant to this subsection has a disqualifying background check result established in Section 4(7) of this administrative regulation.

(3) An approved foster or adoptive parent and each adult member of the household not already enrolled in KARES, with the exception of individuals specified in Sections[~~Section~~] 3 and 7 of this administrative regulation, shall submit to a fingerprint-based background check required by Section 4 of this administrative regulation prior to or during the anniversary month of initial approval.

~~(4)~~[(3)] An applicant specified in Section 3 of this administrative regulation and not enrolled in KARES shall submit annually, prior to or during the anniversary month of initial approval, to:

(a) A criminal records check as described in Section 2(1)(a) of this administrative regulation;

(b) A child abuse or neglect check conducted by the cabinet; and

(c) An address check of the Sex Offender Registry.

~~(5)~~[(4)]

(a) If an adult becomes a new member of an approved foster or adoptive parent's household, the new adult member of the household shall submit to background checks within thirty (30) calendar days of residence within the household in accordance with Section 4 of this administrative regulation.

(b) If an adult becomes a new member of a relative or fictive kin caregiver's household, the new adult member of the household shall submit to background checks within thirty (30) calendar days of residence within the household in accordance with Section 6 of this administrative regulation.

~~(6)~~[(5)] If an adolescent becomes a new member of an approved foster or adoptive parent or a relative or fictive kin caregiver's household, the new adolescent member of the household shall submit to a child abuse and neglect check conducted by the cabinet within thirty (30) calendar days of residence within the household in accordance with Section 2(2) or 6(2) of this administrative regulation, respectively.

Section 10.[~~Section 9.~~] Maintenance of Records.

(1) A child-placing agency shall maintain the approval status of each foster and adoptive applicant who has submitted to a fingerprint-based criminal background check by reporting the status in the NBCP web-based system.

(2) A completed copy of each DPP-157 submitted pursuant to Section 2(2), 3(2), or 5 of this administrative regulation shall be maintained by the child-placing agency.

(3) A completed copy of each DPP-159 submitted and criminal records check conducted pursuant to Section 5 or 6 of this administrative regulation shall be maintained.

Section 11.[~~Section 10.~~] Communications. This administrative regulation shall not limit the cabinet's ability to discuss the qualifications or fitness of an applicant or an existing foster or adoptive parent with a child-placing agency in accordance with:

(1) KRS 620.050(5); or

(2) The terms and conditions of:

(a) A release of information signed by the applicant or foster or adoptive parent; or

(b) The agreement between the cabinet and the child-placing agency.

Section 12.[~~Section 11.~~] Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "DPP-157, Background Check Request for Foster or Adoptive Applicants and Adolescent or Adult Household Members", 07/21;

(b) "DPP-159, Background Check Request for Relative and Fictive Kin Caregivers, or Adolescent and Adult Household Members", 06/21;

(c) "DPP-162, Applicant Waiver Agreement and Statement", 07/21; and

(d) "DPP-163, Disclosures to be Provided to and Signed by the Applicant and Adult Household Members", 06/21[; and]

~~[(e)] ["DPP-164, Applicant Live Scan Fingerprinting Form", 06/21].~~

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Cabinet for Health and Family Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m. This material may also be viewed on the department's Web site at <https://chfs.ky.gov/agencies/dCBS/Pages/default.aspx>.

LESA DENNIS, Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: July 2, 2024

FILED WITH LRC: July 11, 2024 at 11:30 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on September 23, 2024, at 9:00 a.m. using the CHFS Office of Legislative and Regulatory Affairs Zoom meeting room. The Zoom invitation will be emailed to each requestor the week prior to the scheduled hearing. Individuals interested in attending this virtual hearing shall notify this agency in writing by September 16, 2024, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends virtually will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until September 30, 2024. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

CONTACT PERSON: Krista Quarles, Policy Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-7476; fax 502-564-7091; email CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes background check requirements for relative and fictive kin caregivers, applicants seeking to provide foster or adoptive services, or individuals who wish to complete an independent adoption.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish requirements for background checks for foster and adoptive applicants and parents and relative and fictive kin caregivers.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes through its establishment of background check requirements for caretaker relatives, fictive kin, prospective foster or adoptive parents, and other household members.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes through its establishment of background check requirements for foster and adoptive applicants, relative and fictive kin caregivers, and household members to ensure the safety of children.

(2) If 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 includes background check provisions for independent non-relative adoptions and independent relative adoptions and includes that foster and adoptive applicants already in KARES shall undergo a child abuse or neglect check and sex offender

check conducted by the cabinet every year. The amendment to this administrative regulation also increases the administrative fee for the KARES fingerprint-based background check from up to twenty-five (25) dollars to up to thirty (30) dollars due to an increase from the contracted third party, IDEMIA Identity & Security USA. The DPP-164 form is no longer used in obtaining fingerprint-based background checks and is being deleted from the administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to ensure protections for all fostered or adopted Kentucky children. The fee increase is necessary because, in accordance with a state master agreement, IDEMIA Identity & Security USA serves as the central hub for fingerprint-supported background checks. IDEMIA raised their rates per fingerprint check. The cabinet has been covering the cost of this rate increase for over a year, this amendment is necessary in order for private providers to pay the actual cost of the check.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 199.462(5) requires the cabinet to promulgate an administrative regulation for the purpose of requiring a criminal background investigation on behalf of a foster or adoptive parent applicant, an adult member of the applicant's household, or a relative or fictive kin caregiver. The amendment conforms to the content of the authorizing statutes through its establishment of background check requirements for caretaker relatives and fictive kin, prospective foster or adoptive parents, and other household members.

(d) How the amendment will assist in the effective administration of the statutes: The amendment ensures compliance with federal and state law and the safety of children.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: As of June 2, 2024, there were a total of 8,170 children that were placed outside of their home of origin, including foster or adoptive placements and children being cared for by relative and fictive kin caregivers. Of these, over 1,000 are placed with non-foster home relative or fictive kin caregivers, over 2,700 are placed in all types of public (DCBS) foster homes, and over 2,900 are placed in private agency foster homes. There are currently 2,616 private agency foster homes (107 private child-placing agencies) and 1,939 public foster homes subject to the background checks required by this administrative regulation. In 2023, 5,205 public foster and adoptive applicants underwent fingerprint-based background checks paid for by the cabinet and 4,088 private foster and adoptive applicants underwent fingerprint-based background checks paid for by 36 private agencies. Pursuant to this amendment, individuals seeking an independent adoption will also be subject to a background check.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: An individual applying for an independent non-relative adoption or an independent relative adoption petitioner, and each adult member of the household, shall undergo an in-state criminal records check, a child abuse or neglect check, and a sex offender registry check.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Applicants subject to these background check requirements have their background check costs borne by the cabinet or a private child-placing agency in the course of the agency's business practices. The administrative cost of the background check has increased. Per state law, the cabinet cannot charge more than the actual cost of processing the background check.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The further protection of children in the care of foster or adopted parents or relative or fictive kin caregivers.

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

(a) Initially: The cabinet is already paying the increased administrative costs of KARES and the amendment will be enacted through practices and contacts that are already a part of existing services provision so that there will be no additional costs to the

administrative body.

(b) On a continuing basis: This amendment does not result in additional costs to the cabinet.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal Title IV-E (of the Social Security Act), Temporary Assistance for Needy Families Block Grant funds, and State General Funds are the sources of funding to implement and enforce this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: An increase in fees is necessary and is included in this amendment. The company the Kentucky State Police contract with to complete national fingerprint-based background checks, IDEMIA Identity & Security USA, has increased their fee per background check for the first time. The cabinet has been covering the cost of this price increase.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This amendment does directly increase a fee. The amendment increases the administrative fee for the fingerprint-based background check from up to twenty-five (25) dollars to up to thirty (30) dollars. The cabinet is currently covering this cost increase for providers until this amendment is implemented. The fee increase is necessary because, in accordance with a state master agreement, IDEMIA Identity & Security USA serves as the central hub for fingerprint-supported background checks. IDEMIA recently raised their rates per fingerprint check.

(9) TIERING: Is tiering applied? Tiering is not applied, because this administrative regulation will be applied in a like manner statewide.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 45 C.F.R. 1356.30, 42 U.S.C. 247d, 671(a)(20), 5106a, 5141

(2) State compliance standards. KRS 194A.050(1), 199.462(5), 199.640(5), 605.120(5), (6), 605.130(7), 605.150

(3) Minimum or uniform standards contained in the federal mandate. 45 C.F.R. 1356.30 requires criminal record checks be conducted for prospective foster and adoptive parents.

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Existing standards do impose stricter requirements than the federal mandate because the cabinet requires the denial of an applicant if: (1) A criminal record check conducted on behalf of an adult household member reveals physical abuse, battery, or a drug or alcohol-related felony within the previous five (5) year period or a felony involving a spouse, a child, sexual violence, or death; or (2) A child abuse or neglect check conducted by the cabinet reveals that a household member, twelve (12) years of age or older, committed sexual abuse or sexual exploitation of a child, has been responsible for a child fatality related to abuse or neglect, or has had parental rights terminated involuntarily. These standards are currently in place.

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The additional restrictions noted in this analysis were added as additional safeguards for children in out-of-home care. The federal law does not prohibit the addition of these restrictions.

FISCAL IMPACT STATEMENT

(1) Identify each state statute, federal statute, or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194a.050(1), 199.462(5), 199.640(5), 605.120(5), (6), 605.130(7), 605.150, 45 C.F.R. 1356.30

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: The Cabinet for Health and Family Services, the Kentucky State Police, and the Administrative Office of the Courts will be impacted by this administrative regulation.

(a) Estimate the following for the first year:

Expenditures: No expenditures are expected.

Revenues: This administrative regulation does not generate revenue. The cost of fingerprint-based background checks cannot

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exceed the cabinet's cost; therefore, revenue is not generated.

Cost Savings: No cost savings are expected.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? The amendment to this administrative regulation will not generate revenue in subsequent years. Fees charged by law enforcement, judicial agencies, or the state for criminal background checks cannot exceed the actual costs of conducting the checks.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts):

(a) Estimate the following for the first year:

Expenditures: No expenditures are expected.

Revenues: This administrative regulation does not generate revenue.

Cost Savings: No cost savings are expected.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? This is not expected to differ over subsequent years.

(4) Identify additional regulated entities not listed in questions (2) or (3): Private child-placing agencies will pay the cost of the background check increase, which is \$2 per check. In 2023, 36 private agencies paid for the background check of 4,088 private foster and adoptive applicants. The cabinet paid this cost for 5,205 public foster and adoptive applicants. This administrative regulation will generate no revenue. Fees passed along to regulated entities are not allowed to exceed the actual cost of the check. This increase is necessary due to a recent IDEMIA rate increase.

(a) Estimate the following for the first year:

Expenditures: Not applicable.

Revenues: Not applicable.

Cost Savings: Not applicable.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? Not applicable.

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: This administrative regulation does not have a fiscal impact.

(b) Methodology and resources used to determine the fiscal impact: There is not a fiscal impact.

(6) Explain:

(a) Whether this administrative regulation will have an overall negative or adverse major economic impact to the entities identified in questions (2) - (4). (\$500,000 or more, in aggregate) This administrative regulation will not have an overall negative or adverse major economic impact to entities.

(b) The methodology and resources used to reach this conclusion: This regulatory amendment will not have a major economic impact on child-placing agencies that participate in the National Background Check Program. The cost of conducting a national fingerprint-based background check has increased for the first time, but this is a minimal increase that will be implemented at a later date.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Child Care
(Amendment)

922 KAR 2:160. Child Care Assistance Program.

RELATES TO: KRS 194A.060, 199.894(1), (5), 199.896, 199.898(1), (2), 199.8982, 199.899, 214.036, 314.011(5), 337.275, 600.020, 605.120(5), ~~620.020(12)~~~~620.020(10)~~, 7 C.F.R. Part 1463, 20 C.F.R. Parts 676-678, 34 C.F.R. Part 361, Part 463, 45 C.F.R. Part 98, 205.10(a)(6), 205.50(a)(1)(i), 400.66(d), 7 U.S.C. 2012, 25 U.S.C. 1261, 1401, 5501, 29 U.S.C. 723(a)(5), 34 U.S.C. 20102(c), 38 U.S.C. 1815, 42 U.S.C. 601-619, 1395w-141, 1771-1793, 2000d, 3001, 4950-5085, 8621, 9857-9858q, 9902(2)

STATUTORY AUTHORITY: KRS 194A.050(1), 199.892, 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 199.892 enables the Cabinet for Health and Family Services to promulgate administrative regulations to qualify to receive federal funds under provisions of the federal Social Security Act, 42 U.S.C. 9857-9858q, and to provide for effective regulation of child care centers. KRS 199.8994 requires the cabinet to administer all child care funds to the extent allowable under federal law or regulation and in a manner that is in the best interest of the clients to be served. This administrative regulation establishes requirements that enable the Cabinet for Health and Family Services to qualify for federal funds under the Child Care and Development Fund, and establishes procedures for the implementation of the Child Care Assistance Program to the extent that funding is available.

Section 1. Definitions.

(1) "Applicant" means a child's natural or adoptive parent or an individual caring for a child in loco parentis who is applying for CCAP.

(2) "Cabinet" is defined by KRS 199.894(1).

(3) "Change in a circumstance" means a change that may affect eligibility or benefit amounts, such as:

- (a) Beginning or ending employment;
- (b) Change in an employer or obtaining additional employment;
- (c) Increase or decrease in the number of work hours;
- (d) Increase or decrease in the rate of pay;
- (e) Increase or decrease in family members;
- (f) Change in self-employment activity;
- (g) Change in scheduled hours care is needed;
- (h) Beginning or ending an educational activity;
- (i) Change in child care provider;
- (j) Change in address or residence;
- (k) Change in marital status;
- (l) Beginning or ending receipt of unearned income; or
- (m) Enrollment in a certified trade school or an accredited college or university.

(4) "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.

(5) "Child Care and Development Fund" or "CCDF" is defined by 45 C.F.R. 98.2.

(6) "Child Care Assistance Program" or "CCAP" means Kentucky's child care subsidy program providing families, who meet the eligibility requirements of this administrative regulation, with the financial resources to find and afford quality child care.

(7) "Child care certificate" is defined by 45 C.F.R. 98.2.

(8) "Child protective services" is defined by 922 KAR 1:330, Section 1(6)~~(5)~~.

(9) "Child with a special need" means a child who has been evaluated and determined to have requirements above and beyond what is typical for children of a similar age and developmental level~~multiple or severe functional needs requiring ongoing specialized care~~.

(10) "Employment" means public or private, permanent or temporary work for an average of twenty (20) hours per week for compensation or as an unpaid job requirement.

(11) "Family" means an applicant or parent, a child, and another responsible adult if present, residing in the same home.

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

(13) "Full day" means child care that is provided for five (5) or more hours per day.

(14) "Good academic standing" means a student is meeting the trade school, college, or university's requirements for attendance and satisfactory progress towards the completion of coursework.

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

- (a) Physician;
- (b) Physician assistant;
- (c) Advanced practice registered nurse;
- (d) Qualified mental health professional as defined by KRS 600.020(52); or
- (e) Registered nurse as defined by KRS 314.011(5) under the supervision of a physician.

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(16) "Homeless" means an individual or a family lacking a fixed, regular, and adequate nighttime residence, including a child experiencing homelessness as defined by 45 C.F.R. 98.2.

(17) "In loco parentis" means a person acting in place of a parent, including:

(a) A legal guardian;

(b) An individual related by blood, marriage, or adoption to the child; or

(c) A nonrelative pursuing legal custody of the child[~~within one (1) year of application~~].

(18) "Infant" means a child who is less than one (1) year old.

(19) "Kentucky Transitional Assistance Program" or "KTAP" means Kentucky's Temporary Assistance for Needy Families or "TANF" money payment program established in 921 KAR Chapter 2.

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

(21) "Part day" means child care that is provided for less than five (5) hours per day.

(22) "Preschool child" means a child who has reached the third birthday up to, but not including, the sixth birthday.

(23) "Preventive services" is defined by KRS 620.020(12).

(24) "Provider" means the entity providing child care services, such as:

(a) A member of a limited liability corporation (LLC);

(b) The head of an organization;

(c) An owner of a corporation;

(d) A member of a partnership;

(e) An owner of a business;

(f) An individual provider; or

(g) A stockholder of a stock-holding company.

(25) "Qualified immigrant" means a child who meets the requirements of 921 KAR 2:006, Section 1(12) or 5(2).

(26) "Registered relative provider" means a child care provider who meets the requirements of 922 KAR 2:180.

(27) "Related" means having one (1) of the following relationships:

(a) Child;

(b) Stepchild;

(c) Grandchild;

(d) Great-grandchild;

(e) Niece;

(f) Nephew;

(g) Sibling;

(h) Child in legal custody; or

(i) Child living in loco parentis.

(28) "Responsible adult" means a person other than the applicant who is in the child's household and who is:

(a) The natural parent, adoptive parent, or stepparent; or

(b) The spouse of an individual caring for a child in loco parentis.

(29) "School-age child" means a child who has reached the sixth birthday.

(30) "State median income" or "SMI" means the estimated median income of households in the state.

(31) "Supplemental Nutrition Assistance Program" or "SNAP" means the program, formerly known as the Food Stamp Program:

(a) Defined by 7 U.S.C. 2012; and

(b) Governed by 921 KAR Chapter 3.

(32) "Teen parent" means a head of household under the age of twenty (20) and attending high school or obtaining a GED.

(33) "Toddler" means a child who has reached the first birthday up to, but not including, the third birthday.

Section 2. Application Rights and Requirements.

(1) An individual may apply or reapply for CCAP through the cabinet or its designee.

(2)

(a) Unless an applicant is approved according to the criteria in Section 5 or 6 of this administrative regulation, an application shall have been made on the date:

1. The following is received at the cabinet or its designee's office:

a. A signed DCC-90, Subsidized Child Care Assistance Application Summary; or

b. Submission in accordance with 921 KAR 2:040, Section 1(6);

or

2. The agency is contacted, if the person:

a. Has a physical or mental disability; and

b. Needs special accommodation due to the impairment.

(b) An applicant may designate an authorized representative who presents identification to make application.

(c) An applicant may be:

1. Assisted by another individual of choice in the application process; and

2. Accompanied by the individual in a contact with the agency.

(d) In accordance with the procedures established in 920 KAR 1:070, interpreter services shall be provided for persons who are:

1. Deaf; or

2. Hard of hearing.

(e) 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.

(3) The cabinet or its designee shall not discriminate against an applicant based on age, race, color, sex, disability, religious creed, national origin, or political beliefs.

(4) For the month child care payment is intended to cover, a family shall meet the technical and financial eligibility criteria, according to its particular circumstances, as described in Sections 3, 4, 5, 6, 7, and 8 of this administrative regulation.

(a) An applicant or recipient shall have three (3) months from approval to verify that he or she meets the technical and financial eligibility criteria if an applicant reports that he or she is working or attending an educational program and provides identification.

(b) An applicant or recipient shall be the primary source of information and shall:

1. Furnish verification of:

a. Income;

b. Technical eligibility; and

c. Employment; and

2. Give written consent to the cabinet or its designee necessary to verify information pertinent to the eligibility determination.

(c)[(b)] Upon receiving written notice of a request for information or a scheduled appointment to present required documentation, failure of an applicant or recipient to respond shall be considered a failure to present adequate proof of eligibility.

(d)[(e)] A homeless household shall have a minimum of three (3) months to verify information in accordance with 42 U.S.C. 9858c(c)(3)(B)(i).

(5) The cabinet or its designee shall:

(a) Render a decision on each application; and

(b) Within thirty (30) calendar days of receipt of the application submitted in accordance with subsection (2) of this section, send notice to the applicant in accordance with Section 12(4) of this administrative regulation.

(6) Each decision regarding eligibility for assistance shall be supported by documentation recorded in the applicant or recipient's case record.

(7) A family shall not receive:

(a) Assistance until approval of the application for benefits; or

(b) Benefits prior to application.

Section 3. Technical Eligibility.

(1) A child shall be eligible for child care assistance, if the child:

(a) Is a:

1. Resident of Kentucky; and

2. U.S. citizen or qualified immigrant;

(b) Is under age:

1. Thirteen (13) at the time of application or recertification; or

2. Nineteen (19) at the time of application or recertification and

is:

a. Physically or mentally incapable of caring for themselves, as demonstrated by a written document provided by a health professional;

b. Under court supervision; or

c. Identified as a priority by federal statute, regulation, or funding source; and

(c) Has a current immunization certificate showing that the child

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is immunized, unless:

1. There is an exception pursuant to KRS 214.036; or
2. The child is attending a:
 - a. Licensed child-care center;
 - b. Certified child-care home;
 - c. Public school;
 - d. Head Start; or
 - e. Other entity that requires the immunization record.

(2) If a child served by the CCAP is not immunized, child care assistance benefits shall be available or continue for a period of thirty (30) calendar days following the notification of the needed immunization while the family takes necessary action to comply with the immunization requirement.

(3) A family shall not be eligible for a CCAP benefit if care is provided by:

- (a) A parent or stepparent;
- (b) A legal guardian;
- (c) A member of the KTAP or SNAP case in which the child in need of child care assistance is included;
- (d) A person living in the same residence as the child in need of care;

(e) A provider not:

1. Licensed according to 922 KAR 2:090, Child-care center licensure;

2. Certified according to 922 KAR 2:100, Certification of family child-care homes; or

3. Registered according to 922 KAR 2:180, Requirements for registered relative child care providers in the Child Care Assistance Program;

(f) A Head Start program unless the child care is provided before, after, or in between the Head Start program's operating hours as wrap-around child care; or

(g) Another child care provider if the family operates the child care business in the home.

(4) If the restrictions specified in subsection (3) of this section do not apply to the provider related to the child, the provider related to the child may be eligible for payment from CCAP if the requirements of 922 KAR 2:180 are met.

Section 4. Requirements for Low Income Working Family Eligibility Determination.

(1) A child shall be eligible to receive CCAP if the child meets the requirements specified in Section 3 of this administrative regulation and resides with:

(a) An applicant who has employment an average twenty (20) hours per week;

(b) An applicant and a responsible adult who have employment an average of forty (40) hours per week combined, if the individual with the least employment has an average of at least five (5) hours of employment per week;

(c) An applicant and a responsible adult if either the applicant or the responsible adult has employment an average of twenty (20) hours per week, and the other is physically or mentally unable to provide adequate care or supervision as documented by a written statement from a health professional;

(d) A relative or fictive kin caregiver pursuant to 922 KAR 1:565 who meets:

1. All requirements in this section; and
2. Income eligibility standards established in Section 8 of this administrative regulation;

(e) A teen parent attending high school or pursuing a general equivalency degree (GED), including a period of recess or temporary break [up to three (3) months]; or

(f) An applicant who meets the eligibility requirements specified in Section 7 of this administrative regulation.

(2) A child shall be eligible to receive CCAP for a minimum of three (3) months or in accordance with Section 9 of this administrative regulation if the child meets the requirements specified in Section 3 of this administrative regulation and resides with:

- (a) An applicant who is homeless;
- (b) An applicant who is engaged in job search; or
- (c) A recipient after the loss of employment [a reduction in the

required number of employment hours,] or cessation of attendance at a job training or educational program in accordance with 42 U.S.C. 9858(c)(2)(N)(iii), to allow for job search or resumption of work or attendance at job training or educational program [;-or]

~~[(d)] [A recipient on maternity leave or other medical leave from employment as verified by a health professional, unless a temporary disability as verified by a health professional necessitates longer than three (3) months of CCAP eligibility].~~

(3) A child shall be eligible to receive CCAP for a minimum of three (3) months if the child meets the requirements established in Section 3 of this administrative regulation and resides with an applicant who provides identification and reports that he or she is:

(a) Working; or

(b) Attending an educational program.

~~(4) To [Effective October 24, 2022, to] the extent funds are available, a household shall have all earned and unearned income excluded from the eligibility determination if an applicant or responsible adult meets the requirements of subsection (1) of this section and has verified employment in a regulated:~~

~~(a) Licensed child-care center; or~~

~~(b) Certified family child-care home.~~

(5) To the extent funds are available, a household shall have all earned and unearned income excluded from the eligibility determination for a child under the care of a foster parent who is working outside the home or teleworking inside the home and meets the requirements of subsection (1) of this section.

~~[(4)] Compliance with subsection (1) of this section for an applicant or a responsible adult who is self-employed shall be determined by dividing income calculated in accordance with Section 8(6)(d) of this administrative regulation by an hourly pay rate of no less than minimum wage established in accordance with KRS 337.275.~~

Section 5. Requirements for Protection and Permanency Eligibility Determination.

(1) A child shall be eligible to receive CCAP if the child:

(a) Resides with an applicant who:

1. Receives child protective or preventive services; or
2. Needs to receive child protective or preventive services based upon an assessment conducted by child protective services staff pursuant to 922 KAR 1:330; and

(b) Meets the requirements listed in Section 3 of this administrative regulation.

(2) A child shall be approved for child care assistance by the cabinet in accordance with subsection (1) of this section without a separate application, as an integral part of:

(a) A protective or preventive services plan in accordance with 922 KAR 1:430;

(b) An assessment in accordance with Section 3 of 922 KAR 1:330;

(c) An aftercare plan in accordance with Section 12 of 922 KAR 1:330; or

(d) Services offered to a relative or fictive kin caregiver in accordance with 922 KAR 1:565.

(3)

~~[(a)] The [Based on the assessment in accordance with 922 KAR 1:330, the] cabinet shall [may] waive the family copayment required by Section 11 of this administrative regulation for a child who participates in CCAP as a result of child protective services authorization for either protective or preventive CCAP.~~

~~[(b)] [If the cabinet waives the family copayment in accordance with paragraph (a) of this subsection, the cabinet shall document the reason for the waiver in the child's protective services case plan.]~~

Section 6. State-Funded Workforce Training Child Care Eligibility Determination. A child shall be eligible for CCAP if the child:

(1) Resides with an applicant who is participating in the:

- (a) Kentucky Works Program established in 921 KAR 2:370; or
- (b) Supplemental Nutrition Assistance Program Employment and Training Program (SNAP E&T) pursuant to 921 KAR 3:042; and

(2) Meets the requirements listed in Section 3 of this administrative regulation.

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Section 7. Education and Job Training Child Care Eligibility Determination.

(1) To the extent funds are available, a child shall be eligible for CCAP if the child:

(a) Resides with an applicant who:

1. Is enrolled in:

a.

(i) A certified trade school or an accredited college or university;

or

(ii) A program that leads to a degree or certification; and

b. Accordance with subsection (2) of this section;

2. Is in good academic standing with the trade school, college, or university in which the applicant is enrolled;

3. Provides verification of enrollment and good academic standing from the trade school, college, or university in which the applicant is enrolled;

4. Meets income eligibility criteria of Section 8 of this administrative regulation; and

5. Has not received CCAP for more than sixty (60) months due to enrollment in a certified trade school or an accredited college or university; and

(b) Meets the requirements established in Section 3 of this administrative regulation.

(2) While an applicant is enrolled in a certified trade school or an accredited college or university:

(a) The applicant's coursework shall be completed in-person or online; and

(b) The applicant shall be classified as a part-time or full-time student as defined by the trade school, college, or university, and enrolled in at least the equivalent of six (6) credit hours.

(3) An applicant who does not complete a term at a trade school, college, or university shall be responsible for the cost of child care tuition for the term.

Section 8. Income Eligibility.

(1) A child shall be eligible for CCAP if the family's income is less than or equal to eighty-five (85) percent of the SMI as prepared by the U.S. Census Bureau [~~through calendar year 2021~~] at initial application, recertification, or recalculation.

(2) Except for a child who is eligible as specified in Section 5 of this administrative regulation, gross income received or anticipated to be received by the applicant and responsible adult shall be considered when the cabinet or its designee determines the family's eligibility for the CCAP.

(3) A child who is eligible for CCAP as specified in Section 5 of this administrative regulation shall be eligible without regard to the family's income.

(4) Excluded income shall be:

(a) KTAP child only payments, including back payment;

(b) A payment received from the kinship care program, pursuant to 922 KAR 1:130, including back payment;

(c) Educational grant, loan, scholarship, and work study income;

(d) The value of a:

1. Kentucky Works Program supportive services payment pursuant to 921 KAR 2:017; or

2. SNAP E&T transportation payment pursuant to 921 KAR 3:042;

(e) The value of United States Department of Agriculture program benefits including:

1. Donated food;

2. Supplemental food assistance received pursuant to 42 U.S.C. 1771;

3. Special food service program for a child pursuant to 42 U.S.C. 1775;

4. Nutrition program for the elderly pursuant to 42 U.S.C. 3001; and

5. The monthly allotment under SNAP;

(f) Payment made directly to a third party on behalf of the applicant or recipient by a non-responsible[~~nonresponsible~~] person;

(g) In-kind income;

(h) Reimbursement for transportation in performance of an employment duty, if identifiable;

(i) Nonemergency medical transportation payment;

(j) Highway relocation assistance;

(k) Urban renewal assistance;

(l) Federal disaster assistance and state disaster grant;

(m) Home produce utilized for household consumption;

(n) Housing subsidy received from federal, state, or local governments;

(o) Receipt distributed to a member of certain Native American tribes by the federal government pursuant to 25 U.S.C. 1261, 1401, and 5501;

(p) Funds distributed per capita to or held in trust for a member of a Native American tribe by the federal government pursuant to 25 U.S.C. 1261, 1401, and 5501;

(q) Payment for supporting services or reimbursement of out-of-pocket expense made to an individual volunteering as:

1. Senior health aide; or

2. Member of the:

a. Service Corps of Retired Executives; or

b. Active Corps of Executives;

(r) Payment made to an individual from a program pursuant to 42 U.S.C. 4950 to 5085 if less than the minimum wage under state or federal law, whichever is greater, including:

1. Volunteers in Service to America (VISTA);

2. Foster Grandparents;

3. Retired and Senior Volunteer Program; or

4. Senior Companion;

(s) Payment from the cabinet for:

1. Child foster care; or

2. Adult foster care;

(t) Energy assistance payment made under:

1. The Low Income Home Energy Assistance Program (LIHEAP) pursuant to 42 U.S.C. 8621; or

2. Other energy assistance payment made to an energy provider or provided in-kind;

(u) The principal of a verified loan;

(v) Up to \$12,000 to Aleuts and \$20,000 to an individual of Japanese ancestry for payment made by the United States Government to compensate for a hardship experienced during World War II;

(w) The advance payment or refund of earned income tax credit;

(x) Payment made from the Agent Orange Settlement Fund;

(y) Payment made from the Radiation Exposure Compensation Trust Fund;

(z) Up to \$2,000 per year of income received by individual Native Americans denied from a lease or other use of individually-owned trust or restricted lands;

(aa) Payment made to an individual because of the individual's status as a victim of Nazi persecution;

(bb) Income received from temporary employment from the United States Department of Commerce, Bureau of the Census;

(cc) A payment received from the National Tobacco Growers Settlement Trust;

(dd) A Tobacco Loss Assistance Program payment pursuant to 7 C.F.R. 1463;

(ee) A payment received from a crime victim compensation program according to the Antiterrorism and Effective Death Penalty Act of 1996 pursuant to 34 U.S.C. 20102(c);

(ff) A payment made, pursuant to 38 U.S.C. 1815 by the Veteran's Administration, to children of female Vietnam veterans;

(gg) A discount or subsidy provided to Medicare beneficiaries pursuant to 42 U.S.C. 1395w-141;

(hh) Any cash grant received by the applicant under the Department of State or Department of Justice Reception and Placement Programs pursuant to 45 C.F.R. 400.66(d);

(ii) Reimbursement payment for a vocational rehabilitation individual participating in Preparing Adults for Competitive Employment pursuant to 29 U.S.C. 723(a)(5);

(jj) Income or earnings from a program funded under the Workforce Innovation and Opportunity Act pursuant to 20 C.F.R. Parts 676-678 or 34 C.F.R. Part 361 or 463;

(kk) Waiver reimbursement in accordance with 907 KAR 1:170, 907 KAR 1:835, or 907 KAR 7:015 to a parent for the care of a child in the home; or

(ll) Supplemental Security Income (SSI) for a child.

