



ADMINISTRATIVE REGISTER OF KENTUCKY

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

MEETING NOTICES

The **Administrative Regulation Review Subcommittee** is tentatively scheduled to meet on September 13, at 1:00 p.m. in room 149 Capitol Annex. [ARRS Tentative Agenda](#) – 467 [Online agenda updated as needed.](#)

INDEXES & OTHER INFORMATION

Regulation Review Procedure	470	KRS Index	C - 8
ARRS Report	609	Certifications	C - 12
Other Committee Reports	613	Technical Amendments	C - 13
Locator Index - Effective Dates	C - 2	Subject Index	C - 14

EMERGENCIES

Kentucky Housing Corporation
202 KAR 002:020. Rural Housing Trust Fund..... 471

AMENDED IN-PROCESS EMERGENCIES

Finance and Administration Cabinet
200 KAR 005:021. Manual of policies and procedures 474
Public Service Commission
807 KAR 005:015. Access and attachments to utility poles and facilities 474

AS AMENDED

Kentucky Higher Education Assistance Authority
011 KAR 004:080. Student aid applications..... 483
011 KAR 015:090. Kentucky Educational Excellence Scholarship (KEES) program 483
011 KAR 015:110. Scholarships for Registered Apprenticeship and Qualified Workforce Training programs..... 488
Education Professional Standards Board
016 KAR 002:110. Endorsement for teachers for gifted education 489
016 KAR 002:140. Probationary certificate for teachers of exceptional children and interdisciplinary early childhood education 490
016 KAR 002:170. Probationary certificate for middle school teachers..... 491
016 KAR 002:200. Probationary endorsement for teachers for English as a second language..... 492
State Board of Elections
031 KAR 005:026. Ballot standards and election security 492
Department of Law
040 KAR 010:010. Uniform procedure and timeline for conducting independent election inquiries 494
Personnel
101 KAR 001:335. Employee actions 495
101 KAR 001:375. Employee grievances and complaints... 496

Board of Nursing

201 KAR 020:320. Standards for curriculum of prelicensure registered nurse and practical nurse programs 497

Board of Licensure for Occupational Therapy

201 KAR 028:240. Occupational Therapy Licensure Compact..... 499

Department of Housing, Buildings and Construction

815 KAR 007:120. Kentucky Building Code 500
815 KAR 007:125. Kentucky Residential Code 501

AMENDED AFTER COMMENTS

Board of Pharmacy

201 KAR 002:465. Non-resident pharmacy applications and waivers 502

Boxing and Wrestling Commission

201 KAR 027:006. Powers and duties of inspector 504
201 KAR 027:023. Drug testing for boxing, kickboxing, mixed martial arts, and wrestling shows 505
201 KAR 027:041. Managers..... 507
201 KAR 027:106. Violations, penalties, and appeals 509

PROPOSED AMENDMENTS

Teachers' Retirement System

102 KAR 001:320. Qualified domestic relations orders 511

Finance and Administration Cabinet

200 KAR 014:011. Qualified investments 515
200 KAR 014:081. Repurchase agreement..... 518
200 KAR 014:091. Guidelines for money market instruments..... 520
200 KAR 015:010. Formula for allocation of private activity bonds 522

Board of Dentistry

201 KAR 008:563. Licensure of dental hygienists 525

Board for Professional Engineers and Land Surveyors

201 KAR 018:115. License reinstatement 530

Board of Nursing

201 KAR 020:057. Scope and standards of practice of advanced practice registered nurses .. 532

Kentucky Housing Corporation	
202 KAR 002:020. Rural Housing Trust Fund.....	538
Department for Natural Resources	
405 KAR 010:001. Definitions for 405 KAR Chapter 10 ...	540
405 KAR 010:015. General bonding provisions	543
Transportation Cabinet	
600 KAR 004:010. Certification of disadvantaged business enterprises	549
Department of Education	
702 KAR 001:116. Annual in-service training of district board members.....	551
702 KAR 004:090. Property disposal.....	554
703 KAR 005:080. Administration Code for Kentucky's Educational Assessment Program	557
703 KAR 005:240. Accountability administrative procedures and guidelines	559
704 KAR 003:305. Minimum requirements for high school graduation	562
704 KAR 003:535. Full-time enrolled online, virtual and remote learning programs	567
Department for Technical Education	
780 KAR 003:072. Attendance, compensatory time, and leave for certified and equivalent service	570
780 KAR 003:080. Extent and duration of school term, use of school days and extended employment	576
Cabinet for Health and Family Services	
900 KAR 001:009. Employee Access to Federal Tax Information (FTI)	578
Department for Medicaid Services	
907 KAR 010:015. Payments for outpatient hospital services	581
907 KAR 020:035. Spousal impoverishment and nursing facility requirements for Medicaid	584
Department for Community-based Services	
921 KAR 003:030. Application process	588
922 KAR 001:470. Central registry	590
922 KAR 005:120. Vulnerable adult maltreatment registry and appeals.....	593

NEW ADMINISTRATIVE REGULATIONS

Council on Postsecondary Education	
013 KAR 006:010. Aviation training scholarships	596
013 KAR 006:020. Aviation equipment grants	598
Department of Law	
040 KAR 012:010. Regulatory sandbox application process and reporting procedures.....	600
Personnel	
101 KAR 002:086. Internship Interview Preference	601
Department of Revenue	
103 KAR 005:200. Valuation of multi-unit rental housing subject to government restriction on use.....	603
Board of Dentistry	
201 KAR 008:610. Dental Community Health Workers	607

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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



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

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. (Filed with Emergency) (Deferred from August)

013 KAR 002:130. Comprehensive funding model for the allocation of state general fund appropriations to the Kentucky Community and Technical College System institutions. (Filed with Emergency) (Deferred from August)

EDUCATION AND LABOR CABINET

General Administration

016 KAR 001:030E. Procedures for educator certificate surrender, revocation, suspension, reinstatement, and reissuance, and for application denial. ("E" expires 04-11-2025) (Filed with Ordinary)

Teaching Certificates

016 KAR 002:030E. Substitute teachers. ("E" expires 04-11-2025) (Filed with Ordinary)

016 KAR 002:160. Probationary certificate for teachers of exceptional children. (Deferred from May)

Internship

016 KAR 007:011. Repeal of 016 KAR 007:010.

Education Professional Standards Board

Alternative Routes to Certification

016 KAR 009:010E. Provisional and professional certificate for exceptional work experience. ("E" expires 04-04-2025) (Filed with Ordinary)

016 KAR 009:030. Professional and provisional certificate for college faculty. (Filed with Emergency)

016 KAR 009:080E. University-based alternative certification program. ("E" expires 04-04-2025) (Filed with Ordinary)

016 KAR 009:100E. Alternative Route to Certification Institute. ("E" expires 04-04-2025) (Filed with Ordinary)

OFFICE OF THE GOVERNOR

Department of Veterans Affairs

Kentucky Veterans Burial and Memorial Benefits

017 KAR 004:030. Veterans' Service Organization Burial Honor Guard Program.

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) (Deferred from July)

031 KAR 005:040. Questions regarding voter eligibility. (Filed with Emergency) (Deferred from July)

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)

FINANCE AND ADMINISTRATION CABINET

Purchasing

200 KAR 005:021. Manual of policies and procedures. (Filed with Emergency)

BOARDS AND COMMISSIONS

Board of Pharmacy

201 KAR 002:015. Continuing education. (Not Amended After Comments)

201 KAR 002:370. Pharmacy services in a long-term care facility (LTCF).

201 KAR 002:470. Change of ownership.

Boxing and Wrestling Commission

201 KAR 027:006. Powers and duties of inspector. (Amended After Comments)

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

201 KAR 027:041. Managers. (Amended After Comments)

201 KAR 027:106. Violations, penalties, and appeals. (Amended After Comments)

VOLUME 51, NUMBER 3 – September 1, 2024

Board of Interpreters for the Deaf and Hard of Hearing

- 201 KAR 039:001. Definitions for 201 KAR Chapter 039.
- 201 KAR 039:030. Application; qualifications for full licensure; and certification levels.
- 201 KAR 039:040. Fees.
- 201 KAR 039:050. Renewal and reinstatement of full licenses.
- 201 KAR 039:060. Reinstatement of full license subject to disciplinary action.
- 201 KAR 039:070. Application and qualifications for temporary licensure and extensions.
- 201 KAR 039:075. Supervision.
- 201 KAR 039:090. Continuing education unit requirements.
- 201 KAR 039:100. Complaint procedure.
- 201 KAR 039:120. Code of ethics.
- 201 KAR 039:130. Registration for nonresident interpreters.

TOURISM, ARTS AND HERITAGE CABINET

**Department of Fish and Wildlife Resources
Fish**

- 301 KAR 001:410. Taking of fish by nontraditional fishing methods.

ENERGY AND ENVIRONMENT CABINET

**Department for Environmental Protection
Air Quality - General Administrative Procedures**

- 401 KAR 050:038. Air emissions fee. (Not Amended After Comments)

JUSTICE AND PUBLIC SAFETY CABINET

Parole Board

- 501 KAR 001:080. Parole board policies and procedures.

TRANSPORTATION CABINET

Motor Vehicle Tax

- 601 KAR 009:220. Motor vehicle dealer plates.

EDUCATION AND LABOR CABINET

Department of Education

School Administration and Finance

- 702 KAR 003:320. Finance officer certification requirements.

Office of Instruction

- 704 KAR 003:313. Repeal of 704 KAR 003:303.

Academic Standards

- 704 KAR 008:130. Required Kentucky Academic Standards for Visual and Performing Arts.

PUBLIC PROTECTION CABINET

Department of Insurance

Health Insurance Contracts

- 806 KAR 017:570. Minimum standards for Medicare supplement insurance policies and certificates.

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) (Emergency Amended After Comments)

CABINET FOR HEALTH AND FAMILY SERVICES

Department for Public Health

Maternal and Child Health

- 902 KAR 004:030. Newborn screening program.

Food and Cosmetics

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

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

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

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

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)

Behavioral Health

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

Department for Community Based Services

Child Welfare

VOLUME 51, NUMBER 3 – September 1, 2024

922 KAR 001:050. State funded adoption assistance.
922 KAR 001:060. Federal Title IV-E adoption assistance.
922 KAR 001:350E. Requirements for public child welfare agency foster parents, adoptive parents, and respite care providers. (“E” expires 03-28-2025) (Filed with Ordinary)

Child Care

922 KAR 002:090. Child-care center licensure. (Filed with Emergency)
922 KAR 002:120. Child-care center health safety standards.

3. REGULATIONS REMOVED FROM SEPTEMBER’S AGENDA

BOARDS AND COMMISSIONS

Board of Pharmacy

201 KAR 002:030. License transfer and Non-Resident Pharmacist License. (Not Amended After Comments) (Deferred from September)
201 KAR 002:050. License and permits; fees. (Not Amended After Comments) (Deferred from September)
201 KAR 002:210. Patient records, drug regimen review, patient counseling, and final product verification. (Comments Received; SOC ext. due 10-13-2024)
201 KAR 002:465. Non-Resident Pharmacy Applications and Waivers. (Amended After Comments) (Deferred from September)
201 KAR 002:480. Telework and electronic supervision for remote prescription processing. (Comments Received; SOC ext. due 10-13-2024)

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 ext. due 09-13-2024)
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) (Comments Received; SOC ext. due 09-13-2024)
501 KAR 006:340. Corrections policies and procedures: research and information. (Comments Received; SOC ext. due 09-13-2024)
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. (Comments Received; SOC ext. due 09-13-2024)
501 KAR 006:390. Corrections policies and procedures: inmate diet. (Deferred from August)
501 KAR 006:400. Corrections policies and procedures: inmate health care. (Comments Received; SOC ext. due 09-13-2024)
501 KAR 006:410. Corrections policies and procedures: inmate life and issues. (Comments Received; SOC ext. due 09-13-2024)
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 ext. due 09-13-2024)
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. (Comments Received; SOC ext. due 09-13-2024)
501 KAR 006:470. Corrections policies and procedures: inmate education and training. (Comments Received; SOC ext. due 09-13-2024)
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. (Comments Received; SOC ext. due 09-13-2024)
501 KAR 006:540. Inmate record. (Deferred from August)

CABINET FOR HEALTH AND FAMILY SERVICES

Department for Public Health

Food and Cosmetics

902 KAR 045:001. Definitions for hemp-derived cannabinoid products. (Filed with Emergency) (Comments Received; SOC ext., due 09-13-2024)
902 KAR 045:012. Hemp-derived cannabinoid product retail and food service establishment requirements. (Filed with Emergency) (Comments Received; SOC ext., due 09-13-2024)
902 KAR 045:021. Hemp-derived cannabinoid products registration, processing, manufacturing, storage and distribution requirements. (Filed with Emergency) (Comments Received; SOC ext., due 09-13-2024)
902 KAR 045:031. Hemp-derived cannabinoid product sampling and tasting requirements. (Filed with Emergency) (Comments Received; SOC ext., due 09-13-2024)

Office of the Secretary

General

915 KAR 001:010. Initial and renewal application for cannabis business licenses. (Filed with Emergency) (Comments Received; SOC ext., due 09-13-2024)
915 KAR 001:020. Cannabis business licenses. (Filed with Emergency) (Comments Received; SOC ext., due 09-13-2024)

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

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

(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
202 KAR 2:020E

This emergency administrative regulation is necessary to allow the lending and granting of funds to address the housing supply gap in rural areas of the Commonwealth. This emergency administrative regulation is being promulgated pursuant to KRS 13A.190(1)(a)1, to meet an imminent threat to public health, safety, and welfare by providing funding for safe, sanitary, and secure shelter for citizens in the rural areas. An ordinary administrative regulation is not sufficient because the rural areas of the Commonwealth lack sufficient safe, sanitary, and secure shelter. Delaying the effective date of the ordinary regulation will further impact the health, safety, and welfare of citizens in the affected areas by delaying construction and repair of housing units. Enacting an emergency regulation would mitigate this risk. This emergency administrative regulation will be replaced by an ordinary administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.

ANDY BESHEAR, Governor
WINSTON E. MILLER, Executive Director

KENTUCKY HOUSING CORPORATION
(Emergency Amendment)

202 KAR 2:020E. Rural Housing Trust Fund.

EFFECTIVE: August 6, 2024

RELATES TO: KRS 198A.740 - 198A.750

STATUTORY AUTHORITY: KRS 198A.744, 198A.746(5), 198A.748(5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 198A.744 authorizes Kentucky Housing Corporation to administer the Rural Housing Trust Fund by providing loans or grants for eligible activities, as established in KRS 198A.746, to create new sources of funding or to supplement existing sources of funding for the development of housing for moderate-income individuals or families in rural areas. KRS 198A.746 authorizes Kentucky Housing Corporation to define relocation costs to be paid if the development of rural housing displaces moderate-income individuals or families. This administrative regulation establishes additional criteria to qualify for the loans and grants and establishes the procedures to be followed in paying relocation costs.

Section 1. Qualification Criteria.

(1) Applications shall be prioritized based on the priorities established in KRS 198A.748(6).

(2) Single-family project applications shall be competitively ranked based on the following criteria:

(a) Willingness to serve those in a federally declared disaster area or displaced by an event triggering a federal disaster declaration within twenty-four (24) months of the event triggering the federal disaster declaration~~[the most impacted and distressed western Kentucky disaster counties];~~

(b) Readiness to proceed;

(c) Number of units to be addressed by the project;

(d) Demonstrated experience in development or repair of housing;

(e) Projects to house disaster survivors still living in shelters, doubled up with family, or in another unsustainable housing situation;

(f) Established relationships and mechanisms to ensure a pipeline of moderate-income homebuyer referrals;

(g) Demonstrated expansion of capacity to develop at scale;
and]

(h) Demonstrated financial capacity to carry out larger-scale housing projects;[-]

(i) Creation of new housing supply;

(j) Location in rural areas with significant job growth;

(k) Location in counties shown to have a housing supply gap; or
(l) Projects awarded contributions from local government, a local employer, or a combination of local sources.

(3) Multifamily project applications shall be competitively ranked based on the following criteria:

(a) Willingness to serve those in a federally declared disaster area or displaced by an event triggering a federal disaster declaration within twenty-four months of the event triggering the federal disaster declaration~~[the most impacted and distressed western Kentucky disaster counties];~~

(b) Readiness to proceed;

(c) Experience in development of multifamily housing utilizing Kentucky Housing Corporation financing resources;

(d) Demonstrated financial capacity to carry out larger-scale housing projects;[-and]

(e) Projects awarded under the Kentucky Housing Corporation tax exempt bond notice of funding availability in accordance with the terms of the notice of funding availability;[-]

(f) Creation of new housing supply;

(g) Location in rural areas with significant job growth;

(h) Location in counties shown to have a housing supply gap; or
(i) Projects awarded contributions from local government, a local employer, or a combination of local sources.

(4) Approval of applications shall be based on the numerical ranking received and the availability of funds.

Section 2. Relocation Costs. In the development of rural housing under the Rural Housing Trust Fund, displacement of moderate-income individuals or families shall not be permitted unless the project pays all reasonable relocation costs. Reasonable relocation costs shall be determined on a case-by-case basis based on the following criteria:

(1) Provision of relocation advisory services to displaced tenants and owner occupants;

(2) Provision of a minimum of ninety (90) days written notice to vacate prior to requiring possession;

(3) Reimbursement for moving expenses; and

(4) Provision of payments for the added cost of renting or purchasing comparable replacement housing.

WINSTON E. MILLER, Executive Director

APPROVED BY AGENCY: August 1, 2024

FILED WITH LRC: August 6, 2024 at 2:40 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 1:00 p.m. at Kentucky Housing Corporation, 1231 Louisville Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until 11:59 p.m. on September 30, 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.

VOLUME 51, NUMBER 3– September 1, 2024

CONTACT PERSON: Samuel Thorne, General Counsel, Kentucky Housing Corporation, 1231 Louisville Road, Frankfort, Kentucky 40601; phone (502) 564-7630, fax (502) 564-7322; email sthorne@kyhousing.org.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Samuel Thorne

(1) Provide a brief summary of:

(a) What this administrative regulation does: Establishes uniform criteria for qualifying for Rural Housing Trust Fund grants and loans and establishes criteria for the payment of relocation costs.

(b) The necessity of this administrative regulation: Sets standards to create new sources of funding or to supplement existing sources of funding for the development of housing for moderate-income individuals or families in rural areas. Sets standards for payment of relocation costs if development of rural housing displaces moderate-income individuals or families.

(c) How this administrative regulation conforms to the content of the authorizing statutes: Kentucky Housing Corporation may administer the Rural Housing Trust Fund, by KRS 198A.744, KRS 198A.746, and KRS 198A.748, to promote development of housing for moderate-income individuals and families in rural areas.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By providing clear notice to organizations eligible for funding of any standards and rules which exist in regard to the use of funds in housing development and relocation costs.

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

(a) How the amendment will change this existing administrative regulation: This amendment adds criteria for qualifying for Rural Housing Trust Fund grants and loans.

(b) The necessity of the amendment to this administrative regulation: This amendment adds criteria for qualifying for Rural Housing Trust Fund grants and loans to address the housing supply gap in rural areas.

(c) How the amendment conforms to the content of the authorizing statutes: Kentucky Housing Corporation may administer the Rural Housing Trust Fund, by KRS 198A.744, KRS 198A.746, and KRS 198A.748, to promote development of housing for moderate-income individuals and families in rural areas.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will set standards to create new sources of funding or to supplement existing sources of funding for the development of housing for moderate-income individuals or families in rural areas.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This emergency administrative regulation affects all potential applicants seeking to apply for loans or grants for eligible activities under the Rural Housing Trust Fund, which includes local governments, local government housing authorities, nonprofit organizations, regional or statewide housing assistance organizations, and business organizations that undertake new construction or rehabilitation of rural housing units for moderate-income individuals.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This amendment adds criteria for selection of applications for funding under the Rural Housing Trust Fund and defines reasonable relocation costs. The identified entities must ensure the project pays all reasonable relocation costs in the event it involves displacement of moderate-income individuals or families.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This amendment adds criteria for selection of applications for funding under the Rural Housing Trust Fund and defines reasonable relocation costs. There is no cost to complying with the criteria portion of the regulation. In the event reasonable relocation projects shall be paid, those costs will be paid by the project, not the identified entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This amendment adds criteria for the evaluation and selection of applications for funding under the Rural Housing Trust Fund. The more criteria a project application meets, the more likely it is to be funded. The portion of the regulation establishing reasonable relocation costs will not cause any benefits to accrue to the identified entities. (5) Provide an estimate of how much it will cost to implement this administrative regulation:

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

(a) Initially: Administrative costs associated with notifying appropriate organizations of funding, designing and reviewing applications, administering funding to eligible applicants and monitoring funded agencies.

(b) On a continuing basis: There will be some long-term direct costs associated with continued monitoring of funded agencies to ensure long-term compliance.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Administrative fees charged to the Rural Housing Trust Fund.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: There are no fees directly or indirectly increased by this emergency administrative regulation.

(9) TIERING: Is tiering applied? Tiering is not applied, all organizations applying for funds will be subject to the same requirements to provide a fair and equitable selection process.

FISCAL IMPACT STATEMENT

(1) Identify each state statute, federal statute, or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 198A.744, KRS 198A.746, and KRS 198A.748 require and authorize the actions taken by this administrative regulation.

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: This administrative regulation will affect the promulgating agency, Kentucky Housing Corporation.

(a) Estimate the following for the first year:

Expenditures: Kentucky Housing Corporation expects that this administrative regulation amendment will cost no more to administer than is currently expended.

Revenues: It is not expected or intended that this administrative regulation will generate any revenue.

Cost Savings: Kentucky Housing Corporation expects that this administrative regulation will not generate any specific cost savings.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? Kentucky Housing Corporation does not anticipate expenditures, revenues, or cost savings to differ in subsequent years.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): This administrative regulation affects organizations eligible for funding from the Rural Housing Trust Fund which includes all local governments and local government housing authorities that undertake new construction or rehabilitation of rural housing units for moderate-income individuals.

(a) Estimate the following for the first year:

Expenditures: Kentucky Housing Corporation expects that this administrative regulation amendment will cost no more to administer than is currently expended.

Revenues: It is not expected or intended that this administrative regulation will generate any revenue.

Cost Savings: Kentucky Housing Corporation expects that this administrative regulation will not generate any specific cost savings for the regulated entities.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? Kentucky Housing Corporation does not anticipate expenditures, revenues, or cost savings to differ in subsequent years.

(4) Identify additional regulated entities not listed in questions (2) or (3): This administrative regulation affects organizations eligible for

funding from the Rural Housing Trust Fund which includes nonprofit organizations, regional or statewide housing assistance organizations, and business organizations that undertake new construction or rehabilitation of rural housing units for moderate-income individuals.

(a) Estimate the following for the first year:

Expenditures: Kentucky Housing Corporation expects that this administrative regulation amendment will cost no more to administer than is currently expended.

Revenues: It is not expected or intended that this administrative regulation will generate any revenue.

Cost Savings: Kentucky Housing Corporation expects that this administrative regulation will not generate any specific cost savings for the regulated entities.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? Kentucky Housing Corporation does not anticipate expenditures, revenues, or cost savings to differ in subsequent years.

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: Kentucky Housing Corporation expects that this administrative regulation will have little to no fiscal impact on the regulated entities, outside those expenditures already undertaken.

(b) Methodology and resources used to determine the fiscal impact: This determination of the administrative regulation's fiscal impact is made by the listed contact person and other agency staff based on their collective experience with the subject matter.

(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) Kentucky Housing Corporation does not expect this administrative regulation will result in a negative or adverse major economic impact to the entities identified in questions (2) - (4).

(b) The methodology and resources used to reach this conclusion: This conclusion is made by the listed contact person and other agency staff based on their collective experience with the subject matter.

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.

**FINANCE AND ADMINISTRATION CABINET
(Emergency Amended at ARRS Committee)**

200 KAR 5:021E. Manual of policies and procedures.

EFFECTIVE: August 13, 2024

Prior Versions:

Emergency Amendment - 50 Ky.R. 12

RELATES TO: KRS ~~Chapter 45A~~45A.045(2)~~(Chapter 45A)~~

STATUTORY AUTHORITY: KRS 45A.045(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 45A.045(2) requires the Finance and Administration Cabinet to publish a manual of policies and procedures, which is to be incorporated by reference as an administrative regulation pursuant to KRS Chapter 13A. This administrative regulation incorporates the Finance and Administration Cabinet Manual of Policies and Procedures.

Section 1. **A state agency shall follow the procurement requirements in the Finance and Administration Cabinet Manual of Policies and Procedures.**~~[A state agency shall follow the procurement requirements in the Finance and Administration Cabinet Manual of Policies and Procedures.]~~

Section 2. ~~[Section 2.]~~ Incorporation by Reference.

(1) "Finance and Administration Cabinet Manual of Policies and Procedures", revised ~~August~~May ~~2024~~February—2016], is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Finance and Administration Cabinet, Office of General Counsel, 200 Mero Street, 5th Floor~~[Office of Policy and Audit, Policy Branch, Room 493, Capitol Annex]~~, Frankfort, Kentucky ~~40622~~40604, Monday through Friday, 8 a.m. to ~~4:00~~4:30 p.m. This material may also be obtained at the Finance and Administration Cabinet's Web site, <https://finance.ky.gov/office-of-the-secretary/office-of-policy-and-audit/Pages/Finance-Policies.aspx>~~[www.finance.ky.gov/services/policies/Pages/default.aspx]~~.

FILED WITH LRC: August 13, 2024

CONTACT PERSON: Cary Bishop, Assistant General Counsel, Office of General Counsel, 200 Mero Street, 5th Floor, Frankfort, Kentucky 40622, phone (502) 564-6660, fax (502) 564-9875, email cary.bishop@ky.gov.

**ENERGY AND ENVIRONMENT CABINET
Public Service Commission
(Emergency Amended After Comments)**

807 KAR 5:015E. Access and attachments to utility poles and facilities.

EFFECTIVE: August 15, 2024

Prior Versions:

Emergency Amendment - 50 Ky.R. 14

RELATES TO: KRS Chapter 278, 47 U.S.C. 224(c)

STATUTORY AUTHORITY: KRS 278.030(1), 278.040(2), 278.5464

NECESSITY, FUNCTION, AND CONFORMITY: KRS 278.040(3) authorizes the commission to promulgate administrative regulations to implement the provisions of KRS Chapter 278. KRS 278.040(2) requires the commission to have exclusive jurisdiction over the regulation of rates and service of utilities. KRS 278.030(1) authorizes utilities to demand, collect, and receive fair, just, and reasonable rates. KRS 278.030(2) requires every utility to furnish adequate, efficient, and reasonable service. KRS 278.5464 requires

the commission to promulgate administrative regulations regarding pole attachments under its jurisdiction, including those necessary for the provision of broadband. 47 U.S.C.A. 224(c) requires that state regulation of pole attachments shall only preempt federal regulation of poles under federal jurisdiction if the state regulates the rates, terms, and conditions of access to those poles, has the authority to consider and does consider the interest of the customers of attachers and the pole owning utilities, has effective rules and administrative regulations governing attachments, and addresses complaints regarding pole attachments within ~~180~~360 days. This administrative regulation establishes the process by which the commission regulates the rates, terms, and conditions of utility pole attachments and access to other utility facilities, establishes specific criteria and procedures for obtaining access to utility poles within the commission's jurisdiction, and establishes a process by which the complaints of those seeking to access utility facilities shall be addressed within the period established by federal law. The amendments establish an expedited complaint process to address issues pertaining to contract negotiations. 2024 Kentucky S.J.R. 175, 2024 Regular Session requires the Commission to promulgate emergency regulations addressing issues pertaining to broadband attachments to utility poles.

Section 1. Definitions.

(1) "Attachment" means any attachment by a cable television system operator, telecommunications carrier, broadband internet provider, or governmental unit to a pole owned or controlled by a utility.

(2) "Broadband internet provider":

(a) Means a person who owns, controls, operates, or manages any facility used or to be used to offer internet service to the public with download speeds of at least twenty-five (25) megabits per second and upload speeds of at least three (3) megabits per second; and

(b) Does not mean a utility with an applicable joint use agreement with the utility that owns or controls the poles to which it is seeking to attach.

(3) "Communications space" means the lower usable space on a utility pole, which is typically reserved for low-voltage communications equipment.

(4) "Complex make-ready" means any make-ready that is not simple make-ready, such as the replacement of a utility pole; splicing of any communication attachment or relocation of existing wireless attachments, even within the communications space; and any transfers or work relating to the attachment of wireless facilities.

(5) "Existing attacher" means any person or entity with equipment lawfully on a utility pole.

(6) "Governmental unit" means an agency or department of the federal government; a department, agency, or other unit of the Commonwealth of Kentucky; or a county or city, special district, or other political subdivision of the Commonwealth of Kentucky.

(7) "Macro cell facility" means a wireless communications system site that is typically high-power and high-sited, and capable of covering a large physical area, as distinguished from a distributed antenna system, small cell, or WiFi attachment, for example.

(8) "Make-ready" means the modification or replacement of a utility pole, or of the lines or equipment on the utility pole, to accommodate additional facilities on the utility pole.

(9) "New attacher" means a cable television system operator, telecommunications carrier, broadband internet provider, or governmental unit requesting to attach new or upgraded facilities to a pole owned or controlled by a utility, except that a new attacher does not include a utility with an applicable joint use agreement with the utility that owns or controls the pole to which it is seeking to attach or a person seeking to attach macro cell facilities.

(10) "Red tagged pole" means a pole that a utility that owns or controls the pole that:

VOLUME 51, NUMBER 3– September 1, 2024

(a) Is designated for replacement based on the pole's non-compliance with an applicable safety standard;

(b) Is designated for replacement within two (2) years of the date of its actual replacement for any reason unrelated to a new attachment's request for attachment; or

(c) Would have needed to be replaced at the time of replacement even if the new attachment were not made.

(11) "Telecommunications carrier":

(a) Means a person who owns, controls, operates, or manages any facility used or to be used for or in connection with the transmission or conveyance over wire, in air, or otherwise, any message by telephone or telegraph for the public, for compensation; and

(b) Does not mean a utility with an applicable joint use agreement with the utility that owns or controls the poles to which it is seeking to attach.

(12) "Simple make-ready" means make-ready in which existing attachments in the communications space of a pole could be rearranged without any reasonable expectation of a service outage or facility damage and does not require splicing of any existing communication attachment or relocation of an existing wireless attachment.

Section 2. Duty to Provide Access to Utility Poles and Facilities.

(1) Except as established in paragraphs (a) through (c) of this subsection, a utility shall provide any cable television system operator, telecommunications carrier, broadband internet provider, or governmental unit nondiscriminatory access to any pole, duct, conduit, or right-of-way owned or controlled by it.

(a) A utility may deny access to any pole, duct, conduit, or right-of-way on a non-discriminatory basis if there is insufficient capacity or for reasons of safety, reliability, or generally applicable engineering purposes.

(b) A utility shall not be required to provide access to any pole that is used primarily to support outdoor lighting.

(c) A utility shall not be required to secure any right-of-way, easement, license, franchise, or permit required for the construction or maintenance of attachments or facilities from a third party for or on behalf of a person or entity requesting access pursuant to this administrative regulation to any pole, duct, conduit, or right-of-way owned or controlled by the utility.

(2) A request for access to a utility's poles, ducts, conduits or rights-of-way shall be submitted to a utility in writing, either on paper or electronically, as established by a utility's tariff or a special contract between the utility and person requesting access.

(3) If a utility provides access to its poles, ducts, conduits, or rights-of-way pursuant to an agreement that establishes rates, terms, or conditions for access not contained in its tariff:

(a) The rates, terms, and conditions of the agreement shall be in writing; and

(b) The utility shall file the written agreement with the commission pursuant to 807 KAR 5:011, Section 13.

Section 3. Pole Attachment Tariff Required.

(1) A utility that owns or controls utility poles located in Kentucky shall maintain on file with the commission a tariff that includes rates, terms, and conditions governing pole attachments in Kentucky that are consistent with the requirements of this administrative regulation and KRS Chapter 278.

(2) The tariff may incorporate a standard contract or license for attachments if its terms and conditions are consistent with the requirements of this administrative regulation and KRS Chapter 278.

(3) Standard contracts or licenses for attachments permitted by subsection (2) of this section shall prominently indicate that the contracts or licenses are based wholly on the utility's tariff and that the tariff shall control if there is a difference.

(4) The tariff may include terms, subject to approval by the commission, that are fair, just, and reasonable and consistent with the requirements of this administrative regulation and KRS Chapter 278, such as certain limitations on liability, indemnification and insurance requirements, and restrictions on access to utility poles for reasons of lack of capacity, safety, reliability, or generally applicable engineering standards.

(5)

(a) The tariff shall include the URL for a utility-maintained Web site.

(b) The Web site shall include:

1. A certificate form that a new attachment shall submit to the utility that shall require a new attachment to:

a. Certify that the person filing the application has reviewed the utility's requirements, pole attachment tariff, and applicable law and that the application meets these requirements to the best of the new attachment's knowledge and ability;

b. Designate appropriate personnel responsible for overseeing all attachments with the utility;

c. Identify appropriate personnel associated with each application, who shall be responsible for coordinating with the utility and ensuring that attachment-related issues are addressed in a timely manner;

2. Pole attachment information including the identity and contact information for contractors approved to conduct surveys and make-ready self-help;

3. Construction standards for attachments; and

4. The identity and contact information for:

a. The primary utility personnel responsible for invoicing, payment, make-ready work, and escalation of disputes; and

b. The alternate utility personnel responsible for invoicing, payment, make-ready work, and escalation of disputes if the primary personnel are unavailable.

(6) Overlapping.

(a) A utility shall not require prior approval for:

1. An existing attachment that overlaps its existing wires on a pole; or

2. A third party overlapping of an existing attachment that is conducted with the permission of an existing attachment.

(b)

1. A utility shall not prevent an attachment from overlapping because another existing attachment has not fixed a preexisting violation.

2. A utility shall not require an existing attachment that overlaps its existing wires on a pole to fix preexisting violations caused by another existing attachment, unless failing to fix the preexisting violation would create a capacity, safety, reliability, or engineering issue.

(c)

1. A utility shall not require more than thirty (30) days' advance notice of planned overlapping.

2. If a utility requires advance notice for overlapping, then the utility shall include the notice requirement in its tariff or include the notice requirement in the attachment agreement with the existing attachment.

3. If, after receiving advance notice, the utility determines that an overlap would create a capacity, safety, reliability, or engineering issue, it shall provide specific documentation of the issue to the party seeking to overlap within the thirty (30) day advance notice period and the party seeking to overlap shall address any identified issues before continuing with the overlap either by modifying its proposal or by explaining why, in the party's view, a modification is unnecessary.

(d)

1. A party that engages in overlapping shall be responsible for its own equipment and shall ensure that it complies with reasonable safety, reliability, and engineering practices.

2. If damage to a pole or other existing attachment results from overlapping or overlapping work causes safety or engineering standard violations, then the overlapping party shall be responsible at its expense for any necessary repairs.

(e) An overlapping party shall notify the affected utility within fifteen (15) days of completion of the overlap on a particular pole.

1. The notice shall provide the affected utility at least ninety (90) days from receipt in which to inspect the overlap.

2. The utility shall have fourteen (14) days after completion of its inspection to notify the overlapping party of any damage or code violations to its equipment caused by the overlap.

3. If the utility discovers damage or code violations caused by the overlap on equipment belonging to the utility, then the utility

VOLUME 51, NUMBER 3– September 1, 2024

shall inform the overlashing party and provide adequate documentation of the damage or code violations.

4. The utility shall either:

a. Complete any necessary remedial work and bill the overlashing party for the reasonable costs related to fixing the damage or code violations; or

b. Require the overlashing party to fix the damage or code violations at its expense within fourteen (14) days following notice from the utility.

(7) [(6)] Signed standard contracts or licenses for attachments allowed by subsection (2) of this section shall be submitted to the commission but shall not be filed pursuant to 807 KAR 5:011, Section 13.

(8) [(7)] Tariffs conforming to the requirements of this administrative regulation and with a proposed effective date no later than October [August] [March] 31, 2024 [2022], shall be filed by November 30 [July 31] [February 28], 2024 [2022].

Section 4. Procedure for New Attachers to Request Utility Pole Attachments.

(1) All time limits established in this section shall be calculated according to 807 KAR 5:001, Section 4(7).

(2) Application review and survey.

(a) Application completeness.

1. A new attacher shall:

a. Prior to submitting a pole attachment application to a utility:

(i) Review the application for completeness and;

(ii) Submit the information required by Section 3(5) of this administrative regulation; and

b. Submit the written certification with the pole attachment application. If the utility uses an electronic system to manage pole attachments, this certification shall be uploaded to the utility's designated system.

2. A utility shall review a new attacher's pole attachment application for completeness before reviewing the application on its merits and shall notify the new attacher within **the time established in subparagraph 8. of this paragraph [ten (10) business days]** after receipt of the new attacher's pole attachment application if the application is incomplete.

3. [2.] A new attacher's pole attachment application shall be considered complete if the application provides the utility with the information necessary under its procedures, as established in the utility's applicable tariff or a special contract regarding pole attachments between the utility and the new attacher, to begin to survey the affected poles.

4. [3.] If the utility notifies a new attacher that its attachment application is not complete, then the utility shall state all reasons for finding it incomplete.

5. A utility shall not require a new attacher to submit a survey or pole loading analysis as a filing requirement for an application.

6. A new attacher may submit a survey with an application of 500 poles or less, which the utility shall accept if the new attacher used an approved contractor listed on the utility's Web site and the survey was conducted no longer than thirty (30) days prior to submission. A utility shall conduct the survey for applications exceeding 500 poles.

7. If a utility rejects an application the rejection shall state the reason for the denial and shall include specific citations to this administrative regulation and the utility's tariff that form the basis of the rejection.

8. A utility shall complete a review of an application of 500 poles or less within ten (10) business days after receipt of the application. A utility shall have an additional one (1) business day to complete its review for each additional 500-pole increment in an application.

9. A new attacher, if it submits an application while a previous application is still under review, may prioritize the order in which a utility shall review the applications. Prioritizing a new application resets the respective review time period of the new attacher's deprioritized applications currently under review over which the new application is being prioritized.

10. [4.] If the utility does not respond within **the time prescribed in subparagraph 8. of this paragraph [ten (10) business days]** after receipt of the application, or if the utility rejects the application as

incomplete but fails to state any reasons in the utility's response, then the application shall be deemed complete and the time for the utility's next procedural step begins to run.

(b) Survey and application review on the merits.

1. A utility shall complete a survey of poles for which access has been requested within forty-five (45) days of receipt of a complete application to attach facilities to its utility poles (or within 120 [105] [sixty (60)] days in the case of larger orders as established in subsection (8) [(7)] of this section) for the purpose of determining if the attachments may be made and identifying any make-ready to be completed to allow for the attachment.

2. Participation of attachers in surveys conducted by a utility.

a. A utility shall allow the new attacher and any existing attachers on the affected poles to be present for any field inspection conducted as part of a utility's survey conducted pursuant paragraph (b)1. of this subsection.

b. A utility shall use commercially reasonable efforts to provide the affected attachers with advance notice of not less than five (5) business days of any field inspection as part of the survey and shall provide the date, time, and location of the inspection, and name of the contractor, if any, performing the inspection.

3. If a new attacher has conducted a survey pursuant to subsection (11) [(10)](b) of this section, or a new attacher has otherwise conducted and provided a survey, after giving existing attachers notice and an opportunity to participate in a manner consistent with subsection (11) [(10)](b), a utility may elect to satisfy survey obligations established in this paragraph by notifying affected attachers of the intent to use the survey conducted by the new attacher and by providing a copy of the survey to the affected attachers within the time period established in subparagraph 1. of this paragraph.