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(5) Deductions from gross income shall be:

(a) Actual, legally obligated child support payment made by the applicant or responsible adult to a party not living in the family's residence; and

(b) Operating costs to determine adjusted gross income from self-employment.

(6) Best estimate.

(a) Gross income shall be computed by using a best estimate of income that may exist in the benefit month.

(b) The following method shall be used to calculate a best estimate of earned income other than earned self-employment:

1. Cents shall:

a. Not be rounded to the nearest dollar before adding or multiplying hourly or daily earnings; and

b. Be rounded to the nearest dollar before adding or multiplying weekly, biweekly, semi-monthly, monthly, quarterly, or annual earnings;

2. Unless it does not represent the ongoing situation, income from all pay periods in the preceding two (2) calendar months shall be used;

3. A monthly amount shall be determined by adding gross income from each pay period, dividing by the total number of pay periods considered, and converting the pay period figure to a monthly figure by multiplying a:

a. Weekly amount by four and one-third (4 1/3);

b. Biweekly amount by two and one-sixth (2 1/6); or

c. Semimonthly amount by two (2); and

4. If income has recently begun and the applicant or recipient has not received a calendar month of earned income, the anticipated monthly income shall be computed by:

a. Multiplying the:

(i) Hourly rate by the estimated number of hours to be worked in a pay period; or

(ii) Daily rate by the estimated number of days to be worked in the pay period;

b. Converting the resulting pay period figure to a monthly amount pursuant to subparagraph 3.c. of this paragraph; and

c. Rounding to the nearest dollar.

(c) For a case with unearned income, other than unearned self-employment income, a monthly amount shall be determined by:

1. Using the gross monthly amount of continuing, stable unearned income received on a monthly basis; and

2. Averaging the amount of unstable unearned income received in the three (3) prior calendar months, unless it does not represent the ongoing situation.

(d) For a case with self-employment income, a monthly amount shall be determined as follows:

1. If the self-employment enterprise has been in operation for at least a year, the income shall be prorated by dividing the income from the last calendar year by twelve (12);

2. If the self-employment enterprise has been in operation for less than a year, the income shall be prorated by dividing by the number of months the business has been in existence; and

3. Profit shall be determined by:

a. Rounding the total gross income to the nearest dollar;

b. Rounding the total amount of allowable expenses to the nearest dollar;

c. Dividing total gross income and total amount of allowable expenses separately by twelve (12) or the appropriate number of months, and rounding the quotients to the nearest dollar; and

d. Subtracting the rounded monthly allowable expense quotient from the rounded monthly gross income quotient.

(e) If the cabinet or its designee becomes aware of a change in circumstance, the best estimate shall be recalculated.

Section 9. Continuing Eligibility.

(1) Continued eligibility under the CCAP shall be recertified at least every twelve (12) months.

(2) Eligibility shall be reviewed at each twelve (12) month recertification for a child who is placed with a relative or fictive kin caregiver. A child who is placed with a relative or fictive kin caregiver shall remain eligible pursuant to Section 5 of this administrative regulation for as long as the cabinet determines that child care is

necessary in order to prevent child maltreatment or entry into the foster care system.

(3) Eligibility shall be reviewed and recalculated [if necessary] due to a known or reported change in circumstance and shall:

(a) Continue for twelve (12) months unless a non-temporary circumstance is reported, which shall include:

1. A change in income, with income exceeding eighty-five (85) percent of Kentucky's SMI;

2. The end of a recipient's eligible activity; or

3. A move out of state; and

(b) Be readjusted to twelve (12) months from the date of the reported change or verification of a new child in the household.

(4) Unless a nonrelative is approved as fictive kin pursuant to 922 KAR 1:140 or 922 KAR 1:565 and Section 5 of this administrative regulation, a nonrelative who is acting in loco parentis for a child shall be required to show proof of efforts to seek permanent custody of the child or adopt the child [within one (1) year of initial application] as a condition of continued eligibility for CCAP.

(5) In accordance with 42 U.S.C. 9858c(c)(2)(N), if a family's income does not exceed eighty-five (85) percent of Kentucky's SMI, the family shall remain eligible for CCAP until recertification in accordance with this section.

(6)

(a)

~~[1.] [Effective March 4, 2022, through August 31, 2022, the cabinet shall implement a transitional period in the Child Care Assistance Program. A child enrolled shall continue to receive assistance for three (3) months after becoming ineligible due to exceeding the income limitations established in Section 8 of this administrative regulation.]~~

~~[2.] Effective September 1, 2022, to the extent funds are available, the cabinet shall implement a transitional period in the Child Care Assistance Program. A child enrolled shall continue to receive assistance for six (6) months after becoming ineligible due to exceeding the income limitations established in Section 8 of this administrative regulation.~~

(b) During the transitional period established in paragraph (a) of this subsection, the provider shall continue to receive fifty percent (50%) of the lesser amount of the provider subsidized rate or maximum payment rate established in the DCC-300, rounded up to the nearest whole dollar.

Section 10. Payment Rates and Policy.

(1)

(a) To the extent funds are available, the cabinet shall make payments as listed in the DCC-300, Kentucky Child Care Maximum Payment Rate Chart.

(b) The rates in the DCC-300 shall represent the maximum payment rates on a per day, per child, per child care provider basis.

(c) The maximum payment rates shall include the following categories:

1. Full day;

2. Part day;

3. Licensed Type I;

4. Licensed Type II;

5. Certified;

6. Registered relative;

7. Infant/Toddler;

8. Preschool child; and

9. School-age child.

(2) To the extent funds are available, a licensed or certified provider shall receive:

(a) Five (5) dollars per day beyond the maximum rate if the provider is accredited by the:

1. National Association for the Education for Young Children;

2. National Early Childhood Program Accreditation;

3. National Association for Family Child Care;

4. Council on Accreditation; or

5. Other accrediting body approved by the Early Childhood Advisory Council or the cabinet; or

(b) [1]Ten (10) dollars per day beyond the maximum rate for nontraditional care for providing child care assistance based on the parent's schedule between:

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- 1. 7 p.m. to 5 a.m. daily; or
- 2. Friday, 7 p.m. through Monday, 5 a.m.
- (3) To the extent funds are available, a licensed, certified, or registered relative provider shall receive a special care rate of five (5) additional dollars per day beyond the maximum rate for care of a child:

- (a) With a special need; or
- (b) Who is age thirteen (13), but under age nineteen (19) at application or recertification, and is:

- 1. Physically or mentally incapable of caring for himself as determined by a health professional; or
- 2. Under court supervision.

(4) The cabinet or its designee shall determine the maximum daily reimbursement rate not to exceed the amount charged to the general public.

(5) A child care provider registered according to 922 KAR 2:180 shall not be paid for more than six (6) related children receiving CCAP per day[;]

[(a) [Three (3) children receiving CCAP per day; or]

[(b) [Six (6) children receiving CCAP per day, if those children are:]

[1.] [A part of a sibling group; and]

[2.] [Related to the provider].

(6) A family meeting the requirements of Section 4 or 6 of this administrative regulation shall be eligible for payment to cover child care needs due to full-time or part-time enrollment in an educational program.

(7) To the extent funds are available, required enrollment fees shall be paid no more than three (3) times in a twelve (12) month period for a family meeting the requirements in Section 5 or 6 of this administrative regulation.

Section 11. Family Copayment.

(1) Unless a family copayment has been waived in accordance with Section 5(3) of this administrative regulation, a family of a child served by the CCAP shall be responsible for a copayment in accordance with the family copayment table in subsection (3) of this section.

(2) If a court orders a parent of a CCAP-eligible child to pay a portion of the child's child care expenses, the court-ordered payment shall be in lieu of the family copayment required by subsection (3) of this section.

(3)

(a) The cabinet or its designee shall determine a copayment that a family shall pay to the provider for the cost of child care, based on the following table:

CCAP Daily Co-Payment Chart							
Gross Monthly Income Range (\$)		Household (HH) of 2	HH of 3	HH of 4	HH of 5	HH of 6	Deduct \$1 for each additional household member over age 6, with 0 being the lowest
0	1599.99	\$0	\$0	\$0	\$0	\$0	\$0
1,600	1,899.99	\$4	\$3	\$2	\$1	\$0	\$0
1,900	2,199.99	\$5	\$4	\$3	\$2	\$1	\$0
2,200	2,499.99	\$6	\$5	\$4	\$3	\$2	\$1
2,500	2,799.99	\$7	\$6	\$5	\$4	\$3	\$2
2,800	3,099.99	\$8	\$7	\$6	\$5	\$4	\$3
3,100	3,399.99	\$9	\$8	\$7	\$6	\$5	\$4
3,400	3,699.99	\$10	\$9	\$8	\$7	\$6	\$5
3,700	3,999.99	\$11	\$10	\$9	\$8	\$7	\$6
4,000	4,299.99	\$12	\$11	\$10	\$9	\$8	\$7
4,300	4,599.99	\$13	\$12	\$11	\$10	\$9	\$8
4,600	4,899.99	\$14	\$13	\$12	\$11	\$10	\$9
4,900	5,199.99	\$15	\$14	\$13	\$12	\$11	\$10
5,200	5,499.99	\$16	\$15	\$14	\$13	\$12	\$11
5,500	5,799.99	\$17	\$16	\$15	\$14	\$13	\$12
5,800	6,099.99	\$18	\$17	\$16	\$15	\$14	\$13
6,100	6,399.99	\$19	\$18	\$17	\$16	\$15	\$14
6,400	6,699.99	\$20	\$19	\$18	\$17	\$16	\$15
6,700	6,999.99	\$21	\$20	\$19	\$18	\$17	\$16
7,000	7,299.99	\$22	\$21	\$20	\$19	\$18	\$17
7,300	7,599.99	\$23	\$22	\$21	\$20	\$19	\$18
7,600	7,899.99	\$24	\$23	\$22	\$21	\$20	\$19
7,900	8,199.99	\$25	\$24	\$23	\$22	\$21	\$20
For every \$300 over \$8199.99, add \$1 to the HH size amount							

[Family Co-Payment Per Day]								
[Income Range Monthly]		[Family Size 2 Family Co-Pay With 1 Child]	[Family Size 3 Family Co-Pay]		[Family Size 4 Family Co-Pay]		[Family Size 5 or More Family Co-Pay]	
			[With 1 Child]	[With 2 or more]	[With 1 Child]	[With 2 or more]	[With 1 Child]	[With 2 or more]
[0]	[899]	[\$0]	[\$0]	[\$0]	[\$0]	[\$0]	[\$0]	[\$0]
[900]	[999]	[\$0]	[\$0]	[\$0]	[\$0]	[\$0]	[\$0]	[\$0]
[1,000]	[1,099]	[\$0]	[\$0]	[\$0]	[\$0]	[\$0]	[\$0]	[\$0]
[1,100]	[1,199]	[\$0]	[\$0]	[\$0]	[\$0]	[\$0]	[\$0]	[\$0]
[1,200]	[1,299]	[\$0]	[\$0]	[\$0]	[\$0]	[\$0]	[\$0]	[\$0]
[1,300]	[1,399]	[\$0]	[\$0]	[\$0]	[\$0]	[\$0]	[\$0]	[\$0]
[1,400]	[1,499]	[\$6]	[\$5]	[\$6]	[\$5]	[\$6]	[\$4]	[\$4]
[1,500]	[1,599]	[\$7]	[\$6]	[\$6]	[\$6]	[\$6]	[\$5]	[\$5]
[1,600]	[1,699]	[\$8]	[\$6]	[\$7]	[\$6]	[\$7]	[\$6]	[\$6]

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[1,700]	[1,799]	[\$9]	[\$7]	[\$8]	[\$7]	[\$8]	[\$6]	[\$7]
[1,800]	[1,899]	[\$10]	[\$8]	[\$9]	[\$7]	[\$8]	[\$7]	[\$8]
[1,900]	[1,999]	[\$10]	[\$9]	[\$10]	[\$8]	[\$9]	[\$8]	[\$9]
[2,000]	[2,099]	[\$11]	[\$10]	[\$11]	[\$8]	[\$9]	[\$8]	[\$9]
[2,100]	[2,199.99]	[\$12]	[\$10]	[\$11]	[\$9]	[\$10]	[\$9]	[\$10]
[2,200]	[2,299.99]	[\$12]	[\$11]	[\$12]	[\$10]	[\$11]	[\$9]	[\$10]
[2,300]	[2,399.99]	[\$12]	[\$12]	[\$13]	[\$11]	[\$12]	[\$9]	[\$10]
[2,400]	[2,499.99]	[\$12]	[\$12]	[\$13]	[\$12]	[\$13]	[\$10]	[\$11]
[2,500]	[2,599.99]	[\$12]	[\$13]	[\$14]	[\$12]	[\$13]	[\$10]	[\$11]
[2,600]	[2,699.99]	[\$12]	[\$13]	[\$14]	[\$13]	[\$14]	[\$12]	[\$13]
[2,700]	[2,799.99]	[\$12]	[\$13]	[\$14]	[\$13]	[\$14]	[\$13]	[\$14]
[2,800]	[2,899.99]	[\$12]	[\$13]	[\$14]	[\$14]	[\$15]	[\$14]	[\$15]
[2,900]	[2,999.99]	[\$12]	[\$13]	[\$14]	[\$14]	[\$15]	[\$16]	[\$17]
[3,000]	[3,099.99]	[\$12]	[\$13]	[\$14]	[\$15]	[\$16]	[\$18]	[\$19]
[3,100]	[3,199.99]	[\$12]	[\$13]	[\$14]	[\$15]	[\$16]	[\$20]	[\$21]
[3,200]	[3,299.99]	[\$12]	[\$13]	[\$14]	[\$15]	[\$16]	[\$20]	[\$21]
[3,300]	[3,399.99]	[\$12]	[\$13]	[\$14]	[\$15]	[\$16]	[\$22]	[\$23]
[3,400]	[3,499.99]	[\$12]	[\$13]	[\$14]	[\$15]	[\$16]	[\$22]	[\$23]
[3,500]	[3,599.99]	[\$12]	[\$13]	[\$14]	[\$15]	[\$16]	[\$24]	[\$25]
[3,600]	[3,699.99]	[\$12]	[\$13]	[\$14]	[\$15]	[\$16]	[\$25]	[\$25]

(b) The maximum copayment for an eligible family with more than five (5) members shall be twenty-five (25) dollars.

(c) In accordance with 45 C.F.R. 98.21, a copayment for an eligible family shall:

1. Be determined at initial application or recertification; and
2. Not increase during the twelve (12) month eligibility period.

Section 12. Family Rights and Responsibilities.

(1) The family of a child served by the CCAP shall have rights pursuant to KRS 199.898(1) and (2).

(2) Unless an alternative program such as Head Start, state preschool, or state kindergarten is available and accessible during the time child care is needed, an applicant for a child who receives or has been approved to receive CCAP benefits shall:

(a) Be offered choice of child care assistance subject to the availability of state and federal funds; and

(b) Receive a DCC-94, Child Care Service Agreement and Certificate.

(3) Upon enrollment or reenrollment with a provider, an applicant approved in accordance with Section 4 of this administrative regulation shall sign and return the:

- (a) DCC-94; or
- (b) DCC-90.
- (4) Notification of action.

(a) A DCC-94C, Provider Notification Letter, shall provide notice to a provider of a child's discontinuation from CCAP or disenrollment with a provider.

(b) A DCC-94.1, CHILD CARE Approval/Change Notice, shall provide notice of:

1. A change in the certification period of child;
2. Approval of an application; or
3. Continued eligibility.

(c) A DCC-105, Child Care Denial/Discontinuance Notice, shall provide notice of:

1. Denial of an application;
2. Discontinuance of a CCAP benefit;
3. Reason for adverse action;
4. Citation from an applicable state administrative regulation; and

5. Information regarding the opportunity to request an administrative hearing in accordance with Section 18 of this administrative regulation.

(d) The language on the form shall differ according to the purpose of the notice described in paragraphs (a) through (c) of this subsection.

(5) An applicant for a child served by CCAP shall advise the cabinet or its designee of a change in a circumstance within ten (10) calendar days of the day the change is known.

(6) Failure to report a change in a circumstance may result in a:

(a) Decrease or discontinuance of CCAP benefits based on the type of change; or

(b) Claim in accordance with 922 KAR 2:020.

(7) An applicant for a child served by CCAP who fails to cooperate with a cabinet quality control or case review shall be:

- (a) Discontinued from CCAP benefits; and
- (b) Unable to participate in CCAP until the applicant meets the requirements of the quality control or case review.

(8) An applicant for a child served by CCAP shall report to the cabinet or its designee a provider whom the applicant suspects is not fulfilling requirements in accordance with Section 14(1)(c) of this administrative regulation.

Section 13. Cabinet Requirements.

(1) The DCC-94 shall:

(a) Be used for child care assistance provided by a licensed, certified, or registered relative provider; and

(b) Not be considered a contract, employment, or grant to the child care provider, but shall be considered assistance to the applicant pursuant to 45 C.F.R. 98.30(c)(6).

(2) The cabinet or its designee shall provide consumer information regarding conditions for termination of the DCC-94 pursuant to KRS 199.8994(6)(b).

(3) The cabinet or its designee shall assure that a provider of child care assistance funded under the CCDF and other local, state, or federal funds shall comply with the applicable regulatory requirements pursuant to:

(a) 922 KAR 2:020, Child Care Assistance Program (CCAP) improper payments, claims, and penalties;

(b) 922 KAR 2:090, Child-care center licensure;

(c) 922 KAR 2:100, Certification of family child-care homes;

(d) 922 KAR 2:120, Child-care center health and safety standards;

(e) 922 KAR 2:180, Requirements for registered relative child care providers in the Child Care Assistance Program;

(f) 922 KAR 2:190, Civil penalties;

(g) 922 KAR 2:270, Kentucky All STARS quality-based graduated early childhood rating system for licensed child-care centers and certified family child-care homes; and

(h) 922 KAR 2:280, Background checks for child care staff members, reporting requirements, and appeals.

(4) ~~[The cabinet or its designee shall complete a home inspection of a registered child care provider in CCAP in accordance with 42 U.S.C. 9858c(c)(2)(K)(i)(IV) and 922 KAR 2:180.]~~

~~[(5)]~~ If CCAP benefits are reduced or discontinued due to the shortage of funding, the cabinet shall provide a minimum thirty (30) calendar day notice to each family receiving child care assistance.

~~[(5)]~~~~[(6)]~~ If the daily maximum payment rate is reduced due to the shortage of funding, the cabinet shall provide a minimum thirty (30) calendar day notice to licensed, certified, or registered relative providers.

~~[(6)]~~~~[(7)]~~ The cabinet shall send a notice of adverse action at least ten (10) calendar days in advance of taking adverse action.

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~~(7)~~~~(8)~~ In accordance with 45 C.F.R. 98.46, the cabinet shall prioritize child care assistance benefits as determined by the available funds as follows:

- (a) Child protective or preventive services authorization;
- (b) A child with a special need;
- (c) A child experiencing homelessness as defined by 45 C.F.R. 98.2;
- (d) A child in the custody of the cabinet;
- (e) KTAP recipients participating in the Kentucky Works Program established in 921 KAR 2:370;
- (f) Teen parents attending high school or pursuing a general equivalency degree (GED);
- (g) A KTAP recipient attempting to transition off assistance through employment;
- (h) A parent whose KTAP case has been discontinued during the previous twelve (12) months and who needs child care assistance in order to accept or retain employment;
- (i) A low income working parent; or
- (j) A parent in education or training programs leading to self-sufficiency.

Section 14. Provider Requirements.

(1) A licensed child-care center, certified family child-care home, or registered relative child care provider that serves a child who participates in the CCAP shall:

(a) Sign and give to the parent for submission to the cabinet or its designee, upon a child's enrollment or reenrollment with the provider and prior to receiving payment from the CCAP, the DCC-94;

(b) Report all absences on the DCC-97, Provider Billing Form, submitted to the cabinet or its designee;

(c)

1. Maintain the DCC-94E, Child Care Daily Attendance Record, or a cabinet approved electronic billing system in which the attendance is:

a. Recorded legibly each time the child arrives and each time the child departs the provider's care; and

b. Signed or electronically recorded legibly with first and last name by the parent or applicant for the child served by CCAP; and

2. Submit the DCC-94E or electronic daily attendance record upon request of the cabinet or its designee;

(d) Comply with the applicable regulatory requirements pursuant to:

1. 922 KAR 2:020, Child Care Assistance Program (CCAP) improper payments, claims, and penalties;

2. 922 KAR 2:090, Child-care center licensure;

3. 922 KAR 2:100, Certification of family child-care homes;

4. 922 KAR 2:120, Child-care center health and safety standards;

5. 922 KAR 2:180, Requirements for registered relative child care providers in the Child Care Assistance Program;

6. 922 KAR 2:190, Civil penalties;

7. 922 KAR 2:270, Kentucky All STARS quality-based graduated early childhood rating system for licensed child-care centers and certified family child-care homes; and

8. 922 KAR 2:280, Background checks for child care staff members, reporting requirements, and appeals;

(e) Complete the cabinet approved training on billing and the DCC-94E prior to receiving an initial payment from CCAP; and

(f) Complete, retain on file, and provide to the CCAP billing section a certificate of completion for cabinet approved training on billing once during each state fiscal year of operation or upon change of the staff member submitting billing information.

(2) A licensed or certified child care provider shall complete and submit the DCC-94B, Licensed or Certified Provider Agreement Form, prior to receiving payment from CCAP.

(3) A licensed child care provider shall maintain written documents with attendance records stating the reason for any absence of a child receiving CCAP in excess of twelve (12)~~five (5)~~ absences per month per child.

(4)

(a) If CCAP records indicate that a certified family child-care home or a licensed child-care center is operating over capacity, as

specified in 922 KAR 2:100 or 922 KAR 2:120 respectively, by having two (2) or more shifts, the cabinet shall request an operating plan from the provider.

(b) An operating plan in accordance with paragraph (a) of this subsection shall specify:

1. Each employee of each shift;
2. The work hours for each employee of each shift;
3. The management for each shift;
4. The work hours for each management employee of each shift;

and

5. The children enrolled for each shift.

(c) The cabinet shall approve a provider for overcapacity if:

1. The operating plan meets all requirements of:

a. For a licensed child-care center, 922 KAR 2:090 and 922 KAR 2:120; or

b. For a certified family child-care home, 922 KAR 2:100; and

2. The provider has had less than two (2) health, safety, or welfare deficiencies or violations within the previous twenty-four (24) month period, even if deficiencies were corrected.

~~(5) [A registered child care provider in CCAP shall comply with an inspection in accordance with 42 U.S.C. 9858c(c)(2)(K)(i)(IV) and 922 KAR 2:180 conducted by the cabinet or its designee.]~~

~~[(6)] A provider shall be ineligible for CCAP if the provider:~~

~~(a) Was discontinued or disqualified from participation in a governmental assistance program due to fraud or abuse of the program;~~

~~(b) Has had a previous ownership interest in a child-care provider, which had a prior certification, license, registration, or permit to operate denied, suspended, revoked, or voluntarily relinquished as a result of an investigation or pending adverse action; or~~

~~(c) Is a parent, spouse, sibling, or child of a previous provider described in paragraphs (a) and (b) of this subsection, and the previous provider will be involved in the new provider's operations in any capacity.~~

Section 15. Other Services. To the extent funds are available, a child whose family's income is over the income limits for the CCAP described in Section 8 of this administrative regulation may be eligible for:

(1) Child care payments;

(2) Enrollment fees;

(3) Activity or day trip fees;

(4) Material fees;

(5) Transportation fees; or

(6) Other items relating to child care services with prior approval of the cabinet.

Section 16. An improper payment, claim, or penalty in CCAP shall be handled in accordance with 922 KAR 2:020.

Section 17. Criteria for Payment and Nonpayment.

(1) Payment under the CCAP shall:

~~(a) Be made to a registered, certified, or licensed provider based on the enrollment of the child, per the care schedule on the DCC-94 [Not be made to a licensed provider for more than five (5) absences per child during a month if the provider fails to verify in writing, and maintain attendance records verifying, that the additional absences were related to:]~~

~~[1.] [A death in the family;]~~

~~[2.] [An illness of the:]~~

~~[a.] [Child; or]~~

~~[b.] [Applicant; or]~~

~~[3.] [A disaster verified by utility provider, local, state, or federal government];~~

~~(b) [Not be made to a certified provider for more than five (5) absences per child during a month;]~~

~~[(c)] [Not be made to a registered provider for any absences;]~~

~~[(d)] Be denied in accordance with KRS 199.8994(6);~~

~~[(c)] [(e)] Cease if a family or provider defaults on a payment in accordance with Section 11 of this administrative regulation or 922 KAR 2:020;~~

~~[(d)] [(f)] Not be made if a family no longer meets the technical or~~

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financial eligibility requirements under the CCAP;

(e)(9) Not be made to a provider for payment requests ninety (90) days after the date of service;

(f)(10) Not be made to a licensed or certified provider for more than ten (10) holidays per calendar year;

(g)(11) Cease if a provider denies:

1. A parent of a child in care, the cabinet, the cabinet's designee, or a representative of an agency with regulatory authority:

- a. Entry into the provider's premises during operating hours; or
- b. Access to a child in care; or

2. The cabinet, the cabinet's designee, or a representative of an agency with regulatory authority access to the provider's records relevant to a:

a. Cabinet review, including CCAP quality control or case review; or

b. Review by another agency with regulatory authority;

(h)(12) Not be made to a provider if the provider's DCC-94E in accordance with Section 14(1)(c) of this administrative regulation does not support billing for a child reported as served for the same period of time on the DCC-97;

(i) Not be made if the DCC-94E is not provided to the cabinet for a records audit.

(j)(13) Not be made if a licensed or certified provider cares for a child served by CCAP at a location not specified on the DCC-94; or

(k)(14) Not be made to a provider for a child in care over the capacity of the provider, as governed by 922 KAR 2:100 or 922 KAR 2:120, unless an operating plan is approved in accordance with Section 14(4) of this administrative regulation.

(2) Subject to the availability of state or federal funds, the cabinet may suspend approval of initial application for benefits under the CCAP following the priorities established in Section 13(8) of this administrative regulation.

Section 18. Administrative Hearings.

(1) A CCAP applicant or recipient may request an administrative hearing regarding eligibility determination, recalculation, or recertification in accordance with 921 KAR 2:055.

(2) An administrative hearing pertaining to a matter not specified in subsection (1) of this section may be requested in accordance with:

- (a) 922 KAR 2:260; or
- (b) 922 KAR 2:020.

Section 19. Records. Records of CCAP shall be maintained and disclosed in accordance with:

- (1) KRS 194A.060;
- (2) 45 C.F.R. 98.90(e); and
- (3) 45 C.F.R. 205.50(a)(1)(i).

Section 20. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "DCC-90, Subsidized Child Care Assistance Application Summary", 7/2019;

(b) "DCC-94, Child Care Service Agreement and Certificate", 07/21;

(c) "DCC-94.1, CHILD CARE Approval/Change Notice", 10/17;

(d) "DCC-94B, Licensed or Certified Provider Agreement Form", 04/17;

(e) "DCC-94C, Provider Notification Letter", 10/17;

(f) "DCC-94E, Child Care Daily Attendance Record", 07/22;

(g) "DCC-97, Provider Billing Form", 04/13;

(h) "DCC-105, Child Care Denial/Discontinuance Notice", 10/17; and

(i) "DCC-300, Kentucky Child Care Maximum Payment Rate Chart", 10/22.

(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/dcbcs/Pages/default.aspx>.

LESA DENNIS, Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: July 2, 2024

FILED WITH LRC: July 11, 2024 at 11:30 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on September 23, 2024, at 9:00 a.m. using the CHFS Office of Legislative and Regulatory Affairs Zoom meeting room. The Zoom invitation will be emailed to each requestor the week prior to the scheduled hearing. Individuals interested in attending this virtual hearing shall notify this agency in writing by September 16, 2024, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends virtually will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until September 30, 2024. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

CONTACT PERSON: Krista Quarles, Policy Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-7476; fax 502-564-7091; email CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation enables the cabinet to qualify for federal funds under the Child Care and Development Fund (CCDF) and establishes procedures for the implementation of the Child Care Assistance Program (CCAP) to the extent that funding is available.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to qualify for federal funds under CCDF and for the proper administration of CCAP.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the authorized statutes by allowing the cabinet to qualify for federal funds and establishing procedures for the implementation of CCAP.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the administration of the CCAP in a manner that is consistent with federal and state requirements, including available funding, and the interests of the clients to be served, child care providers, and taxpayers.

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

(a) How the amendment will change this existing administrative regulation: The amendment addresses non-compliances from Kentucky's federal monitoring visit and updated changes to the Child Care and Development Fund. These include presumptive eligibility, which gives applicants three months to submit all documentation aside from an ID. Temporary circumstances and the addition of a new child to the household shall result in a household having their eligibility adjusted for twelve months. The amendment also allows protective and preventive co-payments to be waived for families involved with the child welfare system, recognizing that child care provides reliable supervision and protective factors for children. Applicants will be eligible for CCAP if meeting other eligibility requirements and enrolled in a part-time education activity. Program co-payments are being minimally increased.

(b) The necessity of the amendment to this administrative regulation: Alignment with the Child Care and Development Funds federal rules. Allowing co-payments to be waived for protective and preventative child welfare cases will help ensure safe and reliable child care for vulnerable families. Allowing part-time enrollment for education activities will broaden access to CCAP.

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

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statutes: The amendment conforms to the content of the authorizing statutes by aligning policy with more efficient operations, promoting parents' efforts to achieve self-sufficiency and the provision of quality child care, enhancing program integrity, and preserving the health and welfare of vulnerable children.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statutes through its refinement of CCAP in accordance with federal and state laws and the interests of households and children served.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: As of May 2024, there were 20,776 families and 35,401 children enrolled in CCAP, and over 2,000 child care providers participating in CCAP.

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

(a) List 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 to this administrative regulation will create no new actions for these entities, but more families and children may be eligible for program assistance.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The amendment to this administrative regulation will create no new or additional costs to regulated entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Families will benefit from expanded eligibility timeframes, referred to as presumptive eligibility. Families/applicants attending an educational activity can continue or apply for CCAP if they are enrolled part-time. Families with child welfare cases whose child care falls under preventive or protective measures can have all co-payments waived.

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

(a) Initially: The amendment to this administrative regulation will be implemented within available federal and state appropriations for CCAP.

(b) On a continuing basis: The administrative regulation will be implemented within available federal and state appropriations for CCAP. The administrative body will continually monitor its costs to make any adjustments necessary to maintain CCAP and related services within available funding.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of funding to be used for implementation and enforcement of this administrative regulation are the federal Child Care and Development Fund Block Grant, state match, state maintenance of effort funds, and state General Funds.

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

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

(9) TIERING: Is tiering applied? The Child Care Assistance Program is implemented in a like manner statewide. However, provider payment rates are tiered to recognize the higher operating costs of certain geographical, more populated areas. The provider payment rates were originally established based on the classification of cities. The rates are further supported by the analysis of the market rate survey results specified in KRS 199.899.

199.8994

(3) Minimum or uniform standards contained in the federal mandate. 45 C.F.R. 98, 42 U.S.C. 601-619, 9857-9858q

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

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

FISCAL IMPACT STATEMENT

(1) Identify each state statute, federal statute, or federal regulation that requires or authorizes the action taken by the administrative regulation. 45 C.F.R. 98, 42 U.S.C. 601-619, 9857-9858q and KRS 194A.050(1), 199.892, 199.8994

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: The Cabinet for Health and Family Services will be impacted by this administrative regulation. Any local government or school district operating a child care program that receives CCAP will be impacted by this administrative regulation.

(a) Estimate the following for the first year:

Expenditures:

Revenues:

Cost Savings:

(b) How will expenditures, revenues, or cost savings differ in subsequent years? The Child Care Assistance Program is funded through Child Care and Development Fund Block Grant federal funds and state appropriations.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): Any local government or school district operating a child care program that receives CCAP will be impacted by this administrative regulation.

(a) Estimate the following for the first year:

Expenditures:

Revenues:

Cost Savings:

(b) How will expenditures, revenues, or cost savings differ in subsequent years? The Child Care Assistance Program is funded through Child Care and Development Fund Block Grant federal funds and state appropriations.

(4) Identify additional regulated entities not listed in questions (2) or (3):

(a) Estimate the following for the first year:

Expenditures:

Revenues:

Cost Savings:

(b) How will expenditures, revenues, or cost savings differ in subsequent years? Cost savings are not anticipated. There are no costs associated with this amendment.

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: There are no costs associated with this amendment.

(b) Methodology and resources used to determine the fiscal impact:

(6) Explain:

(a) Whether this administrative regulation will have an overall negative or adverse major economic impact to the entities identified in questions (2) - (4). (\$500,000 or more, in aggregate)

(b) The methodology and resources used to reach this conclusion: This administrative regulation amendment makes funding available to regulated entities and eligible families and is not anticipated to have a negative or adverse economic impact to regulated entities.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 45 C.F.R. 98, 42 U.S.C. 601-619, 9857-9858q

(2) State compliance standards. KRS 194A.050(1), 199.892,

NEW ADMINISTRATIVE REGULATIONS

Public comment periods for ordinary, non-emergency regulations are at least two months long. For other regulations with open comment periods, please also see last month's [Administrative Register of Kentucky](#).

**FINANCE AND ADMINISTRATION CABINET
Teachers' Retirement System
(New Administrative Regulation)**

102 KAR 1:138. Crediting of interest for TRS 4 members.

RELATES TO: KRS 161.440, 161.580

STATUTORY AUTHORITY: KRS 161.220, 161.310, 161.580

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.310(1) requires the Board of Trustees of the Teachers' Retirement System of the State of Kentucky (TRS) to promulgate administrative regulations for the administration of funds of the retirement system. KRS 161.440 requires crediting interest, as defined in KRS 161.220(13), to the various funds of TRS, and KRS 161.580 requires that individual accounts be maintained for each member of the system. This administrative regulation sets out procedures to be followed in crediting interest to each TRS 4 member's account.

Section 1. Definitions.

(1) For TRS 4 members "Regular interest" is defined by KRS 161.220(13)(c).

(2) "TRS 4 members" means those individuals who establish membership in the retirement system on or after January 1, 2022.

Section 2. Regular interest for TRS 4 members for the supplemental benefit component and for the first sixty (60) months for the foundational benefit component shall be the rolling five (5) year yield on a thirty (30) year United States Treasury Bond as of the end of May prior to the most recently completed fiscal year. The thirty (30) year U.S. Treasury bond rate at the daily close of the markets is published by the Board of Governors of the Federal Reserve System and is posted on the website of the Federal Reserve Bank of St. Louis. The daily closing yield is titled "Market Yield on U.S. Treasury Securities at 30-Year Constant Maturity, Quoted on an Investment Basis (DGS30)" and is found at <https://fred.stlouisfed.org/series/DGS30> displayed as a percentage, not seasonally adjusted using the daily frequency.

Section 3. The rolling five (5) year yield shall be calculated by adding the closing yield for each trading day of the last five (5) years ending with the last trading day in the month of May and dividing by the number of trading days in the five (5) year period. The result is the regular interest rate to be created in accordance with KRS 161.220(13). 102 KAR 1:138. Crediting of regular interest for TRS 4 members.

BRENDA MCGOWN, Chairperson

APPROVED BY AGENCY: June 17, 2024

FILED WITH LRC: July 12, 2024 at 3:30 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on 24 September 2024, at 9:00 a.m. Eastern Time at the offices of the retirement system at 479 Versailles Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing 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 30 September 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: Robert B. Barnes, Deputy Executive Secretary of Operations and General Counsel, Kentucky Teachers'

Retirement System, 479 Versailles Road, Frankfort, Kentucky 40601, phone (502) 848-8508, fax (502) 573-0199, email Beau.Barnes@trs.ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Robert B. Barnes

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth the procedures for crediting interest to each TRS 4 member's account.

(b) The necessity of this administrative regulation: This administrative regulation ensures interest shall be accurately credited to TRS 4 members' accounts.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by setting forth the procedures for crediting statutorily required interest to each TRS 4 member's account.

(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 ensuring interest shall be accurately credited to TRS 4 members' accounts.

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Individuals who become active, contributing members with the retirement system on or after January 1, 2022. There are currently approximately 12, 788 TRS 4 members.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment:

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no cost to the members of the retirement system.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Members will be credited the correct rate of interest.

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

(a) Initially: There is no cost to implement this regulation.

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

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Administrative expenses of the retirement system are paid by restricted agency funds.

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

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

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regulation does not establish any fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering is not applied, as all TRS 4 members are treated the same.

FISCAL IMPACT STATEMENT

(1) Identify each state statute, federal statute, or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 161.310, 161.220(13), 161.580.

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: Teachers' Retirement System

(a) Estimate the following for the first year:

Expenditures: None.

Revenues: None.

Cost Savings: None.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? There will be no difference.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): None.

(a) Estimate the following for the first year:

Expenditures: None.

Revenues: None.

Cost Savings: None.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? There will be no difference.

(4) Identify additional regulated entities not listed in questions (2) or (3): None.

(a) Estimate the following for the first year:

Expenditures: None.

Revenues: None.

Cost Savings: None.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? There will be no difference.

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: There is no fiscal impact.

(b) Methodology and resources used to determine the fiscal impact: There is no fiscal impact.

(6) Explain:

(a) Whether this administrative regulation will have an overall negative or adverse major economic impact to the entities identified in questions (2) - (4). (\$500,000 or more, in aggregate) This administrative regulation will not have an overall negative or adverse major impact to the identities identified in questions (2)-(4).

(b) The methodology and resources used to reach this conclusion: There is no economic impact.

FINANCE AND ADMINISTRATION CABINET Teachers' Retirement System (New Administrative Regulation)

102 KAR 1:370. Annuitization and disbursement from supplemental benefit.

RELATES TO: KRS 161.220(13)(c), 161.635, 161.636

STATUTORY AUTHORITY: KRS 161.310(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.310 requires the Board of Trustees of the Teachers' Retirement System of the State of Kentucky (TRS) to promulgate all administrative regulations for the administration of the funds of the retirement system. KRS 161.635 and 161.636 establish a supplemental benefit component for TRS 4 members. Under these statutes, the member may, upon retirement or subsequently, choose to have the accumulated contributions in the supplemental benefit component annuitized into a lifetime monthly retirement allowance or receive the actuarial equivalent under one (1) of the options established by the board pursuant to KRS 161.630 or take a distribution over a period certain or a full or partial refund. This administrative regulation provides the process for, and rules of, the annuitization of and disbursement from the supplemental component.

Section 1. Definition. (1) "TRS 4 members" means those individuals who establish membership in the retirement system on or after January 1, 2022.

Section 2. Upon retirement or subsequently, members may elect to annuitize into a lifetime monthly retirement allowance the total contributions to the supplemental benefit component in accordance with the actuarial assumptions and methods adopted by the board and in effect at the time of the member's retirement date. Members may also elect to annuitize a portion of the contributions to the supplemental benefit component and either receive a disbursement of the remaining contributions or leave the remaining balance in the supplemental benefit component to be accredited regular interest in accordance with KRS 161.220(13)(c). Members may not elect an annuity that provides a retirement allowance of less than \$100 per month unless that retirement annuity represents an annuitization of all the contributions to the supplemental benefit component.

Section 3. Upon retirement or subsequently, members may request distribution of all contributions to the supplemental benefit component, partial disbursements or leave all or part of the contributions in the supplemental benefit component to be accredited interest in accordance with KRS 161.220(13)(c). Partial disbursements shall be in amounts not less than \$5,000 unless the remaining balance is less than \$5,000.

BRENDA MCGOWN, Chairperson

APPROVED BY AGENCY: June 17, 2024

FILED WITH LRC: July 12, 2024 at 3:30 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on 24 September 2024, at 9:00 a.m. Eastern Time at the offices of the retirement system at 479 Versailles Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing 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 30 September 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: Robert B. Barnes, Deputy Executive Secretary of Operations and General Counsel, Kentucky Teachers' Retirement System, 479 Versailles Road, Frankfort, Kentucky 40601, phone (502) 848-8508, fax(502) 573-0199, email Beau.Barnes@trs.ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Robert B. Barnes

(1) Provide a brief summary of:

(a) What this administrative regulation does: Establishes the process for, and rules of, annuitization and disbursement from the supplemental benefit component for TRS 4 members.

(b) The necessity of this administrative regulation: It will provide further details for the annuitization of, and disbursement from, the supplemental benefit component.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 161.635 and 161.636 establish a supplemental benefit component for TRS 4 members that permits annuitization of and disbursements from that account. This regulation provides further details for the annuitization and disbursements of account funds.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 161.635 and 161.636 establish a supplemental benefit component for TRS 4 members that permits annuitization of and disbursements from that account. This regulation provides further details for the annuitization and disbursement of account funds.

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Individuals who become active, contributing members with the retirement system on or after January 1, 2022. There are currently approximately 12,788 members in this tier.

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

(a) List 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 members will not have to take any overt action.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no cost to the members of the retirement system.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Members will have details of annuitization of and disbursements from the supplemental benefit component clearly set forth in regulation.

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

(a) Initially: There is no cost to implement this regulation.

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

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Administrative expenses of the retirement system are paid by restricted agency funds.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied, as all TRS 4 members are treated the same.

FISCAL IMPACT STATEMENT

(1) Identify each state statute, federal statute, or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 161.310, 161.220(13), 161.635, and 161.636.

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: Teachers' Retirement System

(a) Estimate the following for the first year:

Expenditures: None

Revenues: None

Cost Savings: None

(b) How will expenditures, revenues, or cost savings differ in subsequent years? No change.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): None.

(a) Estimate the following for the first year:

Expenditures: None

Revenues: None

Cost Savings: None

(b) How will expenditures, revenues, or cost savings differ in subsequent years? No change.

(4) Identify additional regulated entities not listed in questions (2) or (3):

(a) Estimate the following for the first year:

Expenditures: None

Revenues: None

Cost Savings: None

(b) How will expenditures, revenues, or cost savings differ in

subsequent years? No change.

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: None.

(b) Methodology and resources used to determine the fiscal impact: No impact.

(6) Explain:

(a) Whether this administrative regulation will have an overall negative or adverse major economic impact to the entities identified in questions (2) - (4). (\$500,000 or more, in aggregate) This regulation will not have an overall negative or adverse major economic impact.

(b) The methodology and resources used to reach this conclusion: There is no impact.

**FINANCE AND ADMINISTRATION CABINET
Kentucky Public Pensions Authority
(New Administrative Regulation)**

105 KAR 1:142. Limitations and exclusions on creditable compensation in the last five fiscal years of service.

RELATES TO: KRS 16.645, 61.598, 61.645, 61.675, 78.545, 78.625, 78.782

STATUTORY AUTHORITY: KRS 61.505(1)(g), 61.598(6), 78.545

NECESSITY, FUNCTION, AND CONFORMITY: KRS 61.505(1)(g) authorizes the Kentucky Public Pensions Authority to promulgate administrative regulations on behalf of the Kentucky Retirement Systems and the County Employees Retirement System that are consistent with KRS 16.652, 61.510 to 61.705, and 78.510 to 78.852. KRS 61.598(6) and 78.545 authorize the Kentucky Public Pensions Authority to promulgate an administrative regulation to administer the limitations and exclusions on increases in creditable compensation codified in KRS 61.598 and 78.545. This administrative regulation establishes limitations and exclusions on increases in creditable compensation in the last five (5) years of service for retiring members with a membership date prior to January 1, 2014 in accordance with KRS 61.598 and 78.545.

Section 1. Definition. "Member" means a member of the systems with a membership date prior to January 1, 2014.

Section 2. Determining Percentage Increases for Creditable Compensation.

(1) Except as provided in subsection (2) of this section, in accordance with KRS 61.598 and 78.545, the agency shall review each of the last five (5) fiscal years of the member's employment to determine if his or her creditable compensation in any of the last five (5) fiscal years increased by ten (10) percent or more compared to the immediately preceding fiscal year.

(a) The fiscal year immediately preceding the member's last five (5) fiscal years shall be used for comparison to determine if an increase in creditable compensation of ten (10) percent or more occurred in the initial fiscal year of the member's last five (5) fiscal years.

(b) For each of the member's last five (5) fiscal years of employment, the agency shall multiply the member's creditable compensation for the previous fiscal year by 110 percent. If the member's creditable compensation in any of his or her last five (5) fiscal years of employment is greater than the member's creditable compensation from the immediately preceding fiscal year multiplied by 110 percent, the agency shall determine that an annual increase in the member's creditable compensation greater than ten (10) percent has occurred.

(c) For purposes of performing the calculations in this subsection:

1. Only fiscal years in which the member was employed in a regular full-time position in at least one (1) full month of the fiscal year shall be considered; and

2. The member's creditable compensation shall be annualized by dividing the member's creditable compensation for the fiscal year by the number of months of service credit, and multiplying by twelve (12).

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(2) For members with an effective retirement date on or after January 1, 2018:

(a) The agency shall not review creditable compensation earned by the member prior to July 1, 2017; and

(b) For members with an effective retirement date on or after June 29, 2021, if a reduction in the member's creditable compensation causes his or her monthly retirement allowance to decrease by twenty-five (25) dollars or more, the member's monthly retirement allowance shall only be reduced by the amount that exceeds \$24.99.

(3) The agency shall not consider the following changes in creditable compensation to be increases in creditable compensation:

(a) The employee was on leave without pay for any reason in the fiscal year(s) prior to the fiscal year that contained the increased creditable compensation for members with an effective retirement date on or after January 1, 2014, but prior to July 1, 2017; or

(b) Modifications to the accounting method for reporting employees in accordance with KRS 61.675, KRS 78.625, and 105 KAR 1:140.

Section 3. Final Administrative Determination for Members with an Effective Retirement Date on or after January 1, 2014, but Prior to July 1, 2017.

(1)

(a) Based on the review as provided in Section 2 of this administrative regulation, if the agency determines that the member's creditable compensation in any of the last five (5) fiscal years increased by more than ten (10) percent compared to the immediately preceding fiscal year, the agency shall provide written notice to the member's last participating employer of the agency's determination.

(b) If the member was employed by more than one (1) employer when the member retired, the agency shall provide written notice to each of the member's last participating employers.

(c) The written notice shall include:

1. A statement that the member's creditable compensation in one (1) or more of the last five (5) fiscal years increased by more than ten (10) percent compared to the prior fiscal year;

2. The fiscal year or fiscal years in which the creditable compensation increased by more than ten (10) percent compared to the immediately preceding fiscal year;

3. Details of each increase in creditable compensation; and

4. The amount of the additional actuarial cost to the systems attributable to the increase or increases in creditable compensation.

(2)

(a) If the employer believes that one (1) or more annual increases in creditable compensation greater than ten (10) percent in the member's last five (5) fiscal years of employment were due to a bona fide promotion or career advancement, by the end of day thirty (30) calendar days from the date the notice indicated in subsection (1) of this section was provided, the employer shall:

1. Complete and submit a valid Form 6481, Employer Request for Post-Determination of Bona Fide Promotion or Career Advancement;

2. Submit predetermination documentation if the agency previously provided a determination that a change in position or hiring of the member would be a bona fide promotion or career advancement, and provide documentation that the increase in creditable compensation for that fiscal year was due to the employer implementing the proposed change in position or hiring;

3. Provide a copy of the personnel form with the date of the promotion or advancement, an explanation, and documentation supporting the assertion that the increase in creditable compensation resulted from a bona fide promotion or career advancement, if the employer believes that any salary increase is directly attributable to a bona fide promotion or career advancement;

4. Effective July 1, 2024, submit a copy of the personnel form with the date of increased rate of pay, an explanation, and documentation supporting the assertion that the increase in rate of pay was authorized or funded by the legislative or administrative body of the employer or mandated in a collective bargaining agreement approved by the legislative body of the employer, if the

bona fide promotion or career advancement resulted from an increase in creditable compensation for all employees in a specified class due to an increase in rate of pay authorized or funded by the legislative or administrative body of the employer or due to an increase in rate of pay mandated in a collective bargaining agreement approved by the legislative body of the employer.

(b) The employer shall report any increases in creditable compensation directly attributable to a lump-sum payment for compensatory time during the employer's normal monthly reporting in accordance with 105 KAR 1:140.

(3)

(a) The agency shall consider the following in determining if a change in position or hiring was a bona fide promotion or career advancement:

1. A valid Form 6481, Employer Request for Post-Determination of Bona Fide Promotion or Career Advancement, submitted in accordance with subsection (2)(a) of this section; and

2. Supporting documentation submitted by the employer in accordance with subsection (2)(a) of this section.

(b)

1. The agency may require the employer to provide additional information or require the employer to make certifications regarding the information and documentation submitted.

2. In accordance with KRS 16.645, 61.675, 78.545, and 78.625, the employer shall provide any additional information and certifications requested by the agency under this paragraph by the end of day thirty (30) days from the date the request for additional information was provided.

(4) The employer shall pay the additional actuarial cost to the systems attributable to any annual increases in creditable compensation greater than ten (10) percent over the member's last five (5) fiscal years of employment if the employer fails to comply with:

(a) Subsection (2) of this section; or

(b) Subsection (3)(b) of this section if additional information is requested in accordance with that subsection.

(5)

(a) If the employer timely submits a valid Form 6481, Employer Request for Post-Determination of Bona Fide Promotion or Career Advancement, in accordance with subsection (3)(a) of this section, the agency shall issue a final administrative decision in writing informing the employer whether the annual increases in creditable compensation greater than ten (10) percent over the member's last five (5) fiscal years of employment were due to a bona fide promotion or career advancement.

(b) If the employer disagrees with the final administrative decision by the agency, the employer may appeal the decision in accordance with Section 6 of this administrative regulation.

(c) If the employer does not file a written request for administrative hearing timely as provided in Section 6 of this administrative regulation, the employer shall pay the additional actuarial cost to the systems attributable to annual increases in creditable compensation greater than ten (10) percent over the member's last five (5) fiscal years of employment.

(6)

(a) If an employer is required to pay the additional actuarial cost to the systems attributable to annual increases in creditable compensation greater than ten (10) percent over the member's last five (5) fiscal years of employment, the agency shall issue an invoice to the last employer representing the actuarial cost.

(b) If the member was employed by more than one (1) employer when the member retired, the actuarial cost to the systems attributable to annual increases in creditable compensation greater than ten (10) percent over the member's last five (5) fiscal years of employment shall be divided equally among the member's last employers. Each of the member's last employers shall receive an invoice as provided in this subsection.

(c) An employer that receives an invoice may request that the agency allow the employer to pay the cost over a period, not to exceed one (1) year, without interest and the agency shall establish a payment plan for the employer.

(d) An employer that is required to pay the additional actuarial cost shall be treated as a participating employer in the system to

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which the employer is required to pay the additional actuarial cost solely for purposes of making the payment required pursuant to KRS 61.598 and 78.545.

Section 4. Exemption Determination Process for Members with an Effective Retirement Date on or after January 1, 2018.

(1) This section shall only apply to members with an effective retirement date on or after January 1, 2018.

(2) Exemptions shall include:

(a) Exemptions provided in KRS 61.598(4) and 78.545;

(b) A bona fide promotion or career advancement as defined in 105 KAR 1:001; or

(c) Overtime worked from May 28, 2020, through May 11, 2021, due to local government emergencies issued on or after May 28, 2020, but prior to October 5, 2020, regardless of whether or not the National Guard was mobilized for the entire period.

(3) If the agency review as provided in Section 2 of this administrative regulation determines that the member's creditable compensation in any of the last five (5) fiscal years increased by more than ten (10) percent compared to the immediately preceding fiscal year, the agency shall provide the member's employer the Form 6487, Request for Member Pension Spiking Exemption Amounts. If the reductions in the member's creditable compensation would result in reduction to the member's monthly retirement allowance of less than twenty-five (25) dollars per month or the actuarial equivalent, a Form 6487 shall not be provided.

(4) The employer shall complete and submit the valid Form 6487, Request for Member Pension Spiking Exemption Amounts, and provide supporting documentation as required by KRS 16.645, 61.675, and 78.625 by the end of day thirty (30) calendar days from the date the Form 6487 was provided.

(a) In order to indicate that none of the annual increases in creditable compensation greater than ten (10) percent over the member's last five (5) fiscal years of employment were due to an exemption as provided in subsection (2) of this section, the employer shall select that none of the listed exemptions are applicable on the Form 6487.

(b)

1. In order to indicate that one (1) or more of the annual increases in creditable compensation greater than ten (10) percent over the member's last five (5) fiscal years of employment were due to an exemption as provided in subsection (2) of this section, the employer shall select which of the listed exemption are applicable on the Form 6487. Except as provided in subsection (5)(a) of this section, the employer shall list the portion of the salary directly attributable to each exemption in the corresponding section of the Form 6487.

2.

a. In order to verify that one (1) or more salary increase is directly attributable to a bona fide promotion or career advancement, the employer shall provide a copy of the personnel form with the date of the promotion or advancement, an explanation, and documentation supporting the assertion that the increase in creditable compensation resulted from a bona fide promotion or career advancement.

b. Effective July 1, 2024, in order to verify that one (1) or more bona fide promotion or career advancement resulted from an increase in creditable compensation for all employees in a specified class due to an increase in rate of pay authorized or funded by the legislative or administrative body of the employer or due to an increase in rate of pay mandated in a collective bargaining agreement approved by the legislative body of the employer, the employer shall submit a copy of the personnel form with the date of increased rate of pay, an explanation, and documentation supporting the assertion that the increase in rate of pay was authorized or funded by the legislative or administrative body of the employer or mandated in a collective bargaining agreement approved by the legislative body of the employer.

c. In order to verify that one (1) or more salary increase is directly attributable to overtime hours worked under a state or federal grant as prescribed in KRS 61.598(4)(e)1., a copy of the grant shall be submitted with the specific language in the grant requiring overtime highlighted or otherwise emphasized.

d. Except as provided in subsection (2)(c) of this section, in order to verify that one (1) or more salary increase is directly attributable to a local state of emergency where the Kentucky National Guard was mobilized as prescribed in KRS 61.598(4)(f)2., the applicable Executive Order number that mobilized the National Guard shall be provided.

(5)

(a) The employer shall report any increases in creditable compensation directly attributable to a lump-sum payment for compensatory time, a lump-sum payment made pursuant to alternate sick leave, or leave without pay during the employer's normal monthly reporting in accordance with 105 KAR 1:140.

(b) If, upon review by the employer of the Form 6487, Request for Member Pension Spiking Exemption Amounts, adjustments to the reported salaries are required, then the employer shall make those adjustments during the next monthly reporting cycle pursuant to KRS 16.645, 61.675, and 78.625.

(6)

(a) The agency may require the employer to provide additional information or require the employer to make certifications regarding the information and documentation submitted.

(b) In accordance with KRS 16.645, 61.675, and 78.625, the employer shall provide any additional information and certifications requested by the agency under this subsection by the end of day thirty (30) days from the date the request for additional information was provided.

(7)

(a) Following review of the completed Form 6487, Request for Member Pension Spiking Exemption Amounts, and any additional information and certifications, the agency shall make a final administrative decision in accordance with Section 5 of this administrative regulation.

(b) The agency shall issue a final administrative decision in accordance with Section 5 of this administrative regulation if:

1. A valid Form 6487 is not submitted timely in accordance with subsection (4) of this section; or

2. Additional information is requested in accordance with that subsection (6) of this section is not submitted timely.

Section 5. Final Administrative Decisions for Members with an Effective Retirement Date on or after January 1, 2018.

(1) This section shall only apply to members with an effective retirement date on or after January 1, 2018.

(2)

(a) If the agency determines an increase in creditable compensation of more than ten (10) percent over the immediately preceding fiscal year as provided in Section 2 of this administrative regulation is not directly attributable to any of the listed exemptions in Section 4(2) of this administrative regulation, and no reporting information needs to be corrected, then the increase in creditable compensation above ten (10) percent shall not be used to calculate the member's retirement allowance, unless the reductions in the member's creditable compensation would result in reduction to the member's monthly retirement allowance of less than twenty-five (25) dollars per month or the actuarial equivalent.

(b) The agency shall notify the member of the final administrative decision which shall provide the member's benefit adjustment details. If the member disagrees with the final administrative decision by the agency, he or she may appeal the decision in accordance with Section 6 of this administrative regulation.

(3) Pursuant to KRS 61.598(2)(c)2. and 78.545, the agency shall not issue a refund to the employer for the excess employer contributions. The agency shall utilize any employer contributions directly attributable to the reduction in creditable compensation to pay the unfunded liability of the pension fund in which the retiring member participated.

(4)

(a) Pursuant to KRS 61.598(2)(c)1. and 78.545, the member shall receive a refund of all pre-tax and post-tax member contributions and interest directly attributable to the reduction in creditable compensation.

1. Pre-tax member contributions shall be refunded to the member by the employer that picked-up the contributions.

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2. Post-tax member contributions shall be refunded to the member directly by the agency.

3. Interest earned on pre-tax and post-tax member contributions shall be refunded to the member directly by the agency.

(b)

1. If a member files an appeal in accordance with Section 6 of this administrative regulation, the refunds indicated in this subsection shall be placed on hold during the pendency of the appeal.

2. No additional interest shall accrue during the pendency of the appeal.

Section 6. Appeal.

(1)

(a) For members with an effective retirement date on or after January 1, 2014, but prior to July 1, 2017, pursuant to KRS 61.645(16) and 78.782(16), if the employer disagrees with the final administrative decision in accordance with Section 3 of this administrative regulation, the employer shall file a written request for an administrative hearing pursuant to KRS Chapter 13B by the end of day thirty (30) calendar days from the date of the final administrative decision.

(b) In accordance with KRS 61.598(7) and 78.545, the employer's right to appeal is limited to the issue of whether the agency correctly determined that the annual increases in the member's creditable compensation greater than ten (10) percent were not due to a bona fide promotion or career advancement.

(c) Pursuant to KRS Chapter 13B.090(7), the employer has the burden to show its entitlement to the benefit of not paying the additional actuarial costs related to the employer's appeal in accordance with this subsection, and the ultimate burden of persuasion on that issue.

(2)

(a) For members with an effective retirement date on or after January 1, 2018, pursuant to KRS 61.645(16) and 78.782(16), if the member disagrees with the final administrative decision by the agency in accordance with Section 5 of this administrative regulation, the member shall file a written request for an administrative hearing to be held in accordance with KRS Chapter 13B by the end of day thirty (30) calendar days from the date of the final administrative decision.

(b) The member's right to appeal is limited to the issue of whether the agency correctly determined that the annual increases in the member's creditable compensation were not due to one (1) of the exemptions found in KRS 61.598(4) and 78.545, and 105 KAR 1:001(14).

(c) Pursuant to KRS Chapter 13B.090(7), the agency has the burden to show the propriety of the agency action to remove or reduce benefits related to the member appeals in accordance with this subsection, and the ultimate burden of persuasion as to that issue.

Section 7. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) Form 6481, "Employer Request for Post-Determination of Bona Fide Promotion or Career Advancement", June 2024; and

(b) Form 6487, "Request for Member Pension Spiking Exemption Amounts", June 2024.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Public Pensions Authority, 1260 Louisville Road, Frankfort, Kentucky 40601, Monday through Friday, from 8 a.m. to 4:30 p.m., or on the agency's Web site at kyret.ky.gov.

DAVID L. EAGER, Executive Director

APPROVED BY AGENCY: June 28, 2024

FILED WITH LRC: July 8, 2024 at 2:25 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing to allow for public comment on this administrative regulation shall be held on Wednesday, September 25, 2024, at 10:00 a.m. at the Kentucky Public Pension Authority (KPPA), 1270 Louisville Road, Frankfort, Kentucky 40601. Individuals interested in presenting a public comment at this hearing shall notify this agency in writing no later than five workdays prior to the hearing of their

intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until September 30, 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. KPPA shall file a response with the Regulations Compiler to any public comments received, whether at the public comment hearing or in writing, via a Statement of Consideration no later than the 15th day of the month following the end of the public comment period, or upon filing a written request for extension, no later than the 15th day of the second month following the end of the public comment period.