4. Based on the results of the applicable survey and other relevant information, a utility shall respond to the new attacher either by granting access or denying access within forty-five (45) days of receipt of a complete application to attach facilities to its utility poles (or within 120 [105] [sixty (60)] days in the case of larger orders as described in subsection (8) [(7)] of this section).

5. A utility's denial of a new attacher's pole attachment application shall be specific, shall include all relevant evidence and information supporting the denial, and shall explain how the evidence and information relate to a denial of access for reasons of lack of capacity, safety, reliability, or engineering standards.

6. Payment of survey costs and estimates.

a. A utility's tariff may require prepayment of the costs of surveys made to review a pole attachment application, or some other reasonable security or assurance of credit worthiness before a utility shall be obligated to conduct surveys pursuant to this section.

b. If a utility's tariff requires prepayment of survey costs, the utility shall include a per pole estimate of costs in the utility's tariff and the payment of estimated costs shall satisfy any requirement that survey costs be prepaid.

c. The new attacher shall be responsible for the costs of surveys made to review the new attacher's pole attachment application even if the new attacher decides not to go forward with the attachments.

(3) Payment of make-ready estimates.

(a) Within fourteen (14) days of providing a response granting access pursuant to subsection (2)(b)4. of this section, a utility shall send a new attacher whose application for access has been granted a detailed, itemized estimate in writing, on a pole-by-pole basis if requested and reasonably calculable, and consistent with subsection (6)(b) of this section, of charges to perform all necessary make-ready.

(b) A utility shall provide documentation that is sufficient to determine the basis of all estimated charges, including any projected material, labor, and other related costs that form the basis of the estimate.

(c) A utility may withdraw an outstanding estimate of charges to perform make-ready beginning fourteen (14) days after the estimate is presented.

(d) A new attacher may accept a valid estimate and make payment any time after receipt of an estimate, except a new attacher shall not accept the estimate after the estimate is withdrawn.

(e) Invoices for estimates shall clearly identify the application or project for which payment is requested.

(f) Payment for the estimate shall clearly identify the application(s) or project(s) for which payment is made.

(4) Make-ready. Upon receipt of payment for survey costs owed pursuant to the utility's tariff and the estimate specified in subsection (3)(d) of this section, a utility shall, as soon as practical but in no case more than seven (7) days, notify all known entities with existing attachments in writing that could be affected by the make-ready.

(a) For make-ready in the communications space, the notice shall:

1. State where and what make-ready will be performed;

2. State a date for completion of make-ready in the communications space that is no later than ~~forty-five (45)~~~~[thirty (30)]~~ days after notification is sent (or up to ~~120~~~~[105]~~~~[seventy-five (75)]~~ days in the case of larger orders as established in subsection ~~(8)~~~~[(7)]~~ of this section);

3. State that any entity with an existing attachment may modify the attachment. Modification shall be consistent with the specified make-ready before the date established for completion;

4. State that, if make-ready is not completed by the completion date established by the utility in subparagraph 2. of this paragraph, the new attacher may complete the make-ready, which shall be completed as specified pursuant to subparagraph 1. of this paragraph; and

5. State the name, telephone number, and email address of a person to contact for more information about the make-ready procedure.

(b) For make-ready above the communications space, the notice shall:

1. State where and what make-ready will be performed;

2. State a date for completion of make-ready that is no later than ninety (90) days after notification is sent (or ~~165~~~~[435]~~ days in the case of larger orders, as established in subsection ~~(8)~~~~[(7)]~~ of this section).

3. State that any entity with an existing attachment may modify the attachment. Modification shall be consistent with the specified make-ready before the date established for completion;

4. State that the utility may assert the utility's right to up to fifteen (15) additional days to complete make-ready;

5. State that if make-ready is not completed by the completion date established by the utility in subparagraph 2. of this paragraph (or, if the utility has asserted its fifteen (15) day right of control, fifteen (15) days later), the new attacher may complete the make-ready, which shall be completed as specified pursuant to subparagraph 1. of this paragraph; and

6. State the name, telephone number, and email address of a person to contact for more information about the make-ready procedure.

(c) Once a utility provides the notices required by this subsection, the utility shall provide the new attacher with a copy of the notices and the existing attachers' contact information and address where the utility sent the notices. The new attacher shall be responsible for coordinating with existing attachers to encourage completion of make-ready by the dates established by the utility pursuant to paragraph (a)2. of this subsection for communications space attachments or paragraph (b)2. of this subsection for attachments above the communications space.

(5) A utility shall complete its make-ready in the communications space by the same dates established for existing attachers in subsection (4)(a)2. of this section or its make-ready above the communications space by the same dates for existing attachers in subsection (4)(b)2. of this section (or if the utility has asserted its fifteen (15) day right of control, fifteen (15) days later).

(6) An attacher shall, within fifteen (15) business days following completion of all attachments within an application, provide written notice to a utility in the manner and form stated in the utility's tariff.

(7)~~[(6)]~~ Final invoice.

(a) Within a reasonable period, not to exceed 120 days after a utility completes the utility's make-ready, the utility shall provide the new attacher:

1. A detailed, itemized final invoice of the actual survey charges incurred if the final survey costs for an application differ from any

estimate previously paid for the survey work or if no estimate was previously paid; and

2. A detailed, itemized final invoice, on a pole-by-pole basis if requested and reasonably calculable, of the actual make ready costs to accommodate attachments if the final make-ready costs differ from the estimate provided pursuant to subsection (3)(d) of this section.

(b) Limitations on make ready costs.

1. A utility shall not charge a new attacher, as part of any invoice for make-ready, to bring poles, attachments, or third-party or utility equipment into compliance with current published safety, reliability, and pole owner construction standards if the poles, attachments, or third-party or utility equipment were out of compliance because of work performed by a party other than the new attacher prior to the new attachment.

2. A utility shall not charge a new attacher, as part of any invoice for make ready, the cost to replace any red tagged pole with a replacement pole of the same type and height.

3. If a red tagged pole is replaced with a pole of a different type or height, then the new attacher shall be responsible, as part of any invoice for make ready, only for the difference, if any, between the cost for the replacement pole and the cost for a new utility pole of the type and height that the utility would have installed in the same location in the absence of the new attachment.

4. The make ready cost, if any, for a pole that is not a red tagged pole to be replaced with a new utility pole to accommodate the new attacher's attachment shall be charged in accordance with the utility's tariff or a special contract regarding pole attachments between the utility and the new attacher.

~~(8)~~~~[(7)]~~ For the purposes of compliance with the time periods in this section:

(a) A utility shall apply the timeline as established in subsections (2) through (4) of this section to all requests for attachment up to the lesser of ~~500~~~~[300]~~ poles or ~~.75~~~~[zero and five-tenths (0.5)]~~ percent of the utility's poles in the state;

(b) A utility may, for every ~~[full]~~~~[500-pole increment]~~, add up to fifteen (15) days to the survey period established in subsection (4) of this section to larger orders up to the lesser of ~~3,000~~~~[4,000]~~ poles or ~~three (3)~~~~[4.50]~~ percent of the utility's poles in Kentucky;

(c) A utility may, for every ~~[full]~~~~[500-pole increment]~~, add up to ~~fifteen (15)~~~~[forty-five (45)]~~ days to the make-ready periods established in subsection (4) of this section to larger orders up to the lesser of ~~3,000~~~~[4,000]~~ poles or ~~three (3)~~~~[4.50]~~ percent of the utility's poles in Kentucky;

(d) A utility and a new attacher, unless the utility owns or controls fewer than 500 poles, shall negotiate a special contract in good faith [the timing of] all requests for attachment larger than the lesser of ~~3,000~~~~[4,000]~~ poles or ~~three (3)~~~~[4.50]~~ percent of the utility's poles in Kentucky, or upon receipt of three (3) separate applications averaging 1,000 poles or one (1) percent of the utility's poles in Kentucky for any three (3) months over a five (5) month period. The special contract, at a minimum, shall contain:[:]

1. An agreement for a prepaid account from the new attacher to cover the cost of the request;

2. Direction from the new attacher regarding make ready work that the utility can complete without further direction from the new attacher including;

a. The maximum cost per pole;

b. The total cost for make ready work for each project or line of each project;

3. The new attacher's prioritization of projects if the new attacher has submitted multiple requests for attachment;

4. Contact information, including phone numbers and email addresses, for all necessary utility and new attacher personnel;

5. The cadence, location, and necessary personnel for each project; and

6. The timing of surveys and make ready.

(e) If a special contract identified in paragraph (d) of this subsection cannot be agreed to within fifteen (15) business days from submission of a formal written request to engage from the attacher, the new attacher may file a complaint with the commission, with a copy served contemporaneously to the utility, on which the

VOLUME 51, NUMBER 3– September 1, 2024

commission shall rule within twenty (20) business days of filing of the complaint.

(f)(e)) For the calculation of any deadlines in this regulation a utility may treat multiple applications[requests] from a single new attacher as one (1) application[request] if the applications[requests] are submitted within thirty (30) days of [during the same calendar month as] [within thirty (30) days of] one another; and

(g)(f)) As soon as reasonably practicable, but no less than ninety (90)[sixty (60)] days before the new attacher expects to submit an application in which the number of requests exceed the lesser of the amounts identified in paragraph (a) of this subsection, a new attacher shall provide written notice to a utility in the manner and form stated in the utility's tariff that the new attacher expects to submit a [high volume-]request.

(9)(8)) Deviations from make-ready timeline.

(a) A utility may deviate from the time limits specified in this section before offering an estimate of charges if the new attacher failed to satisfy a condition in the utility's tariff or in a special contract between the utility and the new attacher.

(b) A utility may deviate from the time limits established in this section during performance of make-ready for good and sufficient cause that renders it infeasible for the utility to complete make-ready within the time limits established in this section. A utility that so deviates shall immediately notify, in writing, the new attacher and affected existing attachers and shall identify the affected poles and include a detailed explanation of the reason for the deviation and a new completion date. The utility shall deviate from the time limits established in this section for a period no longer than necessary to complete make-ready on the affected poles and shall resume make-ready without discrimination once the utility returns to routine operations.

(c) An existing attacher may deviate from the time limits established in this section during performance of complex make-ready for reasons of safety or service interruption that renders it infeasible for the existing attacher to complete complex make-ready within the time limits established in this section. An existing attacher that so deviates shall immediately notify, in writing, the new attacher and other affected existing attachers and shall identify the affected poles and include a detailed explanation of the basis for the deviation and a new completion date, which shall not extend beyond sixty (60) days from the completion date provided in the notice specified in subsection (4) of this section as sent by the utility (or up to 120[105] days in the case of larger orders specified in subsection (8)(6)(b) and (c) of this section). The existing attacher shall not deviate from the time limits established in this section for a period for longer than necessary to complete make-ready on the affected poles.

(10)(9)) Self-help remedy.

(a) Surveys. If a utility fails to complete a survey as established in subsection (2)(b) of this section, then a new attacher may conduct the survey in place of the utility by hiring a contractor to complete a survey, which shall be completed as specified in Section 5 of this administrative regulation.

1. A new attacher shall allow the affected utility and existing attachers to be present for any field inspection conducted as part of the new attacher's survey.

2. A new attacher shall use commercially reasonable efforts to provide the affected utility and existing attachers with advance notice of not less than five (5) business days of a field inspection as part of any survey the attacher conducts.

3. The notice shall include the date and time of the survey, a description of the work involved, and the name of the contractor being used by the new attacher.

(b) Make-ready. If make-ready is not complete by the applicable date established in subsection (4) of this section, then a new attacher may conduct the make-ready in place of the utility and existing attachers by hiring a contractor to complete the make-ready, which shall be completed as specified in Section 5 of this administrative regulation. The make-ready shall be performed in compliance with this administrative regulation, the utility's tariff, and the construction standards listed on the utility's Web site. Make-ready work performed by the new attacher within the electric space

shall be conducted by an approved contractor listed on the utility's Web site.

1. A new attacher shall allow the affected utility and existing attachers to be present for any make-ready.

2. A new attacher shall use commercially reasonable efforts to provide the affected utility and existing attachers with advance notice of not less than seven (7) days of the impending make-ready.

3. The notice shall include the date and time of the make-ready, a description of the work involved, and the name of the contractor being used by the new attacher.

(c) The new attacher shall notify an affected utility or existing attacher immediately if make-ready damages the equipment of a utility or an existing attacher or causes an outage that is reasonably likely to interrupt the service of a utility or existing attacher.

(d) Pole replacements. Self-help shall not be available for pole replacements.

(11)(40)) One-touch make-ready option. For attachments involving simple make-ready, new attachers may elect to proceed with the process established in this subsection in lieu of the attachment process established in subsections (2) through (6) and (9) of this section.

(a) Attachment application.

1. A new attacher electing the one-touch make-ready process shall elect the one-touch make-ready process in writing in its attachment application and shall identify the simple make-ready that it will perform. It is the responsibility of the new attacher to ensure that its contractor determines if the make-ready requested in an attachment application is simple.

2. Application completeness.

a. The utility shall review the new attacher's attachment application for completeness before reviewing the application on its merits and shall notify the new attacher within ten (10) business days after receipt of the new attachers attachment application whether or not the application is complete.

b. An attachment application shall be considered complete if the application provides the utility with the information necessary under its procedures, as established in the utility's applicable tariff or a special contract regarding pole attachments between the utility and the new attacher, to make an informed decision on the application.

c. If the utility notifies the new attacher that an attachment application is not complete, then the utility shall state all reasons for finding the application incomplete.

d. If the utility fails to notify a new attacher in writing that an application is incomplete within ten (10) business days of receipt, then the application shall be deemed complete.

3. Application review on the merits. The utility shall review on the merits a complete application requesting one-touch make-ready and respond to the new attacher either granting or denying an application within fifteen (15) days of the utility's receipt of a complete application (or within thirty (30) days in the case of larger orders as established in subsection (8)(7)(b) of this section or within a time negotiated in good faith for requests equal to or larger than those established in (8)(7)(d)).

a. If the utility denies the application on its merits, then the utility's decision shall be specific, shall include all relevant evidence and information supporting its decision, and shall explain how the evidence and information relate to a denial of access.

b. Within the fifteen (15) day application review period (or within thirty (30) days in the case of larger orders as established in subsection (8)(7)(b) of this section or within a time negotiated in good faith for requests equal to or larger than those established in (8)(7)(d)), a utility or an existing attacher may object to the designation by the new attacher's contractor that certain make-ready is simple.

c. An objection made pursuant to clause b. of this subparagraph shall be specific and in writing, include all relevant evidence and information supporting the objection, be made in good faith, and explain how the evidence and information relate to a determination that the make-ready is not simple.

d. If the utility's or the existing attacher's objection to the new attacher's determination that make-ready is simple complies with clause c. of this subparagraph, then the make-ready shall be

deemed to be complex and the new attacher shall not proceed with the affected proposed one-touch make-ready.

(b) Surveys.

1. The new attacher shall be responsible for all surveys required as part of the one-touch make-ready process and shall use a contractor as established in Section 5(2) of this administrative regulation to complete surveys.

2. The new attacher shall allow the utility and any existing attachers on the affected poles to be present for any field inspection conducted as part of the new attacher's surveys.

3. The new attacher shall use commercially reasonable efforts to provide the utility and affected existing attachers with advance notice of not less than five (5) business days of a field inspection as part of any survey and shall provide the date, time, and location of the surveys, and name of the contractor performing the surveys.

(c) Make-ready. If the new attacher's attachment application is approved by the pole owner and if the attacher has provided at least fifteen (15) days prior written notice of the make-ready to the affected utility and existing attachers, the new attacher may proceed with make-ready. The new attacher shall use a contractor in the manner established for simple make-ready in Section 5(2) of this administrative regulation.

1. The prior written notice shall include the date and time of the make-ready, a description of the work involved, the name of the contractor being used by the new attacher, and provide the affected utility and existing attachers a reasonable opportunity to be present for any make-ready.

2. The new attacher shall notify an affected utility or existing attacher immediately if make-ready damages the equipment of a utility or an existing attacher or causes an outage that is reasonably likely to interrupt the service of a utility or existing attacher.

3. In performing make-ready, if the new attacher or the utility determines that make-ready classified as simple is complex, then all make-ready on the impacted poles shall be halted and the determining party shall provide immediate notice to the other party of its determination and the impacted poles. All remaining make-ready on the impacted poles shall then be governed by subsections (2) through (9) of this section, and the utility shall provide the notices and estimates required by subsections (2)(a), (3), and (4) of this section as soon as reasonably practicable.

(d) Post-make-ready timeline. A new attacher shall notify the affected utility and existing attachers within fifteen (15) days after completion of make-ready on a one-touch make ready application.

Section 5. Contractors for Survey and Make-ready.

(1) Contractors for self-help complex and above the communications space make-ready. A utility shall make available and keep up-to-date a reasonably sufficient list of contractors the utility authorizes to perform self-help surveys and make-ready that is complex and self-help surveys and make-ready that is above the communications space on the utility's poles. The new attacher shall use a contractor from this list to perform self-help work that is complex or above the communications space. New and existing attachers may request the addition to the list of any contractor that meets the minimum qualifications in subsection (3) of this section and the utility shall not unreasonably withhold its consent.

(2) Contractors for surveys and simple work. A utility may keep up-to-date a reasonably sufficient list of contractors the utility authorizes to perform surveys and simple make-ready. If a utility provides this list, then the new attacher shall choose a contractor from the list to perform the work. New and existing attachers may request the addition to the list of any contractor that meets the minimum qualifications in subsection (3) of this section and the utility shall not unreasonably withhold its consent.

(a)

1. If the utility does not provide a list of approved contractors for surveys or simple make-ready or no utility-approved contractor is available within a reasonable time period, then the new attacher may choose its own qualified contractor that shall meet the requirements in subsection (3) of this section.

2. If choosing a contractor that is not on a utility-provided list, the new attacher shall certify to the utility that the attacher's contractor meets the minimum qualifications established in subsection (3) of

this section upon providing notices required by Section 4(9)(a)2., (9)(b)2., (10)(b)3., and (10)(c) of this administrative regulation.

(b)

1. The utility may disqualify any contractor chosen by the new attacher that is not on a utility-provided list, but a disqualification shall be based on reasonable safety or reliability concerns related to the contractor's failure to meet any of the minimum qualifications established in subsection (3) of this section or to meet the utility's publicly available and commercially reasonable safety or reliability standards.

2. The utility shall provide notice of the utility's objection to the contractor within the notice periods established by the new attacher in Section 4(9)(a)2., (9)(b)2., (10)(b)3., and (10)(c) of this administrative regulation and in the utility's objection must identify at least one available qualified contractor.

(3) Contractor minimum qualification requirements. Utilities shall ensure that contractors on a utility-provided list, and new attachers shall ensure that contractors selected pursuant to subsection (2)(a) of this section, meet the minimum requirements established in paragraphs (a) through (e) of this subsection.

(a) The contractor has agreed to follow published safety and operational guidelines of the utility, if available, but if unavailable, the contractor shall agree to follow National Electrical Safety Code (NEC) guidelines.

(b) The contractor has acknowledged that the contractor knows how to read and follow licensed-engineered pole designs for make-ready, if required by the utility.

(c) The contractor has agreed to follow all local, state, and federal laws and regulations including the rules regarding Qualified and Competent Persons under the requirements of the Occupational and Safety Health Administration (OSHA) rules.

(d) The contractor has agreed to meet or exceed any uniformly applied and reasonable safety and reliability thresholds established by the utility, if made available.

(e) The contractor shall be adequately insured or shall establish an adequate performance bond for the make-ready the contractor will perform, including work the contractor will perform on facilities owned by existing attachers.

(4) A consulting representative of a utility may make final determinations, on a nondiscriminatory basis, if there is insufficient capacity and for reasons of safety, reliability, and generally applicable engineering purposes.

Section 6. Notice of Changes to Existing Attachers.

(1) Unless otherwise established in a joint use agreement or special contract, a utility shall provide an existing attacher no less than sixty (60) days written notice prior to:

(a) Removal of facilities or termination of any service to those facilities if that removal or termination arises out of a rate, term, or condition of the utility's pole attachment tariff or any special contract regarding pole attachments between the utility and the attacher; or

(b) Any modification of facilities by the utility other than make-ready noticed pursuant to Section 4 of this administrative regulation, routine maintenance, or modifications in response to emergencies.

(2) Stays from removals, terminations, and modifications noticed pursuant to subsection (1) of this section.

(a) An existing attacher may request a stay of the action contained in a notice received pursuant to subsection (1) of this section by filing a motion pursuant to 807 KAR 5:001, Section 4 within fifteen (15) days of the receipt of the first notice provided pursuant to subsection (1) of this section.

(b) The motion shall be served on the utility that provided the notice pursuant to 807 KAR 5:001, Section 5(1).

(c) The motion shall not be considered unless it includes the relief sought, the reasons for such relief, including a showing of irreparable harm and likely cessation of cable television system operator or telecommunication service, a copy of the notice, and a certification that service was provided pursuant to paragraph (b) of this subsection.

(d) The utility may file a response within ten (10) days of the date the motion for a temporary stay was filed.

(e) No further filings under this subsection shall be considered unless requested or authorized by the commission.

(3) Transfer of attachments to new poles.

(a) Unless an applicable tariff or special contract or Section 4 of this administrative regulation establishes a different timeframe, existing attachers shall transfer their attachments within sixty (60) days of receiving written notice from the utility pole owner.

(b) Existing attachers may deviate from the time limit established in paragraph (a) of this subsection for good and sufficient cause that renders it infeasible for the existing attacher to complete the transfer within the time limit established. An existing attacher that requires such a deviation shall immediately notify, in writing, the utility and shall identify the affected poles and include a detailed explanation of the reason for the deviation and the date by which the attacher shall complete the transfer. An existing attacher shall deviate from the time limits established in paragraph (a) of this subsection for a period no longer than is necessary to complete the transfer.

(c) If an existing attacher fails to transfer its attachments within the timeframe established in paragraph (a) of this subsection and the existing attacher has not notified the utility of good and sufficient cause for extending the time limit pursuant to paragraph (a) of this subsection, a utility pole owner may transfer attachments and the transfer shall be at the existing attacher's expense.

(d) A utility pole owner may transfer an existing attacher's attachment prior to the expiration of any period established by paragraph (a) or (b) of this subsection if an expedited transfer is necessary for safety or reliability purposes.

Section 7. Complaints for Violations of This Administrative Regulation.

(1) Contents of complaint. Each complaint shall be headed "Before the Public Service Commission," shall establish the names of the complainant and the defendant, and shall state:

(a) The full name and post office address of the complainant;

(b) The full name and post office address of the defendant;

(c) Fully, clearly, and with reasonable certainty, the act or omission, of which complaint is made, with a reference, if practicable, to the law, order, or administrative regulation, of which a failure to comply is alleged, and other matters, or facts, if any, as necessary to acquaint the commission fully with the details of the alleged failure; and

(d) The relief sought.

(2) Signature. The complainant or his or her attorney, if applicable, shall sign the complaint. A complaint by a corporation, association, or another organization with the right to file a complaint, shall be signed by its attorney.

(3) How filed.

(a) Complaints shall be filed in accordance with the electronic filing procedures in 807 KAR 5:001, Section 8; and

(b) The complainant shall serve a copy of the complaint on the defendant at the same time as it files the complaint with the commission. [The filing party shall file two (2) copies in paper medium with the commission in the manner required by 807 KAR 5:001, Section 8(12)(a)2.]

(4) Procedure on filing of complaint.

(a) Upon the filing of a complaint, the commission shall immediately examine the complaint to ascertain if it establishes a prima facie case and conforms to this administrative regulation.

1. If the commission finds that the complaint does not establish a prima facie case or does not conform to this administrative regulation, the commission shall notify the complainant and provide the complainant an opportunity to amend the complaint within a stated time.

2. If the complaint is not amended within the time or the extension as the commission, for good cause shown, shall grant, the complaint shall be dismissed.

(b) If the complaint, either as originally filed or as amended, establishes a prima facie case and conforms to this administrative regulation, the commission shall serve an order upon the person complained of, accompanied by a copy of the complaint, directed to the person complained of and requiring that the matter complained of be satisfied, or that the complaint be answered in writing within ten (10) days from the date of service of the order. The commission may require the answer to be filed within a shorter period if the

complaint involves an emergency situation or otherwise would be detrimental to the public interest.

(5) Satisfaction of the complaint. If the defendant desires to satisfy the complaint, he or she shall submit to the commission, within the time allowed for satisfaction or answer, a statement of the relief that the defendant is willing to give. Upon the acceptance of this offer by the complainant and with the approval of the commission, pursuant to KRS Chapter 278 and this administrative regulation, the case shall be dismissed.

(6) Answer to complaint. If the complainant is not satisfied with the relief offered, the defendant shall file an answer to the complaint within the time stated in the order or the extension as the commission, for good cause shown, shall grant.

(a) The answer shall contain a specific denial of the material allegations of the complaint as controverted by the defendant and also a statement of any new matters constituting a defense.

(b) If the defendant does not have information sufficient to answer an allegation of the complaint, the defendant may so state in the answer and place the denial upon that ground.

(7) Burden of proof.

(a) The complainant has the burden of establishing it is entitled to the relief sought.

(b) The commission may presume that a pole replaced to accommodate a new attachment was a red tagged pole if:

1. There is a dispute regarding the condition of the pole at the time it was replaced; and

2. The utility failed to document and maintain records that inspections were conducted pursuant to 807 KAR 5:006 and that no deficiencies were found on the pole or poles at issue, or if inspections of poles are not required pursuant to 807 KAR 5:006, the utility failed to periodically inspect and document the condition of its poles.

(8) Time for final action.

(a) The commission shall take final action on a complaint regarding the rates, terms, or conditions for access to a utility's pole, duct, conduit, or right-of-way within sixty (60)[480] days of a complaint establishing a prima facie case being filed, unless the commission finds it is necessary to continue the proceeding for good cause for up to 180[360] days from the date the complaint establishing a prima facie case is filed.

(b) The period within which final action shall be taken may be extended beyond 180[360] days upon agreement of the complainant and defendant and approval of the commission.

This is to certify that the Public Service Commission approved promulgation of this emergency administrative regulation amended after comment, pursuant to KRS 278.040(3), on August 15, 2024.

LINDA BRIDWELL, P.E., Executive Director

ANGIE HATTON, Chairman

APPROVED BY AGENCY: August 15, 2024

FILED WITH LRC: August 15, 2024 at 10:00 a.m.

CONTACT PERSON: John E.B. Pinney, Executive Advisor, Kentucky Public Service Commission, 211 Sower Boulevard, Frankfort, Kentucky 40601, phone (502) 782-2587, fax (502) 564-7279, email jeb.pinney@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: John E.B. Pinney

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides the process by which the commission regulates the rates, terms, and conditions of utility pole attachments and access to other utility facilities, amends the specific criteria and procedures for certain types of pole attachment applications for obtaining access to utility poles within the Kentucky Public Service Commission's jurisdiction, and establishes a process by which the complaints of those seeking to access utility facilities shall be addressed within the period established by federal law. The emergency amendments address issues pertaining to expediting certain applications to attach broadband facilities to the poles of utilities subject to the jurisdiction of the Public Service Commission.

(b) The necessity of this administrative regulation: Senate Joint Resolution 175 from the 2024 Regular Session mandates that the Public Service Commission promulgate emergency regulations, or emergency amendment to existing regulations, to address issues pertaining to certain applications to attach broadband facilities to the poles of utilities subject to the jurisdiction of the Public Service Commission.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 278.040(3) authorizes the Commission to adopt reasonable regulations to implement the provisions of KRS Chapter 278. KRS 278.040(2) states that the PSC has exclusive jurisdiction over the regulation of rates and services of utilities. KRS 278.030(1) provides that all rates received by a utility shall be fair, just, and reasonable. KRS 278.030(2) provides that every utility shall furnish adequate, efficient, and reasonable service. In *Kentucky CATV Ass'n v. Volz*, 675 S.W.2d 393 (Ky. App. 1983), the Court of Appeals held that utility pole attachments are a service that is provided for a rate. Senate Joint Resolution 175 from the 2024 Regular Session mandates that the Public Service Commission promulgate emergency regulations, or emergency amendment to existing regulations, to address issues pertaining to certain applications to attach broadband facilities to the poles of utilities subject to the jurisdiction of the Public Service Commission.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The amendments will expedite deployment of broadband internet service in rural areas of the Commonwealth places unserved and underserved citizens at a disadvantage and recounts that funds from the Broadband Equity, Access, and Deployment Program and the Rural Digital Opportunity Fund that will be used to assist in deploying broadband internet service to unserved and underserved areas.

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

(a) How the amendment will change this existing administrative regulation: The proposed amendments after comment: (1) clarify which timelines apply to which size of pole attachment application; (2) amend several timelines which the emergency regulation had incorrectly stated; (3) remove confusing language regarding how to calculate when a special contract is required for multiple orders for attachments received over a period of time; and (4) corrects an inadvertent omission of changing reference to a specific subsection from the emergency regulation

(b) The necessity of the amendment to this administrative regulation: The original emergency amendments to the regulation expanded from 1,000 poles to 3,000 poles the threshold for when an attached must request a special contract with a pole owner. The emergency amendment also established new deadlines by which certain actions must be taken by a pole owner. The new deadlines proved the actions must be completed within 45 days of receipt of an application, and the deadline would increase 15 days for each 500 pole increment. For example, for an application for 500 poles or less, the deadline is 45 days, for 501-1,000 poles the deadline is 60 day, and for an application of 2,501-3,000 poles the deadline is 120 days. The Commission, in several instances in the emergency regulation, incorrectly stated the maximum deadline was 105 days. The amendments after comment correct this and other errors in calculating deadlines. The amendments after comment address ambiguity noted by several commenters concerning when a special contract is required under Section 4(8)(d). Commenters specifically noted that it was difficult to calculate when applications over a five (5) month period would trigger the requirement for a special contract. The Commission has deleted the ambiguous language because it was not helpful and could cause confusion. The amendments after comment also amended Section 4(8)(f) to clarify how multiple applications may be considered one application for the purposes of applying relevant timelines in the regulation.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 278.040(3) authorizes the Commission to adopt reasonable regulations to implement the provisions of KRS Chapter 278. 2024 Kentucky S.J.R. 175, 2024 Regular Session requires the Commission to promulgate emergency regulations addressing issues pertaining to broadband attachments to utility poles. The amendments after comment should assist in the processing of broadband

attachments by providing clarity and correcting statements of deadlines, clarifying the applicable deadlines, and removing ambiguity from how numbers of poles are calculated in multiple attachments which triggers the need for a special contract.

(d) How the amendment will assist in the effective administration of the statutes: The amendments will hasten the review the processing of pole attachment applications and increase the speed at which pole attachments are made which meet the requirements of 2024 Kentucky S.J.R. 175, 2024 Regular Session directing the Public Service Commission to promulgate emergency amendments to promote the deployment of broadband in unserved or underserved areas of the Commonwealth. The amendments after comment should assist in the faster processing of broadband attachments by providing clarity and correcting statements of deadlines, clarifying the applicable deadlines, and removing ambiguity from how numbers of poles are calculated in multiple attachments which triggers the need for a special contract.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The administrative regulation will primarily affect regulated utilities in Kentucky that own or control utility poles, including investor owned electric utilities, rural electric cooperatives, and incumbent local exchange carriers. There are currently four investor owned electric utilities, 21 rural electric cooperates, and 20 incumbent local exchange carriers, which include investor owned telephone utilities and telephone cooperatives, operating in Kentucky.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The commission does not anticipate the regulated entities having to take additional actions to comply with the amendments after comment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The regulated entities will incur some initial costs in updating their tariffs to comply with the original emergency administrative regulation. However they will not be required to file additional tariffs in response to the amendments after comment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The adoption of a uniform process to expedite broadband deployment should reduce potential conflicts in the future that would have to be resolved through the complaint process. This should reduce the overall cost of pole attachments for utilities and attachers by reducing or eliminating costly delays. The amendments after comment remove ambiguities that could have contributed to unnecessary delays.

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

(a) Initially: Zero Dollars, no fiscal impact.

(b) On a continuing basis: Zero Dollars, no fiscal impact.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The commission does not anticipate this amendment increasing its enforcement cost. The commission currently funds enforcement of this regulation through its general operating budget funded through annual assessments paid by regulated utilities pursuant to KRS 278.130, et. seq., and this amendment has no effect on that funding.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No new fees are established and existing fees will not be affected.

(9) TIERING: Is tiering applied? Yes. The speed at which utilities are required to process applications and complete make ready is tiered based on the number of poles owned the utility. Tiering the regulation in this manner, which is consistent with how the federal regulation is tiered, will allow smaller utilities to process pole attachment applications at slower rates, while maintaining a relatively consistent attachment speed throughout the state.

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 278.040, HB 320 (2021,) SJR 175 (2024).

(2) Identify the promulgating agency and any other affected state units, parts, or divisions:

- (a) Estimate the following for the first year:
Expenditures: Zero Dollars; no fiscal impact.
Revenues: Zero Dollars; no fiscal impact.
Cost Savings: Zero Dollars; no fiscal impact.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? No fiscal impact.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): These entities will be affected to the extent that they are seeking to attach to poles owned or controlled by regulated utilities of which there should be few requests.

- (a) Estimate the following for the first year:
Expenditures: Zero Dollars; no fiscal impact.
Revenues: Zero Dollars; no fiscal impact.
Cost Savings: Zero Dollars; no fiscal impact.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? Zero Dollars; no fiscal impact.

(4) Identify additional regulated entities not listed in questions (2) or (3): Utilities, as defined by KRS 278.010(3), that own utility poles.

(a) Estimate the following for the first year:

Expenditures: It is not possible to estimate the expenditures for the first year. The amount of expenditures will depend upon the volume of applications for pole attachments, as well as the utilities' costs to engage the resources necessary to meet the requirements of the amendments to the regulation.

Revenues: It is not possible to estimate the revenues for the first year. The revenues should approximately match the expenditures incurred to process pole attachments although there may be some lag in recovery. Utilities are allowed to recover the cost of pole attachments from attachers through rates and billing of other costs.

Cost Savings: None. Expenditures and revenue should roughly match.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? While the amount of expenditures and revenues will vary in subsequent years the expenditures and revenues should roughly match because utilities are allowed to recover the cost of pole attachments from attachers through rates and billing of costs.

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: There is no fiscal impact to the Public Service Commission. Pole-owning utilities are already under an obligation to allow broadband attachment to their poles at rates, terms, and conditions in their tariffs. The emergency amendments will increase the speed at which these attachments are made, but should have no significant fiscal impact over the current obligation to provide attachments.

(b) Methodology and resources used to determine the fiscal impact: The Public Service Commission will not require additional resources to implement the emergency amendment. Pole-owning utilities are under an existing obligation to provide access to their poles and the emergency amendment does not increase the fiscal impact of attachments that does not already exist.

(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 will be no major economic impact to the Public Service Commission which will have no increased costs resulting from the emergency regulation. Other public entities that attach to utility poles will see no negative or positive fiscal impact. Pole-owning utilities will see increased costs of operation due to an increase of pole attachment requests. These costs, however, will ultimately be recovered from the entities requesting attachment to the poles.

(b) The methodology and resources used to reach this conclusion: The Public Service Commission initiated a docket at the end of 2023 to review the application of 807 KAR 5:015 and invited the participation of pole-owning utilities and pole attachers. The Public Service Commission has held several conferences in this docket, during which

the attachers and utilities introduced information that the incoming funds from the Broadband Equity, Access, and Deployment (BEAD) Program and the Rural Digital Opportunity Fund (RDOF) will result in a significant increase in pole attachment applications. Pole owning utilities will have to acquire the necessary personnel and resources to meet this increase in attachment applications, which will increase the utilities' up-front expenses. The costs, however, will ultimately be recovered from the attaching entities once attachments are completed.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. Currently not applicable to the regulation.

(2) State compliance standards. Currently not applicable to the regulation.

(3) Minimum or uniform standards contained in the federal mandate. Currently not applicable to the regulation.

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

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Currently not applicable to the regulation.

ADMINISTRATIVE REGULATIONS AS AMENDED BY PROMULGATING AGENCY
AND REVIEWING SUBCOMMITTEE

ARRS = Administrative Regulation Review Subcommittee
IJC = Interim Joint Committee

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY
Division of Student Financial Aid
(As Amended at ARRS, August 13, 2024)

11 KAR 4:080. Student aid applications.

RELATES TO: KRS 164.518, 164.744(2), 164.748(4), (7), (8), 164.753(3), (4), (6), 164.7535, 164.769, 164.780, 164.785, 164.786, 164.787, 164.7870, 164.7890, 164.7894, 34 C.F.R. 654.1-654.5, 654.30-654.52, 20 U.S.C. 1070d-31 - 1070d-41

STATUTORY AUTHORITY: KRS 164.518(3), 164.746(6), 164.748(4), 164.753(3),(6), 164.7535, 164.769(5),(6)(f), 164.7894(6), 34 C.F.R. 654.30, 654.41, 20 U.S.C. 1070d-37, 1070d-38

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.748(4) ~~authorizes~~[requires] the Authority to promulgate administrative regulations pertaining to the awarding of grants, scholarships, and honorary scholarships as ~~established~~[provided] in KRS 164.740 ~~through~~[to] 164.7891. KRS 164.7894(6) requires the Authority to promulgate administrative regulations as ~~may be~~ needed for the administration of the Kentucky Coal County College Completion Program. This administrative regulation designates and incorporates the applications to be utilized under the grant, scholarship, and work-study programs administered by KHEAA.

Section 1. Applications. To participate in a specified grant, scholarship, or work-study program administered by the Kentucky Higher Education Assistance Authority, the following application forms shall be completed for the appropriate academic year in which an award is sought in accordance with their instructions:

(1) For the KHEAA Grant Program established in 11 KAR 5:130, the Free Application for Federal Student Aid (FAFSA);

(2) ~~[For the KHEAA Work-Study Program established in 11 KAR 6:010, the KHEAA Work-Study Program Student Application;]~~

~~[(3)]~~ For the Teacher Scholarship Program established in 11 KAR 8:030, the Teacher Scholarship Application;

~~[(3)]~~~~[(4)]~~ For the Early Childhood Development Scholarship Program established in 11 KAR 16:010:

(a) The Free Application for Federal Student Aid (FAFSA); and

(b) The Early Childhood Development Scholarship Application;

~~[(4)]~~~~[(5)]~~ ~~[For the Robert C. Byrd Honors Scholarship Program established in 11 KAR 18:010;]~~

~~[(a)]~~ ~~[For high school and home school students, the Robert C. Byrd Honors Scholarship Program; and]~~

~~[(b)]~~ ~~[For GED recipients, the Robert C. Byrd Honors Scholarship Program GED Recipients;]~~

~~[(6)]~~ ~~[For the Go Higher Grant Program established in 11 KAR 5:200;]~~

~~[(a)]~~ ~~[The Free Application for Federal Student Aid (FAFSA); and]~~

~~[(b)]~~ ~~[The Go Higher Grant Program Application;]~~

~~[(7)]~~ For the Coal County Scholarship Program for Pharmacy Students established in 11 KAR 19:010, the Coal County Scholarship Program for Pharmacy Students Application;

~~[(5)]~~~~[(8)]~~ ~~[For the Kentucky Coal County College Completion Scholarship Program established in 11 KAR 20:020;]~~

~~[(a)]~~ ~~[The Free Application for Federal Student Aid (FAFSA); and]~~

~~[(b)]~~ ~~[The Kentucky Coal County College Completion Scholarship Application;]~~

~~[(9)]~~ For the Optometry Scholarship Program established in KRS 164.7870, the Optometry Scholarship Application;

~~[(6)]~~~~[(10)]~~ For the Dual Credit Scholarship Program established in KRS 164.786, the Dual Credit Scholarship Application; and

~~[(7)]~~~~[(11)]~~ For the Work Ready Kentucky Scholarship Program established in KRS 164.787:

- (a) The Free Application for Federal Student Aid (FAFSA); and
(b) The Work Ready Kentucky Scholarship Application.