CONTACT PERSON: Jessica Beaubien, Policy Specialist, Kentucky Public Pension Authority, 1260 Louisville Road, Frankfort, Kentucky 40601, phone (502) 696-8800 ext. 8570, fax (502) 696-8615, email Legal.Non-Advocacy@kyret.ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jessica Beaubien

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes limitations and exclusions on increases in creditable compensation in the last five (5) years of service for retiring members with a membership date prior to January 1, 2014.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to allow the Kentucky Public Pensions Authority to effectively carry out KRS 61.598 and 78.545.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 61.505(1)(g) authorizes the Kentucky Public Pensions Authority to promulgate administrative regulations on behalf of the Kentucky Retirement Systems and the County Employees Retirement System that are consistent with KRS 16.505 to 16.652, 61.510 to 61.705, and 78.510 to 78.852. KRS 61.598(6) and 78.545 authorize the Kentucky Public Pensions Authority to promulgate an administrative regulation to administer the limitations and exclusions on increases in creditable compensation codified in KRS 61.598 and 78.545.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists with the effective administration of the statutes by detailing how the Kentucky Public Pensions Authority will carry out the limitations and exclusions on increases in creditable compensation in the last five (5) years of service for retiring members with a membership date prior to January 1, 2014.

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

(a) How the amendment will change this existing administrative regulation: This is a new regulation.

(b) The necessity of the amendment to this administrative regulation: This is a new regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is a new regulation.

(d) How the amendment will assist in the effective administration of the statutes: This is a new regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation may affect over 166,000 members of the systems for which the Kentucky Public Pensions Authority provides operations who have a membership date prior to January 1, 2014. Additionally, this administrative regulation may affect over 1,450 employers that participate in the State Police Retirement System, the Kentucky Employees Retirement System, and the County Employees Retirement System. Finally, this administrative regulation will affect the Kentucky Public Pensions Authority and the three (3) systems for which it provides operations, the State Police Retirement System, the Kentucky Employees Retirement System, and the County Employees Retirement System.

(4) Provide an analysis of how the entities identified in question

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(3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Regulated entities will be minimally impacted by these changes as most parts of this administrative regulation are already being administered as written. The minimal impact may include affected members and participating employers needing to provide additional information to the Kentucky Public Pensions Authority in order for the Kentucky Public Pensions Authority to determine whether any statutory exemptions apply to the limitations and exclusions on increases in creditable compensation in a member's last five years of service.

(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 compliance with this administrative regulation for the Kentucky Public Pensions Authority, the County Employees Retirement System and the Board of Trustees for the County Employees Retirement System should be negligible, as this administrative regulation is largely already being administered as written.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The benefits should be negligible, as this administrative regulation is largely already being administered as written.

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

(a) Initially: The costs associated with the implementation of this amendment should be negligible.

(b) On a continuing basis: The continuing costs associated with this amendment should be negligible.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Administrative expenses of the Kentucky Public Pensions Authority are paid from the Retirement Allowance Account (trust and agency funds).

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

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

(9) TIERING: Is tiering applied? Tiering is not applied. All entities are subject to the same processes and procedures.

FISCAL IMPACT STATEMENT

(1) Identify each state statute, federal statute, or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 61.505(1)(g), 61.598(6), and 78.545.

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: The promulgating agency for this administrative regulation is the Kentucky Public Pensions Authority (KPPA). This administrative regulation will affect the KPPA and the systems for which the KPPA provides operations (the County Employees Retirement System, the State Police Retirement System and the Kentucky Employees Retirement System), and 333 state government employers that participate in the Kentucky Employees Retirement System and the State Police Retirement System.

(a) Estimate the following for the first year:

Expenditures: None.

Revenues: None.

Cost Savings: None.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? There should be no expenditures, revenue, or cost saving for this administrative regulation in subsequent years because this administrative regulation is largely being administered as written.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): The County Employees

Retirement System and 1,120 county and local employers that participate in the County Employees Retirement System.

(a) Estimate the following for the first year:

Expenditures: None.

Revenues: None.

Cost Savings: None.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? There should be no expenditures, revenue, or cost saving for this administrative regulation in subsequent years because this administrative regulation is largely being administered as written.

(4) Identify additional regulated entities not listed in questions (2) or (3): None.

(a) Estimate the following for the first year:

Expenditures: N/A

Revenues: N/A

Cost Savings: N/A.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? There are no additional regulated entities not listed in questions (2) or (3).

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: The fiscal impact of this administrative regulation should be negligible because this administrative regulation is already being administered as written.

(b) Methodology and resources used to determine the fiscal impact: This administrative regulation is largely being administered as written.

(6) Explain:

(a) Whether this administrative regulation will have an overall negative or adverse major economic impact to the entities identified in questions (2) - (4). (\$500,000 or more, in aggregate) This administrative regulation will not have a "major economic impact" because this administrative regulation is already being administered as written.

(b) The methodology and resources used to reach this conclusion: This administrative regulation is largely being administered as written.

**KENTUCKY COMMUNITY AND TECHNICAL COLLEGE
SYSTEM
Board of Regents
(New Administrative Regulation)**

739 KAR 1:060. Management of capital construction projects.

RELATES TO: KRS 164A.580

STATUTORY AUTHORITY: KRS 164A.560

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164A.560 permits the governing boards of public institutions of higher education to elect to perform financial management functions per KRS 164A.555 to 164A.630 by issuing administrative regulations. This administrative regulation implements the provisions of KRS 164A.580 at the Kentucky Community and Technical College System.

Section 1. Subject to the provisions of KRS 45.750 through 45.800 and 56.870 to 56.874, the Kentucky Community and Technical College System Board of Regents elects to adopt the management and administration procedures set forth in KRS 164A.580, Sections 1, 2, 3, 4, 5, 6, 7, and 8.

DR. RYAN QUARLES, President

APPROVED BY AGENCY: July 12, 2024

FILED WITH LRC: July 15, 2024 at 10:00 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 23, 2024, at 11:00 a.m. at 300 North Main Street, Versailles, Kentucky 40383. 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.

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A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through September 30, 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: Katie George, Staff Attorney, 300 North Main Street, Versailles, Kentucky 40383, phone 859-256-3242, email katie.george@kctcs.edu.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Katie George

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation implements the provisions of KRS 164A.580 at the Kentucky Community and Technical College System.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to effectuate the provisions of KRS 164A.555-164A.630.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation conforms to the authorizing statutes by electing the management and administrative procedures set forth therein.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will assist in administration by adopting the necessary procedures, set forth in the statute.

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

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation; existing language regulatory language is not being amended.

(b) The necessity of the amendment to this administrative regulation: This regulation adopts the procedures as prescribed in the existing statute; thus, it is necessary to satisfy the existing law.

(c) How the amendment conforms to the content of the authorizing statutes: The authorizing statute specifically provides that relevant governing boards may issue regulations relating to financial management functions.

(d) How the amendment will assist in the effective administration of the statutes: This regulation will provide guidance relating to the procedures that shall be followed in accordance with the law.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Kentucky Community and Technical College System, including the sixteen colleges within that system.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The system will adopt the management and administration procedures as set forth in the applicable law.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Nothing.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The effected entities will benefit from the regulatory guidance pertaining to the necessary procedures that shall be followed.

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

(a) Initially: Nothing.

(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: Not applicable.

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

increase in fees or funding will be necessary.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No, this regulation does not establish any new fees; nor does it directly increase any existing fees.

(9) TIERING: Is tiering applied? No. Tiering is not appropriate as the administrative regulation applies equally to all individuals or entities that it regulates.

FISCAL IMPACT STATEMENT

(1) Identify each state statute, federal statute, or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 164A.560

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: The Kentucky Community and Technical College System

(a) Estimate the following for the first year:

Expenditures: None.

Revenues: None.

Cost Savings: None.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? Nothing.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): Kentucky Community and Technical College System.

(a) Estimate the following for the first year:

Expenditures: None.

Revenues: None.

Cost Savings: None.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? None.

(4) Identify additional regulated entities not listed in questions (2) or (3): Not applicable.

(a) Estimate the following for the first year:

Expenditures: None.

Revenues: None.

Cost Savings: None

(b) How will expenditures, revenues, or cost savings differ in subsequent years? None.

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: This regulation will not have a fiscal impact on the regulated entities.

(b) Methodology and resources used to determine the fiscal impact: This regulation will not have a fiscal impact on the regulated entities.

Proposed Fee Structure				
Beaches	Size of the beach front	Number of beaches	Proposed fee	Potential Revenue
	149 linear feet or less of beach front	10	\$99	\$990
	150 to 200 linear feet of beach front	10	\$192.50	\$1,925
	201 or more linear feet of beach front	14	\$192.50+\$55 for each additional 50 linear square feet	\$3,465 (at a minimum)
TOTAL		34		\$6,380
Annual Permit Fee				
For all beaches		34	\$110	\$3,740

(6) Explain:

(a) Whether this administrative regulation will have an overall negative or adverse major economic impact to the entities identified in questions (2) - (4). (\$500,000 or more, in aggregate) No.

(b) The methodology and resources used to reach this conclusion: Not applicable.

**KENTUCKY COMMUNITY AND TECHNICAL COLLEGE
SYSTEM
Board of Regents
(New Administrative Regulation)**

739 KAR 1:070. Contracting for capital construction projects.

RELATES TO: KRS 164A.580, 164A.590, 164A.595, 164A.600
STATUTORY AUTHORITY: KRS 164A.560

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164A.560 permits the governing boards of public institutions of higher education to elect to perform financial management functions per KRS 164A.555 to 164A.630 by issuing administrative regulations. This administrative regulation implements the provisions of KRS 164A.580 at the Kentucky Community and Technical College System.

Section 1. The Kentucky Community and Technical College System Board of Regents, under the provisions of KRS 164A.560, elects to manage and administer capital construction projects in accordance with 164A.585, 164A.590, 164A.595, and 164A.600.

DR. RYAN QUARLES, President

APPROVED BY AGENCY: July 12, 2024

FILED WITH LRC: July 15, 2024 at 10:00 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 23, 2024, at 1:00 p.m. at 300 North Main Street, Versailles, Kentucky 40383. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through September 30, 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: Katie George, Staff Attorney, 300 North Main Street, Versailles, Kentucky 40383, phone 859-256-3242, email katie.george@kctcs.edu.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Katie George

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation implements the provisions of KRS 164A.580 at the Kentucky Community and Technical College System.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to effectuate the provisions of KRS 164A.555-164A.630.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation conforms to the authorizing statutes by electing the management and administrative procedures set forth therein.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will assist in administration by adopting the necessary procedures, set forth in the statute.

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

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation; existing language regulatory language is not being amended.

(b) The necessity of the amendment to this administrative regulation: This regulation adopts the procedures as prescribed in the existing statute; thus, it is necessary to satisfy the existing law.

(c) How the amendment conforms to the content of the authorizing statutes: The authorizing statute specifically provides that relevant governing boards may issue regulations relating to financial management functions.

(d) How the amendment will assist in the effective administration of the statutes: This regulation will provide guidance relating to the procedures that shall be followed in accordance with the law.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Kentucky Community and Technical College System, including the sixteen colleges within that system.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The system will adopt the management and administration procedures as set forth in the applicable law.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Nothing.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The effected entities will benefit from the regulatory guidance pertaining to the necessary procedures that shall be followed.

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

(a) Initially: Nothing.

(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: Not applicable.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No, this regulation does not establish any new fees; nor does it directly increase any existing fees.

(9) TIERING: Is tiering applied? No. Tiering is not appropriate as the administrative regulation applies equally to all individuals or entities that it regulates.

FISCAL IMPACT STATEMENT

(1) Identify each state statute, federal statute, or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 164A.560

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: The Kentucky Community and Technical College System

(a) Estimate the following for the first year:

Expenditures: None.

Revenues: None.

Cost Savings: None.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? Nothing.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): Kentucky Community and Technical College System.

(a) Estimate the following for the first year:

Expenditures: None.

Revenues: None.

Cost Savings: None.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? None.

(4) Identify additional regulated entities not listed in questions (2) or (3): Not applicable.

(a) Estimate the following for the first year:

Expenditures: None.

Revenues: None.

Cost Savings: None.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? None.

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: This regulation will not have a fiscal impact on the regulated entities.

(b) Methodology and resources used to determine the fiscal impact: This regulation will not have a fiscal impact on the regulated entities.

(6) Explain:

(a) Whether this administrative regulation will have an overall negative or adverse major economic impact to the entities identified in questions (2) - (4). (\$500,000 or more, in aggregate) No.

(b) The methodology and resources used to reach this conclusion: Not applicable.

**PUBLIC PROTECTION CABINET
Department of Financial Institutions
Division of Depository Institutions
(New Administrative Regulation)**

808 KAR 15:050. Out-of-state trust companies operating in Kentucky.

RELATES TO: KRS 286.3-146

STATUTORY AUTHORITY: KRS 286.1-020(1), KRS 286.3-146(2)(a)2

NECESSITY, FUNCTION, AND CONFORMITY: KRS 286.1-020(1) authorizes the commissioner to promulgate administrative regulations to interpret and carry out the provisions and intent of KRS Chapter 286. KRS 286.3-146(2)(a)2 authorizes the Commissioner to promulgate a regulation to prescribe the form and format of out-of-state trust companies' notice of intent to conduct the activities outlined in KRS 286.3-146(1) in Kentucky. This administrative regulation establishes the procedure by which an out-of-state trust company, without a physical location in Kentucky, may file a written notification of their intent to conduct the activities outlined in KRS 286.3-146(1) within Kentucky.

Section 1. An out-of-state trust company without a physical location in Kentucky may conduct activities authorized under KRS 286.3-146(1) in Kentucky if they submit a completed "Notification by Out-of-State Trust Company of Business Activity" Form to the department at least thirty (30) days prior to engaging in activities authorized under KRS 286.3-146(1) in Kentucky.

Section 2. Incorporation by Reference.

(1) Form B-1, "Notification by Out-of-State Trust Company of Business Activity", July 12, 2024, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Financial Institutions, 500 Mero St 2SW19, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 5:00 p.m. This material may also be obtained from the department's Web site at https://kfi.ky.gov/new_docs.aspx?cat=65.

MARNI R. GIBSON, Commissioner

RAY PERRY, Secretary

APPROVED BY AGENCY: July 15, 2024

FILED WITH LRC: July 15, 2024 at 10:05 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 23rd, 2024, at 2:00 p.m., at 500 Mero Street, Frankfort Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through September 30th, 2024. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact persons.

CONTACT PERSON: Kathryn Adams-Cornett, Staff Attorney and Marni Gibson, Commissioner, Department of Financial Institutions, Address: 500 Mero Street, 2SW19, Frankfort, Kentucky

40601, phone 502-782-9065, fax 502-573-8787, email katie.adams@ky.gov and Marni.Gibson@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kathryn Adams-Cornett

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedure by which an out-of-state trust company, without a physical location within Kentucky, may file a written notification of their intent to conduct the activities outlined in KRS 286.3-146(1) within Kentucky.

(b) The necessity of this administrative regulation: This administrative regulation provides guidance as to the notification requirements for out-of-state trust companies that wish to conduct activities outlined in KRS 286.3-146(1) within Kentucky.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 286.3-146(2)(a)2 authorizes the Commissioner to promulgate a regulation to prescribe the form and format of notifications by out-of-state trust companies to conduct the activities outlined in KRS 286.3-146(1) in Kentucky. This regulation describes the required form and format of this notification.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation establishes the process by which out-of-state trust companies, with no physical locations within the state, may notify the Kentucky Department of Financial Institutions (the "Department") of their intent to conduct the activities outlined in KRS 286.3-146(1) within Kentucky. At this time, no notification process exists for such a request. KRS 286.3-146(2)(a)2 contemplates the promulgation of such regulation.

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation would impact out-of-state trust companies, without physical locations in Kentucky, that are seeking to conduct the activities outlined in KRS 286.3-146(1) within Kentucky. The precise number of these companies is unknown as it is dependent on the number of out-of-state trust companies that elect to conduct the activities addressed in KRS 286.3-146(1) in Kentucky. However, all out-of-state trust companies not having a physical location in Kentucky would be eligible.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This regulation creates a notification process for out-of-state trust companies that wish to conduct activities addressed in KRS 286.3-146(1) in Kentucky. These trust companies will submit a "Notification by Out-of-State Trust Company of Business Activity" as outlined in the regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The cost to the eligible entities is expected to be minimal.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance, out-of-state trust companies that complete notification requirements will be able to conduct the activities addressed in KRS 286.3-146(1) in Kentucky.

(5) Provide an estimate of how much it will cost the

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administrative body to implement this administrative regulation:

- (a) Initially: No or minimal costs anticipated.
- (b) On a continuing basis: No or minimal costs anticipated.
- (6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Current Department resources.
- (7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The Department does not anticipate a need to increase fees or funding to implement this regulation.
- (8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This regulation does not establish any fee, nor does it increase any existing fee.
- (9) TIERING: Is tiering applied? Tiering was not applied. The regulation did not require tiering to be applied to implement.

FISCAL IMPACT STATEMENT

(1) Identify each state statute, federal statute, or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 286.3-146(2)(a)2 authorizes this regulation.

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: The Department of Financial Institutions (the "Department").

(a) Estimate the following for the first year:

Expenditures: See statement below

Revenues: See statement below

Cost Savings: See statement below. The effect on overall revenue for the Department will be minimal; this regulation will not have a substantial impact on the Department's budget.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? The effect on overall revenue for the Department will be minimal; this regulation will not have a substantial impact on the Department's budget.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): This regulation will not impact any local entities.

(a) Estimate the following for the first year:

Expenditures: See statement below

Revenues: See statement below

Cost Savings: See statement below. This regulation will not impact local entities.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? This regulation will not impact regulated local entities.

(4) Identify additional regulated entities not listed in questions (2) or (3): This regulation will not impact any additional regulated entities.

(a) Estimate the following for the first year:

Expenditures: See statement below

Revenues: See statement below

Cost Savings: See statement below. This regulation will not impact additional regulated entities.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? This regulation will not impact any additional regulated entities.

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: There will be minimal fiscal impact from this regulation on the Department of Financial Institutions and on regulated entities.

(b) Methodology and resources used to determine the fiscal impact: Requirements put in place by this regulation were examined and found to create negligible financial burden or revenue in regard to the Department of Financial Institutions or regulated entities.

(6) Explain:

(a) Whether this administrative regulation will have an overall negative or adverse major economic impact to the entities identified in questions (2) - (4). (\$500,000 or more, in aggregate) The amended regulation will not have a major economic impact on the regulated entities or the Department.

(b) The methodology and resources used to reach this conclusion: Requirements put in place by this regulation were examined and found to create negligible financial burden or revenue in regard to the Department of Financial Institutions or regulated entities.

**CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Public Health Protection and Safety
(New Administrative Regulation)**

902 KAR 10:122. Repeal of 902 KAR 10:121 and 902 KAR 10:190.

RELATES TO: KRS 211.180

STATUTORY AUTHORITY: KRS 13A.310

NECESSITY, FUNCTION, AND CONFORMITY: KRS 13A.310

allows a promulgating agency to repeal an existing administrative regulation. This administrative regulation repeals 902 KAR 10:121 as the fees for plan review, annual permitting and inspection of public swimming and bathing facilities, including bathing beaches, have been incorporated into new subject matter related administrative regulations. This administrative regulation repeals 902 KAR 10:190 as the requirements for splash pads have been incorporated into other administrative regulations.

Section 1. The following administrative regulations are hereby repealed:

(1) 902 KAR 10:121, Plan review, annual permitting, and inspection fees for public swimming and bathing facilities, including splash pads operated by local governments; and

(2) 902 KAR 10:190, Splash pads operated by local governments.

STEVEN J. STACK, MD, MBA, Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: July 2, 2024

FILED WITH LRC: July 11, 2024 at 11:30 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on September 23, 2024, at 9:00 a.m. using the CHFS Office of Legislative and Regulatory Affairs Zoom meeting room. The Zoom invitation will be emailed to each requestor the week prior to the scheduled hearing. Individuals interested in attending this virtual hearing shall notify this agency in writing by September 16, 2024, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends virtually will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until September 30, 2024. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

CONTACT PERSON: Krista Quarles, Policy Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-7476; fax 502-564-7091; email CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Julie Brooks or Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation repeals 902 KAR 10:121, Plan review, annual permitting, and inspection fees for public swimming and bathing facilities, including splash pads operated by local governments, and 902 KAR 10:190, Splash pads operated by local governments.

(b) The necessity of this administrative regulation: The fee

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structure from 902 KAR 10:121 have been incorporated into new subject matter related administrative regulations; therefore, 902 KAR 10:121 is no longer necessary. The design, construction, and operational requirements of splash pads operated by local governments have been incorporated in other administrative regulations and 902 KAR 10:190 is no longer necessary.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 13A.310 allows a promulgating agency to repeal an existing administrative regulation.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The repeal of 902 KAR 10:121 and 902 KAR 10:190 will help to eliminate any confusion regarding the fees necessary for the specific phase of swimming pool operation, and will eliminate any confusion regarding the requirements for splash pads operated by local governments.

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

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation.

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

(d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are currently 2,254 public swimming pools, bathing facilities, and spas regulated by the department. The department receives approximately 115 requests for plan review each year.

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

(a) List 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 only action required is to be aware of the new administrative regulations that contain the plan review, annual permit and inspection fees.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no cost to the regulated entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Not applicable.

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

(a) Initially: There are no initial cost to implement.

(b) On a continuing basis: There are no continuing cost to implement.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The public swimming and bathing facility program is funding through a mix of state general fund dollars and fees received for plan review, annual permitting and inspections.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Not applicable.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: There are no fees established in this administrative regulation.

(9) TIERING: Is tiering applied? Tiering is not applied as this administrative regulation repeals another administrative regulation.

FISCAL IMPACT STATEMENT

(1) Identify each state statute, federal statute, or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 13A.310.

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: The Division of Public Health Protection and Safety in the Department for Public Health is the promulgating agency. Other affected state offices include Kentucky state parks that have a swimming pool or beach available for guest.

(a) Estimate the following for the first year:

Expenditures: This administrative regulation does not impact expenditures.

Revenues: This administrative regulation does not generate revenue.

Cost Savings: This administrative regulation does not result in cost savings.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? Not applicable.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): Additional affective local entities include local health departments and local governments that operate a public swimming or bathing facility.

(a) Estimate the following for the first year:

Expenditures: This administrative regulation does not impact expenditures.

Revenues: This administrative regulation does not generate revenue.

Cost Savings: This administrative regulation does not result in cost savings.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? Not applicable.

(4) Identify additional regulated entities not listed in questions (2) or (3): Additional regulated entities include hotels, recreational facilities such as water parks, health facilities and athletic clubs, schools including colleges and universities, swim clubs and country clubs, youth camps, and any other entity that provides a public swimming and bathing facility.

(a) Estimate the following for the first year:

Expenditures: This administrative regulation does not impact expenditures.

Revenues: This administrative regulation does not generate revenue.

Cost Savings: This administrative regulation does not result in cost savings.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? Not applicable.

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: This administrative regulation will have no fiscal impact as it just repeals another administrative regulation.

(b) Methodology and resources used to determine the fiscal impact: Not applicable.

(6) Explain:

(a) Whether this administrative regulation will have an overall negative or adverse major economic impact to the entities identified in questions (2) - (4). (\$500,000 or more, in aggregate) This administrative regulation will not have an overall negative or adverse major economic impact.

(b) The methodology and resources used to reach this conclusion: Not applicable.

**CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Public Health Protection and Safety
(New Administrative Regulation)**

902 KAR 10:123. Kentucky public swimming and bathing facilities construction requirements.

RELATES TO: KRS 211.015, 211.090, 211.210, 211.220, 211.990(2), 29 C.F.R. 1910.119, 15 U.S.C. 8003

STATUTORY AUTHORITY: KRS 194A.050, 211.180

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) authorizes the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of Kentucky citizens and to operate programs and fulfill the responsibilities vested in the cabinet. KRS 211.180 authorizes the cabinet to adopt administrative regulations relating to public facilities and their operation and maintenance in a safe and sanitary manner to protect public health and prevent health hazards. This administrative regulation establishes uniform

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standards for construction of public swimming pools and bathing facilities.

Section 1. Definitions.

(1) "Accessible" means having access to a fixture, connection, appliance or equipment, even if it is necessary to remove an access panel, door, or similar obstruction.

(2) "Agitation" means the mechanical or manual movement to dislodge the filter aid and dirt from the filter element.

(3) "Air gap" means the unobstructed vertical distance through the free atmosphere between the lowest opening from any pipe or faucet conveying water or waste to a tank, plumbing fixture, receptor, or other device, and the flood level rim of the receptacle.

(4) "Approved" means that which is acceptable to the cabinet.

(5) "Backwash" means the flow of water through the filter element or media in the reverse direction sufficient to dislodge the accumulated dirt and filter aid and remove them from the filter tank.

(6) "Backwash cycle" means the time required to backwash the filter system thoroughly.

(7) "Backwash rate" means the rate of application of water through a filter during the backwash cycle expressed in gallons per minute per square foot of effective filter area.

(8) "Bather" means a person using a public swimming and bathing facility.

(9) "Cabinet" is defined by KRS 211.015(a).

(10) "Cartridge filter" means a filter that utilizes a porous cartridge as its filter media.

(11) "Diatomaceous earth (DE) filter" means a filter that utilizes a thin layer of diatomaceous earth as its filter media that will need to be periodically replaced.

(12) "Disinfectant" means an approved chemical compound designed for the destruction of pathogenic organisms in bathing facilities and includes chlorine and bromine.

(13) "Equalizer line" means the connection from the skimmer housing to the pool, spa, or hot tub below the weir box, which:

(a) Is sized to satisfy pump demand and prevent air lock or loss of prime; and

(b) Contains a float valve assembly and pop-up valve.

(14) "Facility operator" means a person or employee of that person who is responsible for the proper operation and maintenance of the facility.

(15) "Filter" means a device that separates solid particles from water by recirculating it through a porous substance.

(16) "Filtration rate" means the rate of water flow through a filter while in operation.

(17) "Flow meter" means a device that measures the flow of water through piping.

(18) "Head loss" means the total pressure drop between the inlet and the outlet of a component.

(19) "Holding tank" means a storage vessel to retain water for a spray pad recirculation system.

(20) "Hydrojet" means a fitting which blends air and water, creating a high velocity, turbulent stream of air enriched water.

(21) "Inlet" means a fitting or fixture through which filtered water returns to a pool or spa.

(22) "Main outlet" means an outlet fitting at the deepest point of the horizontal bottom of a pool through which water passes to a recirculating pump or surge tank, and is often referred to as a "main drain".

(23) "Modulating valve" means a valve that automatically regulates the flow of water from the main drain through the use of a float ball.

(24) "Perimeter overflow system" means a channel at normal water level that extends completely around the pool perimeter and is used to remove surface debris, also known as an overflow or scum gutter.

(25) "Perlite filter" means a filter that utilizes a thin layer of perlite as its filter media deposited on a septum that must be periodically replaced.

(26) "Play feature" means a structure or feature that is added to a pool for the purpose of entertainment.

(27) "Plunge pool" means a pool or area within a pool designed as the termination point for a water slide or water ride.

(28) "Positive shutoff valve" means a valve that completely stops the flow of water.

(29) "Precoat" means the process of depositing a layer of diatomaceous earth or perlite on the filter element at the start of a filter cycle.

(30) "Public swimming and bathing facility" means a natural or artificial body or basin of water that is modified, improved, constructed, or installed for the purpose of swimming or bathing, except for a pool at a private single family residence intended only for the use of the owner and guests.

(31) "Readily accessible" means direct access without the necessity of removing any panel, door, or similar obstruction.

(32) "Skimmer" means a device designed to continuously remove surface film and water and return it through the filter.

(33) "Splash pad" means an area that:

(a) Has aquatic play features that spray or drop water for the purpose of wetting people;

(b) Is designed so that there is no accumulation or ponding of water on the ground;

(c) Includes both recirculating and non-recirculating water systems; and

(d) Includes splash pads operated by local governments as defined in KRS 211.205.

(34) "State Building Code" means the requirements established in 815 KAR Chapter 7.

(35) "State Plumbing Code" means the requirements established in 815 KAR Chapter 20.

(36) "Strainer" means a device used to remove hair, lint, leaves, or other coarse material on the suction side of a pump.

(37) "Suction piping" means that portion of the circulation piping located between the facility structure and the inlet side of a pump.

(38) "Surge tank" means a storage vessel within the pool recirculation system used to retain the water displaced by bathers.

(39) "Total discharge head" means the amount of water that a pump will raise water above its center line.

(40) "Total dynamic head" means the arithmetical difference between the total discharge head and total suction head (a vacuum reading is considered as a negative pressure). This value is used to develop the published performance curve.

(41) "Total suction head" means the amount of water that a pump will lift by suction.

(42) "Turnover rate" means the time requirements, in hours or minutes, for the circulation system to filter and recirculate a volume of water equal to the facility volume.

(43) "Wading pool" means a pool or area within a pool where the water depth is twenty- four (24) inches or less.

Section 2. Submission of Plans and Specifications for Approval.

(1) A person shall not construct, alter, or reconstruct a public swimming and bathing facility until approval of detailed plans and specifications, with supporting design data as required in this administrative regulation, is granted in writing by the state or local agency having jurisdiction.

(2) The original plans and five (5) copies shall be submitted to the local health department with payment pursuant to Section 3 of this administrative regulation.

(3) The front page of the plans submitted for review and approval shall contain the:

(a) Name of the swimming and bathing facility;

(b) Location by city and county;

(c) Name and contact information for the facility owner;

(d) Name of the installer; and

(e) Name of the engineer, architect, or person preparing the plans.

(4) Plans shall be submitted by an engineer or architect licensed in the state of Kentucky and bear the individual's official seal.

(5) Plans and specifications on public swimming and bathing facilities constructed by the state or local government, or for a facility with surface area greater than 1,600 square feet, shall be prepared by an engineer or architect registered in the State of Kentucky.

(6) The plans shall be:

(a) Drawn to scale;

(b) Accompanied by proper specifications to permit a

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comprehensive review of the plans, including the piping and hydraulic details; and

(c) Include:

1. A site plan of the general area with a plan and sectional view of the facility complex with all necessary dimensions;

2. A piping diagram showing all appurtenances including treatment facilities in sufficient detail, as well as pertinent elevation data, to permit a hydraulic analysis of the system;

3. The specifications on all treatment equipment, including performance ranges of pumps, disinfecting equipment, chemical feeders, filters, strainers, lights, skimmers, suction outlets or return inlets, diving boards, safety equipment, and other related equipment;

4. Drawing of equipment room showing placement of equipment; and

5. Appropriate fees.

(7) One (1) set of approved plans shall be kept at the job site and available for inspection.

(8) Upon completion of recirculation piping system construction and prior to the piping being tested for air pressure at ten (10) pounds per square inch of pressure for fifteen (15) minutes and covered, the owner or builder shall contact the cabinet for an inspection.

(9) Upon completion of construction, a notarized statement certifying the facility was constructed in accordance with the approved plans and this administrative regulation shall be submitted to the cabinet.

(10) The facility shall not be used before receiving a final inspection and written approval from the cabinet, as well as any other affected state and local regulatory agencies. It shall be the owner or operator's responsibility to notify the cabinet and other involved agencies of construction completion and call for inspection.

(11) Unless construction is begun within one (1) year from the date of approval, the approval shall expire. Extension of approval may be considered upon written request to the cabinet.

(12) No change in location, construction, design, materials, or equipment shall be made to approved plans or the facility without the written approval of the cabinet.

Section 3. Fees for Plan Review and Construction Inspection.

(1) A fee shall be required for all plan reviews and construction inspections by the cabinet or the local health department to determine compliance with this administrative regulation.

(2) The fee for plan review shall be calculated as follows:

(a) Swimming and bathing facility plan review for gutter pools, the fee shall be \$346.50

(b) Swimming and bathing facility plan review for skimmer pools, the fee shall be \$173.25

(c) Swimming and bathing facility plan review for minor reconstruction, the fee shall be \$115.50

(3) The fee required shall include \$82.50 for interactive water features.

(4) The fee for swimming and bathing facility construction inspection shall be calculated as follows:

(a) Pre-renovation evaluation/consultation, the fee shall be \$231.00

(b) Rough-in construction inspection, the fee shall be \$115.50

(c) Final construction inspection, the fee shall be \$173.25

(5) The plan review and construction inspection fees required by this section shall be paid to the Kentucky Department for Public Health by check or money order made payable to the Kentucky State Treasurer.

Section 4. Water Supplies.

(1) Potable water from an approved municipal water system or water district shall be supplied to all public swimming and bathing facilities. If these supplies are not available, a potable water supply meeting the approval of the Energy and Environment Cabinet shall be provided.

(2) The water supply shall be capable of providing:

(a) Sufficient quantities of water under pressure to all water-using fixtures and equipment at the facility; and

(b) Enough water to raise the water level by at least one (1) inch

in three (3) hours in:

1. Swimming, diving, or wave pools; and

2. Water slide plunge pools.

Section 5. Sewage and Wastewater Disposal.

(1) Sewage or wastewater generated from the operation of a public swimming and bathing facility shall discharge to a public sanitary sewer.

(2) If a public sanitary sewer is not available, sewage or wastewater shall be discharged to a system that complies with 902 KAR 10:085.

(3) Outdoor deck or surface area drainage water may be discharged directly to storm sewers, natural drainage areas, or to the ground surface without additional treatment. This drainage shall not result in nuisance conditions that create an offensive odor, a stagnant wet area, or an environment for the breeding of insects.

(4) Filter backwash shall be discharged to public sanitary sewers, or if unavailable, to a system approved by the cabinet.

Section 6. Facility Design and Construction.

(1) All public swimming and bathing facilities, and attendant structures, such as bathhouses, dressing rooms, or restrooms, except for beach areas at bathing beaches, shall meet the design, materials, fixture, and construction requirements of 815 KAR 7:120 and 815 KAR Chapter 20.

(2) Depth markings and lane lines.

(a) On all facilities other than beaches, the depth of the water shall be marked plainly at or above the water surface on the vertical wall of the facility, if possible, and on the edge of the deck next to the facility. Depth markers shall be placed at the following locations:

1. At the points of maximum and minimum depths;

2. At the point of change of slope between deep and shallow portions or transition point;

3. At intermediate two (2) feet increments of water depth; and

4. If the facility is designed for diving, at appropriate points to denote the water depths in the diving area.

(b) Depth markers shall be spaced so that the distance between adjacent markers is not greater than twenty-five (25) feet as measured peripherally.

(c) Depth markers shall be in Arabic numerals at least four (4) inches high and of a color contrasting with the background. If depth markers cannot be placed on the vertical walls at or above the water level, other means shall be used, so that markings shall be plainly visible to persons in the facility.

(d) Lane lines or other markings on the bottom of the facility shall be a minimum of ten (10) inches in width and be of a contrasting color.

(3) A safety line supported by buoys shall be provided across the section of the pool where the break between the shallow and deep water occurs (five (5) feet) except when the pool is being used for organized activities or during operation as a wave pool. The line shall be placed one (1) foot toward the shallow end from where the break occurs.

(4) The hydrojet auxiliary air or water pump for a spa shall be controlled by an on-off switch with a fifteen (15) minute timer located and labeled at least five (5) feet away from the spa.

(5) All facilities shall provide an emergency automatic pump shut off located adjacent to the telephone.

Section 7. Facility Water Treatment Systems.

(1)

(a) A recirculation system, consisting of pumps, piping, filters, water conditioning, disinfection equipment, and other accessory equipment shall be provided to clarify, chemically balance, and disinfect the water for all swimming and bathing facilities, except bathing beaches.

(b) All system components, including piping, shall bear the NSF International (NSF) potable water (NSF-pw) mark.

(c) Pumps greater than seven and five-tenths (7.5) horse power that are not required to meet NSF testing standards shall be considered on a case-by-case basis.

(2) Pumping equipment.

(a) The recirculation pump and motor shall deliver the flow

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necessary to obtain the turnover required in the table below. A valve for flow control and a flow meter shall be provided in the recirculation pump discharge piping.

(b) The turnover rate shall be:

Type of Facility	Turnover Required
Diving pools	8 hours or less
Wading pools, Spas, Therapy pools, Splash pad holding tanks, Facility equipped with a spray feature not providing additional filtered and disinfected water to the spray feature	30 minutes or less
Wave pools, Lazy rivers, Water rides	2 hours or less
Vortex pools, Plunge pools	1 hour or less
All other pools	6 hours or less

(c) Higher flow rates may be necessary in pools with skimmers so that each skimmer will have a minimum flow rate of thirty (30) gallons per minute.

(d) The pump shall be of sufficient capacity to provide a minimum backwash rate of fifteen (15) gallons per square foot of filter area per minute in sand filter systems.

(e) The pump or pumps shall supply the required recirculation rate of flow to obtain the turnover rate required at a total dynamic head of at least:

1. Fifty (50) feet for all vacuum filters;
2. Seventy (70) feet for pressure sand or cartridge filters; or
3. Eighty (80) feet for pressure diatomaceous earth filters and perlite filters.

(f) If the pump is located at an elevation higher than the facility water line, it shall be self-priming.

(g) If vacuum filters are used, a vacuum limit control shall be provided on the pump suction line. The vacuum limit switch shall be set for a maximum vacuum of eighteen (18) inches of mercury.

(h) A compound vacuum-pressure gauge or vacuum gauge shall be installed on the suction side of the pump.

(i) A pressure gauge shall be installed on the pump discharge line adjacent to the pump.

(j) Valves shall be installed to allow the flow to be shut off during cleaning, switching baskets, or inspection of hair and lint strainers.

(k) A hair or lint strainer with openings no more than one-eighth (1/8) inch is required except for pumps that are used with vacuum filter systems.

(3) Water heaters shall be installed at all indoor swimming and bathing facilities, and shall comply with the following:

(a) A water heater piping system shall be equipped with a bypass. A valve shall be provided at the bypass and on the influent and effluent heater piping. The influent and effluent heater piping shall be metallic and installed in accordance with heater manufacturer's recommendations;

(b) A heating coil, pipe, or steam hose shall not be installed in any swimming and bathing facility;

(c) Thermometers shall be provided in the piping to check the temperature of the water returning from the facility and the temperature of the blended water returning to the facility;

(d) An automatic temperature limiting device with thermostatic control that prevents the introduction of water in excess of 100 degrees Fahrenheit to swimming and diving pools and in excess of 104 degrees Fahrenheit for spas shall be provided and shall be accessible only to the facility operator;

(e) A pressure relief valve shall be provided and shall be piped to within six (6) inches of the floor;

(f) Venting of gas or other fuel burning water heaters shall be provided in accordance with the State Building Code;

(g) Heaters for indoor swimming and diving pools shall be capable of maintaining an overall pool water temperature between seventy-six (76) degrees Fahrenheit and eighty-four (84) degrees Fahrenheit;

(h) Combustion and ventilation air shall be provided for fuel burning water heaters in accordance with manufacturer recommendations or the State Building Code;

(i) Heaters for indoor swimming and diving pools shall be sized on a basis of 150 British Thermal Units per hour input per square foot of pool water surface area; and

(j) All heaters shall meet the latest standards of applicable recognized testing agencies.

(4) A flow meter shall be:

(a) Located so that the rate of recirculation may be easily read;

(b) Installed on a straight length of pipe at a distance of at least ten (10) pipe diameters downstream, and five (5) pipe diameters upstream from any valve, elbow, or other source of turbulence, except for those specifically designed without separation parameters; and

(c) Installed on each recirculation system, splash pad feature, waterslide, any other type of spray feature, and on multiple filtration units, except at government-owned, non-recirculating splash pads.

(5) Vacuum cleaning system.

(a) A vacuum cleaning system shall be:

1. Provided for all facilities except beaches; and

2. Capable of reaching all parts of the facility bottom.

(b) A vacuum system that utilizes the attachment of a vacuum hose to the suction piping through the skimmer may be provided.

(c)

1. If the vacuum cleaning system is an integral part of the facility recirculation system, a wall fitting shall be provided:

a. Eight (8) to twelve (12) inches below the normal water level; and

b. With a cap or plug that is not removable by bathers.

2. Piping from this connection shall be:

a. To the suction side of the pump ahead of the hair and lint strainer;

b. At least one and one-half (1.5) inches in diameter; and

c. Equipped with a control valve near the junction with the pump suction line.

3. The size of the vacuum hose shall be at least one and one-half (1.5) inches in diameter and be of sufficient strength to prevent collapsing and allow adequate flow for proper cleaning.

(d) Automatic vacuum systems may be used to supplement the built-in vacuum system provided they are capable of removing all debris from the facility bottom.

(e) Vacuum systems shall only be used when the facility is closed to bathers.

(6) Piping, skimmer, and overflow system.

(a) Piping shall comply with the material specifications listed in the Kentucky State Plumbing Code for potable water.

(b) All piping, valves, and fittings shall be color coded, suitably labeled, or marked to denote its purpose within the facility water treatment system.

(c) The piping shall be designed to carry the required quantities of water at velocities not exceeding five (5) feet per second in suction piping and ten (10) feet per second in pressure piping.

(d) Gravity piping shall be sized so that the head loss in piping, fittings, and valves does not exceed the difference in water levels between the facility and the maximum operating level in the surge or filter tank.

(e) The following waste lines shall be provided with six (6) inch air gaps at their points of discharge to the waste pump or sewer:

1. Main outlet bypass or other connections to waste;

2. Surge tank drain and overflow lines;

3. Pump discharge to waste lines; and

4. Gutter bypass to waste lines.

(7) Inlets.

(a) Each inlet shall be directionally adjustable.

(b) The velocity of flow through any inlet orifice shall be in the range of five (5) to twenty (20) feet per second, except that facilities equipped with skimmers shall have a velocity of flow in the range of ten (10) to twenty (20) feet per second.

(c) Inlets shall be located and directed to produce uniform circulation of water to facilitate the maintenance of a uniform disinfectant residual throughout the entire facility without the existence of dead spots.

(d) Inlets in facilities with skimmers shall be twelve (12) inches below the midpoint on the skimmer throat.

(e) Inlets in facilities with a prefabricated perimeter overflow

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system shall be eight (8) inches or more below the lip of the gutter.

(f) Inlets shall be placed completely around the pool with each serving a linear distance of not more than fifteen (15) feet on center. The pipe serving the inlets shall form a loop completely around the pool.

(g) The number of inlets shall be determined by dividing the perimeter of the pool measured in feet, by fifteen (15). Any fraction thereof would represent one (1) additional inlet.

(h) Pools greater than forty-five (45) feet wide shall be equipped with floor inlets in a grid pattern located no more than seven and five-tenths (7.5) feet from a wall and no more than fifteen (15) feet apart. The grid shall form a continuous loop with no reduction in loop pipe sizing.

(i) A minimum of two (2) inlets is required on all pools, holding tanks, and bathing facilities, regardless of size.

(j) At least one (1) inlet shall be located in each recessed stairwell or other space where water circulation might be impaired.

(k) Prefabricated perimeter overflow systems shall be approved on a case-by-case basis by the cabinet.

(8) Outlets.

(a) All facilities, including holding tanks, shall be provided with a minimum of two (2) main outlets at the deepest horizontal point plumbed in parallel to permit the facility to be completely and easily drained.

(b) Openings and grates shall:

1. Conform to 15 U.S.C. 8003;

2. Be covered by a proper grating that is not removable by bathers;

3. Be at least four (4) times the area of the main outlet pipe;

4. Have sufficient area so that the maximum velocity of the water passing through the grate does not exceed one and one-half (1.5) feet per second at maximum flow; and

5. Have a maximum grate opening width of one-fourth (1/4) inch.

(c) Additional outlets shall be provided in all facilities where the width of the facility is more than sixty (60) feet. In these cases, outlets shall be spaced not more than thirty (30) feet apart, nor more than fifteen (15) feet from side walls, and shall be connected in parallel, not series.

(d) A hydrostatic relief valve may be provided for in-ground swimming and diving pools. Subsurface drainage, if provided, shall not be directly connected to a sanitary sewer.

(e) Main outlet piping shall be sized for water removal at a rate of at least 100 percent of the design recirculation flow rate and at velocities specified in subsection (6)(c) of this section. It shall function as a part of the recirculation system. The piping system shall be valved to permit adjustment of flow through it.

(9) Perimeter overflow systems.

(a) Swimming and bathing facilities with a water surface area greater than 1,600 square feet shall have a continuous perimeter overflow system.

(b) A perimeter overflow system shall:

1. Extend completely around the facility;

2. Permit inspection, cleaning, and repair;

3. Be designed so that no ponding or retention of water occurs within any portion of the system;

4. Be designed to prevent entrapment of bathers or the passage of small children into an enclosed chamber;

5. Have an overflow lip which is rounded, provides a good handhold, and is level within two-tenths (0.2) inch;

6. Provide for the rapid removal of all water and debris skimmed from the pool's surface;

7. Be designed for removal of water from the pool's upper surface at a rate equal to 100 percent of the design turnover flow rate;

8. Discharge to the recirculation system;

9. Be provided with a minimum of two (2) outlet pipes that will not allow the overflow channel to become flooded when the facility is in normal use;

10. Require additional outlet pipes provided at one (1) per 150 linear feet of perimeter overflow system or fraction thereof; and

11. Have drain gratings with surface area at least equal to two (2) times the area of the outlet pipe.

(10) All facilities that have perimeter overflow systems shall

have a net surge capacity of at least one (1.0) gallon per square foot of water surface area. Surge capacity shall be provided either in a vacuum filter tank, surge tank, or a combination of these. Main drain piping shall terminate eighteen (18) inches above the surge tank floor and be equipped with a modulating valve and a positive shutoff valve. Surge capacity for a diatomaceous earth (DE) filter is measured eighteen (18) inches above the filter media and the bottom of the gutter pipe.

(11) Skimmers are permitted on facilities whose width does not exceed thirty (30) feet and whose water surface area is 1,600 square feet or less. If skimmers are used, the following shall be met:

(a) At least one (1) skimmer shall be provided for each 500 square feet of water surface area or fraction thereof with a minimum of two (2) skimmers provided, except for spas, holding tanks, or wading pools with a water surface area of 144 square feet or less, where a minimum of one (1) skimmer shall be required.

(b) Skimmers shall be located to minimize interference with each other.

(c) The rate of flow per skimmer shall not be less than thirty (30) gallons per minute, and all skimmers shall be capable of handling at least eighty (80) percent of required flow rate.

(d) Surface skimmer piping shall have a separate valve in the equipment room to permit adjustment of flow.

(e) Each skimmer shall be provided with an equalizer line at least one and one-half (1.5) inches in diameter, located at least one (1) foot below the lowest overflow level of the skimmer, and be provided with a self-closing valve and cover that conforms to 15 U.S.C. 8003.

(f) All overflow water shall pass through a basket that can be removed without the use of tools.

(g) All pools not equipped with a perimeter overflow system shall have a smoothly contoured handhold coping not over two and one-half (2.5) inches thick for the outer two (2) inches or an equivalent approved handhold. The handhold shall be no more than nine (9) inches above the normal water line.

(12) All facilities shall be equipped for the addition of make-up water from a potable water source pursuant to the following:

(a) Discharge through an air gap of at least six (6) inches to a surge tank or a vacuum filter tank. If make-up water is added directly to the facility, the fill-spout shall be located under or immediately adjacent to a ladder rail, grab rail, or lifeguard platform. If added to a surge tank or vacuum filter tank, the six (6) inch air gap shall be measured above the top lip of the tank; and

(b) Through piping with vacuum breaker, antisiphon, or other protection as specified by the State Plumbing Code.

(13) Filtration.

(a) Filters shall comply with the following:

1. Pressure filters shall have:

a. Pressure gauges;

b. An observable free fall, or a sight glass installed on the backwash discharge line; and

c. A manual air-relief valve at the high point;

2. The filter backwash disposal facility shall have sufficient capacity to prevent flooding during the backwash cycle;

3. All filters shall be designed so that they can be completely drained. Filters shall be drained through a six (6) inch air gap to a pump or sanitary sewer; and

4. Filter media shall be listed as NSF approved.

(b) Each facility shall have separate filtration and treatment systems.

(c) Filter equipment and treatment systems shall operate continuously twenty-four (24) hours per day, except if the facility is closed for repairs or at the end of the swimming season.

(d) Rapid sand or gravity sand filters shall be designed for a filter rate not to exceed three (3) gallons per minute per square foot of bed area at time of maximum head loss with sufficient area to meet the design rate of flow required by the prescribed turnover.

(e) At least eighteen (18) inches of freeboard shall be provided between the upper surface of the filter media and the lowest portion of the pipes or drains that serve as overflows during backwashing.

(f) The filter system shall be designed with necessary valves and piping to permit filtering to the pool.

(g) High rate sand filters. The design filtration rate shall be a

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minimum of five (5) gallons per minute per square foot of filter area. The maximum design filtration rate shall be the lesser of fifteen (15) gallons per minute per square foot of filter area or seventy-five (75) percent of the NSF listed filtration rate. The backwash rate shall be fifteen (15) gallons per minute per square foot of filter area.

(h) Diatomaceous earth filters shall comply with the following requirements:

1. The design filtration rate shall not exceed one and one-half (1.5) gallons per minute per square foot of filter area on diatomaceous earth filters, except that the rate of filtration may be increased to two (2) gallons per minute per square foot of filter area if continuous feeding of diatomaceous earth is employed;

2. A precoat pot shall be provided on the pump suction line for pressure diatomaceous earth systems. All diatomaceous earth filter systems shall have piping arranged to allow recycling of the filter effluent during precoating;

3. If equipment is provided for the continuous feeding of diatomaceous earth to the filter influent, the equipment shall have a capacity to feed at least one and one-half (1.5) ounces of this material per square foot of filter area per day;

4. Overflow piping on vacuum diatomaceous earth filters shall be provided on the filter tank to discharge overflow water;

5. All filters shall be equipped for cleaning by one (1) or more of the following methods:

- a. Backwashing;
- b. Air-pump assist backwashing;
- c. Spray wash;
- d. Water pressure to wash vacuum filter; or
- e. Agitation; and

6. Perlite may be used in filters listed by NSF for perlite, but it may not be substituted for diatomaceous earth without NSF listing.

(i) Vacuum sand filters shall comply with the following requirements:

1. The design filtration rate shall be seventy-five (75) percent of that listed by NSF or fifteen (15) gallons per minute, whichever is lesser. The backwash rate shall be at fifteen (15) gallons per minute per square foot of filter area; and

2. Overflow piping shall be provided in order to drain overflow water.

(j) Cartridge filters shall comply with the following requirements:

1. Cartridge filters shall not be used on facilities with a capacity larger than 80,000 gallons;

2. Cartridge filters shall only be used on indoor pools;

3. The design filtration rate shall not exceed fifteen hundredths (0.15) gallons per minute per square foot of filter surface area; and

4. A clean duplicate set of cartridges shall be maintained at the facility.

(14) Disinfectant and chemical feeders.

(a) The minimum chemical feed equipment required at any facility shall include a unit for feed of a disinfectant and a unit for feed of a chemical for pH control.

(b) Equipment capacity.

1. Equipment for supplying chlorine or compounds of chlorine shall be of sufficient capacity to feed the chlorine at a rate of:

a. Eight (8) ppm or two and seven-tenths (2.7) pounds per day chlorine gas or its equivalent for each 10,000 gallons of pool volume for outdoor facilities; or

b. Three (3) ppm or one (1) pound per day for chlorine gas or its equivalent for each 10,000 gallons of pool volume for indoor facilities based on the turnover rates specified in subsection (2)(b) of this section.

2. The equipment for supplying chlorine shall not be controlled by a day-date clock.

3. The injection point for chlorine shall be placed on the discharge side of the pump and downstream of the flow meter unless the chlorine injection point is located within the surge tank.

4. Pot feeders for supplying bromochlorodimethylhydantoin sticks shall contain at least five tenths (0.50) a pound of bromochlorodimethylhydantoin per thousand gallons of facility capacity, or fraction thereof. The feeder shall have a method of feed rate adjustment.

5. Supplemental NSF listed ultraviolet (UV) light disinfection systems:

a. Shall be provided on all splash pads with a recirculating water system;

b. Shall be installed on a bypass line; and

c. Shall be equipped with a flow indicator; and

d. May be used on other facilities as supplemental disinfection.

6. Ozone may be used as a supplement to chlorination or bromination. Ozonation equipment will be considered by the cabinet on a case-by-case basis.

7. No more than one (1) gram per day of ozone per ten (10) gallons per minute of flow rate will be allowed. The ambient air ozone concentration shall be less than five hundredths (.05) ppm at all times either in the vicinity of the ozonator or at the pool water surface.

(c) If positive displacement pumps, or hypochlorinators, are used to inject the disinfectant solution into the recirculation line, they shall be of variable flow type and shall be of sufficient capacity to feed the amount of disinfectant required by paragraph (b)1 of this subsection. If calcium hypochlorite is used, the concentration of calcium hypochlorite in the solution shall not exceed five (5) percent. The solution container shall have a minimum capacity equal to the volume of solution required per day at the feed rate required in paragraph (b)1 of this subsection.

(d) Gas chlorinators shall only be used in a pre-existing facility and shall comply with applicable sections of 29 C.F.R. 1910.119.

(e) pH control feeders. All facilities shall install a chemical feeder of positive displacement type for the purpose of applying chemicals to maintain pH of facility water within the range of seven and two-tenths (7.2) to seven and eight-tenths (7.8). A solution tank of adequate capacity shall be provided.

Section 8. Operational Water Quality Standards. Operational water quality shall comply with 902 KAR 10:120.

Section 9. Equipment Rooms. Equipment rooms shall comply with the following requirements:

(1) Equipment necessary for facility operation shall be housed in a lighted, ventilated room that affords protection from the weather, prevents unauthorized access, has ceilings of at least seven (7) feet in height, and is of sufficient size for operation and inspection.

(2) The equipment room floor shall slope toward drains and shall have a nonslip finish.

(3) A hose bib with a vacuum breaker shall be installed in the equipment room.

(4) Suitable space, if not provided in the equipment room, shall be provided for storage of chemicals, tools, equipment, supplies, and records where they can be acquired by the facility operator without leaving the premises. The storage space shall be dry and protected from unauthorized access.

(5) The equipment room and all other storage areas shall be maintained in a clean, uncluttered condition, and shall not be used for storage of materials not essential to operation and maintenance of the facility.

Section 10. Telephones.

(1) All facilities shall have a non-pay landline telephone, or Voice over Internet Protocol (VoIP) telephone, continuously connected to a power source and operational at all times, capable of direct dialing 911 without going through a switchboard located on the deck that is readily accessible and conspicuously located. A cordless telephone shall be prohibited.

(2) All facilities utilizing VoIP telephones shall only use fixed VoIP services.

(3) Instructions for dialing shall be posted if necessary.

(4) The address of the facility and the telephone number of the police department, fire department, emergency medical service, or a hospital shall be posted in a conspicuous place near the telephone.

Section 11. Existing Facilities and Equipment.

(1) Existing facilities and equipment being used prior to the effective date of this administrative regulation that do not fully meet the design, construction, and materials requirements of this administrative regulation, may continue to be used if the facilities and equipment:

- (a) Are in good repair;
- (b) Are capable of being maintained in a sanitary condition;
- (c) Meet facility water quality standards; and
- (d) Create no health or safety hazard.

(2) If existing equipment, components, piping, or fittings involved in the facility water treatment system are replaced to effect repairs, the replacement equipment, components, piping, or fittings shall meet the requirements of this administrative regulation. If replacement occurs, it shall be the owner's or operator's responsibility to notify the cabinet as to what was replaced and what was used for a replacement.

Section 12. Effect on Local Administrative Regulations. Compliance with this administrative regulation shall not relieve any person from compliance with any other state or local laws dealing with pool operation and maintenance matters or zoning requirements that may also be applicable.

Section 13. Variances for Construction Requirements.

(1) All facilities shall be constructed or remodeled in compliance with the provisions of this administrative regulation, except that an applicant may request a variance if the cabinet determines that the variance would not affect seriously the safe and healthful operation of the facility.

(2) Before granting a variance, the cabinet shall require proof from the applicant documenting that the requested variance will comply with the basic intent of these administrative regulations and that no safety or health hazard would be created if the variance is granted.

STEVEN J. STACK, MD, MBA, Commissioner
ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: July 2, 2024

FILED WITH LRC: July 11, 2024 at 11:30 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on September 23, 2024, at 9:00 a.m. using the CHFS Office of Legislative and Regulatory Affairs Zoom meeting room. The Zoom invitation will be emailed to each requestor the week prior to the scheduled hearing. Individuals interested in attending this virtual hearing shall notify this agency in writing by September 16, 2024, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends virtually will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until September 30, 2024. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

CONTACT PERSON: Krista Quarles, Policy Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-7476; fax 502-564-7091; email CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Julie Brooks or Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the uniform design and construction standards for public swimming and bathing facilities, including splash pads and spas.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to ensure all public swimming and bathing facilities are designed and constructed in a manner that protects public health.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 194A.050(1) authorizes the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of Kentucky citizens and to operate programs and fulfill the responsibilities vested in the cabinet. KRS 211.180 authorizes the cabinet to adopt administrative regulations relating to public facilities and their operation and maintenance in a safe and sanitary manner to protect public health and prevent health hazards.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will ensure all public swimming and bathing facilities, including splash pad and spas, are designed, constructed and installed in a manner that protects public health.

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

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation.

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

(d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The department receives between 115 and 120 construction plans per year.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Regulated entities will need to be aware of the design, construction, and inspection requirements contained in this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The cost of compliance with this administrative regulation should be minimal.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): All public swimming and bathing facilities will be designed and constructed in a manner that protects public health while also providing opportunities for the general public to enjoy the facilities.

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

(a) Initially: This is an ongoing program, there are no initial cost.

(b) On a continuing basis: This is an ongoing program, the costs associated with this administrative regulation will be absorbed by current program funding.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: State general fund dollars and revenue received from the permitting and inspection fees are the sources of funding to implement this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: This new administrative regulation proposes to increase the current fee structure for the construction permit and inspection by ten (10) percent.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: The fees established in this new administrative regulation are not new fees. The existing fee structure is in 902 KAR 10:121 and that administrative regulation will be repealed with the filing of this new administrative regulation. This new administrative regulation proposes to increase the plan review and construction inspection fees by ten (10) percent.

(9) TIERING: Is tiering applied? Tiering is not applied. All public swimming and bathing facilities, including splash pads operated by a local government, require plan review approval before beginning construction.

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FISCAL IMPACT STATEMENT

(1) Identify each state statute, federal statute, or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050 and 211.180.

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: The Cabinet for Health and Family Services, Department for Public Health, Division of Public Health Protection and Safety is the promulgating agency. The Division of Plumbing, Department of Housing, Building and Construction in the Public Protection Cabinet and the Divisions of Water and Waste Management in the Energy and Environment Cabinet will also be affected by this new administrative regulation. The Department of Parks in the Tourism, Arts and Heritage Cabinet will also be affected by this administrative regulation.

(a) Estimate the following for the first year:

Expenditures: The costs associated with administering the plan review and construction inspection program is between \$335,000 to \$340,000.

Revenues: The department receives approximately \$48,000 in revenue from the plan review and construction inspection fees.

Cost Savings: This administrative regulation does not result in cost savings.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? Expenditures may be impacted by changes in salary, fringe benefits and travel cost for state and local health department employees. These changes cannot be determined at this time. The revenues received will not change in subsequent years without an amendment to this administrative regulation.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): This new administrative regulation affects local health departments and local governments that have a public swimming and bathing facility.

(a) Estimate the following for the first year:

Expenditures: Expenditures for local health departments will be minimal. Local health departments receive the initial construction plans but forward those, along with the required fee, to the state. Local governments will have expenditures related to the facility design, plan development, and construction cost. This cost can range from \$50,000 to \$100,000 or more.

Revenues: This administrative regulation does not generate revenue for the affected local entities.

Cost Savings: This administrative regulation does not result in cost savings.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? The impact in expenditures, revenue and cost savings in subsequent years cannot be determined.

(4) Identify additional regulated entities not listed in questions (2) or (3): This new administrative regulation affects newly constructed hotels that have a swimming pool or spa/hot tub and existing hotels that seek to remodel the swimming pool or spa/hot tub, health facilities and athletic clubs, schools including colleges and universities, swim clubs and country clubs, youth camps, and any other entity that provides a public swimming and bathing facility.

(a) Estimate the following for the first year:

Expenditures: Expenditures for the additional regulated entities will be the cost associated with the facility design, plan development, and construction cost. This cost can range from \$50,000 to \$100,000 or more.

Revenues: This administrative regulation does not generate revenue for the additional regulated entities.

Cost Savings: This administrative regulation does not result in cost savings.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? The fee structure in this administrative regulation will not change in subsequent years without amending the administrative regulation. The expenditures for the additional regulated entities may change depending on the cost associated with the facility design, plan development and construction cost. That total cannot be determined at this time.

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: This administrative regulation will have minimal fiscal impact for the

regulated entities. The Department for Public Health receives approximately \$48,000 per year in revenue from the fees associated with the plan review and construction inspection activities. However, the departments expenditures are between \$335,000 to \$340,000 per year.

(b) Methodology and resources used to determine the fiscal impact: A financial report of revenue for the associated cost center and the salary report were used to determine the revenue and expenditures for this administrative regulation.

(6) Explain:

(a) Whether this administrative regulation will have an overall negative or adverse major economic impact to the entities identified in questions (2) - (4). (\$500,000 or more, in aggregate) This administrative regulation will not have an overall negative or adverse major economic impact for the entities identified in questions (2) - (4).