Section 2. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) ~~[The]~~ ~~Free Application for Federal Student Aid July 1, 2024 - June 30, 2025~~, (FAFSA), December 2023~~["Free Application for Federal Student Aid July 1, 2023 - June 30, 2024" (FAFSA), October 2022];~~

(b) ~~[The]~~ ~~Free Application for Federal Student Aid July 1, 2023 - June 20, 2024~~, (FAFSA), October 2022~~["Free Application for Federal Student Aid July 1, 2022 - June 30, 2023" (FAFSA), October 2021];~~

(c) ~~[The "KHEAA Work-Study Program Student Application", July 2001;]~~

~~[(d)]~~ ~~[The]~~ "Teacher Scholarship Application", June 2006;

~~[(d)]~~~~[(e)]~~ ~~[The]~~ "Early Childhood Development Scholarship Application", April 2006;

~~[(e)]~~~~[(f)]~~ ~~[The "Robert C. Byrd Honors Scholarship Program", June 2009;]~~

~~[(g)]~~ ~~[The "Robert C. Byrd Honors Scholarship Program-GED Recipients", June 2009;]~~

~~[(h)]~~ ~~[The "Go Higher Grant Program Application", January 2008;]~~

~~[(f)]~~ ~~[The]~~ "Coal County Scholarship Program for Pharmacy Students Application", February 2011;

~~[(f)]~~~~[(f)]~~ ~~[The]~~ "Kentucky Coal County College Completion Scholarship Application", October 2014;

~~[(g)]~~~~[(k)]~~ ~~[The]~~ "Optometry Scholarship Application", January 2022;

~~[(h)]~~~~[(l)]~~ ~~[The]~~ "Dual Credit Scholarship Application", 2024 - 2025~~[July 2021];~~ and

~~[(i)]~~~~[(m)]~~ ~~[The]~~ "Work Ready Kentucky Scholarship Application", August 2019.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Higher Education Assistance Authority, 100 Airport Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. The material may also be obtained at www.kheaa.com.

FILED WITH LRC: August 13, 2024

CONTACT PERSON: Hon. Miles F. Justice, General Counsel, Kentucky Higher Education Assistance Authority, P.O. Box 798, Frankfort, Kentucky 40602-0798, phone (502) 696-7309, fax (502) 696-7293, email mjustice@kheaa.com.

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY
Division of Student Financial Aid
(As Amended at ARRS, August 13, 2024)

11 KAR 15:090. Kentucky Educational Excellence Scholarship (KEES) program.

RELATES TO: KRS 154A.130(4), 156.010, 158.007(8), 164.002(1), (2), 164.7871, 164.7884, 164.7885, 42 U.S.C. 1751 et seq.

STATUTORY AUTHORITY: KRS 164.7874(3), (16), 164.7877(3), 164.7879(1), (2), (3), 164.7881(4)(a), (c), (6)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.7877(3) requires the Kentucky Higher Education Assistance Authority to administer the Kentucky Educational Excellence Scholarship (KEES) trust fund. KRS 164.7874(16) requires the authority to promulgate administrative regulations establishing the KEES curriculum's courses of study. KRS 164.7879(3)(e) requires the authority to promulgate administrative regulations to determine the eligibility of a noncertified, nonpublic high school graduate and

VOLUME 51, NUMBER 3– September 1, 2024

of a GED recipient for a supplemental award. KRS 164.7874(3) requires the authority to establish score equivalents between the SAT and ACT. KRS 164.7881(4)(a) requires the authority to establish overall award levels for the program. KRS 164.7879(2)(c) requires the authority to promulgate administrative regulations determining eligibility for children of parents who are in the military and who claim Kentucky as their home of record. KRS 164.7881(4)(c) requires the authority to promulgate administrative regulations identifying equivalent undergraduate programs of study. This administrative regulation establishes those requirements relating to the Kentucky Educational Excellence Scholarship (KEES) Program.

Section 1. Definitions.

(1) "Academic term":

(a) Means the fall or spring semester or their equivalence under a trimester or quarter system at a postsecondary education institution; and

(b) Does not mean summer sessions.

(2) "Accredited out-of-state high school" means a high school that is:

(a) Located in a state other than Kentucky or in another country; and

(b) A member of an organization belonging to the Commission on International and Trans-Regional Accreditation.

(3) "ACT" means the test:

(a) Administered to a student for entrance to a Kentucky postsecondary education institution; and

(b) Owned by the ACT Corporation of Iowa City, Iowa.

(4) "Advanced placement" or "AP" is defined by KRS 164.002(1).

(5) "Cambridge Advanced International" or "CAI" is defined by KRS 164.002(2).

(6) "Course" means the equivalent of one (1) credit as determined by the Kentucky Department of Education (KDE) in 704 KAR 3:305.

(7) "Department of Defense school" means a school operated by the U.S. Department of Defense for the purpose of providing a high school education to a child whose custodial parent or guardian is in active military or diplomatic service in a state other than Kentucky or in another country.

(8) "Dual credit" is defined by KRS 158.007(8).

(9) "Enrolled" means the status of a student who has completed the registration requirements, except for the payment of tuition and fees, at a participating postsecondary education institution that the student is attending.

(10) "Free and reduced price lunch" means the National School Lunch program established by the United States Department of Agriculture, Richard B. Russell National School Lunch Act, 42 U.S.C. 1751, et. seq., to provide subsidized meals to lower income students.

(11) "GED" means a general educational development diploma awarded to a student.

(12) "International Baccalaureate" or "IB" is defined by KRS 164.002(7).

(13) "SAT" means the test:

(a) Administered to a student for entrance to a Kentucky postsecondary education institution; and

(b) Owned by the College Board.

Section 2. High School Grade Point Average Calculation and Reporting.

(1) An eligible high school student's grade point average for an academic year shall be calculated using each letter grade awarded for all courses taken during an academic year. The grading scale cutoff scores used to determine the letter grade for each course shall be the same as those used to determine the letter grade for each course reported on the student's official high school transcript.

(2)

(a) Except as established in paragraphs (b) and (c) of this subsection, an eligible high school student's grade point average shall be calculated by:

1. Taking the number of units in a course multiplied by the course grade as expressed on a 4.0 point grading scale where 4.0 is an "A", 3.0 is a "B", 2.0 is a "C", 1.0 is a "D", and 0.0 is an "F";

2. Adding the total number of points accumulated for an academic year; and

3. Dividing the total number of points accumulated in subparagraph 2 of this paragraph by the total number of units for the academic year.

(b) For an eligible high school student taking an AP, IB, or CAI course during the academic year, the course grade assigned shall be calculated using a 5.0 point scale where 5.0 is an "A", 4.0 is a "B", 3.0 is a "C", 2.0 is a "D", and 1.0 is an "F".

(c) Beginning with the academic year 2015-2016, for an eligible high school student taking a dual credit course during the academic year, the course grade assigned by the college shall be used by the high school in calculating the KEES grade point average, and shall be included in the KEES calculation using a 5.0 point scale where 5.0 is an "A", 4.0 is a "B", 3.0 is a "C", 2.0 is a "D", and 1.0 is an "F". This weighted scale shall not be applicable to a remedial course.

(3) The grade point average reported for an eligible high school student for each academic year shall include all information as **established [set forth]** in KRS 164.7885(1) and be submitted to the authority in either an electronic or hard copy format.

(4) A high school student who participated in an educational high school foreign exchange program or the Congressional Page School that was approved by the student's local high school shall have the student's grade point average reported in accordance with KRS 164.7879(2)(b).

Section 3. High School Students of Custodial Parents or Guardians in Active Military Service.

(1)

(a) For purpose of determining eligibility under the provisions of KRS 164.7879(2)(c), a high school student shall establish that the custodial parent or guardian meets the requirements of KRS 164.7879(2)(c)1.a. and b. and shall submit ~~[the Home of Record Certification form]~~ to the authority ~~[-]~~ documentation demonstrating **that the custodial parent or guardian:**

1. [That the custodial parent or guardian] is in active service in the U.S. Armed Forces; and

2. [That the custodial parent or guardian] has been transferred by the U.S. Armed Forces from a Kentucky location to a non-Kentucky location.

(b) The authority annually shall notify the eligible high school student and the custodial parent or guardian of the student's eligibility.

(2)

(a) A high school student, determined to be eligible for the KEES program under the terms of KRS 164.7879(2)(c) and subsection (1)(a) of this section, shall be responsible for requesting:

1. Grade and curriculum information from the local school; and

2. That the local school submit the information to the authority using the Curriculum Certification form and the Data Submission form.

(b) Upon receipt of curriculum and grade information from an accredited out-of-state high school or Department of Defense school for a student determined to be eligible for the KEES Program under this section, the authority shall:

1. Verify that the submitted curriculum meets the requirements of Section 4 of this administrative regulation;

2. Verify that the out-of-state high school or Department of Defense school is an accredited high school; and

3. Retain the Curriculum Certification form on file until the student's eligibility has expired.

Section 4. Postsecondary Student Eligibility and KEES Curriculum.

(1) A Kentucky postsecondary student shall be eligible to receive a base scholarship award if the student:

(a) Has earned a base scholarship award in high school;

(b) Has completed the KEES curriculum as **established [set forth]** in subsection (2) of this section;

(c) Has graduated from a Kentucky high school, except as established in Section 2(4) or 3 of this administrative regulation; and

VOLUME 51, NUMBER 3– September 1, 2024

(d) Is enrolled in a participating institution in an eligible program.
 (2) Except as established in subsection (4) of this section, the KEES curriculum shall consist of the curriculum standards established in 704 KAR 3:305.

(3) A student who graduates from high school at the end of the fall semester of his or her senior year and who meets the requirements of KRS 164.7874(7) shall be eligible to earn a KEES award for that year upon:

- (a) Completion of no fewer than three (3) courses of study; and
- (b) Satisfying the provisions of KRS 164.7879.

(4) Except as established in subsection (5) of this section, a high school may substitute an integrated, applied, interdisciplinary, or higher level course for a required course or required academic and career interest standards-based learning experience if the course:

(a) Provides the same or greater academic rigor and the course covers or exceeds the minimum required content areas established in 703 KAR ~~5:270~~~~4:060~~; or

(b) Is an honors course, cooperative education course, AP course, IB course, CAI course, dual credit course, or a course taken at a postsecondary education institution.

(5) Beginning with the 2018-2019 academic year, each cooperative education course taken during an academic year shall satisfy KEES curriculum requirements if the course has been approved by the Office of Career and Technical Education as a work-based learning experience in a career pathway pursuant to 705 KAR ~~4:231~~~~4:123~~ and 705 KAR 4:041. For all other cooperative education coursework, only one (1) course per academic year shall count for purposes of satisfying KEES curriculum requirements.

(6) A high school annually shall provide written documentation to a student advising if the student's schedule of coursework meets the requirements of the KEES curriculum.

Section 5. Eligible Postsecondary Education Programs.

(1) An eligible program shall be a certificate or degree program offered by a participating institution and recognized by the authority pursuant to 11 KAR 15:010, Section ~~1(12)~~~~1(10)~~.

(2) Except as established in subsection (3)(4) of this section, an eligible program at an out-of-state participating institution shall be limited to those programs that qualify through the Academic

Common Market administered by the Southern Regional Education Board.

(3) Pursuant to KRS 164.7881(4)(c)1, an academic program shall be designated as an equivalent undergraduate program of study if the student in the program of study:

- (a) Has not received eight (8) academic terms of a KEES award;
- (b) Is classified by an institution as a graduate or professional student and is enrolled in one (1) of the following academic programs:
 1. Pharm. D;
 2. A veterinary medicine program at an institution that participates in the Kentucky Contract Spaces Program; or
 3. An optometric medicine program at an institution that participates in the Optometry Scholarship Program; and
- (c) Has not completed a baccalaureate degree.

Section 6. Postsecondary Grade Point Average Calculation and Reporting.

(1) Each participating institution shall report to the authority the cumulative grade point average for each KEES recipient enrolled in that institution no later than June 30 after the completion of the award period.

(2) The cumulative grade point average shall be reported to the hundredths decimal place. Any cumulative grade point average ~~that~~~~which~~ contains a number of five (5) or greater in the thousandths place shall be rounded up to the nearest hundredth. Any cumulative grade point average ~~that~~~~which~~ contains a number less than five (5) in the thousandths place shall be rounded down to the nearest hundredth.

(3) If a KEES recipient had an incomplete grade when the cumulative grade point average was initially reported to the authority and subsequently receives a final grade, the participating institution shall recalculate the recipient's cumulative grade point average as of the end of the appropriate award period and report the updated cumulative grade point average to the authority.

Section 7. SAT Conversion Table.

(1) Pursuant to KRS 164.7874(3), the SAT to ACT Conversion Table included in this subsection shall be used to convert scores for SAT exams taken prior to the 2011-2012 academic year.

Table C-2 Concordance Between SAT I Recentered V+M Score and ACT Composite Score

SAT IV+M	ACT Composite	SAT IV+M	ACT Composite	SAT IV+M	ACT Composite	SAT IV+M	ACT Composite	SAT IV+M	ACT Composite
1600	35-36	1370	31	1140	25	910	19	680	14
1590	35	1360	31	1130	25	900	19	670	14
1580	35	1350	30	1120	24	890	18	660	14
1570	35	1340	30	1110	24	880	18	650	13
1560	35	1330	30	1100	24	870	18	640	13
1550	34	1320	30	1090	24	860	18	630	13
1540	34	1310	29	1080	23	850	17	620	13
1530	34	1300	29	1070	23	840	17	610	13
1520	34	1290	29	1060	23	830	17	600	13
1510	34	1280	29	1050	22	820	17	590	13
1500	33	1270	28	1040	22	810	17	580	12
1490	33	1260	28	1030	22	800	16	570	12
1480	33	1250	28	1020	22	790	16	560	12
1470	33	1240	28	1010	21	780	16	550	12
1460	33	1230	27	1000	21	770	16	540	12
1450	32	1220	27	990	21	760	16	530	12
1440	32	1210	27	980	21	750	15	520	12
1430	32	1200	26	970	20	740	15	510	11
1420	32	1190	26	960	20	730	15	500	11
1410	32	1180	26	950	20	720	15		
1400	31	1170	26	940	20	710	15		

VOLUME 51, NUMBER 3– September 1, 2024

1390	31	1160	25	930	19	700	14		
1380	31	1150	25	920	19	690	14		

This table may be used to relate SAT I V+M scores to ACT Composite scores. The estimates are based on the test scores of 103,525 students from fourteen (14) universities and two (2) states who took both the ACT and the SAT I between October 1994 and December 1996. Because the ACT and the SAT I have different content, students' actual scores on the ACT could differ significantly from the concordance estimates in the table. Source: ACT, Inc. Questions about the concordance study may be directed to ACT's Research Division (319/337-1471). January, 1998

(2) Pursuant to KRS 164.7874(3), the SAT to ACT Conversion Table included in this subsection shall be used to convert scores for SAT exams taken during or after the 2011-2012 academic year, but

prior to March 2016. Only the scores from the critical reasoning and mathematics sections of the SAT within a single exam administration shall be considered for KEES supplemental awards.

Table C-2 Concordance Between SAT I Recentered V+M Score and ACT Composite Score

SAT CR+M	ACT Composite	SAT ICR+M	ACT Composite	SAT ICR+M	ACT Composite	SAT ICR+M	ACT Composite	SAT ICR+M	ACT Composite
1600	36	1370	31	1140	25	910	19	680	14
1590	35	1360	31	1130	25	900	19	670	14
1580	35	1350	30	1120	24	890	18	660	13
1570	35	1340	30	1110	24	880	18	650	13
1560	35	1330	30	1100	24	870	18	640	13
1550	35	1320	29	1090	24	860	18	630	13
1540	35	1310	29	1080	23	850	17	620	13
1530	34	1300	29	1070	23	840	17	610	12
1520	34	1290	29	1060	23	830	17	600	12
1510	34	1280	28	1050	23	820	17	590	12
1500	34	1270	28	1040	22	810	16	580	12
1490	34	1260	28	1030	22	800	16	570	12
1480	33	1250	28	1020	22	790	16	560	12
1470	33	1240	27	1010	21	780	16	550	11
1460	33	1230	27	1000	21	770	16	540	11
1450	33	1220	27	990	21	760	15	530	11
1440	33	1210	27	980	21	750	15	520	11
1430	32	1200	26	970	20	740	15	510	11
1420	32	1190	26	960	20	730	15		
1410	32	1180	26	950	20	720	15		
1400	32	1170	26	940	20	710	14		
1390	31	1160	25	930	19	700	14		
1380	31	1150	25	920	19	690	14		

This table may be used to relate SAT CR+M scores to ACT Composite scores. The estimates are based on the test scores of 300,437 students who took both the ACT and the SAT CR+M between September 2004 and June 2006. Because the ACT and the SAT CR+M have different content, students' actual scores on the ACT could differ significantly from the concordance estimates in the table. Source: ACT, Inc. Questions about the concordance study may be directed to ACT's Research Division (319/337-1471). June, 2008

(3) Pursuant to KRS 164.7874(3), the SAT and ACT Conversion Table included in this subsection shall be used to convert scores for SAT exams taken during or after the March 2016-2017 academic

year, but prior to July 2018. Only the scores from the Evidence-Based Reading and Writing Sections (ERW+M) of the SAT within a single exam administration shall be considered for KEES supplemental awards.

Table C-2 Concordance Between SAT ERW+M Score and ACT Composite Score

SAT ERW+M	ACT Composite	SAT ERW+M	ACT Composite	SAT ERW+M	ACT Composite	SAT ERW+M	ACT Composite	SAT ERW+M	ACT Composite
1600	36	1380	29	1160	24	940	18	720	13
1590	35	1370	29	1150	23	930	17	710	12
1580	35	1360	29	1140	23	920	17	700	12
1570	35	1350	29	1130	23	910	17	690	12
1560	35	1340	28	1120	22	900	17	680	12
1550	34	1330	28	1110	22	890	16	670	12
1540	34	1320	28	1100	22	880	16	660	12

VOLUME 51, NUMBER 3– September 1, 2024

1530	34	1310	28	1090	21	870	16	650	12
1520	34	1300	27	1080	21	860	16	640	12
1510	33	1290	27	1070	21	850	15	630	12
1500	33	1280	27	1060	21	840	15	620	11
1490	32	1270	26	1050	20	830	15	610	11
1480	32	1260	26	1040	20	820	15	600	11
1470	32	1250	26	1030	20	810	15	590	11
1460	32	1240	26	1020	20	800	14	580	11
1450	32	1230	25	1010	19	790	14	570	11
1440	31	1220	25	1000	19	780	14	560	11
1430	31	1210	25	990	19	770	14		
1420	31	1200	25	980	19	760	14		
1410	30	1190	24	970	18	750	13		
1400	30	1180	24	960	18	740	13		
1390	30	1170	24	950	18	730	13		

(4) Pursuant to KRS 164.7874(3), the SAT and ACT Conversion Table included in this subsection shall be used to convert scores for SAT exams taken during or after July 2018. Only the scores from

the Evidence-Based Reading and Writing Sections (ERW+M) of the SAT within a single exam administration shall be considered for KEES supplemental awards.

Table C-2 Concordance Between SAT ERW+M Score and ACT Composite Score

SAT ERW+M	ACT Composite	SAT ERW+M	ACT Composite	SAT ERW+M	ACT Composite	SAT ERW+M	ACT Composite	SAT ERW+M	ACT Composite
1600	36	1400	31	1200	25	1000	19	800	14
1590	36	1390	31	1190	24	990	19	790	14
1580	36	1380	30	1180	24	980	18	780	14
1570	36	1370	30	1170	24	970	18	770	13
1560	35	1360	30	1160	24	960	18	760	13
1550	35	1350	29	1150	23	950	17	750	13
1540	35	1340	29	1140	23	940	17	740	13
1530	35	1330	29	1130	23	930	17	730	13
1520	34	1320	28	1120	22	920	17	720	12
1510	34	1310	28	1110	22	910	16	710	12
1500	34	1300	28	1100	22	900	16	700	12
1490	33	1290	27	1090	21	890	16	690	12
1480	33	1280	27	1080	22	880	16	680	11
1470	33	1270	27	1070	21	870	15	670	11
1460	33	1260	27	1060	21	860	15	660	11
1450	33	1250	26	1050	20	850	15	650	11
1440	32	1240	26	1040	20	840	15	640	10
1430	32	1230	26	1030	20	830	15	630	10
1420	32	1220	25	1020	19	820	14	620	10
1410	31	1210	25	1010	19	810	14	610	10

Section 8. Criteria for Supplemental Award to Noncertified, Nonpublic High School Students and to GED Students.

(1) A Kentucky resident who is a citizen, national, or permanent resident of the United States and who graduates from a nonpublic Kentucky high school not certified by the Kentucky Board of Education shall be eligible for a supplemental award if:

- (a) The student is not a convicted felon;
- (b) The date of the student's graduation is May 1999 or thereafter;
- (c) The student takes the ACT or SAT and has at least a minimum score as established by KRS 164.7879(3); and
- (d) The student enrolls in a participating institution within five (5) years after graduation from high school.

(2) A Kentucky resident who is a citizen, national, or permanent resident of the United States and who has not graduated from any Kentucky or out-of-state public or nonpublic high school shall be eligible for a supplemental award if:

- (a) The student is not a convicted felon;
- (b) The student's 18th birthday occurs on or after January 1, 1999;
- (c) The student takes and receives a GED diploma in Kentucky:
 - 1. Prior to being admitted to a participating institution; and
 - 2. Within five (5) years after attaining eighteen (18) years of age;
- (d) The student takes the ACT or SAT and achieves a minimum score for eligibility as established by KRS 164.7879(3); and
- (e) The student enrolls in a participating institution after July 1, 1999, and within five (5) years of receiving the GED diploma.

(3) A student who graduates from or attends an accredited out-of-state high school or Department of Defense school shall qualify for a supplemental award if:

(a) The parents meet the provisions of KRS 164.7879(2)(c)1.a. and b.;

(b) The student takes the ACT or SAT and achieves a minimum score for eligibility as established by KRS 164.7879(3); and

(c) The student enrolls in a participating institution within five (5) years of graduating from or attending the accredited out-of-state high school or Department of Defense school.

(4) A student requesting a supplemental award under this section shall notify the participating institution where the student has or intends to enroll.

(5)

(a) Residency shall be determined by a participating institution in accordance with 13 KAR 2:045.

(b) A participating institution shall determine a student's eligibility for a supplemental award under this section and shall notify the authority of the student's eligibility.

Section 9. Supplemental Award. An eligible high school student who receives a supplemental award as a result of taking and receiving a GED within five (5) years of attaining eighteen (18) years of age shall have a maximum of five (5) years eligibility beyond the date the GED is received.

Section 10. Supplemental Award for Achievement on Examinations.

(1) Pursuant to KRS 164.7879(3)(c) and (d), a supplemental award shall be provided for achievement on AP, IB, or CAI examinations to an eligible high school student whose family was eligible for free and reduced price lunch during any year of high school.

(2)

(a) An eligible high school shall report the status of each student as eligible or ineligible for free and reduced price lunch to the authority on an annual basis.

(b) In determining a high school student's free and reduced price lunch eligibility, the high school shall utilize the income eligibility guidelines published each year by the United States Department of Agriculture, Food and Nutrition Service, available at www.fns.usda.gov/school-meals/income-eligibility-guidelines.

Section 11. Administrative Responsibilities and Expenses of Program.

(1) The authority annually shall determine the level of funding for expenses associated with the program and shall allocate funds from the Wallace G. Wilkinson Kentucky Educational Excellence Scholarship Trust Fund established by KRS 164.7877(1) and (3).

(2) The authority annually shall adopt a budget proposal indicating the amount of funds available and a detailed listing of the expenditures necessary to operate the program.

(3) The authority shall develop an allotment schedule for the release of the administrative funds.

Section 12. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) ~~["Home of Record Certification", June 2005];~~

~~[(b)]~~ "Curriculum Certification", June 2005; and

~~[(b)]~~ ~~[(c)]~~ "Data Submission", June 2005.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Higher Education Assistance Authority, 100 Airport Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

FILED WITH LRC: August 13, 2024

CONTACT PERSON: Hon. Miles F. Justice, General Counsel, Kentucky Higher Education Assistance Authority, P.O. Box 798, Frankfort, Kentucky 40602-0798, phone (502) 696-7309, fax (502) 696-7293, email mjustice@kheaa.com.

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY
Division of Student Financial Aid
(As Amended at ARRS, August 13, 2024)

11 KAR 15:110. Scholarships for Registered Apprenticeship and Qualified Workforce Training programs.

RELATES TO: KRS 164.7871-164.7885

STATUTORY AUTHORITY: KRS 164.744(2), 164.748(4), 164.753(3), 164.7884, 164.7894

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.7884(5) requires the authority to promulgate administrative regulations establishing the procedures for making awards to KEES-eligible students participating in a registered apprenticeship or qualified workforce training program. **This administrative regulation establishes the procedures to award funds to KEES-eligible students participating in registered apprenticeships or qualified workforce training programs.**

Section 1. Eligibility.

(1) A student who has earned a KEES award and who is enrolled in a registered apprenticeship program shall be eligible to request reimbursement for approved post-secondary expenses beginning with the 2018-2019 academic year.

(2) A student who has earned a KEES award and who is enrolled in a qualified workforce training program shall be eligible to request reimbursement for approved post-secondary expenses for the academic year beginning July 1, 2020.

(3) A student who has earned a KEES award and who is enrolled in an approved workforce solution training program shall be eligible to request reimbursement for approved post-secondary expenses for the academic year beginning July 1, 2023.

(4) A student who has earned a KEES award and who is enrolled in a qualified proprietary school program shall be eligible to request reimbursement for approved post-secondary expenses for the academic year beginning July 1, 2023.

(5) A student who has earned a KEES award and who is enrolled in an eligible college of art and design shall be eligible to request reimbursement for approved post-secondary expenses for the academic year beginning July 1, 2023.

~~[(3)]~~ Reimbursement shall be made only for approved expenses as established provided in KRS 164.7884(3)(a).

Section 2. Election Process.

(1) By August 1 prior to the start of the academic year, a student enrolled in a registered apprenticeship, ~~or~~ qualified workforce training program, approved workforce solutions training program, qualified proprietary school program, or eligible college of art and design shall submit to KHEAA their funding pathway choice, either traditional or reimbursement, for postsecondary KEES use.

(2) If a student chooses the traditional KEES funding pathway, funds shall be paid to the student's ~~postsecondary~~ institution pursuant to KRS 164.7874 through ~~to~~ 164.7883 and KRS 164.7885 upon KHEAA's receipt of enrollment verification from the institution. Funds shall not be paid directly to the student by KHEAA.

(3) If a student chooses the ~~registered apprenticeship or qualified workforce training~~ reimbursement pathway, funds for approved expenses shall be paid directly to the student upon KHEAA's receipt of both a reimbursement request and proof of purchase by the student.

(4) Any student who fails to make an election by August 1 shall automatically be placed in the traditional KEES funding pathway.

Section 3. Reimbursement Process.

(1) Upon receipt of a student's election to participate in the ~~registered apprenticeship or qualified workforce training~~ reimbursement pathway, KHEAA shall provide written confirmation to the student detailing the reimbursement process.

(2) To be eligible for reimbursement, the student shall:

(a) Purchase items required for participation in the registered apprenticeship, ~~or~~ qualified workforce training program, approved workforce solutions training program, qualified proprietary school program, or eligible college of art and design;

VOLUME 51, NUMBER 3– September 1, 2024

(b) Complete and submit to KHEAA a KEES Expense Reimbursement Request; and

(c) Submit to KHEAA supporting documentation, including an itemized dated receipt.

(3) Upon receipt of the required documentation and approval of the reimbursement request, KHEAA shall provide reimbursement of the approved expenses directly to the student in the form of a paper check.

(4) In addition to reimbursable purchases, a student may request a travel allowance of up to \$250 per semester to cover commuting costs incurred during participation in the registered apprenticeship, ~~or~~ qualified workforce training program, approved workforce solutions training program, qualified proprietary school program, or eligible college of art and design.

(5) The total reimbursement amount per year shall not exceed the student's KEES award maximum.

(6) Eligibility for reimbursement ends the earlier of:

(a) Five (5) years following the student's date of high school graduation or GED receipt;

(b) The student's successful completion of a registered apprenticeship, ~~or~~ qualified workforce training program, approved workforce solutions training program, qualified proprietary school program, or eligible college of art and design program; or

(c) Receipt of reimbursement for four (4) academic years.

Section 4. Conversion of Funding Pathway. A student may elect to change their funding pathway one (1) time after making their initial election.

(1) The completed KEES Reimbursement Pathway Selection Form ~~change request~~ shall be submitted to KHEAA ~~in writing~~.

(2) The change shall become effective at the beginning of the next academic year following KHEAA's receipt and approval of the request.

(3) The KEES award maximum for a student transitioning from the traditional KEES pathway to the reimbursement ~~registered apprenticeship or qualified workforce training~~ pathway shall be based on the student's postsecondary renewal amount for the last academic year completed in the traditional pathway.

Section 5. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "KEES Expense Reimbursement Request", July 2024; and

(b) "KEES Reimbursement Pathway Selection Form", July 2024.

(2) This material may be inspected, copied or obtained, subject to applicable copyright law, at the Kentucky Higher Education Assistance Authority, 100 Airport Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

FILED WITH LRC: August 13, 2024

CONTACT PERSON: Hon. Miles F. Justice, General Counsel, Kentucky Higher Education Assistance Authority, P.O. Box 798, Frankfort, Kentucky 40602-0798, phone (502) 696-7309, fax (502) 696-7293, email mjustice@kheaa.com.

**EDUCATION AND LABOR CABINET
Education Professional Standards Board
(As Amended at ARRS, August 13, 2024)**

16 KAR 2:110. Endorsement for teachers for gifted education.

RELATES TO: KRS 161.020, 161.028, 161.030, 161.052

STATUTORY AUTHORITY: KRS 161.020, 161.028, 161.030, 161.052

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.020, 161.028, and 161.030 require that teachers and other professional school personnel hold certificates of legal qualifications for their respective positions to be issued upon completion of programs of preparation approved by the Education Professional Standards Board (EPSB). KRS 161.052 requires that all persons employed as a teacher for gifted education hold an appropriate certificate

endorsement for gifted education. This administrative regulation establishes a preparation-certification program for teachers for gifted education.

Section 1. Definition ~~Definitions~~.

~~[(1)] "Qualified teacher" means a teacher who holds the appropriate certification as a teacher for gifted education unless the superintendent of the employing school district has documented evidence that the teacher is unsuitable for appointment.]~~

~~[(2)] "Teacher for gifted education" means a teacher who works:~~

~~(1) [(a)] Directly with identified gifted pupils, in addition to the regularly assigned classroom teacher; or~~

~~(2) [(b)] For at least one-half (1/2) of the regular school day in a classroom made up only of properly identified gifted students.~~

Section 2.

(1) A certificate endorsement as teacher for gifted education shall be issued in accordance with KRS Chapter 161 and KAR Title 16 to an applicant who:

(a) Holds a certificate valid for classroom teaching at the elementary school level, the middle grade level, or the high school level; and

~~(b) [Successfully completed the Kentucky Teacher Internship Program established in 16 KAR 7:010. A teacher who has successfully completed the Kentucky Teacher Internship Program prior to issuance of the initial probationary certificate or who is not required to complete the internship program under the requirements for out-of-state teachers established in KRS 161.030(5) shall not be required to complete the internship program again while serving on the probationary certificate; and]~~

~~[(e)] Has completed the appropriate program of preparation for the certificate endorsement established in this administrative regulation at a teacher education institution approved under the standards and procedures established in 16 KAR 5:010.~~

(2) The endorsement as teacher for gifted education shall be valid for grades primary ~~[K]-12~~.

(a) Assignment to a full-time self-contained gifted education class shall be restricted to the level of the base certificate.

(b) The endorsement shall have the same duration as the base certificate.

(3) Each person employed as a teacher for gifted education shall hold an appropriate certificate endorsement for gifted education, except a teacher:

(a) Identified in Section 3 of this administrative regulation; or

(b) Certified on or before July 1, 1984, in accordance with KRS 161.052.

Section 3.

(1) A probationary endorsement for teachers for gifted education may be issued to a candidate who:

(a) Holds a Kentucky teaching certificate; and

(b) Is enrolled in an EPSB approved preparation program for the endorsement for teachers for gifted education.

(2) Application for a probationary endorsement for teachers for gifted education shall be submitted to the EPSB and shall:

(a) Contain a recommendation from the educator preparation provider for the endorsement; and

(b) Be in compliance with 16 KAR 2:010, Section 3(1). [If a qualified teacher is not available for the position of teacher for gifted education as attested by the local school superintendent, the superintendent, on behalf of the local board of education, may request a probationary endorsement for teaching gifted education for a teacher who:]

[(a)] [Has a bachelor's degree;]

[(b)] [Has a valid Kentucky teaching certificate;]

[(c)] [Has been admitted to the preparation program for the endorsement for teachers for gifted education; and]

[(d)] [Is currently enrolled in graduate studies related to the education profession.]

[(2)] [The request for the probationary endorsement shall be submitted on Form CA-GP to the Education Professional Standards Board for each teacher for gifted education requiring the probationary endorsement.]

(3)

(a) The probationary endorsement for teachers for gifted education shall be valid for a period of two (2) years from the initial request.

(b) A teacher receiving this probationary endorsement shall complete the required curriculum for recommendation for the endorsement for teacher for gifted education issued under Section 2 of this administrative regulation within the two (2) year validity of the probationary endorsement.

(c) The probationary endorsement shall not be renewed.

[Section 4.] [Incorporation by Reference.]

[(1)] [Form CA-GP, 08/15, is incorporated by reference.]

[(2)] [This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Education Professional Standards Board, 100 Airport Road, 3rd Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.]

FILED WITH LRC: August 13, 2024

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.

**EDUCATION AND LABOR CABINET
Education Professional Standards Board
(As Amended at ARRS, August 13, 2024)**

16 KAR 2:140. Probationary certificate for teachers of exceptional children and interdisciplinary early childhood education[, birth to primary].

RELATES TO: KRS 157.3175, 161.020, 161.030, 34 C.F.R. 300.156 (c)(2)[34 C.F.R. 200.56, 20 U.S.C. 7801(23)]

STATUTORY AUTHORITY: KRS 161.020, 161.028, 161.030

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.020 and 161.030 require that a teacher and other professional school personnel hold a certificate of legal qualification for the respective position to be issued upon completion of a program of preparation prescribed by the Education Professional Standards Board (EPSB). KRS 161.028(1)(a) requires the EPSB[Education Professional Standards Board] to establish the standards for obtaining and maintaining a teaching certificate. KRS 161.028(1)(b) requires that a teacher education institution be approved for offering the preparation program corresponding to a particular certificate on the basis of standards and procedures established by the EPSB[Education Professional Standards Board]. KRS 161.028(1)(f) requires the EPSB[Education Professional Standards Board] to issue and renew any certificate. This administrative regulation establishes a plan for recruiting certified teachers[qualified individuals] into positions for teachers of exceptional children and interdisciplinary early childhood education.[ages birth to primary age-]

Section 1. Requirements for Probationary Certificate for Teachers of Exceptional Children or Interdisciplinary Early Childhood Education.[Definition: "Qualified teacher" means a teacher who holds an interdisciplinary early childhood education certificate or who has received an approval as established in 16 KAR 2:040, Section 5, unless the superintendent of the employing school district has documented evidence that the teacher is unsuitable for appointment.]

[Section 2.] [If a qualified teacher is not available for the position as teacher of children birth to primary age, as attested by the local school superintendent, the superintendent, on behalf of the local board of education, may request a]

(1) A one (1) year probationary certificate for teachers of exceptional children certificate or interdisciplinary early childhood education may[certificate] be issued to a candidate who:

(a) Holds a Kentucky teaching certificate; and

(b) Is enrolled in an EPSB approved educator preparation program for the certification area for which application is being made.[as provided in this administrative regulation.]

[(1)] [~~A prerequisite for a one (1) year probationary interdisciplinary early childhood education certificate for teaching children, birth to primary age, shall be:~~]

[(a)] [~~A certificate or statement of eligibility in kindergarten or elementary special education; or~~]

[(b)] [~~A certificate in another area, if the applicant has had one (1) year of teaching children birth through age five (5) years.]~~]

[(2)] [~~The applicant shall have:~~]

[(a)] [~~Enrolled in an approved preparation program for certification in interdisciplinary early childhood education established in 16 KAR 2:040; and~~]

[(b)] [~~Completed a minimum of nine (9) semester hours of credit in the development of children below primary age or in special education.]~~]

[(3)] [~~The requirements established in subsection (2) of this section shall be verified by submission of a curriculum contract completed by the teacher education institution with an interdisciplinary early childhood education preparation program approved pursuant to 16 KAR 2:040.]~~]

[(4)] [~~The applicant shall complete twelve (12) clock hours of training established by the Kentucky Department of Education prior to employment.]~~]

[(5)] [~~The applicant shall complete an additional six (6) clock hours of training established by the Kentucky Department of Education within the first three (3) months of employment.]~~]

[(6)] [~~To apply for the probationary interdisciplinary early childhood education certificate, the applicant shall submit a completed Form CA-BP to the Education Professional Standards Board.]~~]

(2) Application for a probationary certificate for a teacher of exceptional children or interdisciplinary early childhood education shall:

(a) Contain a recommendation from the educator preparation provider for the grade level and specialization of the probationary certificate; and

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

(3) The probationary certificate for a teacher of exceptional children or interdisciplinary early childhood education shall be issued in accordance with the grade level and specialization as recommended by the educator preparation provider and be valid for employment consistent with the area of certification being sought through the preparation program.

Section 2.[Section 3.] Requirements for Renewal of a Probationary Certificate for Teachers of Exceptional Children or Interdisciplinary Early Childhood Education[Certificate].

(1) Upon application to the EPSB, a candidate shall be eligible for renewal of the probationary certificate for a teacher of exceptional children if he or she is in compliance with 16 KAR 2:010, Section 3(1), and has a recommendation from the educator preparation provider based on continued enrollment and progress towards the completion of the preparation program.

(2) The probationary certificate for teachers of exceptional children or interdisciplinary early childhood education may be renewed a maximum of two (2) times.[The first renewal of the probationary interdisciplinary early childhood education certificate shall be for one (1) year based upon:]

[(a)] [~~Evidence of employment in a Kentucky school district or nonpublic school as a teacher of children ages birth to primary;~~]

[(b)] [~~Completion of at least six (6) semester hours or its equivalent from the interdisciplinary early childhood education preparation program as approved pursuant to 16 KAR 2:040 and indicated on the teacher's curriculum contract; and~~]

[(c)] [~~Successful completion of the Kentucky Teacher Internship Program established in 16 KAR 7:010. A teacher who has successfully completed the Kentucky Teacher Internship Program prior to issuance of the initial probationary certificate or who is not required to complete the internship program under the requirements for out-of-state teachers established in KRS 161.030(5) shall not be required to complete the internship program again while serving on the probationary certificate.]~~]

[(2)]

VOLUME 51, NUMBER 3– September 1, 2024

~~[(a)] [Subsequent one (1) year renewals of the probationary interdisciplinary early childhood education certificate shall require at least six (6) semester hours or its equivalent of additional credit from the interdisciplinary early childhood education preparation program as approved pursuant to 16 KAR 2:40 and as indicated on the teacher's curriculum contract.]~~

~~[(b)] [The total validity period of the probationary certificate for interdisciplinary early education shall not exceed three (3) years in compliance with the No Child Left Behind Act of 2001, 20 U.S.C. 7801(23) and 34 C.F.R. 200.56.]~~

~~(3) Upon application to the EPSB, compliance with 16 KAR 2:010, Section 3(1), and successful completion of all program requirements for the approved exceptional children or interdisciplinary early childhood education preparation program [established in 16 KAR 2:040,] including successful completion of all required assessments established in 16 KAR 6:010, a professional certificate for teaching exceptional children established in 16 KAR 2:010 or interdisciplinary early childhood education, birth to primary, established in 16 KAR 4:020 and valid for five (5) years shall be issued.~~

~~(4) Program requirements for completion of the exceptional children interdisciplinary early childhood education preparation program while serving on the probationary certificate established in this administrative regulation shall not include student teaching.~~

[Section 4.] [Incorporation by Reference.]