(b) The methodology and resources used to reach this conclusion: The revenue received from the regulated entities in the form of fees is less than \$50,000 per year. The expenditures for the department are less than \$350,000 per year.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 29 C.F.R. 1910.119 Occupational Safety and Health Administration regarding the storage of hazardous materials, and 15 U.S.C. 8003-Federal swimming pool and spa drain cover standards.

(2) State compliance standards. KRS 211.180 authorizes the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations for the regulation and control of the matters set out below and shall formulate, promote, establish, and execute policies, plans, and comprehensive programs relating to all matters of public health, including the sanitation of public and semipublic recreational areas.

(3) Minimum or uniform standards contained in the federal mandate. 29 C.F.R. 1910.119 contains requirements for preventing or minimizing the consequences of catastrophic releases of toxic, reactive, flammable, or explosive chemicals. These releases may result in toxic, fire or explosion hazards. The federal swimming pool and spa drain cover standards under 15 U.S.C. 8003 requires that effective December 19, 2007, all pools and spas manufactured, distributed, or entered into commerce in the United States shall conform to the entrapment protection standards of the ASME/ANSI A112.19.8 performance standard; each public pool and spa in the United States shall be equipped with anti-entrapment devices or systems that comply with the ASME/ANSI A112.19.8 performance standard, or any successor standard.

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

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable.

CABINET FOR HEALTH AND FAMILY SERVICES Department for Public Health Division of Public Health Protection and Safety (New Administrative Regulation)

902 KAR 10:125. Kentucky public swimming and bathing facility safety requirements.

RELATES TO: KRS 211.015, 211.205
STATUTORY AUTHORITY: KRS 194A.050, 211.180, 2024 Ky Acts ch. 116

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) authorizes the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of Kentucky citizens and to operate programs and fulfill the responsibilities vested in the cabinet. KRS 211.180 authorizes the cabinet to adopt administrative regulations relating to public facilities, and their operation and maintenance in a

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safe and sanitary manner to protect public health and prevent health hazards. This administrative regulation establishes uniform safety standards for public swimming pools and bathing facilities.

Section 1. Definitions.

- (1) "Bather" means a person using a public swimming and bathing facility.
- (2) "Bather load" means all bathers within the public swimming and bathing facility enclosure.
- (3) "Cabinet" is defined by KRS 211.015(1)(a).
- (4) "Class A" is defined by 2024 Ky Acts ch. 116 Section 1(1)(a).
- (5) "Class B" is defined by 2024 Ky Acts ch. 116 Section 1(1)(b).
- (6) "Play feature" means a structure or feature that is added to a pool for the purpose of entertainment.
- (7) "Public swimming and bathing facility" or "facility" means a natural or artificial body or basin of water that is modified, improved, constructed, or installed for the purpose of swimming or bathing, except for a pool at a private single-family residence intended only for the use of the owner and guests.
- (8) "Public swimming and bathing facility enclosure" means an enclosure that surrounds and secures the public swimming and bathing facility that includes decking and pool.
- (9) "Readily accessible" means direct access without the necessity of removing any panel, door, or similar obstruction.
- (10) "Splash pad" means a public swimming and bathing facility that:
 - (a) Has aquatic play features that spray or drop water for the purpose of wetting people;
 - (b) Is designed so that there is no accumulation or ponding of water on the ground;
 - (c) Includes both recirculating and non-recirculating water systems; and
 - (d) Includes splash pads operated by local governments as defined in KRS 211.205.
- (11) "Third-party compliance specialist" means a person who is a representative of an incorporated organization that provides lifeguard training and pool safety analysis and is not a representative of state and local governments nor is an associate of the establishment seeking use of an alternative lifeguard plan.

Section 2. Lifeguards.

- (1) Class A and Class B pools that meet the criteria specified in 2024 Ky Acts ch. 116 Section 1(2) shall have lifeguards on duty at a rate of one (1) per 100 bathers.
- (2) All Class A pools over 2,000 square feet shall have a minimum of one (1) lifeguard on duty at all times the pool is open to bathers.
- (3) Additional lifeguards shall be provided at a rate of:
 - (a) One per 2,000 square feet or major fraction more than half thereof according to the following table:

Water Surface Square Footage	Number of Lifeguards Required
2,000-3,000	1 lifeguard required
3,001-5,000	2 lifeguards required
5,001-7,000	3 lifeguards required
7,001-9,000	4 lifeguards required
9,001-11,000	5 lifeguards required
11,001 and above	6 lifeguards required plus one additional lifeguard for each additional 2,000 square feet over 11,000 square feet;

or

- (b) One (1) per 100 bathers according to the following table:

Number of Bathers	Number of Lifeguards Required
1-100	1 lifeguard required
101-200	2 lifeguards required
201-300	3 lifeguards required
301-400	4 lifeguards required
401-500	5 lifeguards required
501-600	6 lifeguards required
601 and above	7 lifeguards required plus one additional lifeguard for each additional 100 bathers.

(4) All Class A and B pools using number of bathers for the lifeguard application rate shall:

- (a) Establish a method for tracking bathers entering the facility;
 - (b) Continuously monitor fluctuating bather load and staff lifeguards accordingly; and
 - (c) Upon inspection, provide accurate bather load logs to the cabinet.
- (5) In accordance with 2024 Ky Acts ch. 116 Section 1(4), a swimming coach or instructor may count as a required lifeguard. The swimming coach or instructor shall comply with the requirements of subsection (10)(a) of this section when acting as a required lifeguard.

(6) All facilities that are not required to provide lifeguards shall post and enforce the following rules at all entrance points: "No Lifeguard on Duty" and "No person may enter the facility area alone or swim alone."

(7) In accordance with 2024 Ky Acts ch. 116 Section 1(2), at all times when a lifeguard is not on duty, features such as induced waves, slides, diving boards, platforms, climbing walls, or other similar features shall not be used. These features shall be either roped off or otherwise blocked for usage, and signage shall clearly indicate that the features may not be used.

- (8) Splash pads shall not be required to provide lifeguards.
- (9) A facility may submit an alternative lifeguard staffing plan that:

- (a) Has been certified by an independent third-party compliance specialist who witnessed the initial testing to ensure the plan is sufficient to protect patrons;
- (b) Designates the number of lifeguards necessary to ensure each lifeguard is capable of viewing the entire area of the assigned zone of patron surveillance;
- (c) Ensures the lifeguard is able to reach the farthest extent of the assigned zone of patron surveillance within twenty (20) seconds; and
- (d) Includes the following:

- 1. A description of study methods and calculations used to determine lifeguard zones and placement;
- 2. Methods and frequency of testing that will be performed to ensure the plan protects patrons;
- 3. A complete layout of the pool surface diagrammed with lifeguard placement and assigned zone of surveillance; and
- 4. A minimum baseline of lifeguards required for safe operation;
- (e) The alternative lifeguard staffing plan shall be:

- 1. On file with the Public Safety Branch within the Department for Public Health;
- 2. Submitted to the local health department of jurisdiction; and
- 3. Resubmitted if there is a change in:
 - a. The shape or size of the swimming pool;
 - b. The surrounding areas that would obstruct the lifeguard's view of the bottom of the pool; or
 - c. Ownership of the facility.

(10) Lifeguards shall comply with the following:

(a) Lifeguards, including coaches or instructors serving as lifeguards as described in 2024 Ky Acts ch. 116 Section 1(1)(4), shall have a current lifesaving certificate. Current training as a lifesaver or water safety instructor shall be an American Red Cross or equivalent training and include an in-water training component. The certificate of competency shall be onsite and available for inspection upon request;

(b) Lifeguards shall be dressed in swimming attire; and
 (c) Lifeguards assigned to the supervision of the facility shall not be subject to duties that would:

- 1. Distract their attention from proper observation of persons in the facility area; or
- 2. Prevent immediate assistance to persons in distress in the water.

Section 3. Safety Equipment.

(1) One (1) unit consisting of the following lifesaving equipment shall be provided for 2,000 square feet of water surface area and an additional unit for each additional 2,000 square feet or major fraction more than half thereof:

- (a) A U.S. Coast Guard approved ring buoy no more than twenty

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(20) inches in diameter with a three-sixteenths (3/16) inch rope attached that measures one and one-half (1 1/2) times the maximum pool width;

(b) Rescue tubes may be used when lifeguards are present;

(c) A shepherd's hook securely attached to a one (1) piece pole not less than twelve (12) feet in length; and

(2) One (1) backboard with head immobilizer and at least three

(3) straps for back and neck injuries shall be provided per facility.

(3) All facilities shall be equipped with a minimum of one (1) standard twenty-four (24) unit first aid kit or its equivalent that is kept filled and ready for use. Additional units shall be provided for each additional 2,000 square feet of facility area or major fraction more than half thereof.

(4) Spas with less than 144 square feet of water surface areas shall be exempt from the requirements of subsection (1) and (2) of this section.

(5) Splash pads shall be exempt from the requirements of subsection (1) through (3) of this section.

(6) Lifesaving equipment shall be mounted in conspicuous places at lifeguard chairs or other readily accessible locations. Its function shall be plainly marked, and this equipment shall be kept in repair and ready condition. Bathers or other persons shall not be permitted to tamper with, use for any purpose other than its intended use, or remove this equipment from its established location.

(7) The hydrojet auxiliary air or water pump for a spa shall be controlled by an on-off switch with a fifteen (15) minute timer located and labeled at least five (5) feet away from the spa.

(8) All facilities shall provide an emergency automatic pump shut off readily accessible by facility staff.

Section 4. Emergency Telephones.

(1) All facilities shall have a non-pay landline or Voice over Internet Protocol (VoIP) telephone, continuously connected to a power source and operational at all times, capable of direct dialing 911 without going through a switchboard, and located in a conspicuous, readily accessible location. A cordless telephone shall be prohibited. Instructions for dialing shall be posted if necessary.

(2) All facilities utilizing VoIP telephones shall only use fixed VoIP services. Non-fixed VoIP services shall be prohibited.

(3) The address of the facility and the telephone number of the police department, fire department, emergency medical service, or a hospital shall be posted in a conspicuous place near the telephone.

Section 5. Reporting Requirements. All drownings, near drownings, and injuries requiring hospitalization shall be immediately reported to the local health department and the Department for Public Health on form "DFS-354, Kentucky Public Swimming and Bathing Facilities Drowning and Injury Report".

Section 6. Existing Facilities and Equipment. Existing facilities and equipment being used prior to the effective date of this administrative regulation that do not fully meet the design, construction, and materials requirements of this administrative regulation, may continue to be used if the facilities and equipment:

(1) Are in good repair;

(2) Are capable of being maintained in a sanitary condition; and

(3) Create no health or safety hazard.

Section 7. Variances.

(1) A facility submitting an alternative lifeguard staffing plan pursuant to Section 2(7) of this administrative regulation may submit a request for a variance to the safety equipment requirements of this section to the Environmental Management Branch in the Department for Public Health.

(2) The variance requested shall not affect the safe and healthful operation of the facility.

(3) Before granting a variance, the cabinet shall require adequate proof from the applicant that the requested variance will comply with the basic intent of this section and that no safety or health hazard would be created if the variance is granted.

Section 8. Incorporated by Reference.

(1) The "DFS-354, Kentucky Public Swimming and Bathing

Facilities Drowning and Injury Report", 3/2024, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Public Health Protection and Safety, Department for Public Health, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m. and online at <https://chfs.ky.gov/agencies/dph/dphps/emb/Pages/pools.aspx>.

STEVEN J. STACK, MD, MBA, Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: July 2, 2024

FILED WITH LRC: July 11, 2024 at 11:30 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on September 23, 2024, at 9:00 a.m. using the CHFS Office of Legislative and Regulatory Affairs Zoom meeting room. The Zoom invitation will be emailed to each requestor the week prior to the scheduled hearing. Individuals interested in attending this virtual hearing shall notify this agency in writing by September 16, 2024, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends virtually will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until September 30, 2024. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

CONTACT PERSON: Krista Quarles, Policy Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-7476; fax: 502-564-7091; email CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Julie Brooks or Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the safety requirements for public swimming and bathing facilities.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to ensure all public swimming and bathing facilities operate in a safe and sanitary manner to reduce the incidence of recreational water related illnesses and injuries. According to the Centers for Disease Control and Prevention (CDC): "Water-based physical activity, such as swimming, improves physical and mental health throughout life; however, it can put people at risk for recreational water-associated illness and injury. A recreational water illness outbreak is the occurrence of similar illnesses in 2 or more persons, epidemiologically linked by location and time of exposure to recreational water. For 1978–2012, 879 recreational water illness outbreaks have been reported CDC, and the number reported annually has increased significantly in recent years, especially the number of outbreaks associated with treated recreational water venues (e.g., pools and hot tubs/spas) reported annually". Fatal drownings are the leading cause of injury death for US children ages 1 to 4, and the third leading cause of unintentional injury death for US youth ages 5 to 19 (American Academy of Pediatrics). Not all drownings are considered "fatal" drownings; non-fatal drownings can have long term physical and mental health consequences. According to a 1998 report by the CDC on lifeguard effectiveness: "Most drownings are preventable through a variety of strategies, one of which is to provide lifeguards in public areas where people are known to swim and to encourage people to swim in those protected areas. Some estimates indicate that the chance of drowning at a beach protected by lifeguards can be less than one in 18 million.

There is no doubt that trained, professional lifeguards have had a positive effect on drowning prevention in the United States."

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 194A.050(1) authorizes the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of Kentucky citizens and to operate programs and fulfill the responsibilities vested in the cabinet. KRS 211.180 authorizes the cabinet to adopt administrative regulations relating to public facilities, public and semipublic recreational areas, and their operation and maintenance in a safe and sanitary manner to protect public health and prevent health hazards.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will ensure public swimming and bathing facilities operate in a safe and sanitary manner to protect the public health.

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

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation.

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

(d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are currently 2,252 public swimming pools, bathing facilities, and spas regulated by the department.

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

(a) List 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 facility owners and operators will need to be aware of the safety requirements, including staffing requirements, and ensure their facilities are in compliance.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There may be minimal cost to facilities to comply with the safety requirements of this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Facilities operating in compliance with this administrative regulation will protect the health and safety of those who swim at the facility.

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

(a) Initially: This is an ongoing program, there are no initial cost.

(b) On a continuing basis: The cost to the Department for Public Health associated with administering the public swimming pool permitting and inspection program is \$2,376,885. This is a combined state and local health department total.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: State general fund dollars, permit and inspection fees are the sources of funding for 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: An increase in fees or funding is not needed to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: There are no fees established in this administrative regulation.

(9) TIERING: Is tiering applied? Tiering is not applied. While some Class A and Class B pools may not be required to provide lifeguards, the required safety rules apply equally to all regulated swimming and bathing facilities.

FISCAL IMPACT STATEMENT

(1) Identify each state statute, federal statute, or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050 and 211.180.

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: The Kentucky Department for Public Health, Division of Public Health Protection and Safety is the promulgating agency. This administrative regulation also affects Kentucky state parks that operate public swimming and bathing facilities.

(a) Estimate the following for the first year:

Expenditures: The cost to the Department for Public Health associated with administering the permitting and inspection program is \$2,376,885. This is a combined total for state and local health departments. Expenditures for Kentucky state parks include the cost associated with maintaining their facilities in compliance with this administrative regulation and associated staffing cost.

Revenues: This administrative regulation does not generate revenue.

Cost Savings: This administrative regulation does not result in cost savings.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? Expenditures for the Department for Public Health may be impacted by changes in salary, fringe benefits and travel cost for state and local health department employees. These changes cannot be determined at this time. Expenditures for Kentucky state parks will be impacted by changes in maintenance cost and associated staffing cost. These totals cannot be determined at this time.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): This administrative regulation affects local health departments who inspect the permitted facilities for compliance with the safety requirements of this administrative regulation. This administrative regulation also affects local governments that have public swimming and bathing facilities.

(a) Estimate the following for the first year:

Expenditures: The costs associated with administering the permitting and inspection program is \$2,376,885. This is a combined total for state and local health departments. Expenditures for local governments will include the cost associated with maintaining the public swimming and bathing facility and associated staffing costs.

Revenues: This administrative regulation does not generate revenue.

Cost Savings: This administrative regulation does not result in cost savings.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? Expenditures for local health departments may be impacted by changes in salary, fringe benefits and travel cost for state and local health department employees. These changes cannot be determined at this time. Expenditures to Kentucky state parks may be impacted by changes in the costs associated with facility maintenance as well as changes in associated staff cost.

(4) Identify additional regulated entities not listed in questions (2) or (3): Additional regulated entities include hotels, recreational facilities, such as water parks, health facilities and athletic clubs, schools including colleges and universities, swim clubs and country clubs, youth camps, and any other entity that provides a public swimming and bathing facility.

(a) Estimate the following for the first year:

Expenditures: Expenditures for the additional regulated entities include the cost associated with maintaining their facilities in compliance with this administrative regulation and associated staffing cost.

Revenues: This administrative regulation does not generate revenue.

Cost Savings: This administrative regulation does not result in cost savings.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? Expenditures to the additional regulated entities may be impacted by changes in the costs associated with facility maintenance as well as changes in associated staff cost.

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: This administrative regulation does not add any additional requirements to the regulated entities. Permitted facilities may incur costs associated with facility maintenance as well as associated staffing cost. Those figures cannot be determined at this time.

(b) Methodology and resources used to determine the fiscal impact: This administrative regulation does not generate revenue. Expenditures for each facility will be dependent on the size of the facility and the facility staffing pattern. A facility that employs lifeguards will incur the cost associated with staffing the facility. All facilities will incur cost associated with maintaining the facility for compliance with this administrative regulation.

(6) Explain:

(a) Whether this administrative regulation will have an overall negative or adverse major economic impact to the entities identified in questions (2) - (4). (\$500,000 or more, in aggregate) This administrative regulation will not have an overall negative or adverse major economic impact.

(b) The methodology and resources used to reach this conclusion: The costs associated with this administrative regulation are shared costs between local health departments and the cabinet. This administrative regulation does not generate revenue. The administrative costs to local health departments and the cabinet are approximately \$150 per hour for the environmental health inspectors of swimming and bathing facilities. This cost includes the salary of the inspector, Kentucky Employee Retirement System (KERS) contributions, Federal Insurance Contributions Act (FICA) contributions, and health and life insurance cost. The total costs across all local health departments and the state are approximately \$2,376,885 per year.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Public Health Protection and Safety
(New Administrative Regulation)

902 KAR 10:127. Kentucky public beach requirements.

RELATES TO: KRS 211.015, 211.090, 211.210, 211.220, 211.990(2)

STATUTORY AUTHORITY: KRS 194A.050, 211.180

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) authorizes the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of Kentucky citizens and to operate programs and fulfill the responsibilities vested in the cabinet. KRS 211.180 authorizes the cabinet to adopt administrative regulations relating to public facilities and their operation and maintenance in a safe and sanitary manner to protect public health and prevent health hazards. This administrative regulation establishes uniform requirements for public swimming and bathing beaches.

Section 1. Definitions.

(1) "Approved" means that which is acceptable to the cabinet.

(2) "Bather" means a person using a public beach.

(3) "Cabinet" is defined by KRS 211.015(a).

(4) "Facility" means a public beach as defined in subsection (6) of this section.

(5) "Facility operator" means a person or employee of that person who is responsible for the proper operation and maintenance of the facility.

(6) "Public beach" means a natural body of water that is modified or improved for the purpose of swimming or bathing.

(7) "Readily accessible" means direct access without the necessity of removing any panel, door, or similar obstruction.

(8) "State Plumbing Code" means the requirements established in 815 KAR Chapter 20.A

(9) "Turbidity" means the state or quality of being clouded or opaque with suspended matter.

Section 2. Submission of Plans and Specifications for Approval.

(1) A person shall not construct, alter, or reconstruct a public

beach until approval of detailed plans and specifications, with supporting design data as required in this administrative regulation, is granted in writing by the state or local agency having jurisdiction.

(2) The original plans and five (5) copies shall be submitted to the local health department with payment pursuant to Section (3) of this administrative regulation.

(3) The front page of the plans submitted for review and approval shall contain the:

(a) Name of the public beach;

(b) Location by city and county;

(c) Name and contact information for the facility owner;

(d) Name of the installer; and

(e) Name of the engineer, architect, or person preparing the plans.

(4) Plans shall be submitted by an engineer or architect licensed in the state of Kentucky and bear the individual's official seal.

(5) The plans shall be:

(a) Drawn to scale;

(b) Accompanied by proper specifications to permit a comprehensive review of the plans; and

(c) Include:

1. A site plan of the general area with a sectional view of the facility complex with all necessary dimensions;

2. A diagram showing all appurtenances in sufficient detail, as well as pertinent elevation data, water depths and slope of the beach below the water line;

3. Indication of the placement of sand or gravel for the beach area; and

4. The fees required by Section 3 of this administrative regulation.

(6) One (1) set of approved plans shall be kept at the job site and available for inspection.

(7) Prior to the issuance of plan and construction approval, the cabinet shall conduct a sanitary survey of the proposed beach. This survey shall include an evaluation of the physical, chemical, and bacteriological characteristics of the public beach area and the watershed.

(8) Upon completion of construction, a notarized statement certifying the facility was constructed in accordance with the approved plans and this administrative regulation shall be submitted to the cabinet.

(9) The facility shall not be used before receiving a final inspection and written approval from the cabinet.

(10) Unless construction is begun within one (1) year from the date of approval, the approval shall expire. Extension of approval may be considered upon written request to the cabinet.

(11) No change in location, construction, design, materials, or equipment shall be made to approved plans or the facility without the written approval of the cabinet.

Section 3. Plan Review and Construction Inspection Fees.

(1) A fee shall be required for all plan reviews and construction inspections by the cabinet or the local health department.

(2) The fee for plan review shall be calculated as follows:

(a) Public beach plan review, the fee shall be \$346.50; and

(b) Include \$82.50 for interactive water features or inflatable water features.

(3) The fee for public beach construction inspection shall be calculated as follows:

(a) Pre-construction survey or pre-renovation evaluation, the fee shall be \$231.

(b) Rough-in construction inspection, the fee shall be \$115.50.

(c) Final construction inspection, the fee shall be \$173.25.

Section 4. Permit and Inspection Fees.

(1) An annual permit fee of \$110 for all public beaches shall be:

(a) Paid no later than May 1 each year; and

(b) Paid to the Kentucky Department for Public Health by check or money order made payable to the Kentucky State Treasurer.

(2) Permits shall be nontransferable from one (1) person to another.

(3) Fees for Inspections.

(a) For all public beaches, the annual inspection fee shall be:

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1. Assessed according to the linear footage of beach front;
2. Calculated as established in this paragraph:
 - a. 149 or less linear feet, the fee shall be ninety-nine (99) dollars;
 - b. 150 to 200 linear feet, the fee shall be \$192.50; and
 - c. 201 and above, the fee shall be \$192.50 plus fifty-five (55) dollars for each additional fifty (50) linear feet; and
- (b) Include \$82.50 for interactive or inflatable water features.
- (4) A late payment fee of fifty-five (55) dollars shall be assessed on all annual permits not received by May 1 each year.
- (5) The inspection fee required by this section shall be:
 - (a) Paid to the local health department having jurisdiction by check or money order made payable to the Kentucky State Treasurer;
 - (b) Deposited in the environmental fee account; and
 - (c) Sent to the Department for Public Health for deposit with the Kentucky State Treasury.

Section 5. Water Quality and Sanitary Requirements for Public Beaches.

- (1) Physical quality. The following characteristics shall not be present in the beach area or watershed:
 - (a) Sludge deposits, solid refuse, floating waste solids, oils, grease, and scum; or
 - (b) Hazardous substances being discharged into public beach water or watershed.
- (2) Bacteriological quality. The bacteriological quality of water at public beaches shall comply with the following criteria:
 - (a) It shall meet the requirements of 401 KAR 10:031. Satisfactory bacteriological results shall be obtained before approval for construction is considered; and
 - (b) There shall not be any sanitary or combined sewer discharges or other raw or partially treated sewage discharges to the public beach area or immediate watershed.
- (3) Chemical quality. There shall not be any discharges of chemical substances, other than disinfecting agents, capable of creating toxic reactions, or irritations to the skin or mucous membranes of a bather.

Section 6. Water Supplies at Public Beaches.

- (1) Potable water from an approved municipal water system or water district shall be supplied to all public beaches. If these supplies are not available, a potable water supply meeting the approval of the Energy and Environment Cabinet shall be provided.
- (2) The water supply shall be capable of providing sufficient quantities of water under pressure to all water-using fixtures and equipment at the facility.

Section 7. Sewage and Wastewater Disposal.

- (1) All sewage and waste water shall be disposed of into a public sewer system if available.
- (2) If a public sewer system is not available, disposal shall be made into a private sewage disposal system designed, constructed, and operated pursuant to the requirements of the cabinet in 902 KAR 10:085 and the Energy and Environment Cabinet in KAR Title 401;
- (3) If a public sewer system subsequently becomes available, connections shall be made to it and the use of the facility's private sewage disposal system shall be discontinued.

Section 8. Refuse Disposal.

- (1) All refuse at a public swimming and bathing beach shall be disposed of in a manner approved by the Energy and Environment Cabinet in KAR Title 401.
- (2) An adequate number of refuse containers with tight fitting lids shall be provided at readily accessible locations at all public beaches.
- (3) Refuse containers in women's restrooms shall be kept covered.
- (4) Bulk refuse storage areas shall be designed and maintained to prevent rodent harborage.
- (5) Bulk refuse containers shall be:
 - (a) Of approved design and construction;
 - (b) Kept closed; and
 - (c) Placed upon an impervious surface within a suitable

enclosure to prevent access by animals.

Section 9. Facility Design and Construction.

- (1) Attendant structures, such as bathhouses, dressing rooms, or restrooms, shall meet the design, materials, fixture, and construction requirements of 815 KAR 7:120 and 815 KAR Chapter 20.
- (2)
 - (a) The wading and swimming areas at beaches where the water is less than five (5) feet deep shall be separated from swimming and diving areas by lines securely anchored and buoyed.
 - (b) Safe limits of swimming shall be marked by buoys, poles, or other markers located not over 100 feet apart and visible to bathers from a distance of at least 100 feet.
 - (c) Lettering on markers shall be maintained in good repair.
 - (d) Within these limits of safe swimming there shall not be any boating, underwater obstructions, or other hazards that may be dangerous or cause injury to swimmers.
 - (e) Signs shall be provided on the beach describing these markers and stating that they indicate the limits of safe bathing.
 - (f) The bottom of the swimming area shall consist of sand or gravel and be of a uniform slope.
- (3) The water surrounding any floats or inflatable features where diving is permitted shall be at least nine (9) and one-half (1/2) feet deep.

Section 10. General Facility Operation and Maintenance.

- (1) All facilities shall be maintained in good repair and free of debris.
- (2) Bather preparation facilities. Each beach facility shall provide one (1) or more central bath house containing the necessary toilet and other plumbing fixtures as designated below.
 - (a) Toilet facilities shall be provided for females at a ratio of three (3) for 500 linear feet of beach.
 - (b) Toilet facilities shall be provided for males at a ratio of one (1) for 500 linear feet of beach.
 - (c) Urinal facilities shall be provided for males at a ratio of two (2) for 500 linear feet of beach.
 - (d) Lavatories shall be provided for each sex accommodated at a ratio of two (2) for 500 linear feet of beach.
 - (e) For each additional 500 linear feet of beach one (1) additional toilet and lavatory shall be provided for female and male restrooms and one (1) additional urinal for male restrooms.
- (3) A bath house shall be conveniently located within 500 feet of the beach area to be served.
- (4) All plumbing installation shall meet the State Plumbing Code, 815 KAR Chapter 20.
- (5) A room containing sanitary facilities shall have:
 - (a) Every opening to the outer air effectively screened and a self-closing entry door;
 - (b) Natural or artificial lighting;
 - (c) Hot and cold or tempered water under pressure furnished at every lavatory and sink; and
 - (d) Cold water furnished to every toilet and urinal.
- (6) Floors, walls, ceilings, attached or freestanding fixtures, and equipment shall be easily cleanable and in good repair. Floors shall be maintained in a nonslip condition.
- (7) An adequate supplies of toilet tissue, soap, and disposable hand drying towels or suitable hand drying devices shall be provided and maintained.
- (8) Refuse containers shall be placed in all restrooms.
- (9) Diving boards or platforms, ladders, hand rails, docks, and other similar equipment, shall be maintained in good repair, be securely anchored, and have a nonslip surface.
- (10) Maintenance of bathing beaches.
 - (a) Beach areas shall be maintained free of litter and water borne debris. Beverage containers of glass or metal containers with detachable pull tabs shall be prohibited.
 - (b) A layer of sand or gravel of sufficient depth to prevent the creation of mud holes or slicks and to reduce shallow water turbidity shall be maintained on all beach areas and shall extend beneath the water of all wading and swimming areas.
 - (c) Wading, swimming, and diving areas shall be examined by

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the facility operator on a routine basis and immediately after high water conditions for floating or sunken debris, obstructions at diving areas, and high-water turbidity, which may present safety hazards to bathers.

Section 11. Personnel.

(1) Operator. A facility operator shall be responsible for the operation and maintenance of the facility. The operator shall be available at all times when the facility is open for use.

(2) Lifeguards.

(a) Lifeguards shall be provided at all bathing beaches that allow bathers seventeen (17) years of age or younger without a responsible adult at a rate of one (1) per 100 linear feet of beach front or major fraction more than half thereof. Public beaches that do not provide lifeguards shall post the following warnings: "No lifeguard on duty. Swim at your own risk. No person seventeen (17) years of age or younger may swim without a responsible adult present."

(b) A public beach that has an inflatable water attraction shall have a minimum of one (1) lifeguard per attraction, with additional lifeguards provided to ensure all areas surrounding the attraction are clearly visible at all times.

(3) Lifeguards shall comply with the following:

(a) Lifeguards shall have a current lifesaving certificate. Current training as a lifesaver or water safety instructor by the American Red Cross or equivalent shall satisfy this requirement. The certificate of competency shall be prominently posted;

(b) Lifeguards shall be dressed in swimming attire; and

(c) Lifeguards assigned to the supervision of the facility shall not be subject to duties that would:

1. Distract their attention from proper observation of persons in the facility area; or
2. Prevent immediate assistance to persons in distress in the water.

Section 12. Safety Equipment.

(1) One (1) unit of life saving equipment consisting of the following shall be provided per facility:

(a) A U.S. Coast Guard approved ring buoy no more than twenty (20) inches in diameter with a three-sixteenths (3/16) inch rope attached;

(b) A shepherd's hook securely attached to a one (1) piece pole not less than twelve (12) feet in length;

(c) One (1) backboard with head immobilizer and at least three (3) straps, for back and neck injuries;

(d) One (1) lifeboat outfitted to meet state water safety administrative regulations;

(e) A torpedo shaped buoy; and

(f) A minimum of one (1) standard twenty-four (24) unit first aid kit or its equivalent that is kept filled and ready for use.

(2) Lifesaving equipment shall be mounted in a conspicuous place at the most centrally located readily accessible location. Its function shall be plainly marked, and this equipment shall be kept in good repair and ready condition. Bathers or other persons shall not be permitted to tamper with, use for any purpose other than its intended use, or remove this equipment from its established location.

(3) Telephones.

(a) All facilities shall have a non-pay landline or Voice over Internet Protocol (VoIP) telephone, continuously connected to a power source and operational at all times, capable of direct dialing 911 without going through a switchboard, and located in a conspicuous, readily accessible location. A cordless telephone shall be prohibited. Instructions for dialing shall be posted if necessary.

(b) A two (2) way radio communication system to a manned telephone system may be substituted at an isolated beach facility.

(c) All facilities utilizing VoIP telephones shall only use fixed VoIP services. Non-fixed VoIP services shall be prohibited.

(d) The address of the facility and the telephone number of the police department, fire department, emergency medical service, or a hospital shall be posted in a conspicuous place near the telephone.

(4) All drownings, near drownings, and injuries requiring

hospitalization shall be immediately reported by next business day to the local health department and the Department for Public Health on form DFS-354, Kentucky Public Swimming and Bathing Facilities Drowning and Injury Report, incorporated by reference in 902 KAR 10:125.

Section 13. Spectator and Bather Administrative Regulations.

(1) Management of each facility shall adopt rules for controlling of food, drink, and smoking in the facility and surrounding areas.

(2) Rules governing the use of the facility and instructions to bathers shall be displayed on placards at the entrance to dressing rooms and enforced by the facility operator. Posting of rules and other instructions shall provide that:

(a) Admission to the facility shall be refused to a person:

1. Having any contagious disease or infectious conditions, such as colds, fever, ringworm, foot infections, skin lesions, carbuncles, boils, inflamed eyes, ear discharges, or any other condition that has the appearance of being infectious;

2. Having excessive sunburn, abrasions that have not healed, corn plasters, bunion pads, adhesive tape, rubber bandages, or other bandages of any kind; and

3. Under the influence of alcohol, illegal substances, or exhibiting erratic behavior;

(b) Food, drink, gum, tobacco, or vapor producing products shall not be allowed, other than in specially designated and controlled sections of the facility area;

(c) Glass, soap, or other material that creates hazardous conditions shall not be permitted in the beach area or in the water;

(d) Beverage containers of glass or metal containers with detachable pull tabs shall not be permitted in the beach area or in the water;

(e) Diving in areas other than designated diving areas shall not be permitted; and

(f) Caution shall be exercised in the use of diving boards, floating platforms and inflatable attractions.

Section 14. Facility Inspection.

(1) Inspections.

(a) All owners or operators, prior to opening to the public, shall certify to the cabinet in writing, that the facility is in compliance with the requirements of this administrative regulation, except in instances where the cabinet has made an inspection prior to its opening. The cabinet shall make at least two (2) full facility inspections during the operating season. The cabinet may require one (1) of the full facility inspections to be performed prior to a facility's opening.

(b) The facility owner or operator shall be responsible for notifying the cabinet of the proposed opening date.

(2) New facilities shall receive final construction approval inspections by the cabinet, and other affected state and local regulatory agencies, prior to placing the facility in operation. It shall be the owner or operator's responsibility to notify the cabinet and other involved agencies of construction completion and call for inspection.

(3) The cabinet may make as many additional inspections and reinspections as necessary for the enforcement of this administrative regulation.

(4) When an agent of the cabinet makes an inspection of a public swimming and bathing facility, the findings shall be recorded on the DFS-350, Public Beaches Inspection Report, and a copy provided to the facility owner or operator. The inspection report shall:

(a) Set forth any violation observed;

(b) Establish a specific and reasonable period of time for the correction of the violation observed; and

(c) State that failure to comply with any notice issued pursuant to the provisions of this administrative regulation may result in closure of the facility.

Section 15. Water Sampling and Testing.

(1) Beaches shall comply with the requirements of Section 5 of this administrative regulation prior to opening for the season and during the operating season.

(2) Beaches shall be monitored once each month or anytime

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immediately after periods of heavy rainfall. Monitoring inspections for beaches shall include general sanitation, bacteriological water sampling, and safety checks as necessary. Results shall be made available to the cabinet upon inspection.

(3) Additional samples may be requested to ensure compliance with this administrative regulation.

Section 16. Conditions requiring Closure of a Facility and Enforcement Provisions.

(1) The cabinet shall immediately order the closure of a facility and prohibit any person from using the facility by written notice to the facility owner or operator if:

(a) There is an immediate danger to health or safety;

(b) The water does not conform to the bacteriological standards contained in this administrative regulation;

(c) An environmental survey of the area shows evidence of sewage, other pollutants, or toxic materials being discharged to waters tributary to a beach;

(d) The owner, operator, an employee, or representative of the owner interferes with duly authorized agents of the cabinet who bear proper identification, in the performance of their duties;

(e) If serious or repeated violations of any of the requirements of the administrative regulations are found.

(2) The notice shall state the reasons prompting the closing of the facility, and a copy of the notice shall be posted conspicuously at the facility by the owner or operator.

(3) Any owner or operator affected by an order may request an administrative conference in accordance with 902 KAR 1:400.

(4) If the conditions rendering closure are abated or further analyses prove to not render closure, the cabinet may authorize reopening the facility.

(5) If a source of sewage, pollution, or toxic material discovered as a result of an environmental survey is eliminated, the cabinet may authorize the reopening of a beach.

(6) In all other instances of a violation of the provisions of this administrative regulation, or for the nonpayment of fees, the cabinet shall serve upon the owner or operator a written notice specifying the violation in question and afford a reasonable opportunity to correct the violation. An owner or operator who fails to comply with any written notice issued under the provisions of this administrative regulation shall be notified in writing that the facility shall be closed at the end of ten (10) days following service of the notice, unless a written request for a conference pursuant to 902 KAR 1:400 is filed with the cabinet by the owner or operator within the ten (10) day period.

(7) All administrative hearings shall be conducted in accordance with KRS Chapter 13B.

(8) Any person whose facility has been closed may, at any time, make application for a reinspection for the purpose of reopening the facility. Within ten (10) days following receipt of a written request, including a statement signed by the applicant that in his or her opinion the conditions causing closure of the facility have been corrected, the cabinet shall make a reinspection. If the facility is found to be in compliance with the requirements of this administrative regulation, the facility shall be reopened.

(9)

(a) For serious or repeated violations of any of the requirements of this administrative regulation, or for interference with the agents of the cabinet in the performance of their duties, the facility may be permanently closed after an opportunity for a conference has been provided in accordance with 902 KAR 1:400.

(b) Prior to the action, the cabinet shall notify the owner or operator, in writing, stating the reasons for which the facility is subject to closure and advising that the facility shall be permanently closed at the end of ten (10) days following service of the notice unless a request for a conference is filed with the cabinet by the owner or operator, within the ten (10) day period.

Section 17. Existing Facilities and Equipment. Existing facilities and equipment being used prior to the effective date of this administrative regulation that do not fully meet the design, construction, and materials requirements of this administrative regulation, may continue to be used if the facilities and equipment:

(1) Are in good repair;

(2) Are capable of being maintained in a sanitary condition;

(3) Meet facility water quality standards; and

(4) Create no health or safety hazard.

Section 18. Effect on Local Administrative Regulations. Compliance with this administrative regulation shall not relieve any person from compliance with any other state or local laws dealing with beach operation and maintenance matters or zoning requirements that may also be applicable.

Section 19. Variances for Construction Requirements.

(1) All facilities shall be constructed or remodeled in compliance with the provisions of this administrative regulation, except that an applicant may request a variance if the cabinet determines that the variance would not affect seriously the safe and healthful operation of the facility.

(2) Before granting a variance, the cabinet shall require proof from the applicant documenting that the requested variance will comply with the basic intent of these administrative regulations and that no safety or health hazard would be created if the variance is granted.

Section 20. Incorporated by Reference.

(1) The "DFS-350 Public Beach Inspection Report", 3/2024, is incorporated by reference:

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Public Health Protection and Safety, Department for Public Health, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m. and online at <https://chfs.ky.gov/agencies/dph/dphps/emb/Pages/pools.aspx>.

STEVEN J. STACK, MD, MBA, Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: July 2, 2024

FILED WITH LRC: July 11, 2024 at 11:30 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on September 23, 2024, at 9:00 a.m. using the CHFS Office of Legislative and Regulatory Affairs Zoom meeting room. The Zoom invitation will be emailed to each requestor the week prior to the scheduled hearing. Individuals interested in attending this virtual hearing shall notify this agency in writing by September 16, 2024, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends virtually will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until September 30, 2024. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

CONTACT PERSON: Krista Quarles, Policy Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-7476; fax 502-564-7091; email CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Julie Brooks or Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the uniform standards for Kentucky public swimming and bathing beaches.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to ensure all public swimming and bathing beaches operate in a safe and sanitary manner to reduce the incidence of recreational water related illnesses and outbreaks and protect the environment.

FISCAL IMPACT STATEMENT

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 194A.050(1) authorizes the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of Kentucky citizens and to operate programs and fulfill the responsibilities vested in the cabinet. KRS 211.180 authorizes the cabinet to adopt administrative regulations relating to public facilities, public and semipublic recreational areas, and their operation and maintenance in a safe and sanitary manner to protect public health and prevent health hazards.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will ensure public swimming and bathing beaches are designed and operated in a safe and sanitary manner, ensure the water quality standard of these facilities to control for contamination, and ensure sufficient safety and rescue equipment is 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: This is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation.

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

(d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are currently thirty-four (34) permitted public bathing beaches.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Current permitted bathing beaches will need to be aware of the required safety equipment requirements and ensure all equipment is fully operational.

(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 increased cost for compliance with this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Bathing beaches will operate in a safe and sanitary manner.

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

(a) Initially: This is an ongoing program, there are no additional cost.

(b) On a continuing basis: This is an ongoing program, the costs associated with this administrative regulation will be absorbed by current program funding.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This program is funded by a mix of state general fund dollars and fees collected for plan review and inspection activities.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: The fees established in this administrative regulation are not new fees. The existing permit and inspection fees are in 902 KAR 10:121. That administrative regulation will be repealed and the fees for the permit and inspection of bathing beaches added to this new administrative regulation. The current fees will be increased by ten (10) percent.

(9) TIERING: Is tiering applied? Tiering is not applied as the requirements for public swimming and bathing beaches are applied equally to all facilities.

(1) Identify each state statute, federal statute, or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050 and 211.180.

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: The Kentucky Department for Public Health, Division of Public Health Protection and Safety is the promulgating agency. This administrative regulation also affects state parks that operate bathing beaches.

(a) Estimate the following for the first year:

Expenditures: The cost to the Department for Public Health associated with administering the permitting and inspection program is \$2,376,885. Expenditures for Kentucky state parks include the annual permit fee of \$110 and the required inspection fee which ranges between ninety-nine (99) dollars and \$247.50.

Revenues: The potential revenue for the Department for Public Health is \$10,120. This is a combined total for both state and local health departments. The department is unable to determine the revenue for the impacted Kentucky state parks.

Cost Savings: This administrative regulation does not result in cost savings.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? Expenditures for the Department for Public Health may be impacted by changes in salary, fringe benefits and travel cost for state and local health department employees. These changes cannot be determined at this time. The revenues received will not change in subsequent years without an amendment to this administrative regulation.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): This administrative regulation affects local health departments who inspect the permitted bathing beaches.

(a) Estimate the following for the first year:

Expenditures: The costs associated with administering the permitting and inspection program is \$2,376,885.

Revenues: The potential revenue for this administrative regulation is \$10,120. This is a combined total for both state and local health departments.

Cost Savings: This administrative regulation does not result in cost savings.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? Expenditures may be impacted by changes in salary, fringe benefits and travel cost for state and local health department employees. These changes cannot be determined at this time. The revenues received will not change in subsequent years without an amendment to this administrative regulation.

(4) Identify additional regulated entities not listed in questions (2) or (3): Additional regulated entities include communities that have a bathing beach.

(a) Estimate the following for the first year:

Expenditures: Expenditures include the annual permit fee of \$110 and the required inspection fee which ranges between ninety-nine (99) dollars and \$247.50

Revenues: The department is unable to determine the potential revenue for the impacted communities that have a bathing beach.

Cost Savings: This administrative regulation does not result in cost savings.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? Expenditures will not change in subsequent years without an amendment to this administrative regulation.

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: This administrative regulation does not add any additional requirements to the regulated entities. The current permit and inspection fees are listed in 902 KAR 10:121. However, that administrative regulation will be repealed. The proposed fee for the annual permit and required inspection will increase by ten (10) percent of the current fee.

(b) Methodology and resources used to determine the fiscal impact: The estimated total revenue for the department was determined by multiplying the number of current permitted public beach facilities in each category by the proposed fee increase. Each public beach facility will be assessed an annual permit fee. That estimate was determined by multiplying the total number of permitted

facilities by the proposed fee. The estimated inspection fee total and the permit fee total were added together to calculate the total revenue. Proposed Fee Structure: Beaches. Size: 149 linear feet or less of beach front, 10 beaches, proposed fee of \$99, potential revenue of \$990. Size: 150 to 200 linear feet of beach front, 10 beaches, proposed fee of \$192.50, potential revenue of \$1,925. Size: 201 or more linear feet of beach front, 14 beaches, proposed fee of \$192.50 + \$55 for each additional 50 linear square feet, potential revenue of \$3,465 (at a minimum). Total beaches: 34; total potential revenue: \$6,380. Annual Permit Fee for all beaches: 34 beaches, proposed fee of \$110, potential revenue of \$3,740.

(6) Explain:

(a) Whether this administrative regulation will have an overall negative or adverse major economic impact to the entities identified in questions (2) - (4). (\$500,000 or more, in aggregate) This administrative regulation will not have an overall negative or adverse major economic impact.

(b) The methodology and resources used to reach this conclusion: The total anticipated revenue is significantly less than the \$500,000 or more threshold.

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ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
Minutes of July 9, 2024

Call to Order and Roll Call

The July meeting of the Administrative Regulation Review Subcommittee was held on Tuesday, July 9, 2024, at 1:00 p.m. in Room 149 of the Capitol Annex. Senator Stephen West, Co-Chair, called the meeting to order, and roll call was taken.

Present were:

Members: Senator Stephen West, Co-Chair; Representative Derek Lewis, Co-Chair; Senators Julie Raque Adams and David Yates; and Representatives Deanna Frazier Gordon and Daniel Grossberg.

LRC Staff: Stacy Auterson, Ange Darnell, Emily Harkenrider, Karen Howard, Anna Latek, and Carrie Nichols.

Guests: Sterling Crayton, Travis Powell, Council on Postsecondary Education; Taylor Brown, State Board of Elections; Amy Burke, Ed Price, Office of the Attorney General; Carrie Bass, Jessica Beaubien, Kentucky Public Pensions Authority; Clay Patrick, Board of Licensure for Occupational Therapy; Christie Ross, Mike Sunseri, 911 Services Board; Dave Dreves, Steven Fields, Department of Fish and Wildlife Resources; Amy Barker, Amelia Howell, Jason Joseph, Department of Corrections; Todd Allen, Sarah Peace, Kentucky Board of Education; Dale Hamblin, Scott Wilhoit, Department of Workers' Claims; Marni Gibson, Chad Harlan, Gary Stephens, Department of Financial Institutions; Scott Collins, Sam Flynn, Shelby Lewis, Oran McFarlan, Gina Oney, Cabinet for Health and Family Services; and Maryellen Allen, Frank Friday, Jefferson County Clerk's Office.

The Administrative Regulation Review Subcommittee met on Tuesday, July 9, 2024, and submits this report:

GENERAL GOVERNMENT CABINET: Council on Postsecondary Education: Public Educational Institutions

013 KAR 002:120E. Comprehensive funding model for the allocation of state general fund appropriations to public universities. Sterling Crayton, attorney, and Travis Powell, senior vice president and general counsel, represented the council.

In response to a question by Co-Chair West, Mr. Powell stated that these emergency administrative regulations were promulgated to comply with legislation from the 2024 Regular Session of the General Assembly.

013 KAR 002:130E. Comprehensive funding model for the allocation of state general fund appropriations to Kentucky Community and Technical College System institutions.

STATE BOARD OF ELECTIONS: Electronic Voting Systems

031 KAR 002:010E. Preparation of ballots and voting systems prior to election day. Taylor Brown, general counsel, represented the board.

In response to questions by Senator Yates referencing the entire package of administrative regulations (see the deferred administrative regulations for the discussion of 031 KAR 4:031E, 031 KAR 4:031, 031 KAR 5:040E, and 031 KAR 5:040), Mr. Brown stated that these emergency administrative regulations were implemented smoothly for the 2024 primary elections.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1 and 4 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

031 KAR 002:010. Preparation of ballots and voting systems prior to election day.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1 and 4 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Statewide Voter Registration

031 KAR 003:041E. Electronic Voter Registration System.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 2 through 5 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the

amendments were approved.

031 KAR 003:041. Electronic Voter Registration System.

A motion was made and seconded to approve the following amendments: the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 2 through 5 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Forms and Procedures

031 KAR 004:220E. Recount procedures.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 2, 3, and 6 through 12 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

031 KAR 004:220. Recount procedures.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 2, 3, and 6 through 12 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Voting

031 KAR 005:026E. Ballot standards and election security.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 2, 6, and 10 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

031 KAR 005:026. Ballot standards and election security.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 2, 6, and 10 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

FINANCE AND ADMINISTRATION CABINET: Kentucky Public Pensions Authority: General Rules

105 KAR 001:001. Definitions. Carrie Bass, general counsel, and Jessica Beaubien, policy specialist, represented the authority.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Section 1 to

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comply with the drafting requirements of KRS Chapter 13A; and (2) to amend Section 1 to: (a) clarify the definition for “bona fide promotion or career advancement”; and (b) make technical corrections. Without objection, and with agreement of the agency, the amendments were approved.

105 KAR 001:120. Participation of County Employees Retirement System employers.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 6, 8, 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.

105 KAR 001:190. Qualified domestic relations orders.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 2 through 9 and 11 through 21 to comply with the drafting requirements of KRS Chapter 13A; and (2) to amend Section 24 to revise five (5) forms incorporated by reference. Without objection, and with agreement of the agency, the amendments were approved.

105 KAR 001:411. Hospital and medical insurance for retired members and Kentucky Retirement Systems Insurance Fund Trust.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 2 through 4, 6, 7, 10, and 13 to comply with the drafting requirements of KRS Chapter 13A; (2) to amend the RELATES TO paragraph to make corrections; (3) to amend Section 1 to add a definition for “hospital and medical insurance plan”; and (4) to amend Section 10 to clarify qualifying event options for health insurance contributions. Without objection, and with agreement of the agency, the amendments were approved.

BOARDS AND COMMISSIONS: Board of Licensure for Occupational Therapy

201 KAR 028:240E. Occupational Therapy Licensure Compact. Clay Patrick, general counsel, represented the board.

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.

INDEPENDENT ADMINISTRATIVE BODIES: Office of Homeland Security: 911 Services Board

202 KAR 006:090. Permitted uses by PSAPs for CMRS funds. Christie Ross, chief operations officer, and Mike Sunseri, deputy executive director, represented the board.

In response to a question by Co-Chair West, Mr. Sunseri stated that this administrative regulation did not relate to emergency communications pertaining to ham radio operators, but the board was available to assist with questions or concerns regarding these constituents.

A motion was made and seconded to approve the following amendments: to amend the TITLE; the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs; and Sections 1 through 3 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

TOURISM, ARTS AND HERITAGE CABINET: Department of Fish and Wildlife Resources: Fish

301 KAR 001:001. Definitions for 301 KAR Chapter 1. Dave Dreves, fisheries director, and Steven Fields, counsel, represented the department.

301 KAR 001:152. Harvest and sale of invasive carp.

A motion was made and seconded to approve the following amendments: (1) to amend Section 2 to include the types of communication required from Tier II applicants; and (2) to amend Sections 1 through 3 to comply with the drafting requirements of

KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Licensing

301 KAR 005:022. License, tag, and permit fees.

In response to questions by Co-Chair Lewis, Mr. Dreves stated that experimental commercial fishing methods, such as using a system of seines, could be employed by fishers and would be observed by department officials to ensure that these experimental methods did not cause a detrimental impact to fishing, navigation, or recreation.

A motion was made and seconded to approve the following amendment: to add a new Section 8 that lists quota hunt fees that are established in other administrative regulations. Without objection, and with agreement of the agency, the amendment was approved.

JUSTICE AND SAFETY CABINET: Department of Corrections: Office of the Secretary

501 KAR 006:330E. Corrections policies and procedures; personnel. Amy Barker, assistant general counsel; Amelia Howell, program administrator; and Jason Joseph, branch manager, represented the department.

501 KAR 006:430E. Corrections policies and procedures: communication, mail, and visiting.

Jail Standards for Life Safety Facilities

501 KAR 013:010. Life safety issues.

A motion was made and seconded to approve the following amendment: to amend Section 8 to establish that each female prisoner shall be issued an appropriate number of undergarments. Without objection, and with agreement of the agency, the amendment was approved.

EDUCATION AND LABOR CABINET: Board of Education: Office of Instruction

704 KAR 003:550. Minimum qualifications for paraprofessionals. Todd Allen, deputy commissioner, and Sarah Peace, policy advisor, represented the board.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO paragraph and Sections 1, 2, 4, and 5 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Office of Learning Support Services

704 KAR 007:140. Authentic high school diploma to an honorably discharged veteran of World War II, the Korean conflict, or Vietnam War.

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.

Department for Technical Education: Management of the Kentucky TECH System

780 KAR 002:031. Repeal of 780 KAR 002:010.

Personnel System for Certified and Equivalent Employees

780 KAR 003:030. Appointments.

A motion was made and seconded to approve the following amendments: to amend Section 5 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

780 KAR 003:035. Employee evaluations.

A motion was made and seconded to approve the following amendments: to amend Section 1 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

780 KAR 003:100. Employee actions.

A motion was made and seconded to approve the following

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amendments: to amend Section 6 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

780 KAR 003:120. Appeals and hearings.

780 KAR 003:130. Employee grievances.

A motion was made and seconded to approve the following amendments: to amend Sections 2 and 3 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Unclassified Personnel Administrative Regulations

780 KAR 006:010. Classification plan.

780 KAR 006:020. Compensation plan.

Department of Workers' Claims

803 KAR 025:089E. Workers' compensation medical fee schedule for physicians. Dale Hamblin, assistant general counsel, and Scott Wilhoit, commissioner, represented the department.

PUBLIC PROTECTION CABINET: Department of Financial Institutions: Securities

808 KAR 010:260. Examination requirement for individuals advising the public on securities, broker-dealers, and agents. Marni Gibson, commissioner; Chad Harlan, assistant director; and Gary Stephens, assistant general counsel, represented the department.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1, 2, 4, and 6 to comply with the drafting and formatting requirements of KRS Chapter 13A; (2) to amend Section 2 to add to the list of professional designations, a Certified Investment Management Analyst (CIMA) awarded by the Investment and Wealth Institute and an individual registered as an investment advisor representative relying on the professional designation of Chartered Investment Counselor (CIC) prior to January 1, 2025, if certain conditions are met; and (3) to amend Section 5 to: (a) require an agent to pass the FINRA Securities Industry Essentials (SIE) and for the appropriate exam, depending on the proposed business; (b) update the FINRA examination Series list; and (c) require that, if registering in Kentucky as a broker-dealer, the applicant shall employ an individual who has passed the appropriate listed exams and shall be deemed a principal of the broker-dealer. Without objection, and with agreement of the agency, the amendments were approved.

CABINET FOR HEALTH AND FAMILY SERVICES: Department for Aging and Independent Living: Aging Services

910 KAR 001:270. Hart-Supported Living grant program. Scott Collins, branch manager, and Gina Oney, assistant director, represented the department.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph and Sections 1 through 3, 5, 7, 8, and 10 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (2) to amend Section 7 to change references from the Caregiver Misconduct Registry to the Vulnerable Adult Maltreatment Registry for consistency with 922 KAR 5:120. Without objection, and with agreement of the agency, the amendments were approved.

Office of the Secretary: Medicinal Cannabis Program

915 KAR 001:001. Definitions for 915 KAR Chapter 1. Sam Flynn, executive director; Shelby Lewis, executive policy advisor; and Oran McFarlan III, deputy executive director, represented the office.

Senator Yates thanked the office for their work on this program. Co-Chair West concurred.

In response to a question by Representative Grossberg, Mr. Flynn stated that this program had a robust public outreach program available through the office's Web site. Web site resources included information for businesses, potential patients, and residents.

In response to questions by Co-Chair West, Mr. Flynn stated

that these administrative regulations were faithful to the provisions and authority established in KRS 218.B130. Each jurisdiction began from an opt-in standpoint to allow medical cannabis. A jurisdiction could opt out through local ordinance or voter referendum. If a county opted out, that would affect all communities within that county; however, individual municipalities could in turn vote to opt back in to the program in the same manner.

In response to a question by Senator Yates, Mr. Flynn stated that local government guidance was provided in June to jurisdictions across the state to inform communities of the participation process, including the procedures for the drawings for the limited number of dispensary licenses that would be made available.

In response to a question by Representative Frazier Gordon, Mr. Flynn stated that the office's Web site was kymedcan.ky.gov.

A motion was made and seconded to approve the following amendments: to amend Section 1 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

915 KAR 001:030. Cultivator.

A motion was made and seconded to approve the following amendments: to amend Sections 1 through 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.

915 KAR 001:040. Processor.

A motion was made and seconded to approve the following amendments: to amend Sections 1 through 15 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

915 KAR 001:050. Producer.

A motion was made and seconded to approve the following amendments: to amend Sections 1 and 3 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

915 KAR 001:060. Safety compliance facility.

A motion was made and seconded to approve the following amendments: to amend Sections 1 through 4, 7 through 14, 16, 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.

915 KAR 001:070. Dispensary.

A motion was made and seconded to approve the following amendments: to amend Sections 1 through 6, 8 through 12, and 14 through 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.

915 KAR 001:080. Transportation and delivery of medicinal cannabis.

A motion was made and seconded to approve the following amendments: to amend Sections 1 and 2 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

915 KAR 001:090. Advertising.

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.

915 KAR 001:100. Packaging and labeling of medicinal cannabis.

A motion was made and seconded to approve the following amendments: to amend Sections 1, 3, 4, and 5 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

915 KAR 001:110. Medicinal cannabis testing.

A motion was made and seconded to approve the following amendments: to amend Sections 1, 3, and 4 through 6 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Patients, Caregivers, and Practitioners

915 KAR 002:001. Definitions for 915 KAR Chapter 2.

915 KAR 002:010. Procedures for registry identification cards.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 1 through 4 and 6 through 8 to comply with the drafting requirements of KRS Chapter 13A; and (2) to amend Section 8 to add incorporated material. Without objection, and with agreement of the agency, the amendments were approved.

915 KAR 002:020. Supply limits and equivalency formula.

915 KAR 002:030. Written certifications.

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 add a new Section 3 to include incorporated material. Without objection, and with agreement of the agency, the amendments were approved.

915 KAR 002:040. Procedures to publish list of varieties of medicinal cannabis.

A motion was made and seconded to approve the following amendment: to amend Section 1 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendment was approved.

The following administrative regulations were deferred or removed from the July 9, 2024, subcommittee agenda:

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY: Division of Student Financial Aid: Kentucky Higher Education Assistance Authority

011 KAR 004:080. Student aid application.

Kentucky Educational Excellence Scholarship Program

011 KAR 015:090. Kentucky Educational Excellence Scholarship (KEES) program.

011 KAR 015:110. Scholarships for Registered Apprenticeship and Qualified Workplace Training programs.

EDUCATION AND LABOR CABINET: Education Professional Standards Board: Teaching Certificates

016 KAR 002:160. Probationary certificate for teachers of exceptional children.

STATE BOARD OF ELECTIONS: Electronic Voting Systems: Forms and Procedures

031 KAR 004:031E. Reporting. Taylor Brown, general counsel, represented the board. Maryellen Allen, co-director of elections, and Frank Friday, director of government affairs, represented the Jefferson County Clerk's Office in opposition to these administrative regulations.

In response to questions by Senator Yates referencing the entire package of administrative regulations, Mr. Brown stated that these emergency administrative regulations were implemented smoothly for the 2024 primary elections.

In response to a question by Co-Chair West, Mr. Friday stated that the Jefferson County Clerk's Office had three (3) concerns regarding these administrative regulations. Jefferson County did not believe that the matters established in 031 KAR 4:031E and 031 KAR 5:040E constituted a clear emergency. Additional time and staff would be needed to report write-in candidates on election night, which was an unnecessary burden on the limited Jefferson County Clerk's Office. Another regulatory obstacle was the requirement to

include supplemental voter names on the E-poll rosters.

In response to questions by Co-Chair West, Ms. Allen stated that 031 KAR 4:031E and 031 KAR 4:031 required an election-night tally of the number of write-in votes for each candidate who was officially declared as a write-in candidate as registered with the Secretary of State or County Clerk. The election-night results could not be reported until all of the votes, including the write-in information, were tallied, thus slowing down the reporting of election-night information from Jefferson County. Historically, write-in votes were not tallied on election night, but those results were included as part of the certification process. The deadline to declare a write-in candidate intent was ten (10) days prior to election day. It did not seem prudent to delay election-night results in a presidential election for the reporting of write-in candidate tallies.

In response to questions by Co-Chair West, Mr. Brown stated that the requirement for election-night reporting of write-in candidates was not explicitly mandated by statute. The board's vendor, Election Systems and Software, had indicated that the process would not be onerous or cause significant delays. Kentucky's other counties had not expressed concerns with the requirement, and voters deserved this information on election night.

In response to a question by Co-Chair West, Mr. Friday stated that the process of examining write-in candidates, which included screenshots downloaded onto a laptop from thumbdrives from voting devices, would not violate statutory prohibitions against internet accessibility of voting information. Ms. Allen stated that, while Jefferson County was willing to comply with these requirements, there was insufficient time to change procedures before a presidential election. Jefferson County expected to collect thumbdrives from 627 precincts on election night.

Senator Raque Adams stated that it might be prudent to remove the emergency administrative regulations that governed these issues in order to ensure a smooth process in November and give Jefferson County more time to prepare for compliance with the ordinary administrative regulations. Delaying all results in order to report information pertaining to write-in candidates seemed like a significant problem.

Senator Yates agreed with Senator Raque Adams' potential resolution. In response to a question by Senator Yates, Mr. Brown stated that the vendor, Election Systems and Software, was headquartered in Omaha, Nebraska.