~~[(1)] [Form CA-BP, 08/15, Education Professional Standards Board, 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.]~~

FILED WITH LRC: August 13, 2024

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.

**EDUCATION AND LABOR CABINET
Education Professional Standards Board
(As Amended at ARRS, August 13, 2024)**

16 KAR 2:170. Probationary certificate for middle school teachers.

RELATES TO: KRS 161.020, 161.028, 161.030

STATUTORY AUTHORITY: KRS 161.020, 161.028, 161.030

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.020 and 161.030 require that a teacher and other professional school personnel hold a certificate of legal qualifications for the respective position to be issued upon completion of a program of preparation prescribed by the Education Professional Standards Board (EPSB). KRS 161.028 requires the Education Professional Standards Board to establish the standards for obtaining and maintaining a teaching certificate. This administrative regulation establishes the probationary certificate for middle school teachers and the requirements for issuance and renewal of this certificate.

Section 1. [Definition. "Qualified teacher" means a teacher who holds the appropriate certification as a middle school teacher unless the superintendent of the employing school district has documented evidence that the teacher is unsuitable for appointment.]

[Section 2.] Requirements for Issuance of the Probationary Certificate for Middle School Teachers, Grades ~~5-9~~ [Five (5) Through Nine (9)].

(1) A one (1) year probationary certificate for middle school teachers may be issued to a candidate who:

(a) Holds a Kentucky teaching certificate; and

(b) Is enrolled in an EPSB approved middle school preparation program for the content area or areas for which certification is sought.

(2) Application for a probationary certificate for middle school teachers shall be submitted to the EPSB and shall:

(a) Contain a recommendation from the educator preparation provider for the content area or areas of the probationary certificate for middle school teachers; and

(b) Be in compliance with 16 KAR 2:010, Section 3(1). [If a qualified teacher is not available for the position of middle school teacher at the grade level and content area necessary as attested by the local superintendent, the superintendent may request a one (1) year probationary certificate for a teacher who:]

~~[(a)] [Holds at least a valid Kentucky teaching statement of eligibility or Kentucky teaching certificate issued by the Education Professional Standards Board;]~~

~~[(b)]~~

~~[1.] [Has a cumulative grade point average of at least 2.5 on a 4.0 scale; or]~~

~~[2.] [Has a grade point average of at least 3.0 on a 4.0 scale on the last sixty (60) hours of credit completed, including undergraduate and graduate coursework;]~~

~~[(c)] [Has an offer of employment from a Kentucky school district or accredited nonpublic school in grades five (5) through nine (9) in a content area or areas;]~~

~~[(d)] [Has enrolled in an approved middle school preparation program for the content area or areas for which certification is sought; and]~~

~~[(e)] [Has successfully completed at least twelve (12) semester credit hours of content coursework in each content area for which certification is sought.]~~

~~[(2)] [Application shall be made on Form CA-MG.]~~

~~[(3)] [Compliance with the requirements established in subsection (1)(d) and (e) of this section shall be verified by submission of a curriculum contract completed by the teacher education institution with a middle school preparation program, approved pursuant to 16 KAR Chapter 5, in the content area or areas for which certification is sought.]~~

~~(3)~~

~~[(a)] [(4)] [(a)] Upon completion of all requirements established in this section, the applicant shall be issued a probationary certificate for middle school teachers in the content area or areas as recommended by the educator preparation provider valid for one (1) year.~~

~~(b) The probationary certificate shall be valid for teaching grades **5-9** [Five (5) through Nine (9)] in the content area or areas indicated on the face of the certificate.~~

Section 2. [Section 3.] Requirements for Renewal of a Probationary Certificate for Middle School Teachers, Grades ~~5-9~~ [Five (5) Through Nine (9)].

(1) A candidate shall be eligible for renewal of the probationary certificate for middle school teachers upon application to the EPSB, compliance with 16 KAR 2:010, Section 3(1), and recommendation from the educator preparation provider based on continued enrollment and progress towards the completion of the preparation program. [The first renewal of the probationary certificate for middle school teachers shall be for one (1) year based upon:]

~~[(a)] [Evidence of employment in a Kentucky school district or nonpublic school in grades five (5) through nine (9) in the content area or areas indicated on the initial probationary certificate;]~~

~~[(b)] [Completion of at least six (6) semester hours or its equivalent from the middle school preparation program, approved pursuant to 16 KAR Chapter 5, as indicated on the teacher's curriculum contract; and]~~

~~[(c)] [Successful completion of the Kentucky Teacher Internship Program established in 16 KAR 7:010. A teacher who has successfully completed the Kentucky Teacher Internship Program prior to issuance of the initial probationary certificate or who is not required to complete the internship program under the requirements for out-of-state teachers established in KRS 161.030(5) shall not be required to complete the internship program again while serving on the probationary certificate.]~~

~~[(2)]~~

~~[(a)] [Subsequent one (1) year renewals of the probationary certificate for middle school teachers shall require at least six (6)~~

VOLUME 51, NUMBER 3– September 1, 2024

semester hours or its equivalent of additional credit from the middle school preparation, approved pursuant to 16 KAR Chapter 5, program as indicated on the teacher's curriculum contract.]

(2)(b) The probationary certificate for middle school teachers may be renewed for a maximum of two (2) times after the initial issuance.

(3) Upon successful completion of all program requirements for the middle school preparation program, approved pursuant to 16 KAR Chapter 5, including successful completion of all required assessments established in 16 KAR 6:010, a professional certificate for teaching middle school established in 16 KAR 2:010 and valid for five (5) years shall be issued.

(4) Program requirements for completion of the middle school preparation program while serving on the probationary certificate for middle school teachers shall not include student teaching.

[Section 4.] [Incorporation by Reference.]

(1) [Form CA-MG, 08/15, Education Professional Standards Board, 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 40602, Monday through Friday, 8 a.m. to 4:30 p.m.]

FILED WITH LRC: August 13, 2024

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.

**EDUCATION AND LABOR CABINET
Education Professional Standards Board
(As Amended at ARRS, August 13, 2024)**

16 KAR 2:200. Probationary endorsement for teachers for English as a second language.

RELATES TO: KRS 161.020, 161.028, 161.030

STATUTORY AUTHORITY: KRS 161.020, 161.028, 161.030

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.020, 161.028, and 161.030 require that teachers and other professional school personnel hold certificates of legal qualifications for their respective positions to be issued upon completion of programs of preparation approved by the Education Professional Standards Board (EPSB). This administrative regulation establishes a plan for recruiting certified classroom teachers into positions for teachers of English as a second language.

Section 1. Definition[Definitions].

(1) ["Qualified teacher" means a teacher who holds the appropriate certification as a teacher for English as a second language unless the superintendent of the employing school district has documented evidence that the teacher is unsuitable for appointment.]

(2) "Teacher for English as a second language" means a teacher who works:

(1)(a) Directly with identified English as a second language pupils, in addition to the regularly assigned classroom teacher; or

(2)(b) In a classroom made up only of properly identified English as a second language students.

Section 2.

(1) A probationary endorsement for teaching English as a second language may be issued to a candidate who:

(a) Holds a Kentucky teaching certificate; and

(b) Is enrolled in an EPSB approved preparation program for the endorsement for teaching English as a second language.

(2) Application for a probationary endorsement for teaching English as a second language shall be submitted to the EPSB and shall:

(a) Contain a recommendation from the educator preparation provider for the endorsement; and

(b) Be in compliance with 16 KAR 2:010, Section 3(1).[If a qualified teacher is not available for the position of teacher for English as a second language as attested by the local school superintendent, the superintendent, on behalf of the local board of education, may request by filing a Form CA-EL with the Education Professional Standards Board a probationary endorsement for teaching English as a second language for a teacher who:]

[(a)] [Has a bachelor's degree;]

[(b)] [Has a valid Kentucky teaching certificate;]

[(c)] [Has completed at least one (1) year of successful teaching experience;]

[(d)] [Has been admitted to the preparation program for the endorsement for teachers for English as a second language; and]

[(e)] [Is currently enrolled in graduate studies related to the education profession.]

[(2)] [The request for the probationary endorsement shall be submitted on Form CA-EL to the Education Professional Standards Board for each teacher for English as a second language requiring the probationary endorsement.]

(3)

(a) The probationary endorsement for teachers for English as a second language shall be valid for a period of two (2) years from the initial request.

(b) A teacher receiving this probationary endorsement shall complete the required curriculum for recommendation for the endorsement for teacher for English as a second language within the two (2) year validity of the probationary endorsement.

(c) The probationary endorsement shall not be renewed.

[Section 3.] [Incorporation by Reference.]

[(1)] [Form CA-EL, 08/15, is incorporated by reference.]

[(2)] [This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Education Professional Standards Board, 100 Airport Road, 3rd Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.]

FILED WITH LRC: August 13, 2024

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.

**STATE BOARD OF ELECTIONS
(Amended at Interim Joint Committee on State
Government, August 22, 2024)**

31 KAR 5:026. Ballot standards and election security.

RELATES TO: KRS 116.025, 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.

VOLUME 51, NUMBER 3– September 1, 2024

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 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.

(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.]~~

VOLUME 51, NUMBER 3– September 1, 2024

[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.] A voter who changes his or her place of registration to a different state while the registration books are closed in the new state of residence before a presidential election shall be permitted to cast an absentee ballot for President and Vice President only, pursuant to KRS 116.025(7) and 117.085(1)(h)4. by completing SBE Form 44P, Presidential Only Absentee Ballot Application.

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, 04/2024 [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; and
 - (g) "Presidential Only Absentee Ballot Application", Form SBE 44P. 08/2024.
- (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.
- (3) This material may also be obtained on the board's Web site at <https://elect.ky.gov>.

FILED WITH LRC: August 22, 2024
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, August 13, 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" [~~(s)~~] 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 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;

VOLUME 51, NUMBER 3– September 1, 2024

(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.

FILED WITH LRC: July 9, 2024

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.

GENERAL GOVERNMENT CABINET
Personnel Board
(As Amended at ARRS, August 13, 2024)

101 KAR 1:335. Employee actions.

RELATES TO: KRS 18A.075(1), ~~18A.095~~

STATUTORY AUTHORITY: KRS 18A.075, 18A.0751(1), (4)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 18A.075(1) requires the Personnel Board to promulgate

comprehensive administrative regulations consistent with the provisions of KRS 18A.005 through 18A.200. KRS 18A.0751(1) and (4) require the Personnel Board to promulgate administrative regulations for the classified service governing demotion, transfer, reinstatement, and discipline. This administrative regulation establishes the method for determining an employee's work station, the requirements governing a demotion, transfer, or reinstatement of an employee, and requirements relating to written reprimands.

Section 1. Work Station.

(1) ~~The street address of the primary work station assigned by the appointing authority shall be an employee's official work station. [The official work station of an employee assigned to an office shall be the street address where the office is located.]~~

~~[(2)] [The official work station of a field employee shall be that address to which the employee is assigned at the time of appointment to the employee's current position.]~~

~~[(2)]~~ Except as provided by Sections 2, 3, and 4 of this administrative regulation, an appointing authority may assign an employee to work at a site other than his or her current work station if the:

- (a) Site is within the employee's county of employment; and
- (b) Assignment is not a transfer, demotion, or reinstatement.

Section 2. Demotion.

(1) A demotion for cause shall be intra-agency.

(2) Voluntary demotion.

(a) A voluntary demotion shall be made if an employee with status requests a voluntary demotion on the Voluntary Transfer/ Demotion/ Promotion Employee Agreement Form incorporated by reference by the Personnel Cabinet in 101 KAR 2:034.

(b) The form shall include:

- 1. The effective date of the demotion;
- 2. The position from which the employee requests demotion;
- 3. The position to which the employee will be demoted;
- 4. The pay grade, salary, and work week for the position to which the employee will be demoted; and
- 5. A statement that the employee waives the right to appeal the demotion.

(c) The agency shall forward a copy of the form to the Personnel Cabinet Secretary.

(3) A voluntary demotion shall be interagency or intra-agency.

Section 3. Transfers.

(1) The transfer of an employee with status shall conform to the requirements established in this section.

(2)

(a) A transfer shall be on a voluntary or involuntary basis.

(b) An appointing authority shall establish cause for selecting an employee for involuntary transfer.

(c) If an employee has not requested a transfer in writing, a transfer shall be deemed involuntary.

(3) Involuntary transfer, same county.

(a) Prior to the effective date of an involuntary transfer to a position with a work station in the same county, an employee shall receive a written notice of involuntary transfer.

(b) The notice shall:

- 1. Indicate that the employee:
 - a. Has been selected for transfer; and
 - b. Is required to report to the new work station; and
- 2. State the:

- a. New work station;
- b. Reason for the transfer;
- c. Effective date of the transfer; and
- d. Right of the employee to appeal the transfer to the board within ~~thirty (30)~~ ~~[sixty (60)]~~ calendar days of receipt of the notice of involuntary transfer, excluding the date the notice is received.

(c) A copy of the notice shall be forwarded to the Personnel Cabinet Secretary.

(d) An employee shall report to the new work station upon the date stated in the notice.

(4) Involuntary transfer, out of county. If an involuntary transfer is to a position with a work station in a different county:

VOLUME 51, NUMBER 3– September 1, 2024

(a) An employee shall be entitled to travel expenses as provided by 200 KAR 2:006;

(b) An employee shall receive a written notice of involuntary transfer at least thirty (30) calendar days prior to the effective date of the transfer; and

(c) The notice shall contain:

1. The information established in subsection (3)(b) of this section; and

2. A statement that the employee is entitled to reimbursement of travel expenses incurred thirty (30) calendar days following the effective date of the transfer.

(5) An involuntary transfer shall be intra-agency.

(6) Voluntary transfer.

(a) Prior to a voluntary transfer, an employee with status shall request a voluntary transfer on the Voluntary Transfer/ Demotion/ Promotion Employee Agreement Form incorporated by reference by the Personnel Cabinet in 101 KAR 2:034.

(b) The form shall include:

1. The effective date of the transfer;

2. The position number and job classification from which the employee requests a transfer;

3. The position number and job classification to which the employee requests a transfer;

4. The pay grade, salary, and work week for the position to which the employee will be transferred; and

5. A statement that the employee waives the right to appeal the transfer.

(c) The agency shall forward a copy of the form to the Personnel Cabinet Secretary.

(7) A voluntary transfer shall be interagency or intra-agency.

Section 4. Reinstatement.

(1) A request for reinstatement shall be submitted by the appointing authority to the Personnel Cabinet Secretary.

(2) The request shall include a finding that the candidate for reinstatement:

(a) Meets the current qualifications for the job classification to which the employee is being reinstated; and

(b) Has previously held status at that grade level or higher.

(3) If an employee previously held status in a job classification where a pay grade change subsequently occurred, the employee shall be deemed as having held status in the highest pay grade for that job classification.

(4) If the reinstatement is to a job classification outside of the job classification where the employee has previously held status, the candidate shall pass the appropriate examination, if applicable, prior to reinstatement.

~~(5)~~(4) The request for reinstatement shall contain a copy of the board's order ordering reinstatement, if applicable.

Section 5. Written Reprimand.

(1) An employee or former employee may petition the Personnel Cabinet Secretary for removal of a written reprimand and all related documentation from the employee's official personnel file after a period of three (3) years from the date of the written reprimand.

(a) An employee's request shall not be granted if the employee has received any disciplinary action or written reprimand in the three (3) years prior to the request for removal.

(b) A petition for removal shall:

1. Be made by the employee and be dated and signed; and

2. Include:

a. The employee's current position number, job classification, agency, work phone number, and work address;

b. The employee's immediate supervisor at the time of the petition for removal;

c. The date the written reprimand was issued;

d. A statement by the employee that the employee has not received any disciplinary actions or written reprimands in the three (3) years prior to the petition; and

e. A statement that the information contained in the petition is correct and complete to the best of the employee's knowledge, and that the employee has provided notification of the petition to the employee's current appointing authority.

(c) The petition for removal shall be mailed by first-class mail, hand-delivered to the office of the Personnel Cabinet Secretary, or submitted electronically as permitted by the Personnel Cabinet Secretary.

(2) A petition for removal of a written reprimand shall be approved by the Personnel Cabinet Secretary before the reprimand removal.

(a) The Personnel Cabinet Secretary shall approve or deny the petition for removal within thirty (30) calendar days of receipt of the petition.

(b) If the petition is denied, the Personnel Cabinet Secretary shall notify the employee in writing and provide justification for denial. The decision by the secretary with respect to the petition shall be final and not appealable to the Personnel Board.

(c) If the petition is approved, the Personnel Cabinet Secretary shall notify the employee and the appointing authority of the employee's agency in writing of the approval.

(3) Upon removal from an employee's official personnel file maintained by the Personnel Cabinet, a written reprimand shall be handled as established in this subsection.

(a) The written reprimand shall be delivered to the Office of Legal Services and remain in the custody and care of the Office of Legal Services.

(b) The Office of Legal Services shall maintain the written reprimand as confidential work-product materials for the availability or use in any future legal proceeding.

(c) If no legal proceeding involving the employee's personnel file has been filed within five (5) years of receipt, the written reprimand shall be permanently destroyed.

(d) Upon removal from the official personnel file, but prior to destruction, a written reprimand shall not be considered as part of any personnel action.

(e) The employing agency shall be notified by the Personnel Cabinet of the removal of a written reprimand from an employee's official personnel file.

FILED WITH LRC: August 13, 2024

CONTACT PERSON: Gordon A. Rowe, Jr., Executive Director, Personnel Board, 1025 Capital Center Drive, Suite 105, Frankfort, Kentucky 40601, phone (502) 564-7830, fax (502) 695-5799, email personnelboard@ky.gov.

GENERAL GOVERNMENT CABINET Personnel Board (As Amended at ARRS, August 13, 2024)

101 KAR 1:375. Employee grievances and complaints.

RELATES TO: KRS 18A.075, 18A.0751, 18A.095

STATUTORY AUTHORITY: KRS 18A.075, 18A.0751

NECESSITY, FUNCTION, AND CONFORMITY: KRS 18A.075 and 18A.0751 requires the Personnel Board to adopt comprehensive administrative regulations consistent with the provisions of KRS 18A.005 through 18A.200. KRS 18A.0751(1)(i) requires the Personnel Board to promulgate an administrative regulation governing employee grievances and complaints. This administrative regulation establishes the requirements governing employee grievances and complaints.

Section 1. Definition. "Grievance" means a complaint filed by an employee that concerns some aspect of the employee's conditions of employment:

(1) Over which the cabinet or agency has control; and

(2) That has occurred, or of which the employee has become aware through the exercise of due diligence, within thirty (30) calendar days prior to filing.

Section 2. General Provisions.

(1) An employee in the classified service who believes that they have been subjected to unfair or unjust treatment concerning the employee's conditions of employment may file a grievance. A grievance shall be in accordance with this administrative regulation.

(2) A grievance concerning an action that is appealable directly to the board pursuant to KRS 18A.095 may also be filed with the

VOLUME 51, NUMBER 3– September 1, 2024

cabinet or agency. The filing of a grievance with the cabinet or agency shall not:

- (a) Prohibit the employee from also filing an appeal with the board; or
 - (b) Extend the statutory appeal period.
- (3) An employee utilizing the procedure established in this administrative regulation shall be entitled to file a grievance without interference, coercion, discrimination, or reprisal.
- (4) An appointing authority shall inform its employees of the provisions of this administrative regulation or any modifications in the levels of review that have been approved by the Personnel Board for the employee's cabinet or agency pursuant to Section 4(3) of this administrative regulation.

Section 3. Procedures.

- (1) A grievance shall be filed on a Grievance Form with an 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 that is the subject of the grievance. If the action or conduct of the first line supervisor is the basis of an employee's grievance, the grievance may be filed with the second line supervisor.
- (2) An employee shall state in writing the basis of the employee's grievance or complaint together with the corrective action desired. If an employee wishes to submit additional information or documentation, the employee may attach it to the Grievance Form.
- (3) If a grievance is filed that alleges discrimination on the basis of race, color, religion, national origin, sex, disability, or age forty (40) or over, the recipient of this grievance shall immediately notify the cabinet or agency EEO coordinator to comply with the affirmative action plan.
- (4) Interviews to evaluate or investigate the grievance outside of normal work hours with the grievant or other employees shall entitle employee participants to compensatory time.
- (5) Interviews to evaluate or investigate the grievance held with the grievant or other employees shall not require the use of leave time.
- (6) Parties may have a representative present at each step of the grievance procedure.

Section 4. Grievance Levels.

- (1) Except as provided by Section 3(1) of this administrative regulation, the immediate supervisor shall, upon investigation, issue findings and a decision in writing to the employee within ten (10) work days after receipt of the grievance. If the responding supervisor is unable to resolve the complaint to the satisfaction of the employee, the employee may request review of the grievance, which shall be requested within five (5) work days of receipt of the decision by the next appropriate level.
- (2) The next line supervisors shall each have five (5) work days to respond to the grievance. The employee shall have five (5) work days after each intermediate supervisory review to decide to appeal the grievance to the next level.
- (3) If the line supervisors are unable to resolve the grievance to the satisfaction of the employee, the employee may request review of the grievance, which shall be requested within five (5) work days of receipt of the decision of the final line supervisor by the appointing authority for a final determination. The appointing authority, upon investigation, shall issue findings and a final determination in writing to the employee within twenty (20) work days.
- (4) Unless the time limits have been extended by agreement of the parties, failure of supervisory or management personnel to respond within the established time limits shall automatically advance the grievance to the next review level.
- (5) An intermediate grievance level may be waived. Waiver shall be by written agreement of the parties.

Section 5. Incorporation by Reference.

- (1) "Grievance Form", April 2024, [~~October 2014~~] is incorporated by reference.
- (2) This material may be [~~found on the Personnel Board's Web site, <https://personnelboard.ky.gov>, and may be~~] inspected, copied, or obtained, subject to applicable copyright law, [~~from the Web site and~~] at the Personnel ~~Board~~'s physical address [~~Board~~], 1025 Capital Center Drive, [~~Driver~~] Suite 105, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30

p.m. *This material may also be found on the Personnel Board's Web site at <https://personnelboard.ky.gov>.*

FILED WITH LRC: August 13, 2024
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BOARDS AND COMMISSIONS Board of Nursing (As Amended at ARRS, August 13, 2024)

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.

VOLUME 51, NUMBER 3– September 1, 2024

(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.

(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:

VOLUME 51, NUMBER 3– September 1, 2024

- (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 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.]

FILED WITH LRC: August 13, 2024

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.

BOARDS AND COMMISSIONS Board of Licensure for Occupational Therapy (As Amended at ARRS, August 13, 2024)

201 KAR 28:240. Occupational Therapy Licensure Compact.

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: August 13, 2024

CONTACT PERSON: Sara Boswell Janes, Staff Attorney III, Department of Professional Licensing, Office of Legal Services, 500 Mero Street, 2 NC WK#2, office phone (502) 782-2709, fax (502) 564-4818, email Sara.Janes@ky.gov.

PUBLIC PROTECTION CABINET
Department of Housing, Buildings and Construction
Division of Building Code Enforcement
(As Amended at ARRS, August 13, 2024)

815 KAR 7:120. Kentucky Building Code.

RELATES TO: KRS 132.010, 198B.010, 198B.040, 198B.050, 198B.060, 198B.080, 198B.260, 198B.990, 227.300, 227.550(6)(7)
 STATUTORY AUTHORITY: KRS 198B.040(7), 198B.050, **198B.260**

NECESSITY, FUNCTION, AND CONFORMITY: KRS 198B.040(7) and 198B.050 require the department to promulgate a mandatory uniform state building code that establishes standards for the construction of all buildings in the state. This administrative regulation establishes the Kentucky Building Code's general provisions.

Section 1. Definitions.

- (1) "Building" is defined by KRS 198B.010(4).
- (2) "Department" is defined by KRS 198B.010(13).
- (3) "Industrialized building system" or "building system" is defined by KRS 198B.010(18).
- (4) "Manufactured home" is defined by KRS 227.550(6).
- (5) "Single-family dwelling" or "1 family dwelling" means a single unit that:
 - (a) Provides complete independent living facilities for one (1) or more persons, including permanent provisions for living, sleeping, eating, cooking, and sanitation; and
 - (b) Is not connected to another building.
- (6) "Townhouse" means a single-family dwelling unit constructed in a group of three (3) or more attached units separated by property lines in which each unit extends from foundation to roof and with open space on at least two (2) sides.
- (7) "Two (2) family dwelling" means a building containing not more than two (2) dwelling units that are connected.

Section 2. Building Code. The 2015 International Building shall be the mandatory state building code for all buildings constructed in Kentucky except that:

- (1) The Kentucky amendments in the 2018 Kentucky Building Code shall supersede any conflicting provision in the 2015 International Building Code;
- (2) One (1) family dwellings, two (2) family dwellings, and townhouses shall be governed by 815 KAR 7:125; and
- (3) Manufactured homes shall be governed by KRS 227.550 through 227.665.

Section 3. State Plan Review and Inspection Fees. The fees required by this section shall apply for plan review and inspection by the department.

- (1) Fast track elective.
 - (a) A request for expedited site and foundation approval of one (1) week or less, prior to full review of the complete set of construction documents, shall be accompanied by the fee required by Table 121.3.1 in subsection (3) of this section, plus an additional fifty (50) percent of the basic plan review or inspection fee.
 - (b) The additional fifty (50) percent fee shall not be less than \$400 and not more than \$3,000.
 - (c) The entire fee shall be paid with the initial plan submission.
- (2) New buildings.
 - (a) The department's inspection fees shall be calculated by multiplying:
 - 1. The cost per square foot of each occupancy type as listed in Table 121.3.1 in subsection (3) of this section; and
 - 2. The square footage of the outside dimensions of the building.
 - (b) The fee for a building with multiple or mixed occupancies shall be calculated using the cost per square foot multiplier of the predominant use.
 - (c) The minimum fee for review of plans pursuant to this subsection shall be \$285.
 - (3) Table 121.3.1, Basic Department Fee Schedule. The basic plan review or inspection fee shall be as established in Table 121.3.1 in this subsection.

OCCUPANCY TYPE	COST PER SQUARE FOOT
Assembly	16 cents
Business	15 cents
Day care centers	15 cents
Educational	15 cents
High Hazard	16 cents
Industrial factories	15 cents
Institutional	16 cents
Mercantile	15 cents
Residential	15 cents
Storage	15 cents
Utility and Miscellaneous	13 cents
Production greenhouse	10 cents

- (4) Additions to existing buildings.
 - (a) Plan review fees for additions to existing buildings shall be calculated by multiplying the cost per square foot of the occupancy type listed in Table 121.3.1 in subsection (3) of this section by the measurement of the square footage of the addition, as determined by the outside dimensions of the addition and any other changes made to the existing build.
 - (b) The minimum fee for review of plans pursuant to this subsection shall be \$285.
- (5) Change in use.
 - (a) Plan review fees for existing buildings in which the use group or occupancy type is changed shall be calculated in accordance with the schedule listed in Table 121.3.1 in subsection (3) of this section by using the total square footage of the entire building or structure pursuant to the new occupancy type as determined by the outside dimensions.
 - (b) The minimum fee for review of plans pursuant to this subsection shall be \$285.
- (6) Alterations and repairs.
 - (a) Plan review fees for alterations and repairs not otherwise covered by this fee schedule shall be calculated by using the lower result of multiplying the:
 - 1. Cost of the alterations or repairs by 0.0030; or
 - 2. Total area being altered or repaired by the cost per square foot of each occupancy type listed in the schedule in subsection (3) of this section.
 - (b) The total square footage shall be determined by the outside dimensions of the area being altered or repaired.
 - (c) The minimum fee for review of plans pursuant to this subsection shall be \$285.
- (7) Specialized fees. In addition to the fees established by subsections (1) through (6) of this section, the following fees shall be applied for the specialized plan reviews listed in this subsection:
 - (a) Table 121.3.9, Automatic Sprinkler Review Fee Schedule. The inspection fee for automatic sprinklers shall be as established in Table 121.3.9 in this paragraph;

NUMBER OF SPRINKLERS	FEE
4 – 25	\$150
26 – 100	\$200
101 – 200	\$250
201 – 300	\$275
301 – 400	\$325
401 – 750	\$375
OVER 750	\$375 plus thirty (30) cents per sprinkler over 750

- (b) Fire detection system review fee.
 - 1. Zero through 20,000 square feet shall be \$275; and
 - 2. Over 20,000 square feet shall be \$275 plus thirty (30) dollars for each additional 10,000 square feet in excess of 20,000 square feet;
- (c) The standpipe plan review fee shall be \$275. The combination of stand pipe and riser plans shall be reviewed pursuant to the automatic sprinkler review fee schedule;
- (d) Carbon dioxide suppression system review fee.

VOLUME 51, NUMBER 3– September 1, 2024

1. One (1) through 200 pounds of agent shall be \$275; and
2. Over 200 pounds of agent shall be \$275 plus five (5) cents per pound in excess of 200 pounds;

(e) Clean agent suppression system review fee.

1.

- a. Up to thirty-five (35) pounds of agent shall be \$275; and
- b. Over thirty-five (35) pounds of agent shall be \$275 plus ten (10) cents per pound in excess of thirty-five (35) pounds; and
2. The fee for gaseous systems shall be ten (10) cents per cubic foot and not less than \$150;

(f) Foam suppression system review fee.

1. The fee for review of a foam suppression system shall be fifty (50) cents per gallon of foam concentrate if the system is not part of an automatic sprinkler system.

2. Foam suppression system plans that are submitted as part of an automatic sprinkler system shall be reviewed pursuant to the automatic sprinkler review fee schedule.

3. The fee for review of plans pursuant to subclause 1. of this paragraph shall not be less than \$275 or more than \$1,500;

(g) The commercial range hood review fee shall be \$225 per hood;

(h) Dry chemical systems review fee (except range hoods). The fee for review of:

1. One (1) through thirty (30) pounds of agent shall be \$275; and
2. Over thirty (30) pounds of agent shall be \$275 plus twenty-five (25) cents per pound in excess of thirty (30) pounds; and

(i) The flammable, combustible liquids or gases, and hazardous materials plan review fee shall be \$100 for the first tank, plus fifty (50) dollars for each additional tank and \$100 per piping system including valves, fill pipes, vents, leak detection, spill and overflow detection, cathodic protection, or associated components.

Section 4. General. All plans shall be designed and submitted to conform to this administrative regulation.

Section 5. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "2015 International Building Code", International Building Code Council, Inc.; and

(b) "2018 Kentucky Building Code", ~~Fourth~~^{Third} Edition, ~~February 2024~~^{August 2022}.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Housing, Buildings and Construction, 500 Mero Street, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m. and is available online at <http://dhbc.ky.gov/Pages/default.aspx>.

FILED WITH LRC: August 13, 2024

CONTACT PERSON: Jonathon M. Fuller, Deputy Commissioner, Department of Housing, Buildings and Construction, 500 Mero St., First Floor, Frankfort, Kentucky 40601, (502) 782-0617, max.fuller@ky.gov.

**PUBLIC PROTECTION CABINET
Department of Housing, Buildings and Construction
Division of Building Code Enforcement
(As Amended at ARRS, August 13, 2024)**

815 KAR 7:125. Kentucky Residential Code.

RELATES TO: KRS 198B.010, 198B.040, 198B.050, 198B.060, 198B.080, 198B.260, 198B.990

STATUTORY AUTHORITY: KRS 198B.040(7), 198B.050

NECESSITY, FUNCTION, AND CONFORMITY: KRS 198B.040(7) and 198B.050 require the department to promulgate a mandatory uniform state building code that establishes standards for the construction of all buildings in the state. This administrative regulation establishes the basic mandatory uniform statewide code provisions relating to construction of one (1) and two (2) family dwellings and townhouses.

Section 1. Definitions.

(1) "Single-family dwelling" or "one (1)-family dwelling" means a single unit that:

(a) Provides complete independent living facilities for one (1) or more persons, including permanent provisions for living, sleeping, eating, cooking, and sanitation; and

(b) Is not connected to any other unit or building.

(2) "Townhouse" means a single-family dwelling unit constructed in a group of three (3) or more attached units separated by property lines in which each unit extends from foundation to roof and with open space on at least two (2) sides.

(3) "Two (2) family dwelling" means a building containing not more than two (2) dwelling units that are connected.

Section 2. Residential Code.

(1) Except as provided in subsection (2) of this section, the 2015 International Residential Code for One (1) and Two (2) Family Dwellings (IRC) shall be the mandatory state residential building code for all single-family dwellings, two (2) family dwellings, and townhouses constructed in Kentucky, except that the Kentucky amendments in the 2018 Kentucky Residential Code shall supersede any conflicting provision in the 2015 IRC.

(2) Exceptions.

(a) Permits, inspections, and certificates of occupancy shall not be required for a single-family dwelling unless required by local ordinance.

(b) All residential occupancies that are not single-family dwellings, two (2) family dwellings, or townhouses shall comply with the 2015 International Building Code and the 2018 Kentucky Building Code.

(3) Plans for single-family dwellings, two (2) family dwellings, and townhouses shall be designed and submitted to conform to this administrative regulation.

Section 3. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "2015 International Residential Code for One (1) and Two (2) Family Dwellings," International Code Council, Inc.; and

(b) "2018 Kentucky Residential Code," ~~Third~~^{Second} Edition, ~~August~~^{February} ~~2024~~^{May 2020}.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Housing, Buildings and Construction, 500 Mero Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. and is available online at <http://dhbc.ky.gov/Pages/default.aspx>.

FILED WITH LRC: August 13, 2024

CONTACT PERSON: Jonathon M. Fuller, Deputy Commissioner, Department of Housing, Buildings and Construction, 500 Mero St., First Floor, Frankfort, Kentucky 40601, (502) 782-0617, max.fuller@ky.gov

ADMINISTRATIVE REGULATIONS AMENDED AFTER PUBLIC HEARING
OR RECEIPT OF WRITTEN COMMENTS

BOARDS AND COMMISSIONS
Board of Pharmacy
(Amended After Comments)

201 KAR 2:465. Non-resident pharmacy applications and waivers.

RELATES TO: KRS 315.191(1)(a), (d), 315.0351, 201 KAR 2:050

STATUTORY AUTHORITY: KRS 315.191(1)(a), (d)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 315.191(1)(a), (d) authorizes the board to promulgate administrative regulations and issue and renew permits for all pharmacies and require all persons who engage in the practice of the profession of pharmacy for a Kentucky resident to hold an active Kentucky pharmacist license. This administrative regulation establishes the requirements to obtain a non-resident pharmacy permit to engage in the practice of pharmacy in the Commonwealth.

Section 1. Inspection Requirements.

(1) Each pharmacy shall provide to the board and also maintain, in readily retrievable form, the record of a satisfactory inspection conducted within the previous twenty-four (24) month period by the licensing entity of the state where the pharmacy is located.

(2) If no such inspection record is readily available, the record of the satisfactory inspection conducted at the expense of the pharmacy within the previous twenty-four (24) months by a third-party recognized by the board to inspect may be accepted.

(3) If no such inspection has been performed within the previous twenty-four (24) months, the board shall conduct or contract with a third party recognized by the board to inspect the pharmacy, for which all costs shall be borne by the applicant.

Section 2. Pharmacist-in-Charge.

(1) The pharmacist-in-charge shall directly and timely respond to any lawful request for information from the board or law enforcement authorities.

(2) The pharmacist-in-charge shall be responsible for receiving and maintaining publications distributed by the board.

(3) The pharmacist-in-charge shall be responsible for answering the toll-free telephone service six (6) days a week and a minimum of forty (40) hours per week. The toll-free telephone number shall be present on the label of each prescription dispensed by the pharmacy to a Kentucky resident. If the pharmacist-in-charge is unavailable, a staff pharmacist with access to patient records may answer the call but the staff pharmacist shall notify the pharmacist-in-charge of the call and provide the pharmacist-in-charge with a callback number for the patient. If the staff pharmacist is unable to resolve the patient's question, the pharmacist-in-charge shall return the call of the patient within forty-eight (48) hours.

Section 3. Waiver.

(1) The board may grant a waiver from the permitting requirements of this section to any nonresident pharmacy which limits dispensing activity to isolated transactions.

(2) An isolated transaction is defined as a transaction in which dispensing is limited to an established patient of the dispensing pharmacy no more than three (3) times per calendar year.

Section 4. Applications.

(1) A prerequisite for receiving a permit as an out-of-state pharmacy is that the facility must be in good standing in the state where it is located and submit evidence consisting of the following:

(a) A copy of a valid license, permit or registration issued by the regulatory or licensing agency of the state in which the pharmacy is located; and

(b) A letter from the regulatory or licensing agency of the state in which the pharmacy is located that certifies the pharmacy is in good standing. **If the licensing agency does not provide a letter, primary source verification may be utilized.**

(2) Each applicant must disclose the following:

(a) Names and license numbers of all pharmacists and pharmacist-managers dispensing prescription legend drugs to an ultimate user in Kentucky, the names and, if available, the license or registration numbers of all supportive personnel employed by the out-of-state pharmacy who assist pharmacists in such dispensing;

(b) Names, locations, titles, social security number and date of birth of all principal corporate officers or members, if incorporated; and

(c) If the pharmacy is owned by a partnership or sole proprietorship, the name, location, title, social security number, and date of birth of any partner or owner of the pharmacy.

(d) A report containing this information shall be made on an annual basis and within thirty (30) days of each change for any principal office, pharmacist manager, corporate officer, partner, or owner of the pharmacy.

(3) Each non-resident pharmacy shall develop and provide the board with a policy and procedure manual that sets forth:

(a) Normal delivery protocols and times;

(b) The procedure to be followed if the patient's medication is not available at the out-of-state pharmacy, or if delivery will be delayed beyond normal delivery time;

(c) The procedure to be followed upon receipt of a prescription for an acute illness, which shall include a procedure for delivery of the medication to the patient from the out-of-state pharmacy at the earliest possible time, or an alternative that assures the patient the opportunity to obtain medication at the earliest possible time; **and**

(d) The procedure to be followed when the out-of-state pharmacy is advised that the patient's medication has not been received within the normal delivery time and that the patient is out of medication and requires interim dosage until mail prescription drugs become available; **and**

[(e)] [The procedure for shipping products pursuant to FDA approved and manufacturer guidelines].

(4) An applicant for an out-of-state pharmacy permit must designate a resident agent in Kentucky for service of process. Any such out-of-state pharmacy that does not so designate a resident agent shall be deemed to have appointed the Secretary of State of the State of Kentucky to be its true and lawful attorney upon whom process may be served. All legal process in any action or proceeding against such pharmacy arising from shipping, mailing or delivering prescription drugs in Kentucky shall be served on the resident agent. In addition, a copy of such service of process shall be mailed to the out-of-state pharmacy by certified mail, return receipt requested, at the address of the out-of-state pharmacy as designated on the registration form filed with the board. Any out-of-state pharmacy which does not register in this state, shall be deemed to have consented to service of process on the Secretary of State as sufficient service.