In response to questions by Co-Chair West, Mr. Friday stated that removing the emergency administrative regulations that governed these issues would mitigate most of Jefferson County's concerns. Mr. Brown stated that any election-night delay resulting from implementing these administrative regulations would be minimal. Ms. Allen stated that new procedures would add to an already complex process and require additional training for election officers and alternates. The overall goal was laudable; however, Jefferson County needed more implementation time.

Representative Grossberg stated that it was possible for artificial intelligence programs (AI) to read ballots, including processing write-in information, very quickly; however, it would not be prudent to rush a system that had not been empirically tested in real time.

In response to questions by Senator Raque Adams, Mr. Brown stated that the statutory authority for these provisions was established under KRS 117.015, which did not explicitly mandate the reporting of write-in candidates on election night. Other counties without the more robust resources of Jefferson County did not express these concerns, and the vendor had stated that this system worked well for the primaries earlier this year. One (1) county was attempting to constrain the other 119 counties unnecessarily, and it was important for all 120 counties to conduct elections uniformly to ensure a free and fair process. Mr. Friday stated that the primaries did not include write-in candidates. Ms. Allen stated that Jefferson County ballots were more complex than most of the rest of Kentucky's ballots.

In response to questions by Co-Chair West, Mr. Friday stated that, in order to include the names of supplemental voters on E-poll rosters, election clerks had to have access to a passcode, which posed a security risk, or contact election headquarters for each supplemental voter, which added to delays. Mr. Brown stated that

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delays would be minimal, and Kentucky had spent millions to provide counties with these E-poll rosters. Forms of acceptable identification were statutorily authorized, and these administrative regulations had not been revised pertaining to acceptable identification.

In response to questions by Co-Chair West, Mr. Brown stated that these administrative regulations were filed on an emergency basis in order to ensure the public welfare through free and fair elections, as required by the Constitution of the Commonwealth of Kentucky, Section 150. If one (1) county administered an election differently than the others, that lack of uniformity would be detrimental to the ideal of a free and fair election. If these emergency administrative regulations were removed, all Kentucky counties would continue to be under the same election requirements. Ms. Allen stated that there did not seem to be a statutory requirement to capture an electronic image of a voter's signature; therefore, not capturing those images would not seem to impact the determination of a free and fair election. Mr. Friday and Ms. Allen stated that there were already other differences of uniformity with elections because, for example, some counties had early voting at precinct-only voting centers, while other counties did not.

Senator Raque Adams clarified that Jefferson County was not declining to comply with these requirements, but was instead asking for a delay to ensure a successful rollout. In response, Mr. Brown stated that it was unclear what changes would take place in the future to make compliance with these administrative regulations more feasible for Jefferson County.

In response to a question by Representative Grossberg, Mr. Friday stated that Jefferson County would be amenable to a compromise in which the county would report the total number of write-in votes on election night, without providing the specific individual write-in candidate tallies. Mr. Brown stated that details, such as misspelled candidate names, would be matters litigated after election night, but the board would be amenable to a compromise. Ms. Allen stated that many small cities within Jefferson County were expected to have write-in candidates. Representative Grossberg stated that Fairfax, Virginia provided tallies of the number of write-in candidates without immediately providing the specific individual write-in candidate tallies.

In response to a question by Co-Chair West, Mr. Brown stated that the board agreed to defer consideration of these emergency and ordinary administrative regulations until the August meeting of this subcommittee.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1 through 4 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

A motion was made and seconded to defer consideration of 031 KAR 4:031E and 031 KAR 5:040E to the August meeting of this subcommittee. Without objection, and with agreement of the agency, these emergency administrative regulations were deferred. A motion was made and seconded to defer consideration of 031 KAR 4:031 and 031 KAR 5:040 to the August meeting of this subcommittee. Without objection, and with agreement of the agency, these ordinary administrative regulations were deferred.

031 KAR 004:031. Reporting.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1 through 4 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Voting

031 KAR 005:040E. Questions regarding voter eligibility.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1 through 4 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

031 KAR 005:040. Questions regarding voter eligibility.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1 through 4 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

OFFICE OF THE ATTORNEY GENERAL: Department of Law: Criminal Investigations

040 KAR 010:010. Uniform procedure and timeline for conducting independent election inquiries. Amy Burke, former assistant deputy attorney general, Department of Criminal Investigations, and Ed Price, division director, Public Corruption Unit, Department of Criminal Investigations, represented the department.

In response to a question by Co-Chair West, Ms. Burke stated that this administrative regulation was indirectly impacted by the administrative regulations from the State Board of Elections that were deferred; therefore, the department requested to defer consideration of this administrative regulation to the August meeting of this subcommittee.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1 through 4 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, these amendments were approved.

A motion was made and seconded to defer consideration of this administrative regulation to the August meeting of this subcommittee. Without objection, and with agreement of the agency, this administrative regulation was deferred.

KENTUCKY PERSONNEL BOARD

101 KAR 001:335. Employee actions.

101 KAR 001:345. Disciplinary actions.

101 KAR 001:375. Employee grievances and complaints.

101 KAR 001:396. Repeal of 101 KAR 001:395.

BOARDS AND COMMISSIONS: Board of Pharmacy

201 KAR 002:015. Continuing education.

201 KAR 002:030. License transfer and Non-resident Pharmacist License.

201 KAR 002:050. License and permits; fees.

201 KAR 002:220. Collaborative care agreements.

201 KAR 002:465. Non-Resident Pharmacy Applications and Waivers.

Board of Nursing

201 KAR 020:320. Standards for curriculum of prelicensure registered nurse and practical nurse programs.

PUBLIC PROTECTION CABINET: Department of Housing, Buildings and Construction: Kentucky Building Code

815 KAR 007:120. Kentucky Building Code.

815 KAR 007:125. Kentucky Residential Code.

CABINET FOR HEALTH AND FAMILY SERVICES: Department for Public Health: Food and Cosmetics

902 KAR 045:001E. Definitions for hemp-derived cannabinoid products.

902 KAR 045:012E. Hemp-derived cannabinoid product retail and food service establishment requirements.

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902 KAR 045:021E. Hemp-derived cannabinoid products registration, processing, manufacturing, storage and distribution requirements.

902 KAR 045:031E. Hemp-derived cannabinoid product sampling and testing requirements.

Department for Medicaid Services

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

Behavioral Health

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

Office of the Secretary: Medicinal Cannabis Program

915 KAR 001:010E. Initial and renewal applications for cannabis business licenses.

915 KAR 001:020E. Cannabis business licenses.

The subcommittee adjourned at 2:35 p.m. The next meeting of this subcommittee was tentatively scheduled for August 13, 2024, at 1 p.m. in Room 149 of the Annex.

OTHER COMMITTEE REPORTS

COMPILER'S NOTE: In accordance with KRS 13A.290(10), the following reports were forwarded to the Legislative Research Commission by the appropriate jurisdictional committees and are hereby printed in the Administrative Register. The administrative regulations listed in each report became effective upon adjournment of the committee meeting at which they were considered.

**INTERIM JOINT COMMITTEE ON FAMILIES AND CHILDREN
Meeting of June 18, 2024**

The following administrative regulations were available for consideration and placed on the agenda of the Interim Joint Committee on Health Services for its meeting of June 18, 2024, having been referred to the Committee on April 3, 2024, May 1, 2024, and June 5, 2024, pursuant to KRS 13A.290(6):

April 3, 2024
907 KAR 001:061 Proposed

May 1, 2024
201 KAR 020:370 Proposed
201 KAR 020:506 Proposed
201 KAR 036:100 Emergency
201 KAR 036:100 Proposed
900 KAR 007:030 Proposed
900 KAR 007:040 Proposed
902 KAR 020:048 Proposed
902 KAR 020:086 Proposed
907 KAR 001:065 Proposed
907 KAR 001:479 Proposed
907 KAR 003:066 Proposed
907 KAR 013:010 Proposed
907 KAR 013:015 Proposed

June 5, 2024
201 KAR 008:533 Proposed

Committee activity in regards to review of the above-referenced administrative regulations is reflected in the minutes of the June 18, 2024 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

**INTERIM JOINT COMMITTEE ON FAMILIES AND CHILDREN
Meeting of June 19, 2024**

The following administrative regulations were available for consideration and placed on the agenda of the Interim Joint Committee on Families & Children for its meeting of June 19, 2024, having been referred to the Committee on April 3, 2024 and June 5, 2024, pursuant to KRS 13A.290(6):

April 3, 2024
922 KAR 005:070

June 5, 2024
922 KAR 001:140
922 KAR 001:145
922 KAR 001:495
922 KAR 001:565
922 KAR 005:120

Committee activity in regards to review of the above-referenced administrative regulations is reflected in the minutes of the June 18, 2024 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

**INTERIM JOINT COMMITTEE ON EDUCATION
Meeting of July 16, 2024**

The Interim Joint Committee on Education met on July 16, 2024 and a quorum was present. The following administrative regulations were available for consideration having been referred to the Committee on July 3, 2024 and June 5, 2024, pursuant to KRS 13A.290(6):

16 KAR 002:120
16 KAR 004:030

The following administrative regulations were found to be deficient pursuant to KRS 13A.290(8) and 13A.030(2):

none

The Committee rationale for each finding of deficiency is attached to and made a part of this memorandum.

The following administrative regulations were approved as amended at the Committee meeting pursuant to KRS 13A.320:

none

The wording of the amendment of each such administrative regulation is attached to and made a part of this memorandum.

The following administrative regulations were deferred pursuant to KRS 13A.300:

none

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the July 16, 2024 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

**INTERIM JOINT COMMITTEE ON NATURAL RESOURCES AND ENERGY
Meeting of July 18, 2024**

Committee activity regarding the review of the above-referenced administrative regulations is reflected in the minutes of the June 19, 2024 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

The Interim Joint Committee on Natural Resources and Energy met on July 18, 2024, and a quorum was present. The following administrative regulations were available for consideration having been referred to the Committee on July 3, 2024, pursuant to KRS 13A.290(6):

301 KAR 001:150
301 KAR 002:122
301 KAR 005:040
301 KAR 005:210
807 KAR 005:078

The following administrative regulations were found to be deficient

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pursuant to KRS 13A.290(8) and 13A.030(2):

none

The Committee rationale for each finding of deficiency is attached to and made a part of this memorandum.

The following administrative regulations were approved as amended at the Committee meeting pursuant to KRS 13A.320:

none

The wording of the amendment of each such administrative

regulation is attached to and made a part of this memorandum.

The following administrative regulations were deferred pursuant to KRS 13A.300:

none

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the July 18, 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 51st year of the *Administrative Register of Kentucky*, from July 2024 through June 2025.

Locator Index - Effective Dates

B - 2

Lists all administrative regulations published or continuing through the KRS Chapter 13A review process during this Register year. It also lists the page number on which each regulation is published, the effective date of the regulation after it has completed the review process, and other actions that may affect the regulation.

NOTE: Regulations listed with a “50 Ky.R.” notation are regulations that were originally published in last year’s issues of the *Administrative Register of Kentucky* but had not yet gone into effect when the last *Register* year ended.

KRS Index

B - 7

A cross-reference of statutes to which administrative regulations relate. These statute numbers are derived from the RELATES TO line of each regulation submitted for publication during this *Register* year.

Certifications Index

B - 10

A list of administrative regulations for which certification letters have been filed pursuant to KRS 13A.3104 during this *Register* year.

Technical Amendment Index

B - 11

A list of administrative regulations that have had technical, non-substantive amendments made during this *Register* year. These technical changes have been made by the Regulations Compiler pursuant to KRS 13A.040(9) and (10), 13A.2255(2), 13A.312(2), or 13A.320(1)(d). Because these changes were not substantive in nature, administrative regulations appearing in this index will NOT be published in the *Administrative Register of Kentucky*; however, they are usually available through the Legislative Research Commission’s Web site.

Subject Index

B - 12

A general index of administrative regulations published during this *Register* year, and is mainly broken down by agency.

LOCATOR INDEX - EFFECTIVE DATES

Administrative regulations published in previous Register years may appear in this index if a regulation had not completed the KRS Chapter 13A review process by the beginning of *Register* year 51. The "Register number" or "Ky.R. number" is listed the first time a regulation is published during that Register year. Once the regulation has been published in another *Register* year, the new Ky.R. number will appear next to the page number entry. To view versions of regulations published in prior *Registers*, please visit our online [Administrative Registers of Kentucky](#).

SYMBOL KEY:

- * Statement of Consideration not filed by deadline
- ** Withdrawn, deferred more than twelve months (KRS 13A.300(2)(e) and 13A.315(1)(d))
- *** Withdrawn before being printed in Register
- IJC Interim Joint Committee
- (r) Repealer regulation: KRS 13A.310(3)-on the effective date of an administrative regulation that repeals another, the regulations compiler shall delete the repealed administrative regulation and the repealing administrative regulation.

EMERGENCY ADMINISTRATIVE REGULATIONS

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

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.

013 KAR 002:120E	50 Ky.R. 2349	4-30-2024
013 KAR 002:130E	50 Ky.R. 2352	4-30-2024
031 KAR 002:010E	50 Ky.R. 2147	4-15-2024
E Am Comments	51 Ky.R. 218	
031 KAR 003:041E	50 Ky.R. 2150	4-15-2024
E Am Comments	51 Ky.R. 219	
031 KAR 004:031E	50 Ky.R. 2152	4-15-2024
E Am Comments	51 Ky.R. 220	
031 KAR 004:220E	50 Ky.R. 2154	4-15-2024
E Am Comments	51 Ky.R. 221	
031 KAR 005:026E	50 Ky.R. 2158	4-15-2024
E Am Comments	51 Ky.R. 223	
031 KAR 005:040E	50 Ky.R. 2161	4-15-2024
E Am Comments	51 Ky.R. 224	
016 KAR 001:030E	51 Ky.R. 191	7-15-24
016 KAR 002:030E	51 Ky.R. 195	7-15-24
016 KAR 009:010E	51 Ky.R. 197	7-8-2024
016 KAR 009:030E	51 Ky.R. 10	5-31-2024
016 KAR 009:080E	51 Ky.R. 200	7-8-2024
016 KAR 009:100E	51 Ky.R. 204	7-8-2024
200 KAR 005:021E	51 Ky.R. 12	5-16-2024
201 KAR 028:240E	50 Ky.R. 2354	5-14-2024
E Am Comments	51 Ky.R. 225	
201 KAR 036:100E	50 Ky.R. 1649	9-14-2024
E Am Comments	2002	3-5-2024
Replaced	51 Ky.R. 105	6-18-2024
501 KAR 006:330E	50 Ky.R. 2356	5-15-2024
501 KAR 006:430E	50 Ky.R. 2358	5-15-2024
803 KAR 025:089E	50 Ky.R. 2360	5-14-2024
807 KAR 005:015E	51 Ky.R. 14	5-31-2024
902 KAR 045:001E	50 Ky.R. 2362	4-24-2024
902 KAR 045:012E	50 Ky.R. 2364	4-24-2024
902 KAR 045:021E	50 Ky.R. 2368	4-24-2024
902 KAR 045:031E	50 Ky.R. 2373	4-24-2024
915 KAR 001:010E	50 Ky.R. 2378	4-18-2024
E Am Comments	51 Ky.R. 226	
915 KAR 001:020E	50 Ky.R. 2383	4-18-2024

E Am Comments	51 Ky.R. 230	
922 KAR 001:350E	51 Ky.R. 207	7-1-2024
922 KAR 002:090E	51 Ky.R. 22	5-20-2024

ORDINARY ADMINISTRATIVE REGULATIONS

011 KAR 004:080		
Amended	50 Ky.R. 2238	
011 KAR 015:090		
Amended	50 Ky.R. 2240	
011 KAR 015:110		
Amended	50 Ky.R. 2245	
013 KAR 002:120	50 Ky.R. 2459	
013 KAR 002:130	50 Ky.R. 2461	
016 KAR 001:030		
Amended	51 Ky.R. 329	
016 KAR 002:030		
Amended	51 Ky.R. 333	
016 KAR 002:110	50 Ky.R. 2464	
016 KAR 002:120		
Amended	50 Ky.R. 1930	
Am Comments	2409	
As Amended	51 Ky.R. 33	7-16-2024
016 KAR 002:140	50 Ky.R. 2466	
016 KAR 002:160		
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016 KAR 002:170	50 Ky.R. 2469	
016 KAR 002:200	50 Ky.R. 2471	
016 KAR 004:020		
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016 KAR 004:030		
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016 KAR 007:011(r)	51 Ky.R. 170	7-16-2024
016 KAR 009:010		
Amended	51 Ky.R. 335	
016 KAR 009:030		
Amended	51 Ky.R. 77	
016 KAR 009:080		
Amended	51 Ky.R. 337	
016 KAR 009:100		
Amended	51 Ky.R. 341	
017 KAR 004:030		
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017 KAR 006:020	50 Ky.R. 984	
Am Comments	1700	
As Amended	51 Ky.R. 35	
017 KAR 006:030	50 Ky.R. 986	
Am Comments	1702	
As Amended	51 Ky.R. 37	
030 KAR 007:011	50 Ky.R. 2110	
031 KAR 002:010		
Amended	50 Ky.R. 2247	
As Amended	51 Ky.R. 239	
031 KAR 003:041	50 Ky.R. 2319	
As Amended	51 Ky.R. 240	
031 KAR 004:031	50 Ky.R. 2321	
As Amended	51 Ky.R. 241	
031 KAR 004:220	50 Ky.R. 2323	
As Amended	51 Ky.R. 220	
031 KAR 005:026		
Amended	50 Ky.R. 2250	
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LOCATOR INDEX - EFFECTIVE DATES

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031 KAR 005:040	50 Ky.R. 2326		201 KAR 002:015		
As Amended	51 Ky.R. 245		Amended	50 Ky.R. 2282	
040 KAR 010:010	50 Ky.R. 2111		201 KAR 002:030		
As Amended	51 Ky.R. 246		Amended	50 Ky.R. 2284	
101 KAR 001:325			201 KAR 002:050		
Amended	50 Ky.R. 1736		Amended	50 Ky.R. 2287	
101 KAR 001:335			201 KAR 002:210		
Amended	50 Ky.R. 2253		Amended	51 Ky.R. 83	
101 KAR 001:345			201 KAR 002:220		
Amended	50 Ky.R. 2255		Amended	50 Ky.R. 2091	
101 KAR 001:375			201 KAR 002:370		
Amended	50 Ky.R. 2257		Amended	51 Ky.R. 87	
101 KAR 001:396(r)	50 Ky.R. 2328		201 KAR 002:465	50 Ky.R. 2330	
102 KAR 001:138	51 Ky.R. 430		201 KAR 002:470	51 Ky.R. 171	
102 KAR 001:350			201 KAR 002:480	51 Ky.R. 172	
Amended	51 Ky.R. 344		201 KAR 008:533		
102 KAR 001:370	51 Ky.R. 431		Amended	50 Ky.R. 1739	
104 KAR 001:010			As Amended	2393	6-18-2024
Amended	50 Ky.R. 78		201 KAR 010:030		
As Amended	51 Ky.R. 37		Amended	50 Ky.R. 1744	
104 KAR 001:040			201 KAR 010:040		
Amended	50 Ky.R. 80		Amended	50 Ky.R. 1745	
As Amended	51 Ky.R. 38		201 KAR 010:050		
104 KAR 001:050			Amended	50 Ky.R. 1748	
Amended	50 Ky.R. 82		201 KAR 010:070		
As Amended	51 Ky.R. 39		Amended	50 Ky.R. 1749	
104 KAR 001:080			201 KAR 010:080		
Amended	50 Ky.R. 84		Amended	50 Ky.R. 1750	
As Amended	51 Ky.R. 40		201 KAR 018:010		
104 KAR 001:100			Amended	51 Ky.R. 361	
Amended	50 Ky.R. 86		201 KAR 018:030		
Amended	50 Ky.R. 2259		Amended	51 Ky.R. 363	
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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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	902 KAR 010:127	314.042	201 KAR 020:056
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214.155	902 KAR 003:040	314.073	201 KAR 020:215
217	922 KAR 002:120		201 KAR 020:230
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218A.010	016 KAR 001:030	314.103	201 KAR 020:056
218A.010	201 KAR 002:210	314.109	201 KAR 020:056
218A.205	201 KAR 020:056	314.161	201 KAR 020:056
218A.205	201 KAR 020:215	314.475	201 KAR 020:056
218A.205	201 KAR 020:056	314.991	201 KAR 020:215
258.015	922 KAR 001:350	315.010	201 KAR 002:370
258.035	922 KAR 001:350	315.010	201 KAR 002:210
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278.040	807 KAR 005:015E	315.020	201 KAR 002:480
278.5464	807 KAR 005:015E	315.020	201 KAR 002:210
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286.6-095	808 KAR 003:050	315.035	201 KAR 002:470
286.6-100	808 KAR 003:050	315.036	201 KAR 002:470
286.6-225	808 KAR 003:050	315.121	201 KAR 002:370
286.6-585	808 KAR 003:050	315.191	201 KAR 002:210
286.6-715	808 KAR 003:050	315.310	201 KAR 002:480
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304.2-320	806 KAR 017:570	315.350	201 KAR 002:470
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304.17-311	806 KAR 017:570		201 KAR 018:030
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304.33-030	806 KAR 017:570		201 KAR 018:030
304.28-205	806 KAR 017:570	322.120	201 KAR 018:010
309.300	201 KAR 039:001		201 KAR 018:030
309.301	201 KAR 039:001	322.180	201 KAR 018:192
	201 KAR 039:130		201 KAR 018:196
309.304	201 KAR 039:001	322.190	201 KAR 018:192
309.304	201 KAR 039:030		201 KAR 018:196
309.304	201 KAR 039:075	322.290	201 KAR 018:192
	201 KAR 039:120	322.290	201 KAR 018:196
309.304	201 KAR 039:050	337.275	922 KAR 002:160
	201 KAR 039:090	439.310-439.440	501 KAR 001:080
309.304	201 KAR 039:100	527.070	922 KAR 002:120
309.306	201 KAR 039:040	527.100	922 KAR 001:350
309.312	201 KAR 039:050	527.110	922 KAR 001:350
309.312	201 KAR 039:040	532.040-532.060	501 KAR 001:080
309.312	201 KAR 039:030	532.400	501 KAR 001:080
	201 KAR 039:070	600.020	922 KAR 001:350
309.312	201 KAR 039:070		922 KAR 002:160
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605.090	922 KAR 001:490	26 U.S.C. 401	105 KAR 001:140
610.110	922 KAR 001:350	26 U.S.C. 408	105 KAR 001:140
605.120	922 KAR 001:490	26 U.S.C. 3121	105 KAR 001:140
605.120	922 KAR 002:160	29 U.S.C. 723	922 KAR 002:160
605.130	922 KAR 001:490	29 U.S.C. 1002	806 KAR 017:570
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	922 KAR 002:090	38 U.S.C. 1815	922 KAR 002:160
620.030	922 KAR 001:350	42 U.S.C. 247d	922 KAR 001:490
	922 KAR 002:090	42 U.S.C. 426	806 KAR 017:570
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620.020	922 KAR 002:160	42 U.S.C. 671	922 KAR 001:350
620.050	922 KAR 001:350	42 U.S.C. 671	922 KAR 001:490
620.050	922 KAR 001:490	42 U.S.C. 672	922 KAR 001:350
620.140	922 KAR 001:350	42 U.S.C. 673	922 KAR 001:060
620.360	922 KAR 001:350	42 U.S.C. 675	922 KAR 001:060
620.363	922 KAR 001:350	42 U.S.C. 1320c-3	806 KAR 017:570
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12 C.F.R. Part 702	808 KAR 003:050	42 U.S.C. 1396	806 KAR 017:570
12 C.F.R. Part 704	808 KAR 003:050	42 U.S.C. 1771-1793	922 KAR 002:160
12 C.F.R. Part 705	808 KAR 003:050	42 U.S.C. 2000d	922 KAR 002:160
12 C.F.R. Part 723	808 KAR 003:050	42 U.S.C. 3001	922 KAR 002:160
16 C.F.R. 1219	922 KAR 001:350	42 U.S.C. 4950-5085	922 KAR 002:160
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16 C.F.R. 1220	922 KAR 001:350	42 U.S.C. 5141	922 KAR 001:490
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16 C.F.R. 1221	922 KAR 002:120	42 U.S.C. 9831-9852	922 KAR 002:090
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20 C.F.R. 676-678	922 KAR 002:160	42 U.S.C. 9902	922 KAR 002:160
29 C.F.R. 1910.119	902 KAR 010:123	Pub. L. 108-173	806 KAR 017:570
34 C.F.R. 300.156	016 KAR 009:080	Pub. L. 114-10	806 KAR 017:570
	902 KAR 030:200	Pub. L. 116-127	806 KAR 017:570
	902 KAR 030:200	Pub. L. 117-328	806 KAR 017:570
34 C.F.R. 303.120-122	902 KAR 030:200		
34 C.F.R. 303.220-226	902 KAR 030:200		
34 C.F.R. 303.500	902 KAR 030:200		
34 C.F.R. 303.520	922 KAR 002:160		
34 C.F.R. 303.521	922 KAR 002:160		
34 C.F.R. 361	105 KAR 001:140		
34 C.F.R. 463	806 KAR 017:570		
41 C.F.R. 105-64	105 KAR 001:140		
42 C.F.R. 409.87	922 KAR 001:350		
42 C.F.R. 423.504	201 KAR 002:210		
42 C.F.R. 435.407	806 KAR 017:570		
42 C.F.R. 456	922 KAR 002:160		
45 C.F.R. Part 46	922 KAR 002:090		
45 C.F.R. 98	922 KAR 002:120		
45 C.F.R. 98.2	922 KAR 002:090		
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45 C.F.R. 98.43	922 KAR 001:350		
45 C.F.R. 160	105 KAR 001:140		
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45 C.F.R. 162	922 KAR 001:350		
45 C.F.R. 164	922 KAR 002:160		
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45 C.F.R. 201.10	922 KAR 002:160		
45 C.F.R. 205.50	922 KAR 002:160		
45 C.F.R. 400.66	922 KAR 001:490		
45 C.F.R. 1359.30	922 KAR 001:060		
45 C.F.R. 1356.40	922 KAR 001:060		
45 C.F.R. 1356.41	922 KAR 002:120		
49 C.F.R. 571.213	806 KAR 017:570		
74 F.R. 18808	922 KAR 002:160		
7 U.S.C. 2012	922 KAR 001:350		
8 U.S.C. 1151	922 KAR 001:350		
8 U.S.C. 1181	017 KAR 004:030		
10 U.S.C. 1491	902 KAR 010:123		
15 U.S.C. 8003	808 KAR 003:050		
20 U.S.C. 1071	922 KAR 002:160		
25 U.S.C. 1261	922 KAR 002:160		
25 U.S.C. 1401	922 KAR 002:160		

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
016 KAR 002:090	06-25-2024	Remain in Effect without Amendment
040 KAR 002:145	07-23-2024	Remain in Effect without Amendment
201 KAR 032:050	07-17-2024	Remain in Effect without Amendment
900 KAR 006:125	07-18-2024	Remain in Effect without Amendment
902 KAR 020:360	07-18-2024	Remain in Effect without Amendment
902 KAR 055:040	07-18-2024	Remain in Effect without Amendment
902 KAR 055:095	07-23-2024	To be amended; filing deadline 1-23-2026
907 KAR 023:001	07-22-2024	Remain in Effect without Amendment
907 KAR 023:010	07-22-2024	Remain in Effect without Amendment
910 KAR 001:210	06-17-2024	To be Amended; filing deadline 12-17-2025

TECHNICAL AMENDMENT INDEX

The Technical Amendment Index is a list of administrative regulations that have had technical, nonsubstantive amendments made during the 49th 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 before finalized versions of the technically amended regulations are available. 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 020:506	6-24-2024	810 KAR 008:050	7-1-2024
809 KAR 001:002	7-1-2024	810 KAR 009:010	7-1-2024
809 KAR 001:003	7-1-2024		
809 KAR 010:001	7-1-2024		
809 KAR 010:002	7-1-2024		
809 KAR 010:003	7-1-2024		
809 KAR 010:004	7-1-2024		
809 KAR 010:005	7-1-2024		
809 KAR 010:006	7-1-2024		
809 KAR 010:007	7-1-2024		
809 KAR 010:008	7-1-2024		
810 KAR 002:001	7-1-2024		
810 KAR 002:010	7-1-2024		
810 KAR 002:020	7-1-2024		
810 KAR 002:030	7-1-2024		
810 KAR 002:040	7-1-2024		
810 KAR 002:050	7-1-2024		
810 KAR 002:060	7-1-2024		
810 KAR 002:070	7-1-2024		
810 KAR 002:080	7-1-2024		
810 KAR 003:001	7-1-2024		
810 KAR 003:010	7-1-2024		
810 KAR 003:020	7-1-2024		
810 KAR 003:030	7-1-2024		
810 KAR 003:040	7-1-2024		
810 KAR 003:050	7-1-2024		
810 KAR 004:001	7-1-2024		
810 KAR 004:010	7-1-2024		
810 KAR 004:020	7-1-2024		
810 KAR 004:030	7-1-2024		
810 KAR 004:040	7-1-2024		
810 KAR 004:050	7-1-2024		
810 KAR 004:060	7-1-2024		
810 KAR 004:070	7-1-2024		
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810 KAR 004:090	7-1-2024		
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810 KAR 005:010	7-1-2024		
810 KAR 005:020	7-1-2024		
810 KAR 005:030	7-1-2024		
810 KAR 005:040	7-1-2024		
810 KAR 005:050	7-1-2024		
810 KAR 005:060	7-1-2024		
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810 KAR 005:080	7-1-2024		
810 KAR 006:0001	7-1-2024		
810 KAR 006:010	7-1-2024		
810 KAR 006:020	7-1-2024		
810 KAR 006:030	7-1-2024		
810 KAR 007:010	7-1-2024		
810 KAR 007:020	7-1-2024		
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810 KAR 007:050	7-1-2024		
810 KAR 007:060	7-1-2024		
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810 KAR 008:010	7-1-2024		
810 KAR 008:020	7-1-2024		
810 KAR 008:025	7-1-2024		
810 KAR 008:030	7-1-2024		
810 KAR 008:040	7-1-2024		

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See also *Occupations and Professions*

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Interpreters for the Deaf and Hard of Hearing (201 KAR Chapter 39)

Nursing (201 KAR Chapter 020)

Pharmacy (201 KAR Chapter 002)

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Licensure; 922 KAR 002:090

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Kentucky Community and Technical College System (KAR Title 739, Ch. 1)

Teachers' Retirement System (KAR Title 102, Ch. 1)

Academic Standards

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Renewal and reinstatement; 201 KAR 039:050

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Policies and procedures; 501 KAR 001:080

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Continuing competency requirements; 201 KAR 020:215

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