(5) Any entity who ships, mails, or delivers prescription drugs to Kentucky residents from more than one (1) out-of-state pharmacy shall register each pharmacy separately.

(6) An out-of-state pharmacy shall report to the disciplinary action taken by another state or jurisdiction against the pharmacy or pharmacy staff within thirty days of final case resolution.

(7) An applicant shall submit photographs of the exterior of the pharmacy building and working areas.

(8) A person who engages in the practice of the profession of pharmacy for a Kentucky resident shall hold an active Kentucky pharmacist license except under Section 3 of this administrative regulation.

CHRISTOPHER HARLOW, Executive Director

APPROVED BY AGENCY: August 14, 2024

FILED WITH LRC: August 14, 2024 at 10:00 p.m.

CONTACT PERSON: Christopher Harlow, Executive Director, Kentucky Board of Pharmacy, 125 Holmes Street, Suite 300, State Office Building Annex, Frankfort, Kentucky 40601, phone (502) 564-7910, fax (502) 696-3806, email Christopher.harlow@ky.gov.

VOLUME 51, NUMBER 3– September 1, 2024

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Christopher Harlow

(1) Provide a brief summary of:

(a) What this administrative regulation does: KRS 315.191(1)(a), (d) authorizes the board to promulgate administrative regulations and issue and renew permits for all pharmacies and require all persons who engage in the practice of the profession of pharmacy for a Kentucky resident to hold an active Kentucky pharmacist license. This administrative regulation establishes the requirements to obtain a non-resident pharmacy permit to engage in the practice of pharmacy in the Commonwealth.

(b) The necessity of this administrative regulation: This administration ensures the Board of Pharmacy has jurisdiction over pharmacies and pharmacists that are mailing and dispensing prescriptions to Kentucky patients.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 315.191(1)(a) authorizes the board to promulgate regulations controlling all matters set forth in KRS 315. KRS 315.0351 lays out requirements for non-resident pharmacy licensure.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will ensure that Kentucky patients are adequately protected per the mission of the Board of Pharmacy in KRS 315.005 and will provide clarity of requirements as listed in KRS 315.0351.

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will impact pharmacies located outside of the Commonwealth seeking a non-resident pharmacy permit with the board to ship medications to patients of the Commonwealth. In the past 5 years, the Kentucky Board of Pharmacy has issued an average of 88 non-resident pharmacy permits annually.

(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 non-resident pharmacists dispensing drugs into the Commonwealth will have to become licensed via the path, as provided for in an amendment to 201 KAR 2:030 and a \$50 fee as provided in 201 KAR 2:050.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): It will cost non-resident pharmacists \$50 to become licensed in Kentucky plus the fee for the background check and NABP Verify.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will maintain licensure in Kentucky and provide services to Kentucky patients.

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

(a) Initially: It is built into the Board's operating costs and software.

(b) On a continuing basis: It is built into the Board's operating costs and software.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Board revenues from pre-existing fees provide the funding source

to enforce the regulation. This funding is used to estimate the biennial budget allocation request. The budget allocated to the board will be used to fund this administrative regulation.

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

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

(9) TIERING: Is tiering applied? All resident and non-resident pharmacies are treated uniformly regarding licensure in the Commonwealth.

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 315.191(1)(a)(d)

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: Kentucky Board of Pharmacy

(a) Estimate the following for the first year:

Expenditures: \$146,922

Revenues: \$148,800

Cost Savings: N/A

(b) How will expenditures, revenues, or cost savings differ in subsequent years? This is not anticipated to differ in subsequent years.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): Only the Board of Pharmacy is impacted.

(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): Non-resident pharmacy applicants and permit holders.

(a) Estimate the following for the first year:

Expenditures: \$148,800

Revenues: N/A

Cost Savings: N/A

(b) How will expenditures, revenues, or cost savings differ in subsequent years? This is not anticipated to differ in subsequent years.

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: The estimate for the expenditure is based on the current data on the total number of non-resident pharmacists currently permitted by the board. Non-resident pharmacies account for approximately 3% of the total licenses, permit holders, and registrants of the board. Additional expenditure was estimated based on 0.5 FTE personnel costs. The revenue generated is based on the estimate for new non-resident pharmacy permit applications and renewals for the year.

(b) Methodology and resources used to determine the fiscal impact: Current and historical data was 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) This regulation will not have an overall negative or adverse major economic impact to the entities identified in questions (2) - (4).

(b) The methodology and resources used to reach this conclusion: The Board reviewed licensing data, current and historical to determine the fiscal impact.

**PUBLIC PROTECTION CABINET
Boxing and Wrestling Commission
(Amended After Comments)**

201 KAR 27:006. Powers and duties of inspector.

RELATES TO: KRS 229.011, ~~229.025, 229.031, 229.035, 229.021, 229.041, 229.054~~, 229.061, 229.155, 229.171, 229.190, 229.200, 229.991[, ~~EO 2016-270~~]

STATUTORY AUTHORITY: KRS 229.171[, ~~229.180~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 229.171(1) authorizes the authority to exercise sole jurisdiction over all boxing, kickboxing, mixed martial arts, and wrestling shows, exhibitions, and licensees in the commonwealth. [~~Executive Order 2016-270, effective May 16, 2016, abolished the Kentucky Boxing and Wrestling Authority and established the Kentucky Boxing and Wrestling Commission.~~] This administrative regulation establishes the duties of an inspector.

Section 1.

(1) The executive director or the executive director's designee shall assign an inspector to monitor each boxing, elimination event, mixed martial arts, and kickboxing show.

(2) The executive director or the executive director's designee may assign an inspector to monitor a wrestling show based on:

- (a) The availability of an inspector;
- (b) The need to conduct periodic inspections; and
- (c) Knowledge or information that a violation or potential violation may occur.

Section 2. Inspector's Duties.

(1) Except as otherwise established in 201 KAR Chapter 27, the inspector shall exercise immediate and full supervision, control, and regulation of any show on behalf of the commission and shall be responsible directly to the commission.

(2) The inspector's powers shall include authority:

- (a) Over each contestant, licensed or unlicensed, on the premises before, during, and after a show relating to the show;
- (b) To conduct hearings and issue decisions or rulings on questions, disputes, protests, complaints, or objections relating to the show;
- (c) To enforce the provisions of KRS Chapter 229 and 201 KAR Chapter 27;
- (d) To issue violations and penalties as established in KRS Chapter 229 and 201 KAR Chapter 27;
- (e) To eject or exclude from the premises or any part thereof any person whom the inspector reasonably believes is intoxicated or under the influence of a legal or illegal drug and who may create a hazard to others or interfere with the show;
- (f) To investigate possible violations of KRS Chapter 229 or 201 KAR Chapter 27;
- (g) To examine the books and records of any person who conducts a show or exhibition;
- (h) To issue a license required by 201 KAR 27:008; and
- (i) To approve the form and sufficiency of any bond filed in accordance with KRS ~~229.035~~~~229.054~~.

Section 3. Appeal. Any decision made pursuant to this administrative regulation may be appealed to the full commission in the manner prescribed in KRS 229.190.

MATT BYRD, Executive Director

RAY A. PERRY, Secretary

APPROVED BY AGENCY: August 15, 2024

FILED WITH LRC: August 15, 2024 at 10:35 a.m.

CONTACT PERSON: Doug Hardin, staff attorney, 500 Mero Street 254 CW, Frankfort, Kentucky 40601, phone (502) 782-8204, and email doug.hardin@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Doug Hardin

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes the powers and duties of the inspectors employed by the Kentucky Boxing and Wrestling Commission.

(b) The necessity of this administrative regulation: This regulation is necessary so that the Boxing and Wrestling commission inspectors have clearly defined authority to regulate boxing, wrestling, and other unarmed combat sporting events in Kentucky.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 229.155 authorizes the Commission's executive director to employ "sufficient regulatory staff...that shall be responsible for the day-to-day operations of the commission."

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Employing inspectors with clearly defined roles will help ensure that unarmed combat events are run safely and in compliance with the law.

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

(a) How the amendment will change this existing administrative regulation: 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: The Boxing & Wrestling Commission licenses and regulates over 800 licensees that will be affected by this administrative regulation, as follows: • Over 679 licensed contestants (includes boxers, kickboxers, amateur mixed martial artists, professional mixed martial artists, and wrestlers); • Over 185 licensed non-contestants (includes judges, trainers, managers, referees, timekeepers, and seconds). • Over 6 licensed medical providers (includes physicians and healthcare professionals) • Over 40 licensed promoters

(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 will not require licensees to take any specific action to comply.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no cost to these licensees to comply with the regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Having inspectors assigned to monitor boxing, mixed martial arts, and wrestling events will help to ensure that these events are conducted safely and in compliance with the law.

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

(a) Initially: There will be no new costs to the Commission or its licensees.

(b) On a continuing basis: There will be no new costs to the Commission or its licensees.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Commission's funding comes from license fees and the tax

VOLUME 51, NUMBER 3– September 1, 2024

that promoters pay on ticket sales to unarmed combat shows.

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

(9) TIERING: Is tiering applied? Tiering does not apply because there are no different classifications of inspectors.

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 229.155 authorizes the Commission's executive director to employ "sufficient regulatory staff...that shall be responsible for the day-to-day operations of the commission."

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: Kentucky Boxing & Wrestling Commission

(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?

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): This regulation is not likely to affect any local government entities.

(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? The Commission does not anticipate any expenditures, revenue, or cost savings related to this regulation.

(4) Identify additional regulated entities not listed in questions (2) or (3): This regulation will likely impact the Commission's licensees, including contestants, physicians, promoters, referees, etc.

(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? The Commission does not anticipate any expenditures, revenue, or cost savings related to this regulation.

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: This regulation is not likely to have a significant fiscal impact.

(b) Methodology and resources used to determine the fiscal impact: The Commission already employees inspectors. This regulation will not result in any new employee hires.

(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 likely have no economic impact on these entities.

(b) The methodology and resources used to reach this conclusion: The Commission already employees inspectors. This regulation will not result in any new employee hires.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. N/A

(2) State compliance standards. N/A

(3) Minimum or uniform standards contained in the federal mandate. N/A

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? N/A

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. N/A

PUBLIC PROTECTION CABINET
Boxing and Wrestling Commission
(Amended After Comments)

201 KAR 27:023. Drug testing for boxing, kickboxing, mixed martial arts, ~~and wrestling~~, ~~and elimination event~~ shows.

RELATES TO: KRS ~~229.025~~~~229.071~~, ~~229.081~~, ~~229.091~~,] 229.111, 229.171, [~~229.180~~,]229.200[, ~~229.991~~, ~~EO 2016-270~~]

STATUTORY AUTHORITY: KRS 229.171[, ~~229.180~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 229.171(1) authorizes the ~~commission~~~~authority~~ to exercise sole jurisdiction over all boxing, kickboxing, mixed martial arts, and wrestling shows, exhibitions, and licensees in the commonwealth. ~~[Executive Order 2016-270, effective May 16, 2016, abolished the Kentucky Boxing and Wrestling Authority and established the Kentucky Boxing and Wrestling Commission.]~~This administrative regulation establishes the policies, procedures, and penalty guidelines associated with drug testing for participants in boxing, kickboxing, mixed martial arts, ~~and wrestling~~, ~~and elimination event~~ shows and exhibitions.

Section 1. Definitions.

(1) "In-competition" means the period commencing twelve (12) hours before the beginning of a bout, match, or exhibition of unarmed combat in which the licensee is scheduled to participate through the end of the bout, match, or exhibition and the sample collection process related to the bout match or exhibition.

(2) "Out-of-competition" means any period that is not in-competition.

(3) "Prohibited List" means the World Anti-Doping Agency Prohibited List dated January 2024.

Section 2. Applicability. This administrative regulation shall apply to all contestants, judges, and referees in boxing, kickboxing, mixed martial arts, wrestling, and elimination events.

Section 3. Prohibitions.

(1) The Prohibited List shall be used in conjunction with this administrative regulation.

(2) Except as established in Section 4 of this administrative regulation, the substances and methods listed in the following classes of the Prohibited List shall be prohibited in-competition and out-of-competition:

(a) S0. Non-approved substances;

(b) S1. Anabolic agents;

(c) S2. Peptide hormones, growth factors, and related substances and mimetics;

(d) S3. Beta-2 agonists;

(e) S4. Hormone and metabolic modulators;

(f) S5. Diuretics and masking agents;

(g) M1. Manipulation of blood and blood components;

(h) M2. Chemical and physical manipulation; and

(i) M3. Gene Doping.

(3) Except as established in Section 4 of this administrative regulation, the following substances listed in the Prohibited List shall be prohibited only while a licensee is in-competition:

(a) S6. Stimulants;

(b) S7. Narcotics;

(c) S8. Cannabinoids;

(d) S9. Glucocorticoids; and

(e) P1. Alcohol.

Section 4. Approved Substances. The following types of drugs or injections are approved:

(1) Antacids, such as Maalox;

VOLUME 51, NUMBER 3– September 1, 2024

(2) Antibiotics, antifungals, or antivirals for which the licensee has a prescription;

(3) Antidiarrheals, such as Imodium, Kaopectate, or Pepto-Bismol;

(4) Antihistamines for colds or allergies, such as Bromphen, Brompheniramine, Chlorpheniramine Maleate, Chlor-Trimeton, Dimetane, Hismal, PBZ, Seldane, Tavist-1, or Teldrin;

(5) Antinauseants, such as Dramamine or Tigan;

(6) Antipyretics, such as Tylenol;

(7) Antitussives, such as Robitussin, if the antitussive does not contain codeine;

(8) Antiulcer products, such as Carafate, Pepcid, Reglan, Tagamet, or Zantac;

(9) Asthma products in aerosol form, such as Brethine, Metaproterenol (Alupent), or Salbutamol (Albuterol, Proventil, or Ventolin);

(10) Asthma products in oral form, such as Aminophylline, Cromolyn, Nasalide, or Vanceryl;

(11) Ear products, such as Auralgan, Cerumenex, Cortisporin, Debrox, or Vosol;

(12) Hemorrhoid products, such as Anusol-HC, Preparation H, or Nupercainal;

(13) Laxatives, such as Correctol, Doxidan, Dulcolax, Efferyllium, Ex-Lax, Metamucil, Modane, or Milk of Magnesia;

(14) Nasal products, such as AYR Saline, HuMist Saline, Ocean, or Salinex; and

(15) The following decongestants and any decongestant that is pharmaceutically similar:

(a) Afrin; or

(b) Oxymetazoline HCL Nasal Spray.

Section 5. Testing Requirement. (1) A licensed boxer, kickboxer, professional mixed martial artist, amateur mixed martial artist, wrestling, or elimination event contestant, judge, or referee shall submit to a blood test, urinalysis, or chemical test at any time, in-competition or out-of-competition, if the commission or a representative of the commission directs him or her to do so.

Section 6. Violations and Penalties.

(1) A licensee who violates any provision of this administrative regulation shall be subject to a penalty issued by the commission.

(2) A blood test shall not be required within seven (7) days of the bout, competition, or exhibition unless directed by the commission upon finding of probable cause that a violation of Section 3 of this administrative regulation has occurred.

(3)

(a) In addition to any other penalty issued by the commission, if a contestant who won or drew a bout is found to have violated the provisions of this administrative regulation, the commission may change the result of that bout to a no decision loss if the commission finds that the drug used may have affected the result.

(b) A note shall be placed on the contestant's record that the change in decision was the result of testing positive for a banned substance or prohibited method.

(4) The commission shall investigate each alleged violation of this administrative regulation.

Section 7. Penalty Guidelines. The guidelines for use in determining a penalty pursuant to 201 KAR 27:105, Section 3 shall be as follows:

(1) For cannabis or cannabinoids:

(a) 1st offense: six (6) month suspension and a fine of fifty (50) dollars;

(b) 2nd offense: twelve (12) month suspension and a \$100 fine;

(c) 3rd offense: twenty-four (24) month suspension and a \$250 fine; or

(d) 4th offense: lifetime ban and a \$500 fine;

(2) For sedatives, muscle relaxants, sleep aids, anxiolytics, opiates, or opioids:

(a) 1st offense: eighteen (18) month suspension and a \$100 fine;

(b) 2nd offense: twenty-four (24) month suspension and a \$250 fine;

(c) 3rd offense: thirty-six (36) month suspension and a \$500 fine; or

(d) 4th offense: lifetime ban and a \$1,000 fine;

(3) For diuretics being used to cut weight:

(a) 1st offense: twenty-four (24) month suspension and a \$250 fine;

(b) 2nd offense: thirty-six (36) month suspension and a \$500 fine; or

(c) 3rd offense: lifetime ban and a \$1,000 fine;

(4) For stimulants:

(a) 1st offense: twenty-four (24) month suspension and a \$250 fine;

(b) 2nd offense: thirty-six (36) month suspension and a \$500 fine; or

(c) 3rd offense: lifetime ban and a \$1,000 fine;

(5) For anabolic steroids:

(a) 1st offense: thirty-six (36) month suspension and a \$500 fine;

(b) 2nd offense: forty-eight (48) month suspension and a \$750 fine; or

(c) 3rd offense: lifetime ban and a \$1,000 fine; or

(6) For avoiding or refusing testing or detection, altering or adulterating a urine or blood sample, providing a urine or blood sample not from the contestant, or using any masking agent:

(a) 1st offense: forty-eight (48) month suspension and a \$750 fine; or

(b) 2nd offense: lifetime ban and a \$1,000 fine.

Section 8. Incorporation by Reference.

(1) "World Anti-Doping Agency Prohibited List", January 2024, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Boxing and Wrestling Commission office at 500 Mero St, 218NC, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m., and is available online at <https://www.wada-ama.org/en/resources/world-anti-doping-code-and-international-standards/prohibited-list>.

MATT BYRD, Executive Director

RAY A. PERRY, Secretary

APPROVED BY AGENCY: August 15, 2024

FILED WITH LRC: August 15, 2024 at 10:35 a.m.

CONTACT PERSON: Doug Hardin, staff attorney, 500 Mero Street 254 CW, Frankfort, Kentucky 40601, phone (502) 782-8204, and email doug.hardin@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Doug Hardin

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes definitions, procedures, and penalties related to drug testing and prohibited substances for unarmed combat events.

(b) The necessity of this administrative regulation: This regulation is necessary to have clear guidelines, procedures, and penalties for banned substances and procedures for testing to ensure that contestants are not using banned substances.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 229.171 vests the Commission with sole jurisdiction over boxing, kickboxing, mixed martial arts, and wrestling shows.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Clear testing procedures will ensure that licensees compete safely and in compliance with the law.

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

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

VOLUME 51, NUMBER 3– September 1, 2024

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Boxing & Wrestling Commission licenses and regulates over 800 licensees that will be affected by this administrative regulation, as follows: • Over 679 licensed contestants (includes boxers, kickboxers, amateur mixed martial artists, professional mixed martial artists, and wrestlers) • Over 185 licensed non-contestants (includes judges, trainers, managers, referees, timekeepers, and seconds) • Over 6 licensed medical providers (includes physicians and healthcare professionals) • Over 40 licensed promoters

(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 provides licensees with a list of banned substances that contestants must refrain from ingesting prior and procedures that contestants must comply with to ensure they are not using a banned substance.

(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 these licensees to comply with the regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): A clear list of banned substances with clear testing procedures and penalties for violations will provide licensees with guidance for how to train and prepare for competitions and ensure that competitions are as fair and safe as possible.

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

(a) Initially: There will be no new costs to the Commission or its licensees.

(b) On a continuing basis: There will be no new costs to the Commission or its licensees.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Commission purchases drug testing kits as part of its ordinary operating budget, which is funded by licensee fees and the promoter tax on ticket sales to shows and events.

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

(9) TIERING: Is tiering applied? Tiering does not apply because the list of banned substances testing procedures, and penalties equally apply to all licensees.

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 229.171 vests the Commission with sole jurisdiction over boxing, kickboxing, mixed martial arts, and wrestling shows.

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: Kentucky Boxing & Wrestling Commission

(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?

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): This regulation is not likely to affect any local government entities.

(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? The Commission does not anticipate any expenditures, revenue, or cost savings related to this regulation.

(4) Identify additional regulated entities not listed in questions (2) or (3): The Commission's licensees, particularly contestants and promoters, will be affected by this regulation.

(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? The Commission does not anticipate any expenditures, revenue, or cost savings related to this regulation.

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: This regulation is not likely to have a significant fiscal impact.

(b) Methodology and resources used to determine the fiscal impact: The Commission already employees inspectors. This regulation will not result in any new employee hires.

(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 likely have no economic impact on these entities.

(b) The methodology and resources used to reach this conclusion: The costs associated with drug testing are already included in the Commission's ordinary operations budget.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate.

N/A

(2) State compliance standards. N/A

(3) Minimum or uniform standards contained in the federal mandate. N/A

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? N/A

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. N/A

PUBLIC PROTECTION CABINET
Boxing and Wrestling Commission
(Amended After Comments)

201 KAR 27:041. Managers.

RELATES TO: KRS ~~229.025~~[~~229.021~~, ~~229.081~~, ~~229.091~~], 229.171[, ~~EO 2016-270~~]

STATUTORY AUTHORITY: KRS [~~229.081~~, ~~229.091~~,]229.171[, ~~229.180~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 229.171(1) authorizes the ~~commission~~[~~authority~~] to exercise sole jurisdiction over all boxing, kickboxing, mixed martial arts, and wrestling shows, exhibitions, and licensees in the commonwealth. [~~Executive Order 2016-270, effective May 16, 2016, abolished the Kentucky Boxing and Wrestling Authority and established the Kentucky Boxing and Wrestling Commission.~~]This administrative regulation establishes standards governing the conduct of managers.

Section 1. Duties and Responsibilities.

(1) A manager shall only do business with a promoter, ring official, or contestant who holds an active license.

(2) A manager shall not act or attempt to act for a contestant unless authorized by the contestant.

(3) A contract between a manager and a contestant shall be filed with the commission as evidence of the manager's authority to act for the contestant.

(4) A manager shall keep accurate records of the receipts and expenses of the contestants under their management and control. These records shall be available to the contestants and to the commission.

MATT BYRD, Executive Director

RAY A. PERRY, Secretary

VOLUME 51, NUMBER 3– September 1, 2024

APPROVED BY AGENCY: August 15, 2024

FILED WITH LRC: August 15, 2024 at 10:35 a.m.

CONTACT PERSON: Doug Hardin, staff attorney, 500 Mero Street 254 CW, Frankfort, Kentucky 40601, phone (502) 782-8204, and email doug.hardin@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Doug Hardin

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes the powers and duties of licensed managers in unarmed combat events and shows in Kentucky.

(b) The necessity of this administrative regulation: This regulation is necessary so that licensed managers have clearly defined responsibilities.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 229.171 vests the Commission with sole jurisdiction over boxing, kickboxing, mixed martial arts, and wrestling shows.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Employing inspectors with clearly defined roles will help ensure that unarmed combat events are run safely and in compliance with the law.

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

(a) How the amendment will change this existing administrative regulation: 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: The Boxing & Wrestling Commission licenses and regulates over 800 licensees that will be affected by this administrative regulation, as follows: • Over 679 licensed contestants (includes boxers, kickboxers, amateur mixed martial artists, professional mixed martial artists, and wrestlers) • Over 185 licensed non-contestants (includes judges, trainers, managers, referees, timekeepers, and seconds) • Over 6 licensed medical providers (includes physicians and healthcare professionals) • Over 40 licensed promoters

(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 will require managers to apply for a license and comply with the provisions of Section 1.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The manager license application fee is \$40, as established by 201 KAR 27:008.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This regulation establishes clear duties and responsibilities for licensed managers.

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

(a) Initially: There will be no new costs to the Commission or its licensees.

(b) On a continuing basis: There will be no new costs to the Commission or its licensees other than the existing \$40 license application fee.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No additional funding will be required to implement or enforce this regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative

regulation, if new, or by the change if it is an amendment: No additional funding will be necessary 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 increase any fees.

(9) TIERING: Is tiering applied? Tiering does not apply because there are no different classifications of managers.

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 229.155 authorizes the Commission's executive director to employ "sufficient regulatory staff...that shall be responsible for the day-to-day operations of the commission."

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: Kentucky Boxing & Wrestling Commission

(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?

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): This regulation is not likely to affect any local government entities.

(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? The Commission does not anticipate any expenditures, revenue, or cost savings related to this regulation.

(4) Identify additional regulated entities not listed in questions (2) or (3): The Commission's licensees may be impacted by this regulation.

(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? The Commission does not anticipate any expenditures, revenue, or cost savings related to this regulation other than the existing license application fee.

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: This regulation is not likely to have a significant fiscal impact.

(b) Methodology and resources used to determine the fiscal impact: This regulation will not result in any new employee hires or any new fees for licensees.

(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 likely have no economic impact on these entities.

(b) The methodology and resources used to reach this conclusion: This regulation will not result in any new employee hires or any new fees for licensees.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. N/A

(2) State compliance standards. N/A

(3) Minimum or uniform standards contained in the federal mandate. N/A

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? N/A

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. N/A

VOLUME 51, NUMBER 3– September 1, 2024

PUBLIC PROTECTION CABINET
Boxing and Wrestling Commission
(Amended After Comments)

201 KAR 27:106. Violations, penalties, and appeals.

RELATES TO: KRS ~~229.025~~[~~229.024~~], 229.031, [~~229.074~~,
]229.091, 229.155, 229.171, [~~229.180~~], 229.190, 229.200[, ~~229.994~~,
~~EO 2016-270~~]

STATUTORY AUTHORITY: KRS ~~229.025~~[~~229.074~~, ~~229.094~~],
229.155, 229.171, [~~229.180~~], 229.190, 229.200[, ~~229.994~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS
229.171(1) authorizes the ~~commission~~[~~authority~~] to exercise sole
jurisdiction over all boxing, kickboxing, mixed martial arts, and
wrestling shows, exhibitions, and licensees in the commonwealth.
~~[Executive Order 2016-270, effective May 16, 2016, abolished
the Kentucky Boxing and Wrestling Authority and established
the Kentucky Boxing and Wrestling Commission.]~~ This
administrative regulation provides the policies and procedures that
govern the finding of a violation of KRS Chapter 229 or 201 KAR
Chapter 27, the issuance of a penalty, and the appeal of a penalty.

Section 1. Violations.

(1) A person shall be guilty of a violation for any of the following
actions:

- (a) Violating any provision of KRS Chapter 229;
- (b) Violating any provision of 201 KAR Chapter 27;
- (c) Being found guilty of, pleading guilty to, pleading no contest
to, or entering an Alford plea to a crime, other than a traffic violation,
that is detrimental to the interests of boxing, kickboxing, mixed
martial arts, or wrestling generally or to the public interest,
convenience, or necessity in any jurisdiction;
- (d) Being found liable in a civil action for any claim that involves
fraud or dishonesty in any jurisdiction if the person is a licensed
promoter, manager, referee, or judge;
- (e) Violating a law related to boxing, kickboxing, mixed martial
arts, elimination events, or wrestling in any jurisdiction;
- (f) Placing a bet or wager on any bout or match in which the
person participates or works;
- (g) Serving as, or consorting or associating with any person who
is, a bookmaker or illegal gambler;
- (h) Participating in an unlicensed event; or
- (i) Declaring bankruptcy if the person is a licensed promoter,
manager, referee, or judge.

(2) A person shall be guilty of a violation if the person authorizes
or ratifies any of the actions in subsection (1) of this section if the
action is taken by the person's agent, employee, shareholder,
member, officer, or director.

(3) A person who commits a violation shall be issued a notice of
violation.

Section 2. Penalties.

(1) If the commission has reason to believe that a person has
committed a violation, the commission may impose one (1) or more
of the following actions:

- (a) Issue a cease and desist order;
 - (b) Declare a contestant ineligible to compete or disqualify the
contestant;
 - (c) Eject the person from the premises at which the show or
exhibition is taking place;
 - (d) Issue a fine;
 - (e) Suspend, reprimand, revoke, probate, or refuse to renew or
issue a license; or
 - (f) Refer the person for criminal prosecution.
- (2) In issuing a penalty pursuant to subsection (1) of this section,
the commission shall consider:
- (a) The severity of the violation;
 - (b) The licensee's history of violations and penalties; and
 - (c) The violation's potential impact on health, safety, and the
outcome of a contest; and

(d) If the penalty is for a violation of 201 KAR 27:021, the penalty
guidelines established in 201 KAR 27:021, Section 7.

(3) A person whose license is currently suspended shall be
prohibited from:

- (a) Being present in a locker room that is used during a
commission-sanctioned event; and
- (b) Being located within the six (6) foot area surrounding the ring
or cage at a commission-sanctioned event.

Section 3. Inspector's Authority to Issue a Violation and a
Penalty.

(1) Pursuant to KRS 229.155, the commission shall authorize its
inspectors to:

- (a) Issue a notice of violation in accordance with Section 1 of
this administrative regulation; and
 - (b) Issue a penalty in accordance with Section 2 of this
administrative regulation.
- (2) A penalty issued by an inspector shall be subject to appeal
pursuant to Section 5 of this administrative regulation.

Section 4. Reciprocity of a Penalty.

(1) A licensee who is subjected to a penalty in any jurisdiction
shall report to the commission within ten (10) days the date, type,
and reason for the penalty given and the name of the regulatory
body that ordered the penalty.

(2) The commission shall enforce the penalty given by any other
regulatory body unless the licensee shows good cause why the
commission should not reciprocally enforce the penalty.

Section 5. Appeals.

(1) Any person issued a penalty may appeal the penalty to the
full commission.

(a) An appeal shall be filed within twenty (20) days of the date
the penalty is issued.

(b) The provisions of KRS Chapter 13B shall govern all
administrative appeals.

(2) A contestant may petition the Commission to change a
decision rendered at the end of a professional contest or exhibition
in which he or she competed. The Commission shall not change a
decision rendered at the end of any contest or exhibition unless:

- (a) The Commission determines that there was collusion
affecting the result of the contest or exhibition;
- (b) The compilation of the scorecards of the judges discloses an
error which shows that the decision was given to the wrong unarmed
combatant; or
- (c) As the result of an error in interpreting a provision of this
chapter, the referee has rendered an incorrect decision.

Section 6. Effect of Expiration of License on Jurisdiction of the
Commission. The expiration of a license shall not deprive the
commission of jurisdiction to:

- (1) Proceed with an investigation of the former licensee; or
- (2) Issue a penalty against the former licensee.

MATT BYRD, Executive Director
RAY A. PERRY, Secretary

APPROVED BY AGENCY: August 15, 2024

FILED WITH LRC: August 15, 2024 at 10:35 a.m.

CONTACT PERSON: Doug Hardin, staff attorney, 500 Mero
Street 254 CW, Frankfort, Kentucky 40601, phone (502) 782-8204,
and email doug.hardin@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Doug Hardin

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation
establishes grounds for the Commission to issue penalties to
licensees, the types of penalties that may be assessed, authority for
inspectors to issue administrative violations, and a process for
licensees to appeal violations issued by the Commission or its
employees.

(b) The necessity of this administrative regulation: This
regulation is necessary so that the Boxing and Wrestling
commission and its employees may take appropriate action against
licensees who violate provisions of Kentucky law related to boxing,
wrestling, and other unarmed combat sports.

FISCAL IMPACT STATEMENT

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 229.155 authorizes the Commission's executive director to employ "sufficient regulatory staff...that shall be responsible for the day-to-day operations of the commission." KRS 229.200 authorizes the Commission to impose penalties on licensees who violate provisions of KRS chapter 229 or 201 KAR Chapter 27.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation establishes a process for imposing penalties on licensees who are alleged to have violated the law and gives licensees an avenue to appeal those violations.

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

(a) How the amendment will change this existing administrative regulation: 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: The Boxing & Wrestling Commission licenses and regulates over 800 licensees that will be affected by this administrative regulation, as follows: • Over 679 licensed contestants (includes boxers, kickboxers, amateur mixed martial artists, professional mixed martial artists, and wrestlers) • Over 185 licensed non-contestants (includes judges, trainers, managers, referees, timekeepers, and seconds) • Over 6 licensed medical providers (includes physicians and healthcare professionals) • Over 40 licensed promoters

(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 will not require licensees to take any specific action to comply, but it does give them a process by which they may appeal violations issued by the Commission or its inspectors.

(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 these licensees to comply with the regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This regulation establishes a process to provide licensees due process when they are alleged to have violated the law.

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

(a) Initially: There will be no new costs to the Commission or its licensees.

(b) On a continuing basis: There will be no new costs to the Commission or its licensees.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No additional funding will be needed 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: No additional funding will be necessary 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 increase any fees.

(9) TIERING: Is tiering applied? Tiering does not apply because the same penalties and process established by this regulation would apply equally to all licensees.

(1) Identify each state statute, federal statute, or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 229.155 authorizes the Commission's executive director to employ "sufficient regulatory staff...that shall be responsible for the day-to-day operations of the commission."

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: Kentucky Boxing & Wrestling Commission

(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?

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): This regulation is not likely to affect any local government entities.

(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? The Commission does not anticipate any expenditures, revenue, or cost savings related to this regulation.

(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? The Commission does not anticipate any expenditures, revenue, or cost savings related to this regulation other than potential fines assessed to licensees who are found to have violated the law.

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: This regulation is not likely to have a significant fiscal impact.

(b) Methodology and resources used to determine the fiscal impact: The Commission already employees inspectors. This regulation will not result in any new employee hires.

(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 likely have no economic impact on these entities.

(b) The methodology and resources used to reach this conclusion: The Commission already employees inspectors. This regulation will not result in any new employee hires.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. N/A

(2) State compliance standards. N/A

(3) Minimum or uniform standards contained in the federal mandate. N/A

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? N/A

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. N/A

PROPOSED AMENDMENTS

Public comment periods for ordinary, non-emergency regulations are at least two months long. For other regulations with open comment periods, please also see last month's [Administrative Register of Kentucky](#).

**FINANCE AND ADMINISTRATION CABINET
Teachers' Retirement System
(Amendment)**

102 KAR 1:320. Qualified domestic relations orders.

RELATES TO: KRS 161.220, 161.700, 161.716, 403.190, 26 U.S.C. 414(p)

STATUTORY AUTHORITY: KRS 161.310(1), 161.700(4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.310(1) requires the Board of Trustees of the Teachers' Retirement System (TRS) to promulgate administrative regulations for the administration of the funds of the retirement system. KRS 161.700(4) requires the Board of Trustees of TRS to promulgate administrative regulations setting forth the requirements, procedures, and forms for the approval and processing of qualified domestic relations orders impacting the benefits of participants of the retirement system. This administrative regulation establishes these requirements.

Section 1. Definitions.

- (1) "Alternate payee" is defined by KRS 161.220(26).
- (2) "Benefits" means a monthly service or disability retirement allowance or refund payable at the request of a participant covered by TRS who terminates employment in a TRS covered position prior to becoming eligible to receive a retirement allowance.
- (3) "Member" is defined by KRS 161.220(4).
- (4) "Participant" is defined by KRS 161.220(24).
- (5) "Qualified domestic relations orders" or "QDRO" is defined by KRS 161.220(25).

Section 2.

- (1) A QDRO shall state the following:
 - (a) The member's name, TRS member identification number, and last-known mailing address;
 - (b) The alternate payee's name and last known mailing address;
 - (c) Whether the order applies to:
 - 1. An active account from which the member is not currently receiving a retirement allowance; or
 - 2. A retired account from which the member is currently receiving a retirement allowance and the date on which the member retired the account;
 - (d) The date of marriage;
 - (e) The date of decree of dissolution of marriage;
 - (f) That the order is for the purpose of property division;
 - (g) Whether the alternate payee shall receive:
 - 1. Recurring monthly payments under Option A, Option B, or Option C; and
 - 2. For an active, contributing participant, a share of a termination refund of the contributions posted to the participant's account as either:
 - a. A fixed dollar amount; or
 - b. A percentage calculated under Section 7(2) of this administrative regulation or as determined by either the Court or the parties;
 - (h) When payments shall begin;
 - (i) When payments shall cease;
 - (j) That the alternate payee shall be paid in the same form as the participant;
 - (k) If the alternate payee spouse shall share in the participant's cost of living adjustments if the QDRO awards a fixed dollar amount to the alternate payee;
 - (l) Who shall be responsible for payment of the TRS processing fee; and
 - (m) All information required on the Qualified Domestic Relations Order to Divide Teachers' Retirement System Benefits.

- (2) A QDRO shall be:
 - (a) Approved by TRS as to enforceability and compliance with the requirements of KRS 161.700 and this administrative regulation;
 - (b) Approved and submitted by the participant and alternate payee or their legal counsel;
 - (c) Signed by the judge of a court of competent jurisdiction;
 - (d) Filed with the clerk of the court; and
 - (e) Certified by the clerk of the court.

Section 3. Administrative Provisions.

- (1) Upon entry of a final divorce decree, the participant shall forward a copy of the decree to TRS and:
 - (a) If the participant is a retired member, request:
 - 1. A Change of Option Following Termination of Marriage form, if the participant wants to change his or her retirement option, which shall be filed with TRS~~done~~ within sixty (60) days of the final divorce decree;
 - 2. A Change of Retirement Beneficiary form, if the participant had chosen retirement Option I or Option II and does not want to change his or her retirement option, but wants to name a new beneficiary;
 - 3. A Designation of Beneficiary for TRS Life Insurance Benefit form, if the participant wants to designate a beneficiary other than his or her estate; or
 - 4. A W-4P Withholding Certificate for Pension or Annuity Payments or "W-4P", if the participant wants to change the amount of federal tax withheld from his or her retirement benefit; or
 - (b) If the participant is an active member, he or she shall request:
 - 1. A Designation of Beneficiary for TRS Retirement Account Balance form, if the participant wants to designate a beneficiary other than his or her estate; or
 - 2. A Designation of Beneficiary for TRS Life Insurance Benefit form, if the participant wants to designate a beneficiary other than his or her estate.
- (2) Thirty (30) days prior to filing the QDRO with TRS, the participant or alternate payee shall present a written request for benefits information for divorce purposes. The participant, alternate payee, or third party, including the party's legal counsel, shall provide a completed TRS Authorization for Release of Information form with the request.
- (3) For a QDRO directed to an active account from which a participant is not currently receiving a retirement allowance, TRS may, for the current fiscal year, provide the unaudited salary information electronically submitted to TRS by the participant's employer upon receipt of the written request and release.
- (4) If the QDRO is directed to an account from which the participant is not currently receiving a retirement allowance, TRS shall not project future earnings or future service or provide an actuarial opinion of present value of the participant's benefits nor calculate the value of the Social Security benefit the member would have received if he or she had contributed for purposes of offset under KRS 403.190. TRS shall provide:
 - (a) The participant's total accrued service credit, including service credit purchased during the marriage, and the member account balance, including the total amount of accrued contributions and interest, as posted at the end of each fiscal year during the marriage and for which an employer annual report has been received by TRS and for which the member has not received a refund; and
 - (b) An estimate of the monthly retirement allowance the participant would receive if the participant retired without a statutory reduction of the basic retirement allowance based upon the participant's final compensation and total accrued service credit as of the date of dissolution of marriage or receipt of the request for information.

VOLUME 51, NUMBER 3– September 1, 2024

(5) If the participant has retired, TRS shall provide the amount of the participant's monthly retirement allowance, the participant's accumulated account balance at retirement, the total retirement allowance received to date, and the participant's total accrued service credit, including any service credit purchased during the marriage. The parties, their legal counsel, or the court may use the information to decide what portion of the participant's account is marital. TRS shall not decide whether, or if, any portion of the participant's account is marital and potentially subject to division.

(6) The participant, alternate payee, or legal counsel shall submit a Qualified Domestic Relations Order to Divide Teachers' Retirement System Benefits form to TRS for review forty-five (45) days prior to filing the QDRO with the court. The draft QDRO shall be approved by the participant and alternate payee or their legal counsel. If more than one (1) of the participant's accounts is subject to classification and division as marital property, a separate QDRO shall be issued for each TRS account. The draft QDRO may be sent via U.S. Mail or scanned and electronically mailed to TRS for review.

(7) TRS shall not review the draft QDRO until ~~unless it is accompanied by~~ the following have been received:

(a) ~~The TRS Administrative Regulatory Compliance form, or the draft QDRO, which~~ has been approved by the:

[1.] [Participant or legal counsel; and]

[2.] [Alternate payee or legal counsel;]

~~[(b)]~~ A \$300 nonrefundable processing fee, by money order, certified check or on the attorney's trust account, made payable to the Kentucky State Treasurer, except that a processing fee shall not be charged for a QDRO issued solely for child support;

~~[(c)]~~ The TRS Confidential Information form, which shall include the participant's and alternate payee's address, Social Security number, and date of birth;

~~[(d)]~~ Copies of the participant's and alternate payee's signed Social Security cards;

~~[(e)]~~ If the participant is retired and receiving a retirement allowance, a TRS Authorization for Direct Deposit form completed by the alternate payee and his or her financial institution; and

~~[(f)]~~ Any other documents that are required to confirm additional service credit purchased, or sought to be purchased, for retirement calculation purposes under KRS 161.220 through 161.716, including TRS Military Service Certification and Affidavit form, with a copy of the discharge papers.

(8) Within twenty (20) days of receipt of the QDRO, TRS shall notify the participant and alternate payee in writing whether the QDRO meets TRS requirements. If the QDRO meets TRS requirements, TRS shall approve the QDRO and return a fully executed hard copy via U.S. Mail ~~circulate an original, signed QDRO for signature by the participant and alternate payee~~ for submission to the court. If the participant or alternate payee is represented by legal counsel, the approved QDRO shall instead be provided to ~~the~~ their legal counsel who submitted the draft by hard copy via U.S. Mail or electronic mail with notice to the other party or their legal counsel for ~~for signature by counsel and~~ submission to the court. If the participant is a retired member, TRS shall forward tax withholding forms ~~a W-4P Withholding Certificate for Pension or Annuity Payments form~~ to the alternate payee.

(9) If the QDRO does not meet TRS requirements, TRS shall notify the participant and alternate payee in writing, identifying those provisions which are not in compliance and the amendments needed to bring the QDRO into compliance. If the participant or alternate payee is represented by legal counsel, this notice shall instead be provided to their legal counsel. The amended QDRO shall be submitted to TRS for review and approval prior to filing with the court.

(10) TRS shall reject any QDRO entered by a court that has not been reviewed or approved by TRS prior to its submission to the court. TRS shall notify the participant, the alternate payee, or their legal counsel, and the court in writing, identifying those provisions that are not in compliance and the amendments needed to bring the QDRO into compliance before it shall be accepted by TRS.

(11) If the QDRO is subsequently amended before filing with the court, the amended QDRO shall be resubmitted to TRS with a \$150 nonrefundable processing fee for review and approval.

(12) Following approval by the court, the participant, alternate payee, or legal counsel shall file a certified copy of the QDRO with TRS.

(a) The QDRO shall not become effective until the certified copy is received by TRS.

(b) Upon receipt of the certified copy, TRS shall designate the participant's account for implementation of the QDRO.

(c) While a separate account balance shall not be maintained for the alternate payee, a separate payroll account shall be established.

(d) If the participant is a retired member, payments to the alternate payee shall commence in the calendar month following the date that a certified copy of the QDRO is received by TRS, if the alternate payee has supplied correctly executed tax withholding forms ~~a correctly executed W-4P form~~. If the alternate payee either fails to return the tax withholding forms ~~W-4P~~ or does not correctly execute the forms ~~form~~, TRS shall apply the IRS default option in effect on the date the forms are received ~~of married with three (3) exemptions, which results in no withholding of federal tax~~. If the Alternate Payee chooses a different option and then provides [a] correctly executed tax withholding forms ~~W-4P~~, future payments shall be adjusted. Retroactive payments shall not be paid for periods between entry of the parties' decree of dissolution and entry and acceptance of the QDRO by TRS.

(e) If the participant is an active member, payments to the alternate payee shall commence in the calendar month in which the participant begins to receive a monthly annuity, ~~if the alternate payee has provided his or her current address, a correctly executed W-4P and banking information as required by subsection (15) of this section.~~ Upon receipt of an active member's retirement application, a TRS Authorization for Direct Deposit form and tax withholding forms shall be mailed to the alternate payee's last known address. Pursuant to KRS 161.640(3)(a), TRS cannot begin electronic fund transfers to the alternate payee until receipt of a fully executed TRS Authorization for Direct Deposit form. If the alternate payee either fails to return the tax withholding forms ~~W-4P~~ or does not correctly execute the forms ~~form~~, TRS shall proceed in the same manner as described in paragraph (d) of this subsection.

(f) If the participant is an active member who withdraws from service prior to eligibility for retirement and requests a refund of his or her accumulated account balance, the provisions of 102 KAR 1:060, setting forth the requirements for processing payment of the refund to the participant and the alternate payee, shall be followed. If the parties fail to designate the alternate payee's share of a refund in the QDRO, TRS shall refund the entire participant's account to the participant in accordance with the provisions of this administrative regulation and 102 KAR 1:060, and TRS and its staff shall have no liability for making the refund in this manner.

(13) If TRS is enforcing a QDRO that is subsequently amended or terminated by the court, then either the participant, alternate payee, or legal counsel shall submit a certified copy of the amended QDRO or order of termination to TRS for processing.

(14) The participant, alternate payee, or legal counsel shall not submit a QDRO that is not final and under consideration by an appellate court.

(15) The alternate payee shall be responsible for notifying TRS of any change in name, mailing address, or banking information.

(a) TRS shall provide a Name or Change of Address form or Authorization for Direct Deposit form upon request.

(b) TRS shall contact the alternate payee at the last known mailing address on file to notify the alternate payee when an annuity benefit subject to the QDRO becomes payable.

(c) Other than sending a notice as established in paragraph (b) of this subsection, TRS shall have no duty or responsibility to search for, or locate, the alternate payee.

(d) If the notification sent to the alternate payee's last known address is returned due to the alternate payee's failure to notify TRS of an address change or if the bank notifies TRS that the alternate payee's account has been closed, within sixty (60) days of the return of the notification to the alternate payee or receipt of notification from the bank, the amounts otherwise payable to the alternate payee shall be paid to the participant until a new address or bank account information is provided by the alternate payee.

(e) TRS shall have no liability to the alternate payee with respect to amounts paid to the participant.

(16) The participant shall be responsible for notifying TRS in writing of an event that causes benefit payments to the alternate payee spouse, child, or other dependent to cease.

(a) The participant shall provide TRS with a certified copy of the alternate payee's death certificate or marriage certificate. TRS shall suspend payments due the alternate payee provided that submission of proof of the death or marriage of the alternate payee, if marriage terminates payments under the terms of the QDRO, is received by the beginning of the month following receipt of the participant's written notification.

(b) The alternate payee shall also be responsible for notifying TRS in writing of the alternate payee's remarriage if, under the terms of the QDRO, that is an event that terminates the alternate payee's right to receive any payments.

(c) TRS shall not be responsible for payments made to the alternate payee until it is given timely written notice and documentation of any event terminating those payments.

Section 4. A QDRO may apply to a participant's:

- (1) Retirement allowance;
- (2) Disability retirement allowance; or
- (3) Termination refund.

Section 5. A QDRO shall not apply to a participant's:

- (1) Survivor annuity that becomes payable after the member's death;
- (2) Survivor benefits that become payable after an active contributing member's death;
- (3) Accounts that are not vested at the time of the dissolution of marriage;
- (4) Life insurance benefit;
- (5) Refund as a result of an error;
- (6) Refund of an active or retired account in response to a member's death;
- (7) Health insurance; and
- (8) Any other payment or benefit not described in Section 4 of this administrative regulation.

Section 6. If an alternate payee has, under the terms of the QDRO, been awarded a share of the participant's annuity benefits and dies before the participant dies, retires, or withdraws his account, the entire remaining account value shall be restored to the participant.

Section 7. Calculation and payment.

(1)

(a) If the participant has retired, the portion of the participant's benefits payable to the alternate payee as a percentage of the participant's total service retirement allowance, disability retirement allowance, or refundable account balance, accrued through the date of dissolution of marriage, that is in excess of the retirement benefits of the alternate payee as provided under KRS 403.190(4), shall be calculated by the following fraction:

1. The numerator of which shall be the participant's total full and fractional years of creditable TRS service earned during the marriage, including service credit purchased during the marriage; and

2. The denominator of which shall be the participant's total full and fractional years of TRS service credit through the date of retirement.

(b) The resulting fraction shall be converted to a percentage that shall be divided by two (2).

(c) Option C may be utilized if the duration of the retired participant and the alternate payee's marriage was less than the participant's total full and fractional years of TRS service at the date of retirement. The parties or their legal counsel shall report the marital years in Option C of the QDRO.

(2)

(a) For an active account, the portion of the participant's benefits payable to the alternate payee as a percentage of the participant's total service retirement allowance, disability retirement allowance, or refundable account balance, accrued through the date of dissolution

of marriage, that is in excess of the retirement benefits of the alternate payee as provided under KRS 403.190(4), shall be calculated by the following fraction:

1. The numerator of which shall be the participant's total full and fractional years of creditable TRS service earned during the marriage, including service credit purchased during the marriage, as reported by the parties or their legal counsel in Option C of the QDRO; and

2. The denominator of which shall be the participant's total full and fractional years of TRS service credit as determined by TRS at the time that the participant retires either by service retirement or disability retirement or requests a refund of his or her account balance.

(b) The resulting fraction shall be converted to a percentage that shall be divided by two (2).

(3) If the participant is or will be receiving a disability retirement allowance, the participant's total annuity benefit for purposes of this administrative regulation shall be calculated under the service retirement formula established under KRS 161.661(5), even if the entitlement period described under KRS 161.661(3) and (4) has not expired.

(4) If an alternate payee has, under the terms of the QDRO, been awarded a share of the participant's disability retirement allowance that is subsequently discontinued, the alternate payee shall not receive a benefit. Further, if a participant remains disabled at the end of his or her entitlement period, pursuant to KRS 161.661(5), the disability benefits shall be recalculated and may result in a lower monthly payment to both the participant and the alternate payee.

(5) If the QDRO is directed to an account from which the participant is not receiving a retirement allowance, the participant's total annuity benefit shall be calculated without inclusion of the discounts required under KRS 161.600[620](1)(b)1. and 2. and (d).

(a) If at retirement the participant is subject to discounts required under KRS 161.620(1)(b) and (d), and if the QDRO establishes a set dollar amount to be withheld from the retirement benefits that are payable to the participant and to be paid to the alternate payee, TRS shall reduce the amount to be paid to the alternate payee under the QDRO by the amount of the discounts.

(b) TRS shall increase the amount paid to the alternate payee in an amount equal to any discounts that are subsequently eliminated as the result of the participant's return to work after retirement under the provisions of KRS 161.605(11), upon the participant's resumption of receipt of retirement benefits.

(6) If the QDRO is directed to an account from which the participant is not receiving a retirement allowance, and the participant at issuance of the QDRO is not eligible for calculation of his total annuity benefit based on his three (3) highest salaries as provided under KRS 161.220(9), then his total annuity benefit shall be calculated on his five (5) highest salaries.

(7) The participant may select any retirement option.

Section 8. Any person who attempts to make TRS a party to a domestic relations action in order to determine an alternate payee's right to receive a portion of the annuity benefits payable to the participant shall be liable to TRS for its costs and legal fees.

Section 9. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Teachers' Retirement System Authorization for Release of Information", July 2016;

(b) "Qualified Domestic Relations Order to Divide Teachers' Retirement System Benefits", July 2024[January 2019];

(c) [~~"Teachers' Retirement System Administrative Regulatory Compliance", July 2016;~~]

~~[(d)]~~ "Teachers' Retirement System Confidential Information", July 2016;

~~[(d)]~~ [(e)] "Teachers' Retirement System Authorization for Direct Deposit", July 2016;

~~[(e)]~~ [(f)] "Teachers' Retirement System Military Service Certification and Affidavit", July 2016;

~~[(f)]~~ [(g)] "Teachers' Retirement System Name or Change of Address", July 2016;

~~(g)~~ ~~(h)~~ "Change of Option Following Termination of Marriage", July 2016;

~~(h)~~ ~~(i)~~ "Change of Retirement Beneficiary", July 2016;

~~(i)~~ ~~(j)~~ "Designation of Beneficiary for TRS Life Insurance Benefit", July 2016;

~~(j)~~ ~~(k)~~ "Designation of Beneficiary for TRS Retirement Account Balance", July 2016; ~~and~~

~~(k)~~ ~~(l)~~ "Withholding Certificate for Pension or Annuity Payments" or "W-4P" 2024; ~~and~~ ~~2016;~~

~~(l)~~ ~~(m)~~ "Kentucky Resident State Tax Withholding Election", January 2023.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Teachers' Retirement System, 479 Versailles Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 5 p.m.

(3) W-4P may also be obtained at www.irs.gov/pub/irs-pdf/fw4p.pdf.

BRENDA MCGOWAN, Chairperson

APPROVED BY AGENCY: June 17, 2024

FILED WITH LRC: August 15, 2024 at 11:40 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on 24 October 2024, at 9:00 a.m. Eastern Time at the offices of the retirement systems 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 31 October 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, 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 requirements, procedures and forms for the approval and processing of qualified domestic relations orders (QDRO) by Teachers' Retirement System (TRS).

(b) The necessity of this administrative regulation: This administrative regulation establishes and ensures compliance with the requirements of KRS 161.700.

(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 (1) setting forth the procedures and timelines to be followed in filing a QDRO with TRS, (2) setting the filing fees, (3) providing the formula for calculating the amount to be paid to the alternate payee, and (4) incorporating the forms required by TRS.

(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 informing TRS participants, their alternate payees, legal counsel and the courts what is required to expedite approval and implementation of a QDRO.

(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: (1) Sets forth in regulation the requirement that retired participant must file a Change of Option form with TRS within 60 days of qualifying event, (2) permits draft QDRO to be submitted via U.S.

mail or scanned and electronically mailed for preapproval and for TRS to return approved QDRO to legal counsel electronically with notice to other parties' counsel, (3) requires parties or legal counsel to approve the draft QDRO and eliminates the Regulatory Compliance form, (4) allows processing fee to be paid by money order, (5) requires submission of direct deposit form and tax forms with draft QDRO for retired participants only, (6) for active participants, requires mailing of direct deposit and tax forms to alternate payee upon receipt of participant's retirement application, (7) specifies that TRS will use the prevailing tax default option if alternate payee fails to return executed tax forms, (8) notifies parties that TRS does not make retroactive payments for period between entry of decree and entry and acceptance of QDRO by TRS, (9) notifies parties TRS does not provide actuarial present value of participant's benefits nor calculates theoretical Social Security benefits for purposes of KRS 403.190, and (10) corrects statutory citation regarding calculation of future benefits for active participants.

(b) The necessity of the amendment to this administrative regulation: Streamlines the QDRO approval process, notifies in regulation when change of option form must be filed with TRS and clarify what information will be provided regarding participant's benefits for offset purposes.

(c) How the amendment conforms to the content of the authorizing statutes: Places participants, alternate payees and their legal counsel on notice as to how the process for preapproval of QDROs has been streamlined as well as notice of important deadlines associated with the filing of the Change of Option form.

(d) How the amendment will assist in the effective administration of the statutes: Participants, alternate payees and their legal counsel will be able to submit documents and forms electronically, thereby possibly shortening the timeframe for preapproval of QDROs, particularly those for participants who have retired. Streamlines filing requirements.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Participants and alternate payees of participants of TRS who subject to a QDRO.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This amendment will not require any additional 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 other than costs already incurred as part of the individual's legal fees in obtaining a divorce and property settlement.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This amendment will streamline the QDRO approval process.

(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: The amendment to this regulation will slightly reduce administrative time and cost spent processing QDROs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Administrative expenses of TRS incurred in processing QDROs will be paid in part, if not all, via the processing fees. Any costs above the processing fees will be paid from restricted funds held by TRS.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This 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 participants 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 161.700, KRS 161.310 and 161.470.

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: Teachers' Retirement System of the State of Kentucky

(a) Estimate the following for the first year:

Expenditures: Potential for minimal costs with some QDROs for which the processing fee does not cover the administrative time required for processing.

Revenues: None.

Cost Savings: None.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? No material change is expected.

(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):

(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: 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) None.

(b) The methodology and resources used to reach this conclusion: None are needed as there is no impact.

**FINANCE AND ADMINISTRATION CABINET
State Investment Commission
(Amendment)**

200 KAR 14:011. Qualified investments.

RELATES TO: KRS 42.500(9)-(14), 42.520, 42.525, 17 C.F.R. 270.2a-7, 15 U.S.C. 80a, 26 U.S.C. 1-9834

STATUTORY AUTHORITY: KRS 42.500(10), 42.520(2), 42.525
NECESSITY, FUNCTION, AND CONFORMITY: KRS 42.500(10) requires the State Investment Commission to promulgate administrative regulations for the investment and reinvestment of state funds. KRS 42.520(2) requires the commission to promulgate administrative regulations concerning the assignment of priorities to public depositories. KRS 42.525(1) requires the commission to promulgate administrative regulations for the investment and reinvestment of state funds and the acquisition, retention, management, and disposition of investments. This administrative regulation establishes the standards that govern the commonwealth's investment and cash management programs.

Section 1. Definitions.

(1) "Commission" means the State Investment Commission.

(2) "Hedge" means a position in a financial instrument taken to minimize or eliminate the risk associated with an existing instrument or portfolio of instruments.

(3) "Interest rate swaps" means an agreement governed by an International Swap and Derivatives Association master contract between two (2) parties to exchange, or have the conditional right to exchange, specified cash flows.

(4) "NRSRO" means "Nationally Recognized Statistical Ratings Organization", which is a credit rating agency that is registered with the Securities and Exchange Commission, and which provides its opinion on the creditworthiness of an entity and the financial obligations issued by that entity.

(5) "Office" means the Office of Financial Management.

(6) "Options" means a contract that provides the right, but not the obligation, to buy or sell a specific amount of a security within a predetermined time period and includes specific bonds or notes, an exchange traded futures contract, or the cash value of an index.

(7) "Pools" means the investment pools that are managed by the Office of Financial Management, under the guidance of the commission.

Section 2. The commission shall:

(1) Not invest state funds in an institution or instrument that it deems unsafe and a threat to the security of state funds;

(2) Maintain adequate liquidity to meet the cash needs of the state; and

(3) Within the limits established by this administrative regulation, invest in securities that maximize yield or return to the Commonwealth.

Section 3.

(1) The commission may:

(a) Engage in securities lending.

(b) Allow ~~internal~~ transfers between pools to meet short term cash needs.

(2) Within the limited term pool, if borrowing exceeds thirty-three (33) percent of the value of the pool's total assets resulting from a change in values of net pool assets at any time, the pool shall then reduce borrowing to no more than thirty-three (33) percent within three (3) business days and shall continue to use prudence in bringing the percentage of borrowing back into conformity.

Section 4. Interest earned on the cash balances shall be calculated daily on an accrual basis.

Section 5. Investment Criteria.

(1) The criteria to determine the amount of funds per investment instrument shall be the:

(a) ~~Safety of principal and interest~~ Liquidity needs of the state in aggregate as budgeted;

(b) Liquidity needs of the state in aggregate as budgeted ~~Rates available per instrument~~; and

(c) Rates available per instrument ~~Safety of principal and interest~~.

(2) An investment instrument shall qualify if it is specified by:

(a) KRS 42.500;

(b) This administrative regulation;

(c) 200 KAR 14:081; or

(d) 200 KAR 14:091.

Section 6. Investment Securities. The commission shall invest only in the following security types:

(1) ~~Securities issued by the U.S. Treasury, agency, and government-sponsored enterprises~~ government sponsored entity agency securities with a maturity of less than seven (7) years, or an embedded put of less than three (3) years.

(2) Mortgage pass-through securities issued by U.S. government agencies or by ~~government-sponsored enterprises~~ government sponsored entities, including Government National Mortgage Association, Fannie Mae, Freddie Mac, and Small Business Administration with an average life of less than four (4) years at the time of purchase, using Bloomberg consensus prepayment projections, if available, or other reasonable prepayment assumptions if there is no consensus. The commission may hold pass-throughs purchased under this subsection ~~that~~ which have an average life of less than six (6) years, using Bloomberg consensus prepayment projections, if available, or other reasonable prepayment assumptions if there is no consensus.

(3) Real estate mortgage investment conduit obligations, as defined by the Internal Revenue Code, 26 U.S.C. 1-9834, also known as collateralized mortgage obligations, or CMOs, rated in the

highest category by commission approved NRSRO with an average life of less than four (4) years at the time of purchase, using Bloomberg consensus prepayment projections, if available, or other reasonable prepayment assumptions if there is no consensus. The commission may hold CMOs purchased under this subsection that have an average life of less than six (6) years, using Bloomberg consensus prepayment projections, if available, or other reasonable prepayment assumptions if there is no consensus.

(4) Asset-backed securities (ABS) rated in the highest category by commission approved NRSRO with an average life of four (4) years or less.

(5) U.S. dollar denominated corporate and Yankee securities issued by foreign and domestic issuers, rated in one (1) of the three (3) highest categories by commission approved NRSRO, with a maturity not longer than five (5) years, or an embedded put of less than three (3) years.

(6) U.S. dollar denominated sovereign debt rated in one (1) of the three (3) highest categories by commission approved NRSRO, with a maturity not to exceed five (5) years.

(7) Money market securities including commercial paper, certificates of deposit, and bankers' acceptances issued by banks with the highest short-term rating by a Commission approved NRSRO. Maturities shall be limited to one 180 days for Bankers' Acceptances and 270 days for all other money market securities.

~~[(7)]~~

~~[(a)] [Money market securities, including:]~~

~~[1-] [Commercial paper:]~~

~~[2-] [Certificates of deposit; and]~~

~~[3-] [Bankers' acceptances issued by banks having the highest short-term rating by an NRSRO.]~~

~~[(b)] [Maturities shall be limited to 180 days for bankers' acceptances and 270 days for all other money market securities.]~~

(8) Repurchase agreements collateralized at a minimum of 102 percent (marked to market daily) with treasuries, agencies, and agency mortgage backed obligations with a maximum maturity of one (1) year and a maximum of three (3) years for the Kentucky Bank Repurchase Program participants.

(9) Municipal obligations rated in one (1) of the three (3) highest categories by commission approved NRSRO, with a maturity not to exceed five (5) years. The maturity and credit restriction shall be waived for obligations issued by the Commonwealth of Kentucky or any entity within the Commonwealth of Kentucky.

(10) Mutual funds in which the underlying holdings of the fund are in securities that meet the investment criteria listed in Section 5 of this administrative regulation in which the pools could invest directly.

(11) In meeting credit standards listed previously in this section, the lowest rating issued by commission approved NRSRO shall be used to determine compliance. The commission, at a minimum on an annual basis, shall determine which NRSRO's shall be used.

Section 7. Limits Per Pool on Investment Securities.

(1) U.S. agency mortgage backed securities and collateralized mortgage obligations shall not exceed twenty-five (25) percent of ~~[total] pool assets~~ ~~[in aggregate]~~.

(2) Asset-backed securities shall not exceed twenty (20) percent of ~~[total] pool assets~~.

(3) U.S. dollar denominated corporate and Yankee and sovereign securities issued by foreign and domestic issuers shall not exceed thirty-five (35) percent of pool assets ~~[an individual pool]~~ or \$25,000,000 per issuer ~~[within an individual pool]~~, inclusive of commercial paper, bankers' acceptances, commercial paper, bankers' acceptances, and certificates of deposit unless these securities are guaranteed by the full faith and credit of the United States government.

~~[(a)] [These securities are guaranteed by the full faith and credit of the United States government; or]~~

~~[(b)] [These securities were purchased between February 19, 2]009 [and March 31, 2009.]~~

(4) Municipal securities shall not exceed \$25,000,000 per issuer.

(5) U.S. dollar denominated sovereign debt shall not exceed five (5) percent of pool assets ~~[any individual portfolio]~~ And \$25,000,000 per issuer.

(6) The investment amount for a single mutual fund shall not exceed ten (10) percent of pool assets with an exception of twenty-five (25) percent for the short-term pool ~~[total pool assets]~~.

(7) The credit and diversification requirements documented in this administrative regulation shall apply at the time of purchase based on book value for the Limited Term Pool and market value for other pools.

(8) The limits set forth in this section may be waived by unanimous vote of the commission ~~[if a situation arises which could damage the state's credit]~~.

Section 8. Risk Management. The pools may utilize interest rate swaps, over-the-counter and exchange traded U.S. Treasury contracts and options to manage the portfolio's exposure to interest rate risk. These instruments shall only be used if the results are ~~[demonstratively]~~ superior to cash market transactions.

Section 9. Pools and Operating Procedures.

(1) Limited term pool.

(a) The ~~[limited-term]~~ pool shall not purchase a security with a final maturity exceeding 365 days.

(b) The weighted average maturity, adjusted for interest rate resets and demand features, shall not exceed sixty (60) days; and the weighted average life, adjusted for demand features only but not interest rate resets, shall not exceed 120 days.

(c) At a minimum:

1. Ten (10) percent of the pool shall be invested in cash, direct obligations of the U.S. government or securities that mature or are subject to a demand feature payable within one (1) business day; and

2. Thirty (30) percent of the pool shall be invested in cash, direct obligations of the U.S. government, government agency discount note maturing in sixty (60) days or less or securities that mature or are subject to a demand feature payable within five (5) business days.

(d) All securities purchased for the pool shall be rated by commission approved NRSRO.

~~[(e)] [No more than five (5) percent of the pool shall be invested in illiquid securities.]~~

~~[(f)] [No more than three (3) percent of the pool shall be invested in second tier securities and no more than five one hundredths (.05) percent of the pool shall be invested in a second tier security issuer.]~~

~~[(g)] [(g)] The net asset value of pool shares shall be computed using the amortized cost method of valuing the pool's investments.~~

~~[(h)] [(h)] The shadow net asset value using the market value of pool holdings shall be computed no less than monthly and made public within sixty (60) days of the calculation date.~~

~~[(i)] [(i)] Stress testing of the pool based on redemption and changes in market value shall be performed no less than quarterly and reported to the commission.~~

~~[(j)] [(j)] Monthly portfolio listings shall be published to a public Web site and shall remain available for no less than six (6) months.~~

(2) Operating procedures.

(a) Except as provided by paragraph (b) of this subsection, state funds held in agency or university accounts, the interest of which accrues to the agency or university, shall be placed in the intermediate pool.

(b) These funds may be placed in the limited-term pool, if the commission determines that the liquidity needs of an agency require shorter term investment.

(c) The duration of the intermediate pool shall not exceed three (3) years.

Section 10. Approved Broker-Dealers.

(1) A broker-dealer who was approved by the commission prior to the effective date of this administrative regulation shall be considered an approved broker-dealer.

(2) Except as provided by subsection (1) of this section, a broker-dealer shall be approved by the commission if the broker-dealer has met the requirements established by subsection (3), (4), or (5) of this section, as applicable.

(3) An approved broker-dealer shall be a broker dealer who meets one (1) of the following qualifications:

- (a) Is a primary dealer of the Federal Reserve;
 - (b) Maintains an office in Kentucky, and has either ~~\$50,000,000~~[\$25,000,000] in excess net capital or has trades that are guaranteed by a primary dealer of the Federal Reserve;
 - (c) Has a minimum of ~~\$130,000,000~~[\$100,000,000] in excess net capital; or
 - (d) Is an alternative trading system as defined by the Securities and Exchange Commission.
- (4) An approved broker-dealer for hedge vehicles shall:
- (a) Have at least ~~\$130,000,000~~[\$100,000,000] in excess net capital;
 - (b) Have market value transactions limited to his excess net capital; and
 - (c) Have executed the:
 1. International Swap and Derivatives Association Agreement prior to the implementation of a swap; and
 2. Commonwealth of Kentucky Master Agreement, Over-the-counter Option Transactions - U.S. Treasury Securities, prior to the implementation of an over the counter option transaction.
 - (5)
 - [(a)] Within 180 days of the end of each broker-dealer's fiscal year, a broker-dealer shall submit a copy of the broker-dealer's audited financial statements for that fiscal year.
 - [(b)] A broker-dealer who wishes to be approved by the commission as an approved broker-dealer shall submit a copy of the broker-dealer's current audited financial statements.
 - [(6)] Notwithstanding the broker-dealer requirements described in this section, the state may purchase securities directly from the issuer.

Section 11. Incorporation by Reference.

- (1) The following material is incorporated by reference:
 - (a) "Securities Industry and Financial Markets Association Master Repurchase Agreement", 12/08;
 - (b) "Custodial Undertaking in Connection with Master Repurchase Agreement, Bank of New York", 12/08;
 - (c) "Custodial Undertaking in Connection with Master Repurchase Agreement, Chase Manhattan", 12/08;
 - (d) "International Swap and Derivatives Association Agreement", 12/02; and
 - (e) "Commonwealth of Kentucky Master Agreement, Over-the-counter Option Transactions - U.S. Treasury Securities", 12/97.
- (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at State Investment Commission, 200 Mero Street, 5th Floor[Suite 76, Capitol Annex], Frankfort, Kentucky 40622[40601] Monday through Friday, 8 a.m. to 4:30 p.m. and online at the Office of Financial Management's Web site at <https://finance.ky.gov/office-of-the-controller/office-of-financial-management/Pages/default.aspx>.

KIM BECHTEL, Deputy Executive Director

APPROVED BY AGENCY: August 14, 2024

FILED WITH LRC: August 15, 2024 at 8:30 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Wednesday, October 23, 2024, at 10:00 a.m. Eastern time, at the Kentucky Finance and Administration Cabinet, Room C117, 200 Mero Street, Frankfort, Kentucky 40622. Individuals interested in being heard at this hearing shall notify this agency in writing five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be 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 11:59 p.m. on Thursday, October 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: Laura Sharp, Administrative Specialist III, Office of General Counsel, 200 Mero Street, 5th Floor, Frankfort, Kentucky 40622; phone (502)564-6660, fax (502)564-9875, email laura.sharp@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Laura Sharp

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the standards that govern the Commonwealth's investment and cash management programs.

(b) The necessity of this administrative regulation: KRS 42.500, 42.520, and 42.525 provide that the State Investment Commission shall implement the state's investment program by administrative regulation.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation sets standards for the investment and reinvestment of state funds and the acquisition, retention, management, and disposition of investments.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the interpretation of the securities allowed to be purchased by the Commission and limitations thereon.

(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 clarifies investment limits on individual pools. In addition, it increases the limits, by less than inflation, of capital requirements for approved broker dealers in Section 10.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to improve transparency of investment limits and ensure approved broker dealers have reasonable cash reserves.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment is consistent with the statute and makes no operational changes to the investment and reinvestment of state funds.

(d) How the amendment will assist in the effective administration of the statutes: By improving clarity and transparency on investment limits.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: None of the above will be affected.

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

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

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No cost.

(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: 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: No additional funding is necessary for implementation of this regulation.

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

(9) TIERING: Is tiering applied? The Commonwealth runs three different funds. Different agencies have different needs for their money, and we accommodate those needs by offering the pools. Historically, the cumulative balances were between 3-4 billion but now due to budget surpluses and funding the BRTF balance is between 12-13 billion on average.

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 42.500, 42.520, and 42.525 provide that the State Investment Commission shall implement the state's investment program by administrative regulation.

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: None should be directly affected. The regulation concerns the internal operations of the State Investment Commission and its investments.

(a) Estimate the following for the first year:

Expenditures: \$0

Revenues: \$0

Cost Savings: \$0

(b) How will expenditures, revenues, or cost savings differ in subsequent years? No subsequent year impacts on expenditures, revenues, or cost savings are expected.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): None should be directly affected. The regulation concerns the internal operations of the State Investment Commission and its investments.

(a) Estimate the following for the first year:

Expenditures: \$0

Revenues: \$0

Cost Savings: \$0

(b) How will expenditures, revenues, or cost savings differ in subsequent years? No subsequent year impacts on expenditures, revenues, or cost savings are expected.

(4) Identify additional regulated entities not listed in questions (2) or (3): None should be directly affected. The regulation concerns the internal operations of the State Investment Commission and its investments.

(a) Estimate the following for the first year:

Expenditures: \$0

Revenues: \$0

Cost Savings: \$0

(b) How will expenditures, revenues, or cost savings differ in subsequent years? No subsequent year impacts on expenditures, revenues, or cost savings are expected.

(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: The regulation is being amended to bring it into alignment with current Office of Financial Management practice.

(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 major economic impact is expected.

(b) The methodology and resources used to reach this conclusion: The regulation is being amended to bring it into alignment with current Office of Financial Management practice.

**FINANCE AND ADMINISTRATION CABINET
State Investment Commission
(Amendment)**

200 KAR 14:081. Repurchase agreement.

RELATES TO: KRS [41.610, 42.500(9)-(14), 42.520, 42.525
STATUTORY AUTHORITY: KRS 42.500(10), 42.520(2), 42.525
NECESSITY, FUNCTION, AND CONFORMITY: KRS 42.500(10) requires the State Investment Commission to promulgate administrative regulations for the investment and reinvestment of state funds. KRS 42.520(2) requires the commission to promulgate administrative regulations concerning the assignment of priorities to public depositories. KRS 42.525(1) requires the commission to promulgate administrative regulations for the investment and reinvestment of state funds and the acquisition, retention, management, and disposition of investments. This administrative regulation establishes the general standards which

shall apply to the employment of repurchase agreements as investment vehicles with eligible financial institutions.

Section 1. Definitions.

(1) "Commission" means the State Investment Commission.

(2) "Eligible financial institution" means an entity approved for repurchase agreements by the commission.

(3) "Office" means the Office of Financial Management.

(4) "Repurchase agreement" means an actual, conditional purchase or sale of securities of the United States Treasury, an agency, instrumentality, or corporation of the United States, or another security authorized for investment pursuant to KRS 42.500(9)(a) or (b), with an agreement to resell or repurchase the securities to their original owner on a specific date in the future.

Section 2. Minimum Interest Rates. Except as provided by KRS 41.610, the commission shall not invest public funds in a repurchase agreement with a yield less than could be received on a directly purchased United States Treasury security of comparable maturity.

Section 3. Reporting Requirements for Eligible Investment Institutions. The commission shall inform eligible financial institutions of the reporting requirements for the investment of state funds in eligible financial institutions established by this section. An eligible financial institution shall:

(1) Submit a copy of its quarterly financial reports including accompanying schedules, to the commission within thirty (30) days from the end of each quarter; and

(2) Complete and sign the Securities Industry and Financial Markets Association Master Repurchase Agreement, incorporated by reference in 200 KAR 14:011.

Section 4. Eligible Securities. Investment securities authorized for investment pursuant to KRS 42.500(9)(a) and (b) shall be considered eligible securities for repurchase agreements.

Section 5. Sufficiency of Securities Purchased.

(1) The securities purchased shall have a market value, including accrued interest, of not less than 102 percent of the face value of the repurchase agreement.

(2) ~~The review for the sufficiency of collateral on all repurchase agreements shall occur every business day excluding holidays by the office.~~~~The state's custodian banking contract shall require the custodial bank to review the sufficiency of collateral on all repurchase agreements, except those subject to a triparty agreement. The review shall occur at least every seven (7) calendar days with periodic reviews made by the office.~~

(3) The commission shall demand additional securities to be delivered immediately, during[if] market conditions that cause the value of the securities purchased to drop below 102 percent of the face value of the repurchase agreement.

Section 6. Status of Parties.

(1) The commission and the eligible financial institutions authorized to enter into repurchase agreements:

(a) Shall be considered principals in repurchase agreements; and

(b) Shall not be considered agents for third parties.

(2) Contractual obligations shall apply to and be binding on the commission and the specific eligible financial institution with which the repurchase agreement is initially negotiated and settled.

(3) The commission shall approve the eligible financial institutions quarterly following fundamental analysis of the most recent financial releases.

(4) ~~The office [of Financial Management]~~shall monitor credit worthiness of eligible financial institutions daily based on financial market indicators.

Section 7. Default.

(1)

~~(a)~~ If an eligible financial institution with which the commission has entered into a repurchase agreement defaults, or is determined by the commission to be in danger of default, the commission shall set off claims and liquidate property held in respect to the

VOLUME 51, NUMBER 3– September 1, 2024

repurchase agreement against obligations owing to the eligible financial institution under other repurchase agreements.

(2)(b) Payments, deliveries, and other transfers made under a repurchase agreement shall be deemed to have been made in consideration of payments, deliveries, and other transfers made under any other repurchase agreement by the eligible financial institution.

(3)(c) The obligation to make payments, deliveries and other transfers under a repurchase agreement may be applied against the obligation to make payments, deliveries and other transfers under any other repurchase agreements of the eligible financial institution and netted.

(4)(2)

(a) From the proceeds of liquidated property, the commission shall pay itself the full principal and accrued interest due as of the date of liquidation.

(5)(b) Remaining cash balances shall be forwarded to the financial institution with which the repurchase agreement was originally executed.

Section 8. Kentucky Bank Repurchase Program.

(1) Repurchase agreements with commercial banks and savings and loan associations chartered by the Commonwealth of Kentucky or by the U.S. government with offices located in Kentucky before being placed shall meet the following criteria:

(a) A loan to deposit ratio equal to or greater than seventy (70) percent;

(b) A nonperforming loan to capital ratio of equal to or less than twenty-five (25) percent;

(c) A capital to assets ratio equal to or greater than eight (8) percent or regulatory requirements; and

(d) A return on assets ratio greater than one-half ~~five-tenths~~ (0.5) percent.

(2) Repurchase agreements with maturities equal to or greater than 365 days with commercial banks and savings and loan associations chartered by the Commonwealth of Kentucky or by the U.S. government with offices located in Kentucky shall be limited to \$5,000,000 per institution.

(3) The office shall review the financial ratios listed quarterly to determine eligibility of institutions. Existing repurchase agreements with institutions which fail to meet the minimum criteria for two (2) consecutive quarters shall be subject to call at par value by the commission. Repurchase agreements shall be placed according to:

(a) Availability of funds;

(b) Demand for funds by the institutions; and

(c) Highest loan to deposit ratio of eligible institutions.

(4)

(a) A repurchase agreement with a commercial bank or savings and loan shall not be an amount in excess of its capital structure or ten (10) percent of the institution's deposits, whichever is less.

(5)(b) The commission shall not enter into a Kentucky Bank Repurchase Program repurchase agreement with a commercial bank or savings and loan association that will cause that institution to exceed in aggregate a total of \$50,000,000 ~~25,000,000~~ in repurchase agreements.

(6)(5) Yield charged and collateral requirements for commercial banks and savings and loans.

(a) A commercial bank or savings and loan submitting U.S. Treasuries and agencies excluding mortgage backed securities and collateralized mortgage obligations as collateral shall be charged the [same duration yield generic] repurchase rate with an equivalent term as quoted by Bloomberg L.P. [Financial Markets with] and shall have a market value of 102 percent of the repurchase agreement face value ~~collateral~~.

(b) A commercial bank or savings and loan submitting mortgage-backed securities and collateralized mortgage obligations shall be charged the [same duration yield generic] repurchase rate with an equivalent term as posted on Bloomberg L.P. [Financial Markets], plus fifty (50) basis points and shall have a market value of [with] 105 percent of the repurchase agreement face value ~~collateral~~.

(7)(6) Payment for and holding collateral ~~[safekeeping]~~ of purchases.

(a) Each transaction shall be conducted on a payment-versus-delivery basis.

(b) The office ~~[A party]~~ shall not allow state funds to be released until delivery of adequate, negotiable collateral has been verified.

(c) Securities purchased from commercial banks or savings and loan associations in a repurchase agreement shall be received, verified, and held ~~[safe-kept]~~ by the state's custodial bank or its agent.

KIM BECHTEL, Deputy Executive Director

APPROVED BY AGENCY: August 14, 2024

FILED WITH LRC: August 15, 2024 at 8:30 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Wednesday, October 23, 2024, at 10:00 a.m. Eastern time, at the Kentucky Finance and Administration Cabinet, Room C117, 200 Mero Street, Frankfort, Kentucky 40622. Individuals interested in being heard at this hearing shall notify this agency in writing five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be 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 11:59 p.m. on Thursday, October 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: Laura Sharp, Administrative Specialist III, Office of General Counsel, 200 Mero Street, 5th Floor, Frankfort, Kentucky 40622; phone (502)564-6660, fax (502)564-9875, email laura.sharp@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Laura Sharp

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation governs the state's investments in repurchase agreements.

(b) The necessity of this administrative regulation: The state invests substantial funds in tri-party repurchase agreements. This regulation requires prudent use of those agreements and establishes monitoring requirements to assure safety of state funds are maintained.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This is required by KRS 42.500(10) and establishes the limitations required by that clause.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides guidance on the investment of state funds and requires prudent investment activities which will limit the exposure of state funds to investment losses.

(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 contains primarily technical and grammatical updates. This amendment brings the regulation up to the current standards adopted by the State Investment Commission

(b) The necessity of the amendment to this administrative regulation: Technical and grammatical changes are needed to maintain clarity, and other changes are necessary to keep the regulation in line with current economic trends.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment is compliant with KRS 42.500(10).

(d) How the amendment will assist in the effective administration of the statutes: The amendment updates investment language to reduce the risk of loss of state funds.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation only affects actions by the Office of Financial Management.

VOLUME 51, NUMBER 3– September 1, 2024

(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 impact is expected from the implementation of this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The amendment clarifies technical aspects of the regulation for the Investment Commission.

(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: No additional funding is necessary for implementation of this regulation.

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

(9) TIERING: Is tiering applied? There is no tiering because it 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. KRS 42.500 requires the State Investment Commission to promulgate this regulation.

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: None should be directly affected. The regulation concerns the internal operations of the State Investment Commission and its investments.

(a) Estimate the following for the first year:

Expenditures: \$0

Revenues: \$0

Cost Savings: \$0

(b) How will expenditures, revenues, or cost savings differ in subsequent years? No subsequent year impacts on expenditures, revenues, or cost savings are expected.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): None should be directly affected. The regulation concerns the internal operations of the State Investment Commission and its investments.

(a) Estimate the following for the first year:

Expenditures: \$0

Revenues: \$0

Cost Savings: \$0

(b) How will expenditures, revenues, or cost savings differ in subsequent years? No subsequent year impacts on expenditures, revenues, or cost savings are expected.

(4) Identify additional regulated entities not listed in questions (2) or (3): None should be directly affected. The regulation concerns the internal operations of the State Investment Commission and its investments.

(a) Estimate the following for the first year:

Expenditures: \$0

Revenues: \$0

Cost Savings: \$0

(b) How will expenditures, revenues, or cost savings differ in subsequent years? No subsequent year impacts on expenditures, revenues, or cost savings are expected.

(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: The regulation is being amended to bring it into alignment with current Office of Financial Management practice.

(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 major economic impact is expected.

(b) The methodology and resources used to reach this conclusion: The regulation is being amended to bring it into alignment with current Office of Financial Management practice.

FINANCE AND ADMINISTRATION CABINET
State Investment Commission
(Amendment)

200 KAR 14:091. Guidelines for money market instruments.

RELATES TO: KRS [41.640,]42.014(1), 42.500, 42.505-42.545
STATUTORY AUTHORITY: KRS 42.500(10), 42.520(2), 42.525
NECESSITY, FUNCTION, AND CONFORMITY: KRS 42.500(10) requires the State Investment Commission to promulgate administrative regulations for the investment and reinvestment of state funds. KRS 42.520(2) requires the commission to promulgate administrative regulations concerning the assignment of priorities to public depositories. KRS 42.525 requires the State Investment Commission to prescribe standards for the operation of the state's investment program. This administrative regulation establishes the standards which shall apply to the use of certain money market instruments which include bankers' acceptances, commercial paper, and negotiable collateralized and uncollateralized certificates of deposit.

Section 1. Definitions.

(1) "Bankers' acceptance" means a short-term negotiable discount note drawn on and accepted by a bank or trust company which is obligated to pay the face value amount at maturity.

(2) "Commercial paper" means an unsecured promissory obligation having a maturity of less than 270 days.

(3) "Commission" means the State Investment Commission.

(4) "NRSRO" means "Nationally Recognized Statistical Ratings Organization", which is a credit rating agency that is registered with the Securities and Exchange Commission, and which provides its opinion on the creditworthiness of an entity and the financial obligations issued by that entity.

(5) "Office" means the Office of Financial Management.

Section 2. Bankers' Acceptances.

(1) The office may purchase bankers' acceptances if rated in the highest short-term rating category by commission approved[an] NRSRO.

(2) The purchase of these instruments shall be:

(a) Made on a delivery versus payment basis; and

(b) Held in the Commonwealth's account in whatever depository shall be designated as eligible by the commission.

(3)

[[a]] Investment in bankers' acceptances shall be made for a period of no longer than 180 days per investment.

[[b]] [The total amount of the investment in this security shall not exceed the amount of twenty-five (25) million dollars in one (1) institution at a time.]

Section 3. Commercial Paper.

(1) The office may purchase commercial paper rated in the highest short-term rating category by commission approved[an] NRSRO.

(2) The purchase of these instruments shall be:

(a) Made on a delivery versus payment basis; and

(b) Held in the Commonwealth's account in whatever depository shall be designated as eligible by the commission.

VOLUME 51, NUMBER 3– September 1, 2024

(3) ~~[The] Investments in commercial paper shall be made for a period of no longer than 270 days per investment [and the total amount of the investment in this security shall not exceed the amount of twenty-five (25) million dollars by any issuer at a time].~~

Section 4. Negotiable Certificates of Deposit, Collateralized and Uncollateralized.

(1) The office may purchase collateralized certificates of deposit if issued by banks rated in one (1) of the three (3) highest categories by commission approved[an] NRSRO.

(2) The office may purchase uncollateralized negotiable certificates of deposit if issued by banks rated in one (1) of the two (2) highest categories by commission approved[an] NRSRO ~~or subject to 200 KAR 14:200.~~

(3) The purchase of these instruments shall be:

(a) Made on a delivery versus payment basis; and

(b) Held in the Commonwealth's account in whatever depository shall be designated as eligible by the commission.

(4)

~~[(a)] Investment in negotiable certificates of deposits shall be made for a period of no longer than 270 days per investment unless specifically authorized by KRS 41.610.~~

~~[(b)] [The total amount of investments in certificates of deposit shall not exceed the amount of twenty-five (25) million dollars in any one (1) institution at a time.]~~

Section 5. Limits of Money Market Instruments Per Pool. The aggregate investment in bankers' acceptances, commercial paper, and negotiable certificates of deposit shall not exceed thirty-five (35) percent of pool assets or \$25,000,000 per issuer. ~~[Limit of Money Market Instruments of the State's Total Portfolio. The aggregate investment in bankers' acceptances, commercial paper, and negotiable certificates of deposit shall not exceed thirty-five (35) percent of the Commonwealth's total investment portfolio.]~~

KIM BECHTEL, Deputy Executive Director

APPROVED BY AGENCY: August 14, 2024

FILED WITH LRC: August 15, 2024 at 8:30 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Wednesday, October 23, 2024, at 10:00 a.m. Eastern time, at the Kentucky Finance and Administration Cabinet, Room C117, 200 Mero Street, Frankfort, Kentucky 40622. Individuals interested in being heard at this hearing shall notify this agency in writing five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be 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 11:59 p.m. on Thursday, October 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: Laura Sharp, Administrative Specialist III, Office of General Counsel, 200 Mero Street, 5th Floor, Frankfort, Kentucky 40622; phone (502)564-6660, fax (502)564-9875, email laura.sharp@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Laura Sharp

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation provides the direction for investment of state funds required by KRS 42.500(10).

(b) The necessity of this administrative regulation: This regulation is required to place limitations on investment activities in order to limit the risk of loss of state funds through imprudent investment decisions.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 42.500(10) specifies particular requirements for this administrative regulation such as limits on the maturity of investments. This regulation specifies those particular limitations.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides guidance on the investment of state funds and requires prudent investment activities which will limit the exposure of state funds to investment losses.

(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 contains primarily technical, formatting, and grammatical updates.

(b) The necessity of the amendment to this administrative regulation: Technical, formatting, and grammatical changes are needed to maintain the regulation's clarity.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment is compliant with KRS 42.500(10).

(d) How the amendment will assist in the effective administration of the statutes: The amendment further clarifies investment activities to reduce the risk of loss of state funds.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation only affects actions by the Office of Financial Management.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: None.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No cost.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The amendment clarifies technical aspects of the regulation for the Investment Commission.

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

(a) Initially: \$0.

(b) On a continuing basis: \$0.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: None needed.

(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: This amendment does not establish or increase any fees.

(9) TIERING: Is tiering applied? There is no tiering because it 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. KRS 42.500 requires the State Investment Commission to promulgate this regulation. KRS 42.500 requires the State Investment Commission to promulgate this regulation. Additionally, the regulation requires that the Limited Term pool be managed consistent with SEC Rule 2a-7 as required by current government accounting standards.

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: None should be directly affected. This regulation only affects the investment actions of the Office of Financial Management.

(a) Estimate the following for the first year:

Expenditures: \$0

Revenues: \$0

Cost Savings: \$0

(b) How will expenditures, revenues, or cost savings differ in subsequent years? No subsequent year impacts on expenditures, revenues, or cost savings are expected.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): None should be directly affected. This

regulation only affects the investment actions of the Office of Financial Management.

(a) Estimate the following for the first year:

Expenditures: \$0

Revenues: \$0

Cost Savings: \$0

(b) How will expenditures, revenues, or cost savings differ in subsequent years? No subsequent year impacts on expenditures, revenues, or cost savings are expected.

(4) Identify additional regulated entities not listed in questions (2) or (3): None should be directly affected. This regulation only affects the investment actions of the Office of Financial Management.

(a) Estimate the following for the first year:

Expenditures: \$0

Revenues: \$0

Cost Savings: \$0

(b) How will expenditures, revenues, or cost savings differ in subsequent years? No subsequent year impacts on expenditures, revenues, or cost savings are expected.

(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: The regulation is being amended to bring it into alignment with current Office of Financial Management practice.

(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 major economic impact is expected.

(b) The methodology and resources used to reach this conclusion: The regulation is being amended to bring it into alignment with current Office of Financial Management practice.

**FINANCE AND ADMINISTRATION CABINET
Office of the Secretary
(Amendment)**

200 KAR 15:010. Formula for allocation of private activity bonds.

RELATES TO: KRS 103.200(1)(k), (l), (m), (n), (2), 103.2101, 103.282, 103.286, 26 U.S.C. 146, Pub.L. 111-5

STATUTORY AUTHORITY: KRS 103.286(3), 26 U.S.C. 146

NECESSITY, FUNCTION, AND CONFORMITY: KRS 103.286(3) requires the Secretary of the Finance and Administration Cabinet to promulgate administrative regulations to provide for the allocation of the state ceiling for the issuance of private activity bonds. This administrative regulation establishes the formula for that allocation. This administrative regulation also establishes the Commonwealth's role in the allocation of additional federal volume cap [received as a result of the American Recovery and Reinvestment Act of 2009, Pub.L. 111-5].

Section 1. Definitions.

(1) "Additional federal volume cap" means federal volume cap allocated above the annual state allocation provided by 26 U.S.C. sec. 146(d).

(2) "Affected bonds" means "private activity bonds" as defined by 26 U.S.C. sec. 146, excluding any obligations not subject to the state ceiling under the Code.

(3) [(2)] "Allocation" means the amount of volume cap that was approved by the Kentucky Private Activity Bond Allocation Committee for a local issuer or state issuer.

[(3)] ["ARRA" means the American Recovery and Reinvestment Act of 2009, Pub.L. 111-5.]

(4) "Available volume cap" means the amount of unallocated volume cap remaining at the close of business on June 30.

(5) "Bonds" is defined by KRS 103.200(2).

(6) "Committee" means the Kentucky Private Activity Bond Allocation Committee.

(7) "Eligible volume cap applicants" means issuers and local issuers who file a notice of intent to issue bonds relating to volume cap.

(8) "Energy efficiency project" means a project meeting the requirements of KRS 103.282.

(9) "Energy efficiency project reserve" means the percentage of the state ceiling that shall be reserved for an energy efficiency project through June 30.

(10) "Issued" means delivered and paid for.

(11) "Issuer" means the public or authorized governmental body which issues the bonds.

(12) "Local issuer" means a public or authorized governmental body which issues bonds on behalf of a local project.

(13) "Local issuer pool" means the portion of the state ceiling from which allocations for local projects are made to issuers of affected bonds issued on behalf or for the benefit of an entity which is not a state agency.

(14) "Local project" means a project, other than a project for creation or financing of residential single family or multifamily affordable housing which are included under the "state projects", for which bonds are issued on behalf or for the benefit of an entity which is not a state agency.

(15) "Lottery" means any process of random selection utilized to allocate available volume cap and which is conducted:

(a) By staff at a public meeting of the Committee; and

(b) In accordance with Section 4 of this administrative regulation.

(16) "Staff" means the Office of Financial Management of the Finance and Administration Cabinet.

(17) "State ceiling" means the cap imposed by 26 U.S.C. 146 on private activity bonds issued within the Commonwealth of Kentucky.

(18) "State project" means a project, including creation or financing of residential single family or multifamily affordable housing projects and student loans, for which bonds are issued by, on behalf, or for the benefit of a state agency.

(19) "Year" means calendar year.

Section 2. Evaluation of Local Projects. Local projects seeking allocation from the state ceiling shall be allocated according to rankings based on the following factors:

(1) Creation of new jobs, as well as preservation of existing jobs, by the project;

(2) Average hourly wage and benefits of new employees proposed for the project;

(3) Capital investment in Kentucky being made as a result of the project;

(4) Unemployment rate in the county of the project;

(5) Any state economic development incentives awarded to the company; and

(6) Previous state ceiling allocated to the benefited borrower within the last ten (10) years.

Section 3. Evaluation of Energy Efficiency Projects. Energy efficiency projects seeking allocation from the state ceiling under the Energy Efficiency Project Reserve shall be allocated according to rankings based on the following factors:

(1) Annual energy savings associated with the project;

(2) Capital investment in Kentucky being made as a result of the project;

(3) Unemployment rate in the county of the project;

(4) Any state economic development incentives awarded to the company; and

(5) Previous state ceiling allocated to the benefited borrower within the last ten (10) years.

Section 4. Allocation of Available Volume Cap.

(1) Allocations from the available volume cap shall be made to eligible volume cap applicants as follows:

(a) First, a lottery shall be conducted to determine the order of disbursement to local projects which did not receive an allocation from the local issuer pool;

(b) Second, to the extent there is remaining available volume cap, a lottery shall be conducted to determine the order of disbursement to local projects which received an allocation from the local issuer pool, whether the allocation was issued or not; and

VOLUME 51, NUMBER 3– September 1, 2024

(c) Finally, any remaining available volume cap shall be allocated by the committee to one (1) or more state issuers for use during the year or as carry forward.

(2) The committee shall choose a reasonable method of random selection for the lottery process.

Section 5. Committee Meetings. The committee shall meet as necessary to allocate the state ceiling. Special meetings may be held on the call of the committee chairman.

Section 6. An issuer shall obtain a confirmation authorizing the issuance of affected bonds by filing with the committee a written notice of intent to issue bonds, using the "Notice of Intent" form. The committee shall issue a confirmation, using the "Confirmation of Allocation of State Ceiling" form, allocating to the issuer a portion of the state ceiling. Affected bonds shall not be issued by any issuer prior to receiving confirmation by the committee of an allocation under the state ceiling. Confirmations shall be dated and numbered in the order issued.

Section 7. Notice of Issuance for Local Projects and Energy Efficiency Projects. A confirmation shall expire ninety (90) calendar days from the date of allocation by the committee, or December 15, whichever is earlier. The issuer shall deliver to the committee a notice that the affected bonds have been issued, using the "Notice of Issuance" form. The notice of issuance may be sent by any means, but the committee shall receive it by the close of business on the 90th day after the confirmation. If the notice period ends on a Saturday, Sunday, or other day upon which state offices are closed for business, the notice period shall be extended to the next business day.

Section 8. Notice of Issuance for State Projects. The issuer shall deliver to the committee a notice of issuance. The notice of issuance may be sent by any means, but the committee shall receive it by the close of business on or before December 15. If the notice period ends on a Saturday, Sunday, or other day upon which state offices are closed for business, the notice period shall be extended to the next business day.

Section 9. Issuance of Bonds in Lesser Amounts than Confirmation. A confirmation of affected bonds shall be effective if the issued amount of the bonds is not less than eighty-five (85) percent of the original confirmation. The issuer shall notify the committee if the bonds issued are within the eighty-five (85) percent requirement and the unused part of the allocation shall revert to the local issuer pool, or if this reversion occurs after June 30 of any year, the amount shall become available volume cap.

Section 10. Carry Forward Allocations.

(1) In any year, the committee shall allocate any remaining state ceiling as carry forward allocations if the aggregate amount of affected bonds issued during the year is less than the state ceiling on December 15th. An issuer shall, in order to receive a carry forward allocation, file with the committee by December 15th:

(a) A notice of intent; and

(b) A carry forward election of unused private activity bond volume cap, using U.S. Treasury Department Form 8328.

(2) The carry forward of any unallocated portion of the state ceiling may be for any purpose authorized by 26 U.S.C. sec. 146(f).

(3) The committee shall issue a confirmation of the notice and election to carry forward, using the "Confirmation of Carry Forward Allocation of State Ceiling" form.

(4) The committee may, but shall not be required to, allocate a carry forward notice or election filed after December 15th.

Section 11. The committee shall not confirm a notice of intent after the aggregate amount of bond confirmations, including carry forwards, have reached the state ceiling for that year.

Section 12. Form and Manner.

(1) The committee and issuer shall use the notice and confirmation forms incorporated by reference in Section 15 of this administrative regulation.

(2) An issuer of a local project or energy efficiency project shall not:

(a) File a notice of intent unless the issuance will be made within the ninety (90) day confirmation period established in Section 7 of this administrative regulation; or

(b) Seek an allocation of the state ceiling in excess of the amount necessary to finance all costs of a local project.

(3) An issuer of a state project shall not:

(a) File a notice of intent unless the issuance will be made by December 15; or

(b) Seek allocation of the state ceiling in excess of the amount necessary to finance all costs of a state project.

Section 13. Delegation of Functions. The committee shall review and allocate all requests for state ceiling. The committee shall not delegate authority to make allocations of the state ceiling to staff except if there are surplus or carry forward allocations. Any delegation of authority and the limit of that authority shall be recorded verbatim in the minutes of the committee meeting at which the delegation is made.

Section 14. Additional Federal Volume Cap Allocations~~[under ARRA]~~.

(1) If federal regulations allocate volume cap directly to the Commonwealth or allow for transfer or waiver of any direct volume cap allocation to a local government back to the Commonwealth, the committee shall:

(a) Accept any notice of waiver of volume cap as authorized by the local governing body on behalf of the Commonwealth;

(b) Accept applications of eligible volume cap recipients consistent with federal regulation; and

(c) Rank each application and allocate volume cap based upon:

1. Any federally mandated standards and objectives; and

2. Expected value to the Commonwealth.

(2) Notice of Issuance. The issuer shall deliver to the committee a notice that the affected bonds have been issued within the time constraints established in the applicable federal regulation, if any.

Section 15. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) The "Notice of Intent" form specified by the Office of Financial Management and posted on its Web site;

(b) The "Confirmation of Allocation of State Ceiling" form specified by the Office of Financial Management and posted on its Web site;

(c) The "Confirmation of Allocation of Carry-Forward Allocation of State Ceiling" form specified by the Office of Financial Management and posted on its Web site;

(d) The "Notice of Issuance" form specified by the Office of Financial Management and posted on its Web site; and

[(a)] ["Notice of Intent" application, December 2014;]

[(b)] ["Confirmation of Allocation of State Ceiling", March 1998;]

[(c)] ["Confirmation of Carry-forward Allocation of State Ceiling", March 1998;]

[(d)] ["Notice of Issuance", March 1998; and]

(e) "U.S. Treasury Department Form 8328".

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Financial Management, 200 Mero Street, 5th Floor~~[76 Capitol Annex]~~, Frankfort, Kentucky 40622~~[40604]~~, Monday through Friday, 8 a.m. to 4:30 p.m. and online at the Office of Financial Management's Web site at <https://finance.ky.gov/office-of-the-controller/office-of-financial-management/Pages/default.aspx>.

HOLLY M. JOHNSON, Secretary

APPROVED BY AGENCY: August 14, 2024

FILED WITH LRC: August 15, 2024 at 8:30 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Wednesday, October 23, 2024, at 10:00 a.m. Eastern time, at the Kentucky Finance and Administration Cabinet, Room C117, 200 Mero Street, Frankfort, Kentucky 40622. Individuals interested in being heard at this hearing shall notify this agency in writing five workdays prior to the hearing of their intent to attend. If no

VOLUME 51, NUMBER 3– September 1, 2024

notification of intent to attend the hearing is received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until 11:59 p.m. on Thursday, October 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: Laura Sharp, Administrative Specialist III, Office of General Counsel, 200 Mero Street, 5th Floor, Frankfort, Kentucky 40622; phone (502) 564-6660, fax (502) 564-9875, email laura.sharp@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Laura Sharp

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the formula for allocation of the state ceiling for the issuance of private activity bonds.

(b) The necessity of this administrative regulation: This administrative regulation is necessary for the evaluation of the allocation of private activity bonds to local projects, energy efficiency projects, and state level projects as well as applicable allocation, notice, and administrative standards.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation describes criteria for efficient allocation of resources within the parameters established by federal tax law and the authorizing statute.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the equitable allocation of private activity bonds among project participants across the state.

(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 contains primarily technical and grammatical updates. It also seeks to simplify the process for updating incorporated reference material, which changes frequently.

(b) The necessity of the amendment to this administrative regulation: Technical and grammatical changes are needed to maintain clarity, and the other changes are necessary to keep the regulation in line with current economic trends.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment is compliant with KRS 103.286(3) and 26 U.S.C. 146.

(d) How the amendment will assist in the effective administration of the statutes: This amendment seeks to update technical and grammatical points as well as to simplify process of providing notice of up-to-date incorporated materials.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Commonwealth traditionally has two (2) state issuers, The Kentucky Housing Corporation and the Kentucky Higher Education Student Loan Corporation, as well as a multitude of projects on the local level.

(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 impact is expected from the implementation of this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No costs.

(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: 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: No additional funding is necessary for implementation of this regulation.

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

(9) TIERING: Is tiering applied? There is no tiering because it 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. The applicable federal statute is the Tax Reform Act of 1986, 26 U.S.C. Sec 146. Kentucky Statutes include KRS 103.200, 103.2101 and 103.286

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: None should be directly affected. This regulation only affects the Finance and Administration Cabinet.

(a) Estimate the following for the first year:

Expenditures: \$0

Revenues: \$0

Cost Savings: \$0

(b) How will expenditures, revenues, or cost savings differ in subsequent years? No subsequent year impacts on expenditures, revenues, or cost savings are expected.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): None should be directly affected. This regulation only affects the Finance and Administration Cabinet.

(a) Estimate the following for the first year:

Expenditures: \$0

Revenues: \$0

Cost Savings: \$0

(b) How will expenditures, revenues, or cost savings differ in subsequent years? No subsequent year impacts on expenditures, revenues, or cost savings are expected.

(4) Identify additional regulated entities not listed in questions (2) or (3): None should be directly affected. This regulation only affects the Finance and Administration Cabinet.

(a) Estimate the following for the first year:

Expenditures: \$0

Revenues: \$0

Cost Savings: \$0

(b) How will expenditures, revenues, or cost savings differ in subsequent years? No subsequent year impacts on expenditures, revenues, or cost savings are expected.

(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: The regulation is being amended to bring it into alignment with current Office of Financial Management practice.

(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 major economic impact is expected.

(b) The methodology and resources used to reach this conclusion: The regulation is being amended to bring it into alignment with current Office of Financial Management practice.

BOARDS AND COMMISSIONS
Board of Dentistry
(Amendment)

201 KAR 8:563. Licensure of dental hygienists.

RELATES TO: KRS 304.40 - 075, 313.030, 313.040, 313.060, 313.080, 313.130, 313.254

STATUTORY AUTHORITY: KRS 313.021(1)(a), (b), (c), 313.040(1), (2), (7), 313.254

NECESSITY, FUNCTION, AND CONFORMITY: KRS 313.040 requires the board to promulgate administrative regulations relating to requirements and procedures for the licensure of dental hygienists. This administrative regulation establishes requirements and procedures for the licensure of dental hygienists.

Section 1. General Licensure Requirements. An applicant desiring initial licensure in Kentucky as a dental hygienist shall [licensure in the Commonwealth shall at a minimum]:

- (1) Understand, read, speak, and write the English language with a comprehension and performance level equal to at least the ninth grade of education, verified by testing as necessary;
- (2) Submit a completed, signed, and notarized Application for Dental Hygiene Licensure with an attached applicant photo taken within the past six (6) months;
- (3) Pay the fee required by 201 KAR 8:520;
- (4) Not be ~~currently~~ subject to disciplinary action pursuant to KRS Chapter 313 that would prevent licensure;
- (5) Complete and pass the board's jurisprudence exam;
- (6) Hold an active [Provide proof of having current] certification in cardiopulmonary resuscitation (CPR) or a more comprehensive program which [that] meets or exceeds the American Heart Association Guidelines for CPR and ECC [—incorporated— by reference in 201 KAR 8:533];
- (7) Submit to a nationwide state and federal criminal background check by fingerprint through the Department of Kentucky State Police;
- (8) Provide verification ~~within three (3) months of the date the application is received at the office of the board~~ of any license to practice dental hygiene held previously or currently in any state or other licensing jurisdiction;
- (9) Hold an Associate's degree or Bachelor's degree in dental hygiene from a school, college, or department of a university accredited by the [Provide proof that the applicant is a graduate of a] Commission on Dental Accreditation (CODA) [—accredited— dental hygiene school or college or dental hygiene department of a university];
- (10) Successfully complete [Provide proof that the applicant has successfully completed] the National Board Dental Hygiene Examination (NBDHE) [—which is written and theoretical], conducted by the Joint Commission on National Dental Examinations (JCND E); [—and]
- (11) Provide a written explanation for any positive returns on a query of the National Practitioner Data Bank; and
- (12) Complete all additional requirements for one (1) of the following:

- (a) Licensure by clinical examination; or
- (b) Licensure by credentials.

Section 2. Requirements for Licensure by Clinical Examination.

- (1) An [Each] individual desiring initial licensure in Kentucky as a dental hygienist by clinical examination shall:
 - (a) Complete [complete] all [—of the] requirements [—established] in Section 1 of this administrative regulation; and [—]
 - (b) Successfully complete all components of one (1) of the following

~~[(2)] [Each individual desiring initial licensure as a dental hygienist by examination shall successfully complete a] clinical examinations [examination] within [the] five (5) years preceding the filing of the application [his or her Application for Dental Hygiene Licensure. The board shall accept the following regional clinical examinations]:~~

1. [(a)] The examination of the Council of Interstate Testing Agencies (CITA);

~~2. [(b)] The examination of the Central Regional Dental Testing Service (CRDTS);~~

~~3. [(c)] The examination of the Commission on Dental Competency Assessments (CDCA);~~

~~4. [(d)] The examination of the States Resources for Testing and Assessments [Southern Regional Testing Agency] (SRTA); [—or]~~

~~5. [(e)] The examination of the Western Regional Examining Board (WREB); or~~

~~6. The Dental Hygiene Licensure Objective Structured Clinical Examination (DHLOSCE) of the Joint Commission on National Dental Examinations (JCND E).~~

~~[(2)] [(3)] An individual applying more than two (2) years after graduating with an Associate's degree or Bachelor's degree in dental hygiene [desiring initial licensure as a dental hygienist by examination more than two (2) years after fulfilling all of the requirements of his or her CODA accredited dental hygiene education] shall:~~

~~(a) Hold a license to practice dental hygiene in good standing in another state or territory of the United States or the District of Columbia; or~~

~~(b) Complete a continuing education plan approved by the board [If the applicant does not hold a license to practice dental hygiene in good standing, complete a board-approved refresher course prior to receiving a license to practice dental hygiene in the Commonwealth of Kentucky].~~

~~[(3)] [(4)] An applicant who has taken a clinical examination three (3) times and failed to achieve a passing score shall complete [not be allowed to sit for the examination again until the applicant has completed and passed] a remediation plan approved [prescribed] by the board [—based on the applicant's deficiencies].~~

Section 3. Requirements for Licensure by Credentials. An individual desiring initial licensure in Kentucky as a [Each individual desiring initial licensure as a] dental hygienist by credentials shall:

- (1) Complete all ~~[—of the] requirements [—established] in Section 1 of this administrative regulation;~~
- (2) Provide proof of having passed a state, regional, or national clinical examination used to determine clinical competency in a state or territory of the United States or the District of Columbia; and
- (3) Be licensed and actively practicing dental hygiene in a state or territory of the United States or the District of Columbia for a least [Provide proof that, for] five (5) of the six (6) years [immediately] preceding the filing of the application [—the applicant has been engaged in the active practice of dental hygiene while he or she was legally authorized to practice dental hygiene in a state or territory of the United States or the District of Columbia if the qualifications for the authorization were equal to or higher than those of the Commonwealth of Kentucky].

Section 4. Requirements for Charitable Limited Dental Hygiene Licensure.

(1) An individual desiring limited licensure in Kentucky to provide charitable dental hygiene services [Each individual desiring a charitable limited license] shall:

- (a) Understand, read, speak, and write the English language with a comprehension and performance level equal to at least the ninth grade of education, verified by testing as necessary;
- (b) Submit a completed, signed, and notarized Application for Charitable ~~[—Dental Hygiene] Limited Licensure~~ with an attached applicant photo taken within the past six (6) months;
- (c) Pay the fee required by 201 KAR 8:520;
- (d) Not be subject to disciplinary action pursuant to KRS Chapter 313 that would prevent licensure;
- (e) Hold [Have] a license to practice dental hygiene in good standing in another state or territory of the United States or the District of Columbia; and
- (f) Provide a written explanation for any positive returns on a query of the National Practitioner Data Bank.

(2) A charitable limited dental hygiene license holder [An individual licensed pursuant to this section] shall:

- (a) Work only with charitable entities registered with the Cabinet for Health and Family Services that have met requirements of KRS 313.254 and 201 KAR 8:581;

VOLUME 51, NUMBER 3– September 1, 2024

(b) Only perform procedures allowed by KRS 313.254, which shall be completed within the duration of the charitable event;

(c) Be eligible for the provisions of medical malpractice insurance procured pursuant to KRS 304.40-075; and

(d) Perform these duties without expectation of compensation or charge to the individual and without payment or reimbursement by any governmental agency or insurer.;

~~(e) [Have a charitable limited license that shall be good for two (2) years and expire during the regular dental hygiene renewal cycle; and]~~

~~(f) [Comply with reciprocity requirements if applicable.]~~

~~[1.] [A state that extends a reciprocal agreement shall comply with this section.]~~

~~[2.] [An individual shall notify the sponsor of a charitable clinic and the board of the intent to conduct or participate in the clinic.]~~

~~[3.] [An individual conducting or participate in a charitable clinic shall have a license to practice dental hygiene in the state in which the dental hygienist practices.]~~

Section 5. ~~[Minimum]~~ Continuing Education Requirements.

(1) A Kentucky licensed dental hygienist shall complete thirty (30) hours of continuing education during the two (2) year licensure period defined by KRS 313.030(2) except in the following cases:

(a) A licensee who was issued a new or reinstated license in the second year of the current biennial license period shall only complete one-half (1/2) the required hours for that period;

(b) A licensee who graduated in the first year of the current biennial license period shall only complete one-half (1/2) the required hours for that period;

(c) A licensee who graduated in the second year of the current biennial license period shall not be required to complete continuing education hours for that period;

(d) A charitable limited license holder shall not be required to complete continuing education hours; or

(e) A licensee may be granted a hardship waiver or deferment if such a request is submitted to and approved by the board. [Each individual desiring renewal of an active dental hygiene license shall complete thirty (30) hours of continuing education that relates to or advances the practice of dental hygiene and would be useful to the licensee in his or her practice.]

(2) Acceptable continuing education content [hours] shall include ~~[course content designed to increase]:~~

(a) Competency in treating patients who are medically compromised or who experience medical emergencies during the course of dental hygiene treatment;

(b) Pharmaceutical [Knowledge of pharmaceutical] products and ~~[the protocol of the]~~ proper use protocols of medications;

(c) Awareness of currently accepted methods of infection control;

(d) Basic [Knowledge of basic] medical and scientific subjects [including, biology, physiology, pathology, biochemistry, pharmacology, epidemiology, and public health];

(e) Clinical [Knowledge of clinical] and technological subjects;

(f) Patient [Knowledge of subjects pertinent to patient] management, safety, and oral healthcare;

(g) Mass [Competency in assisting in mass] casualty or mass immunization situations;

(h) Clinical dental hygiene performed on a charitable or volunteer basis [skills through the volunteer of clinical charitable dental hygiene that meets the requirements of KRS 313.254];

(i) Business [Knowledge of office business] operations and best practices; and ~~[or]~~

(j) Dental [Participation in dental] or dental hygiene association or society business meetings.

(3) The thirty (30) hours of continuing education shall include:

(a) A minimum of ten (10) hours [shall be] taken in a live interactive presentation format; and [-]

(b) [(4)] A maximum of ten (10) hours [total may be taken] that meet the requirements of subsection (2)(h) - (j) of this section.

(4) [(5)] Dental [For dental] hygienists registered to practice under general supervision shall also meet the continuing education requirements of Section 12(8) of this administrative regulation [-, a minimum of three (3) hours shall be taken in medical emergencies

as described in Section 12(1)(d) of this administrative regulation in order to renew their registration].

(5) [(6)] Dental [For dental] hygienists registered to practice as public health hygienists shall also meet the continuing education requirements of Section 16(5) of this administrative regulation [-, a minimum of three (3) hours shall be taken in medical emergencies as described in Section 15(1)(d) of this administrative regulation in order to renew their registration].

(6) [(7)] All continuing education hours shall be documented by [verified by the receipt of] a certificate of completion or [certificate of attendance bearing:

(a) A [The] signature or other verification of the provider;

(b) The name of the licensee in attendance;

(c) The title of the course or meeting attended or completed;

(d) The date of attendance or completion;

(e) The number of hours earned; and

(f) Evidence of the method of delivery if the course was taken in a live interactive presentation format.

(7) [(8)] The licensee shall be responsible for obtaining the qualifying documentation of continuing education [It shall be the sole responsibility of the individual dental hygienist to obtain documentation] from the provider or [sponsoring] organization [verifying participation as established in subsection (7) of this section] and to retain those documents [the documentation] for a minimum of five (5) years.

(8) [(9)] During the [At] license renewal process, licensees [each licensee] shall attest to their compliance [the fact that he or she has complied] with the requirements of this section.

(9) [(10)] Licensees [Each licensee] shall be subject to audit of their compliance with the requirements of this section [proof of continuing education compliance by the board].

Section 6. ~~[Requirements for]~~ Renewal of a Dental Hygiene License.

(1) All dental licenses issued by the board shall expire on December 31 of odd-numbered years and must be renewed to remain active. A licensee [Each individual] desiring renewal of an active dental hygiene license shall:

(a) Submit a completed and [-] signed Application for Renewal of Dental Hygiene License;

(b) Pay the fee required by 201 KAR 8:520;

(c) Maintain an active [-, with no more than a thirty (30) day lapse, CPR] certification in CPR or a more comprehensive program that meets or exceeds the American Heart Association Guidelines for CPR and ECC [-, incorporated by reference in 201 KAR 8:533, unless a hardship waiver is submitted to and subsequently approved by the board]; and

(d) Meet the continuing education requirements as established in Section 5 of this administrative regulation [- except in the following cases:]

[1.] [If a hardship waiver has been submitted to and is subsequently approved by the board];

[2.] [If the licensee graduated in the first year of the biennial license period, the licensee shall complete one-half (1/2) of the hours as established in Section 5 of this administrative regulation; and]

[3.] [If the licensee graduated in the second year of the biennial license period, the licensee shall not be required to complete the continuing education requirements established in Section 5 of this administrative regulation].

(2) A [If a] licensee who has not actively practiced dental hygiene in the two (2) [- consecutive] years preceding the filing of the renewal application shall complete a continuing education plan approved by the board [-, he or she shall complete and pass a board-approved refresher course] prior to resuming the active practice of dental hygiene.

(3) A licensee desiring renewal of a charitable limited dental hygiene license shall repeat the initial licensure process required by Section 4 of this administrative regulation.

Section 7. Retirement of a Dental Hygiene License.

(1) A licensee [Each individual] desiring to no longer hold an active dental hygiene license [retirement of a dental hygiene license]

VOLUME 51, NUMBER 3– September 1, 2024

shall submit a completed and signed Retirement of License Form[, incorporated by reference in 201 KAR 8:533].

(2) Upon receipt of this form[Retirement of License Form], the board shall send written confirmation of retirement to the[~~last known~~] address provided[of the licensee].

(3) A licensee shall not retire a license that has pending disciplinary action against it.

(4) A license that is not properly retired or renewed shall be considered expired for reinstatement purposes[Each retirement shall be effective upon the processing of the completed and signed Retirement of License Form by the board].

Section 8. Reinstatement of a Dental Hygiene License.

(1) A former licensee[Each individual] desiring reinstatement of an expired or[a] properly retired dental hygiene license in Kentucky shall:

(a) Submit a completed, signed, and notarized Application to Reinstat[e] a [~~Dental or Dental Hygiene Licensure~~] License with an attached applicant photo taken within the past six (6) months;

(b) Pay the fee required by 201 KAR 8:520;

(c) Hold an active[Show proof of having current] certification in CPR or a more comprehensive program that meets or exceeds the American Heart Association Guidelines for CPR and ECC[, incorporated by reference in 201 KAR 8:533];

(d) Provide verification[~~within three (3) months of the date the Application to Reinstat[e] a Dental Hygiene License is received at the office of the board~~] of any license to practice dental hygiene obtained[held previously or currently] in any state or other licensing jurisdiction since the applicant was first licensed in Kentucky;

(e) Submit to a nationwide state and federal criminal background check by fingerprint through the Department of Kentucky State Police; and

(f) Provide a written explanation for any positive returns on a query of the National Practitioner Data Bank.

(2) An[If an individual applies to reinstate a license within two (2) years of when the license was last active, the individual shall provide proof of having met the continuing education requirements as established in Section 5 of this administrative regulation within those two (2) years.]

[~~(3) [If the] applicant who has not actively practiced dental hygiene in the two (2) [consecutive] years [immediately] preceding the filing of the reinstatement application~~] Application to Reinstat[e] a Dental Hygiene License, the applicant shall complete[~~and pass~~] a continuing education plan[refresher course] approved by the board prior to resuming the active practice of dental hygiene.

(3) A former licensee who applies to reinstate an expired license that was not properly retired shall be subject to:

(a) The expired license reinstatement penalties in 201 KAR 8:520 if applying less than two (2) years from when the license was last active; or

(b) The same reinstatement fees as a properly retired license if applying more than two (2) years from when the license was last active.

[~~(4) [If a license is reinstated in the first year of the biennial license period, the licensee shall complete all of the continuing education requirements as established in Section 5 of this administrative regulation prior to the renewal of his or her license.]~~

[~~(5) [If a license is reinstated in the second year of the biennial license period, the licensee shall complete one-half (1/2) of the hours as established in Section 5 of this administrative regulation prior to the renewal of his or her license.]~~

Section 9. [~~Requirements for~~] Verification of Licensure. An[Each] individual desiring an official verification of a dental hygiene license held currently or previously in Kentucky shall:

(1) Submit a signed and completed Verification of Licensure or Registration Form[, incorporated by reference in 201 KAR 8:533]; and

(2) Pay the fee required by 201 KAR 8:520.

Section 10. [~~Requesting a Duplicate License. Each individual desiring a duplicate dental hygiene license shall:~~]

[~~(1) [Submit a signed and completed Duplicate License or Registration Request Form, incorporated by reference in 201 KAR 8:533; and]~~

[~~(2) [Pay the fee required by 201 KAR 8:520.]~~

[~~Section 11. Requirements for Local Anesthesia Registration.~~

(1) A[An individual] licensed[~~as a~~] dental hygienist[~~in Kentucky and not subject to disciplinary action~~] who desires to administer infiltration or block[local] anesthesia shall:

(a) Submit a signed and completed[Complete the] Application for Dental Hygiene Special Registrations;

(b) Pay the fee required by 201 KAR 8:520; and

(c) Complete an educational program from a dental or dental hygiene school accredited by the Commission on Dental Accreditation (CODA) that[Document successful completion of an educational program which] meets or exceeds the requirements established in KRS 313.060(10).

(2) Upon authorizing a licensee[Individuals authorized] to practice pursuant to this section, the board shall issue an updated dental hygiene license[provision shall receive a license from the board] indicating registration to administer local anesthesia.

(3) A [~~licensed~~] dental hygienist shall not administer local anesthesia in Kentucky unless[if] the licensee:

(a) Holds a current board-issued registration in[does not hold a] local anesthesia[~~registration issued by the board.~~]; and

(b) Performs these procedures under the direct supervision of a dentist.

(4) A licensed dental hygienist holding a local anesthesia registration from the board who has not administered block or[anesthesia,] infiltration anesthesia[, or nitrous oxide analgesia] for one (1) year shall complete a board-approved refresher course prior to resuming practice of that specific technique.

Section 11. [~~Section 12. Requirements for General Supervision Registration.~~

(1) A[An individual] licensed[~~as a~~] dental hygienist[~~in Kentucky and not subject to disciplinary action~~] who desires to practice under general supervision shall:

(a) Submit a signed and completed[Complete the] Application for Dental Hygiene Special Registrations;

(b) Obtain at least two (2) years and 3,000 hours of verifiable experience in the practice of dental hygiene[Meet the requirements of KRS 313.040(7)(a)];

(c) Complete[Document through payroll records, employment records, or other proof that is independently verifiable, the dates and hours of employment by a dentist in the practice of dental hygiene that demonstrate the required two (2) years and 3,000 hours of experience; and]

[~~(d) [During each biennial license period, successfully complete] a live three (3) hour course approved by the board in the identification and prevention of potential medical emergencies [that shall include, at a minimum, the following topics:]~~

[~~1.] [Medical history, including American Society of Anesthesiologists (ASA) classifications of physical status;]~~

[~~2.] [Recognition of common medical emergency situations, symptoms, and possible outcomes;]~~

[~~3.] [Office emergency protocols; and]~~

[~~4.] [Prevention of emergency situations during dental treatments].~~

(2) Upon authorizing a licensee[An individual authorized] to practice pursuant to this section, the board shall issue an updated dental hygiene license[these provisions shall receive a license from the board] indicating registration [~~to practice~~] under general supervision.

(3) A dentist who employs a dental hygienist who has met the standards of this administrative regulation and who allows the dental hygienist to provide dental hygiene services pursuant to KRS 313.040(7) shall complete a written order specifying[prescribing] the dental service or procedure to be performed on[done to] a specific patient by the dental hygienist and shall retain the original order in the patient's dental record.

(4) The minimum requirements for the written order shall include:

VOLUME 51, NUMBER 3– September 1, 2024

- (a) Medical history update;
- (b) Radiographic records requested;
- (c) Dental hygiene procedures requested;
- (d) Name of the patient;
- (e) Date of last oral examination;
- (f) Date of the written order; and
- (g) Signature of the dentist.

(5) The oral examination of the patient by the supervising dentist shall have been completed within the seven (7) months preceding treatment by the dental hygienist practicing under general supervision.

(6) The supervising dentist shall evaluate and provide to the board written validation of an employed dental hygienist's skills necessary to perform dental hygiene services established in KRS 313.040(7) as part of the Application for Dental Hygiene Special Registrations.

(7) The supervising dentist shall provide a written protocol addressing the medically compromised patients who may or may not be treated by the dental hygienist. The dental hygienist shall only treat patients who are in the ASA Patient Physical Status Classification of ASA I or ASA II as established in Guidelines for Teaching Pain Control and Sedation to Dentists and Dental Students, as incorporated by reference in 201 KAR 8:550.

(8) During each biennial license period, a dental hygienist registered in general supervision must complete a live three (3) hour course in the identification and prevention of potential medical emergencies to maintain registration upon license renewal. These hours may be included in the thirty (30) overall continuing education hours required for license renewal.

(9) A [licensed] dental hygienist shall not practice under general supervision unless [if] the licensee [does not] holds [Hold] a current board-issued general supervision registration [issued by the board].

Section 12. [Section 13.] Requirements for Intravenous Access Line Registration.

(1) A [An individual] licensed [as a] dental hygienist [in Kentucky and not subject to disciplinary action] who desires to start intravenous (IV) access lines shall:

(a) Submit a signed and completed Application for Dental Hygiene Special Registrations;

(b) Pay the fee required by 201 KAR 8:520; and

(c) Complete [Submit documentation proving successful completion of] a board-approved course in starting IV access lines.

(2) Upon authorizing a licensee [An individual authorized] to practice pursuant to this section, the board shall issue an updated dental hygiene license [provision shall receive a license from the board] indicating registration to start IV access lines.

(3) A [licensed] dental hygienist shall not start [an] IV access lines [line] in Kentucky unless [if] the licensee [does not]:

(a) Holds [Hold] a current board-issued registration to start IV access lines; and [er]

(b) Works [Work] under the direct supervision of a dentist who holds either a Moderate Sedation Permit or Deep Sedation and General Anesthesia Permit issued pursuant to 201 KAR 8:550 [a sedation or anesthesia permit issued by the board].

Section 13. [Section 14.] Requirements for Laser Debridement Registration.

(1) A [An individual] licensed [as a] dental hygienist [in Kentucky and not subject to disciplinary action] who desires to perform laser debridement shall:

(a) Submit a signed and completed Application for Dental Hygiene Special Registrations;

(b) Pay the fee required by 201 KAR 8:520; and

(c) Complete [Submit documentation proving successful completion of] a board-approved course in performing laser debridement.

(2) Upon authorizing a licensee [An individual authorized] to practice pursuant to this section, the board shall issue an updated dental hygiene license [provision shall receive a license from the board] indicating registration to perform laser debridement.

(3) A [licensed] dental hygienist shall not perform laser debridement in Kentucky unless [if] the licensee [does not]:

(a) Holds [Hold] a current board-issued registration to perform laser debridement; and [er]

(b) Works [Work] under the direct supervision of a dentist.

Section 14. [Section 15.] Requirements for Public Health Registration.

(1) A [An individual] licensed [as a] dental hygienist [in Kentucky and not subject to disciplinary action] who desires to practice as a public health registered dental hygienist shall:

(a) Submit a signed and completed Application for Dental Hygiene Special Registrations [Registration];

(b) Obtain at least two (2) years and 3,000 hours of verifiable experience in the practice of dental hygiene; and [Meet the requirements established in KRS 313.040(8);]

(c) [Document through payroll records, employment records, or other proof that is independently verifiable, the dates and hours of employment by a dentist in the practice of dental hygiene that demonstrate the required two (2) years and 3,000 hours of experience; and]

(d) [During each biennial license period, successfully] Complete a live three (3) hour course approved by the board in the identification and prevention of potential medical emergencies [that shall include, at a minimum, the following topics:]

[1.] [Medical history, including American Society of Anesthesiologists (ASA) classifications of physical status;]

[2.] [Recognition of common medical emergency situations, symptoms, and possible outcomes;]

[3.] [Office emergency protocols; and]

[4.] [Prevention of emergency situations during dental treatments; and]

(e) [During each biennial license period, complete at least three (3) hours of continuing education in public health or public dental health].

(2) Upon authorizing a licensee [An individual authorized] to practice pursuant to this section, the board shall issue an updated dental hygiene license [subsection (1) of this section shall receive a certificate from the board] indicating registration to practice as a public health registered dental hygienist.

(3) Pursuant to KRS 313.040(8)(c), a public health registered dental hygienist may practice in a government-created public health program at the following sites:

(a) Local health departments;

(b) Public or private educational institutions that provide Head Start, preschool, elementary and secondary instruction to school-aged children under the jurisdiction of the State Board of Education, and that have an affiliation agreement with the health department of jurisdiction;

(c) Mobile and portable dental health programs under contract with a governing board of health; and

(d) Public or private institutions under the jurisdiction of a federal, state, or local agency.

(4) A public health registered dental hygienist shall perform dental hygiene services only under the authority [supervision] of the governing board of health, as required by KRS 313.040(3)(b), as established in KRS 313.040(8), and as identified by the Department for Public Health Practice Reference.

(a) These services shall be limited to:

1. Preventative [preventative] services; and

2. Application of silver diamine fluoride when the supervising dentist has authorized such treatment and provided written protocols for each patient.

(b) The public health registered dental hygienist shall only treat a patient who is in the ASA Patient Physical Status Classification of ASA I or ASA II as established in the current edition of Guidelines for Teaching Pain Control and Sedation to Dentists and Dental Students, as incorporated by reference in 201 KAR 8:550.

(c) The informed consent shall be required prior to preventative services and shall include:

1. The name of the public health entity, including the name of the dentist, that assumes responsibility and control;

2. An inquiry as to the current dentist; and

3. A statement that services are provided by a dental hygienist without the direct supervision of a dentist.

(d) This administrative regulation shall not preclude a Kentucky-licensed dentist from directly participating in a public health program referenced in subsection (3)(a), (b), (c), or (d) of this section.

(5) During each biennial license period, a dental hygienist registered in public health dental hygiene must complete the following to maintain registration upon license renewal:

(a) Three (3) hours of continuing education in public health or public dental health; and

(b) Three (3) hours of continuing education in the identification and prevention of potential medical emergencies.

(c) These hours may be included in the thirty (30) overall continuing education hours required for license renewal.

Section 15.[Section 16.] Issuance of Initial Licensure. Upon an applicant's completion of all[if an applicant has completed the] requirements for dental hygiene licensure within six (6) months of the date the application was received, the board shall:

(1) Issue a license in sequential numerical order; or

(2) Deny licensure due to a violation of KRS Chapter 313 or 201 KAR Chapter 8.

Section 16.[Section 17.] Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Application for Charitable Limited Licensure", January 2024;["Application for Charitable Dental Hygiene Limited Licensure", May 2023;]

(b) "Application for Dental Hygiene Licensure", September 2024;["Application for Dental Hygiene Licensure", May 2023;]

(c) "Application for Dental Hygiene Special Registrations", September 2024["Application for Dental Hygiene Special Registrations", February 2023;]

(d) "Application for Renewal of Dental Hygiene Licensure", September 2024;["Application for Renewal of Dental Hygiene Licensure", May 2023; and]

(e) "Application to Reinstate [a]Dental or Dental Hygiene Licensure[License]", January 2024;[May 2023;]

(f) "Retirement of License Form", January 2024;

(g) "Verification of Licensure or Registration Form", January 2024; and

(h) "2020 American Heart Association Guidelines for CPR and ECC", 2020.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Dentistry, 312 Whittington Parkway, Suite 101, Louisville, Kentucky 40222, Monday through Friday, 8 a.m. through 4:30 p.m. This material is also available on the board's Web site at <http://dentistry.ky.gov>.

JEFFREY ALLEN, Executive Director

APPROVED BY AGENCY: August 14, 2024

FILED WITH LRC: August 15, 2024 at 11:20 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 28, 2024 at 3:00 p.m., Eastern Time at the Kentucky Board of Dentistry, 312 Whittington Parkway, Suite 101, Louisville, Kentucky 40222. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing 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 October 31, 2024. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: Jeff Allen, Executive Director, Kentucky Board of Dentistry, 312 Whittington Parkway, Suite 101, Louisville, Kentucky 40222, phone (502) 429-7280, fax (502) 429-7282, email jeffrey.allen@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jeffrey Allen

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes requirements to practice dental hygiene in Kentucky.

(b) The necessity of this administrative regulation: KRS 313.021(1)(a) requires the board to exercise the administrative functions of the Commonwealth in the regulation of dental hygienists.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes the rules for obtaining a license to practice as a dental hygienist in Kentucky.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes requirements for being licensed to practice dental hygiene in conformity with its authorizing statute.

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

(a) How the amendment will change this existing administrative regulation: The amendment is not intended to make substantive changes, merely to clarify existing language and processes.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to clarify details about certain aspects of dental hygiene licensure and practice.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment maintains established requirements for being licensed to practice dental hygiene in conformity with its authorizing statute.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will clarify certain aspects of dental licensure, making the licensure process more efficient and effective for both board staff and potential licensees

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will primarily affect the approximately 3,000 licensed dental hygienists in Kentucky as well as any new applicants for licensure and, indirectly, the patients of licensed dental hygienists.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Each individual impacted will be required to apply for or renew their licensure in accordance with applicable law and administrative regulations.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This administrative regulation does not specifically enumerate costs, which are already established in 201 KAR 8:520.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The administrative regulation will result in a healthier patient population and the avoidance of potentially costly violations of applicable law and administrative regulations by licensed dental hygienists.

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

(a) Initially: No additional cost.

(b) On a continuing basis: No additional cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Licensure fees are used to fund the implementation of this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Fee amounts are already established in a separate administrative regulation (201 KAR

8:520) and no increase is needed.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not impact existing fees which are already established in 201 KAR 8:520.

(9) TIERING: Is tiering applied? No; this administrative regulation impacts all similarly situated entities equally.

FISCAL IMPACT STATEMENT

(1) Identify each state statute, federal statute, or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 313.021.

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: The Board of Dentistry is the promulgating agency.

(a) Estimate the following for the first year:

Expenditures: There will be no additional administrative costs as a result of this administrative regulation.

Revenues: This amendment does not alter the existing revenue generated by dental licensure, which is approximately \$400,000 every fiscal biennium to the Board of Dentistry.

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): 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.

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: This administrative regulation does not establish specific fee amounts, which are contained in a separate administrative regulation; however, the revenue generated from dental hygiene licensure is approximately \$400,000 every fiscal biennium and will not change as a result of this revision. Expenditures specifically related to this administrative regulation are difficult to determine due to indirect personnel and overhead costs; however, total agency expenditures are approximately \$900,000 every fiscal biennium.

(b) Methodology and resources used to determine the fiscal impact: Historical budget performance.

(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 does not directly have a major economic impact as it does not contain specific fee amounts. When administered in conjunction with the current fees established elsewhere, it impacts the dental health community by approximately \$400,000 per year, primarily from licensure fees.

(b) The methodology and resources used to reach this conclusion: Historical budget performance.

BOARDS AND COMMISSIONS

Board of Licensure for Professional Engineers and Land Surveyors
(Amendment)

201 KAR 18:115. License reinstatement.

RELATES TO: KRS 322.040-322.050, 322.160, 322.180, 322.220

STATUTORY AUTHORITY: KRS 322.160(3)(a), 322.220, 322.290(4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 322.290(4) authorizes the board to promulgate administrative regulations necessary for the proper performance of its duties. KRS 322.160(3)(a) requires a licensee or permit holder who fails to renew within one (1) year after expiration to furnish the board with satisfactory evidence of qualification of continued practice. KRS 322.220 provides for an individual whose license has been revoked to petition the board for reissue. KRS 322.180 sets out grounds for denial of licensure. This administrative regulation establishes the requirements for license reinstatement.

Section 1. General Requirements.

(1) A person whose license has been in retired status, inactive status, or expired for more than one (1) year, or a person whose license has been revoked or surrendered in association with a disciplinary investigation or proceeding shall apply for reinstatement with [to] the board [for reinstatement] by submitting evidence of successful completion of one (1) or more of the following:

(a) Retaking and passing the licensure examination;

(b) College courses related to engineering or surveying;

(c) Continuing education courses related to engineering or surveying;

(d) Work experience under another licensee; or

(e) Licensed practice in another jurisdiction.

(2) The application for reinstatement shall be on the appropriate application form incorporated by reference in 201 KAR 18:020, Section 2, and shall include:

(a) An affidavit indicating whether or not the applicant has practiced engineering or land surveying in the Commonwealth of Kentucky since the expiration, inactivation, retirement, revocation, or surrender of the applicant's license; and

(b) Evidence [A listing of the specific evidence] that the applicant is qualified to continue to practice pursuant to subsection (1) of this section.

(3) The applicant shall meet the requirements of KRS 322.050.

(4) In determining [its determination of] the applicant's fitness for reinstatement, the board may consider the number of times the applicant has allowed his or her license to expire, as well as the length of time in the aggregate that the applicant has been unlicensed following the applicant's initial licensure.

(5) A Professional Land Surveyor applicant shall meet the continuing professional development requirements of 201 KAR 18:192, Section 6[7].

(6) A Professional Engineer applicant shall meet the continuing professional development requirements of 201 KAR 18:196, Section 6[7].

(7) An applicant for reinstatement shall fully cooperate [fully] with the board by providing any [legal request for] relevant information or documentation within his or her knowledge, possession, custody, or control [by the board].

(8) In an application for reinstatement, including any appearance before the board, and in any statement made to the board or to any representative of the board, an applicant shall not:

VOLUME 51, NUMBER 3– September 1, 2024

- (a) Knowingly make a false statement of material fact;
- (b) Fail to disclose a fact necessary to correct a misapprehension known by the applicant to have arisen in the matter; or
- (c) Knowingly fail to respond or produce relevant information or documentation requested by the board~~to a lawful demand for information from the board~~.

Section 2. Expiration of License.

- (1) If the applicant's license has been in retired status, inactive status, or expired for three (3) years or less, or if the applicant has a valid license in another jurisdiction, the executive director may approve or reject ~~the~~that application.
- (2) If the applicant's license has been in retired status, inactive status, or expired for more than three (3) years and the applicant does not possess a valid license in another jurisdiction, the application for reinstatement shall be considered by the board.

Section 3. Revocation of License.

- (1) Pursuant to KRS 322.220, a person whose license has been revoked may petition the board for reinstatement of that license.
- (2) An applicant whose surrender of license was associated with a disciplinary investigation or proceeding shall be considered under this section.
- (3) The applicant shall comply with the requirements of Section 1 of this administrative regulation. In addition, the applicant shall provide evidence that the applicant:
 - (a) Has complied with any terms prescribed by the board; and
 - (b) Is no longer a risk to the public health, safety, and welfare.
- (4) An applicant for reinstatement under this section shall:
 - (a) Be held to a substantially more rigorous standard than a first time applicant for initial licensure as a professional engineer or land surveyor; and
 - (b) Have the burden of proving by a preponderance of evidence that the applicant possesses the professional and ethical qualifications, and good character and reputation, as required by KRS 322.040 through 322.050 and 201 KAR 18:142, for reinstatement of a license to practice engineering or land surveying, as appropriate.
 - (5) To evaluate an applicant's petition for reinstatement, the board shall consider the following:
 - (a) The applicant's compliance with all previous terms of any consent decrees, or with any previous orders of suspension or revocation;
 - (b) The applicant's conduct while under a prior suspension, or while unlicensed, that shows that the applicant is worthy of the trust and confidence of the public;
 - (c) The sufficiency of the applicant's present professional capabilities to serve the public as a licensed engineer or land surveyor, considering:
 - 1. The length of time elapsed since the applicant's license was revoked~~revocation~~ or surrendered~~surrender of license~~; and
 - 2. The type, duration, and extent of educational courses and employment that the applicant has undertaken during the period the applicant was unlicensed;
 - (d) The understanding and appreciation by the applicant of the wrongfulness of any prior misconduct;
 - (e) The nature and degree, as well as the success of, any efforts made by the applicant to rehabilitate himself or herself from past professional or ethical failings;
 - (f) The applicant's previous and present conduct and attitude toward compliance with the requirements of the regulatory scheme governing the practice of engineering or land surveying, as appropriate;
 - (g) The applicant's candor in dealing with the board;
 - (h) Any act or omission by the applicant occurring while unlicensed, that would have violated any part of the statutes or regulations governing the profession of engineering or land surveying, as appropriate, if it had occurred while the applicant was licensed; and
 - (i) Any other information relevant to determining whether the applicant has satisfied the requirements of KRS 322.220.

- (6) Failure to meet any of the criteria to be considered in the evaluation of applicant's petition may constitute a sufficient basis for denial of an applicant's petition.

Section 4. Reconsideration.

- (1) If an application for reinstatement is not approved, the applicant shall be given ~~every~~ reasonable opportunity to secure reconsideration.
- (2) If an application for reinstatement is not approved by the executive director pursuant to paragraph (1) of Section 2 of this administrative regulation, the applicant may request reconsideration by the board by filing a written request for reconsideration with the board within thirty (30) calendar days after the date upon which the applicant is sent notice that the application for reinstatement was not approved by the board's executive director.
- (3) If an application is not approved by the board, the applicant may request a hearing in accordance with the provisions of KRS Chapter 13B by filing a written request for an administrative hearing with the board within thirty (30) calendar days after the date upon which the application for reinstatement was denied. The request shall identify the specific issues in dispute and the legal basis on which the board's decision on each issue is believed to be erroneous.

KYLE L. ELLIOTT, Executive Director

APPROVED BY AGENCY: July 19, 2024

FILED WITH LRC: July 22, 2024 at 1:15 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 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 October 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: 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 requirements for reinstatement of a professional engineer and professional land surveyor license.
- (b) The necessity of this administrative regulation: This administrative regulation is necessary to inform professional engineers and professional land surveyors whose licenses have been retired, made inactive, revoked, or surrendered in association with a disciplinary proceeding of the requirements for the reinstatement of his/her license.
- (c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation, authorized by KRS 322.160(3)(a), KRS 322.220, and KRS 322.290(4), establishes the requirements for the reinstatement of a professional engineer and professional land surveyor license.
- (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation ensures those seeking to reinstate his/her professional engineer or professional land surveyor license are informed of the requirements that must be met in order to secure the reinstatement of the license.

VOLUME 51, NUMBER 3– September 1, 2024

(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 to an existing administrative regulation clarifies that the individual applying for reinstatement of his/her professional engineer or professional land surveyor license must provide sufficient evidence that is within his/her knowledge, possession, custody, or control to the board that he/she is qualified for the reinstatement of his/her professional engineer or professional land surveyor license. This amendment clarifies the day requirement for requesting reconsideration of the denial of an application for reinstatement and the requirement that the individual applying for reinstatement set forth the reasons upon which he/she believes his/her license should be reinstated. The amendment also makes minor grammatical corrections to enhance clarity of the regulation. The amendment further makes corrections to regulation citations to conform with the recent amendments to 201 KAR 18:192 and 201 KAR 18:196.

(b) The necessity of the amendment to this administrative regulation: The amendment to this already existing administrative regulation is necessary to provide clarity on the steps that must be taken when requesting the reconsideration of a denial of an application for reinstatement. This amendment is also necessary to provide clarity as it makes minor changes in wording to enhance clarity of the regulation, and to correct statute citations in this administrative regulation. The amendment further makes corrections to regulation citations to conform with the recent amendments to 201 KAR 18:192 and 201 KAR 18:196.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment to an existing administrative regulation, authorized by authorized by KRS 322.160(3)(a), KRS 322.220, and KRS 322.290(4), establishes the requirements for the reinstatement of a professional engineer and professional land surveyor license. 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 license reinstatement, and the steps that must be taken to secure reconsideration of a denial of an application for reinstatement.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Applicants for the reinstatement of a professional engineer or professional land surveyor license 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): A successful applicant for reinstatement 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 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 engineers and professional land surveyors seeking to have their license reinstated.

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 322.160(3)(a); KRS 322.220; KRS 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 an 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 an 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 20:057. Scope and standards of practice of advanced practice registered nurses.

RELATES TO: KRS 218A.171, 218A.172, 218A.202, 218A.205(3)(a), (b), 314.011(7), (8), 314.039, 314.042, 314.091, 314.193(2), 314.195, 314.475

STATUTORY AUTHORITY: KRS 218A.205(3)(a), (b), 314.042, 314.131(1), 314.193(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 218A.205(3)(a) and (b) require the Board of Nursing, in consultation with the Kentucky Office of Drug Control Policy, to establish by

VOLUME 51, NUMBER 3– September 1, 2024

administrative regulation mandating prescribing and dispensing standards for licensees authorized to prescribe or dispense controlled substances, and in accordance with the Centers for Disease Control and Prevention (CDC) guidelines, to establish a prohibition on a practitioner issuing a prescription for a Schedule II controlled substance for more than a three (3) day supply if intended to treat pain as an acute medical condition, unless an exception applies. KRS 314.131(1) authorizes the board to promulgate administrative regulations necessary to enable it to carry into effect the provisions of KRS Chapter 314 and authorizes the board to require by administrative regulation that licensees and applicants utilize a specific method of submission of documents or information that is required to be provided to the board, including electronic submission. KRS 314.193(2) authorizes the board to promulgate administrative regulations establishing standards for the performance of advanced practice registered nursing to safeguard the public health and welfare. This administrative regulation establishes the scope and standards of practice for an advanced practice registered nurse.

Section 1. Definitions.

(1) "Collaboration" means the relationship between the advanced practice registered nurse (APRN) and a physician in the provision of prescription medication, including both autonomous and cooperative decision-making, with the APRN and the physician contributing their respective expertise.

(2) "Collaborative Agreement for the Advanced Practice Registered Nurse's Prescriptive Authority for Controlled Substances" or "CAPA-CS" means the written document pursuant to KRS 314.042(11).

(3) "Collaborative Agreement for the Advanced Practice Registered Nurse's Prescriptive Authority for Nonscheduled Legend Drugs" or "CAPA-NS" means the written document pursuant to KRS 314.042(8).

(4) "Good standing" is defined by KRS 314.039.

(5) "Immediate family member" means a spouse, parent, parent-in-law, stepparent, child, stepchild, son-in-law, daughter-in-law, sibling, stepsibling, brother-in-law, sister-in-law, grandparent, grandchild, spouse of grandparent or grandchild, or other person residing in the same residence as the APRN.

(6) "KBML" means the Kentucky Board of Medical Licensure.

(7) "PDMP" means the electronic prescription drug monitoring program system for monitoring scheduled controlled substances and medicinal cannabis currently in use in Kentucky pursuant to KRS 218A.202, including the Kentucky All Schedule Prescription Electronic Reporting (KASPER) System.

Section 2.

(1) The practice of the APRN shall be in accordance with the standards and functions established in scope and standards of practice statements adopted by the board in subsection (2) of this section.

(2) The following scope and standards of practice statements shall be adopted:

(a) AACN Scope and Standards for Acute Care Nurse Practitioner Practice;

(b) AACN Scope and Standards for Acute Care Clinical Nurse Specialist Practice;

(c) Neonatal Nursing: Scope and Standards of Practice;

(d) Nursing: Scope and Standards of Practice;

(e) Pediatric Nursing: Scope and Standards of Practice;

(f) Psychiatric- Mental Health Nursing: Scope and Standards of Practice;

(g) Scope of Practice for Nurse Practitioners;

(h) Standards of Practice for Nurse Practitioners;

(i) Scope of Nurse Anesthesia Practice;

(j) Standards for Nurse Anesthesia Practice;

(k) Standards for Office Based Anesthesia Practice;

(l) Standards for the Practice of Midwifery;

(m) Oncology Nursing Scope and Standards of Practice;

(n) The Women's Health Nurse Practitioner: Guidelines for Practice and Education;

(o) Definition of Midwifery and Scope of Practice of Certified Nurse-Midwives and Certified Midwives; and

(p) Standards for Professional Nursing Practice in the Care of Women and Newborns.

Section 3. CAPA-CS Practice Requirements for APRNs.

(1) In the performance of advanced practice registered nursing, the APRN shall seek consultation or referral in those situations outside the APRN's scope of practice.

(2) An APRN wishing to have a CAPA-CS in the first year of the APRN's licensure shall be employed by a health care entity or provider. If the employing provider is an APRN, the employing APRN shall have been granted an exemption under Section 7 of this administrative regulation.

(3) During term of the CAPA-CS, the APRN and the collaborating physician shall meet in person or via video conferencing, or by phone, if in person or video conferencing is not feasible, to review the APRN's reverse PDMP queries since the last review with the collaborating physician[report]. The review may include information from the patient's medical record that relates to the condition or conditions being treated with controlled substances by the APRN.

(a) Both the APRN and the physician shall maintain a written record of:

1. The meeting date;

2. A summary of the discussions; and

3. Any recommendations made[that shall be made in writing].

(b) The record shall be maintained by both parties for a period of one (1) year past the expiration of the APRN CAPA-CS.

(c) The APRN's meeting records shall be subject to audit by the board and the physician's records shall be subject to audit by the KBML. The sole purpose of the audit shall be to document that the collaboration meetings have taken place to verify compliance with this section.

(4) In the first year of the CAPA-CS, the APRN and a physician shall meet at least quarterly.

(5) In the ensuing three (3) years of the CAPA-CS, the APRN and the physician shall meet at least biannually.

Section 4. Advanced practice registered nursing shall include prescribing and administering medications, as well as ordering treatments, devices, diagnostic tests, and performing certain procedures that shall be consistent with the scope and standards of practice of the APRN.

Section 5. Advanced practice registered nursing shall not preclude the practice by the APRN of registered nursing practice as defined by KRS 314.011(6).

Section 6.

(1)

(a) A CAPA-NS and a CAPA-CS shall include the:

1. Name;

2. Practice address;

3. Phone number;

4. License number of both the APRN and each physician who is a party to the agreement; and

5. Population focus and area of practice of the APRN and each physician.

(b) An APRN shall use a CAPA-NS Agreement Form.

(c) An APRN shall use the Standardized CAPA-CS Agreement Form.

(2)

(a) To notify the board of the existence of a CAPA-NS pursuant to KRS 314.042(8)(b), the APRN shall submit an online notification as established in paragraph (e) of this subsection.

(b) To notify the board that the requirements of KRS 314.042(9) have been met and that the APRN will be prescribing nonscheduled legend drugs without a CAPA-NS, the APRN shall submit an online notification as established in paragraph (e) of this subsection.

(c) To notify the board of the existence of a CAPA-CS pursuant to KRS 314.042(11)(b), the APRN shall submit an online notification as established in paragraph (e) of this subsection.

(d) To notify the board that the requirements of KRS 314.042(14) have been met and request that the APRN be exempt from prescribing scheduled legend drugs under a CAPA-CS, the APRN shall complete the request for APRN exemption from CAPA-CS prescriptive authority and pay the listed fee in 201 KAR 20:240, Section 3(1)(e). Each submitted request shall be subject to the fee, regardless of whether the board grants the exemption after making a determination under Section 7 of this administrative regulation.

(e) Each notification, recission, and exemption request shall be submitted by the APRN to the board via the online KBN Nurse Portal at www.kbn.ky.gov, and shall include the information and documentation required by subsection (1) of this section and this subsection.

(f) Upon request by the board, the APRN shall furnish to the board a copy of the executed CAPA-NS Agreement Form or Standardized CAPA-CS Agreement Form.

(3) For purposes of the CAPA-NS and the CAPA-CS, in determining whether the APRN and the collaborating physician are qualified in the same or a similar specialty, the board shall consider the facts of each [particular] situation and the scope of the APRN's and the physician's actual practice.

(4) An APRN with controlled substance prescriptive authority, shall:

(a) Obtain a United States Drug Enforcement Administration (DEA) Controlled Substance Registration Certificate and shall report the APRN's Kentucky DEA number, and any change in the status of a certificate by providing a copy of each registration certificate to the board within thirty (30) days of issuance.

(b) Register for a master account with the PDMP, within thirty (30) days of obtaining a DEA Controlled Substance Registration Certificate, and prior to prescribing controlled substances. A copy of the PDMP master account registration certificate shall be submitted to the board via the online KBN Nurse Portal within thirty (30) days of receipt of confirmation of registration by the PDMP.

(5) An APRN shall report any changes to a CAPA-NS or a CAPA-CS to the board within thirty (30) days.

(6) If an APRN's CAPA-NS or CAPA-CS ends unexpectedly for reasons outside the APRN's control such as being ended by the physician without notice, the physician's license becoming no longer valid in Kentucky, or the death of a physician, the APRN may continue to prescribe for thirty (30) days, after documenting in each patient's medical record the applicant's professional determination that the continued prescribing is justified based on the individual facts applicable to the patient's diagnosis and treatment. This thirty (30) day grace period shall not be extended or occur successively.

(7) An APRN with a CAPA-NS or a CAPA-CS shall report a practice address to the board. A change to the practice address shall be reported to the board within thirty (30) days.

(8) All documents and information required to be reported to the board by this section shall be reported by uploading the document or information through the board's Web site, <https://kbn.ky.gov>. The board shall not accept documents or information sent in any other format.

Section 7. CAPA-CS Exemption Review Request.

(1) An APRN who wishes to request a CAPA-CS exemption pursuant to KRS 314.042(14) shall:

(a) Complete a CAPA-CS exemption review request on the board's Web site as required in Section 6(8) of this administrative regulation;

(b) Submit the fee required by 201 KAR 20:240, Section 3(1)(e); and

(c) Comply with the requirements established in KRS 314.042(14) and this administrative regulation.

(2) Upon receipt of the CAPA-CS exemption review request, the board shall verify the following:

(a) The APRN has had four (4) years of controlled substance prescribing authority;

(b) The APRN's license is in good standing;

(c) The APRN has maintained a DEA registration and a current registration certificate is on file with the board;

(d) The APRN has maintained a PDMP registration and a current registration is on file with the board;

(e) That a current Notification of a CAPA-CS for the APRN is on record with the board; and

(f) The APRN has an active account with the PDMP.

(3) Upon receipt of the CAPA-CS exemption review request, the board shall:

(a) Perform a criminal background check for any unreported misdemeanor or felony convictions in Kentucky; and

(b) Perform a check of the coordinated licensure information system specified in KRS 314.475 for any unreported disciplinary actions in another state.

(4) The APRN submitting the request shall cooperate with supplemental requests for documentation before the board makes a determination that the APRN's license is in good standing pursuant to KRS 314.042(14).

(5) An APRN wishing to practice in Kentucky through licensure by endorsement may request an exemption under this section.

(a) An APRN wishing to practice in Kentucky through licensure by endorsement is exempt from the CAPA-CS requirement if the APRN:

1. Has met the prescribing requirements for controlled substances in a state that grants such prescribing authority to APRNs;

2. Has had authority to prescribe controlled substances for at least four (4) years; and

3. Has a license in good standing.

(b) An APRN wishing to practice in Kentucky through licensure by endorsement who has had the authority to prescribe controlled substances for less than four (4) years and wishes to continue to prescribe controlled substances shall enter into a CAPA-CS with a physician licensed in Kentucky and comply with the provisions of KRS 314.042(11), until the requirements of this section are met.

(6) If the board determines that the APRN is eligible for the exemption after a review and determination of the exemption request under this section, the board shall notify the APRN in writing that the CAPA-CS is no longer required. The board shall not require the APRN to maintain a CAPA-CS as a condition to prescribe controlled substances unless the board imposes the requirement as part of an action instituted under KRS 314.091(1).

(7) If the board denies the exemption request, the denial shall be in writing and shall state the reasons for the denial. The requestor may request a hearing pursuant to KRS Chapter 13B within twenty (20) days of receiving written notification of the denial. If a hearing is requested and the order of the board is adverse to the advance practice registered nurse, the board may impose costs pursuant to 201 KAR 20:162, Section 7.

(8) The APRN nurse shall not prescribe controlled substances without a CAPA-CS until the board has completed its review and has notified the APRN in writing that the APRN is exempt from the CAPA-CS requirement.

Section 8. Prescribing Medications without Prescriptive Authority. Prescribing nonscheduled legend drugs without a CAPA-NS or prescribing controlled substances without a CAPA-CS shall constitute a violation of KRS 314.091(1), unless:

(1) In the case of nonscheduled legend drugs, the CAPA-NS has been discontinued pursuant to KRS 314.042(9) or if the prescribing occurred within the grace period established in Section 6(6) of this administrative regulation; or

(2) In the case of controlled substances, the APRN was granted an CAPA-CS exemption by the board under KRS 314.042(14)(e) prior to the date the medications were prescribed.

Section 9. The board may make an unannounced visit to an APRN's practice to determine if it is consistent with the requirements established by KRS Chapter 314 and 201 KAR Chapter 20. Patient and prescribing records shall be made available for immediate inspection.

Section 10. Prescribing Standards for Controlled Substances.

(1)

(a) This section shall apply to APRNs with controlled substance prescriptive authority. It also applies to the utilization of the PDMP.

(b) The APRN shall practice according to the applicable scope and standards of practice for the APRN's role and population focus. This section does not alter the prescribing limits established in KRS 314.011(8).

(2) Prior to the initial prescribing of a controlled substance to a patient, the APRN shall:

(a) Obtain the patient's medical history, including history of substance use, and conduct an examination of the patient and document the information in the patient's medical record. An APRN certified in psychiatric-mental health shall obtain a medical and psychiatric history, perform a mental health assessment, and document the information in the patient's medical record;

(b) Query the PDMP for the twelve (12) month period immediately preceding the request for available data on the patient and maintain all PDMP report identification numbers and the date of issuance of each PDMP report in the patient's record;

(c) Develop a written treatment plan stating the objectives of the treatment and further diagnostic examinations required; and

(d) Discuss with the patient, the patient's parent if the patient is an unemancipated minor child, or the patient's legal guardian or health care surrogate:

1. The risks and benefits of the use of controlled substances, including the risk of tolerance and drug dependence;

2. That the controlled substance shall be discontinued once the condition requiring its use has resolved; and

3. Document that the discussion occurred and obtain written consent for the treatment.

(3) The treatment plan shall include an exit strategy, if appropriate, including potential discontinuation of the use of controlled substances.

(4) For subsequent or continuing long-term prescriptions of a controlled substance for the same medical complaint, the APRN shall:

(a) Update the patient's medical history and document the information in the patient's medical record;

(b) Modify and document changes to the treatment plan as clinically appropriate; and

(c) Discuss the risks and benefits of any new controlled substances prescribed, including the risk of tolerance and drug dependence with the patient, the patient's parent if the patient is an unemancipated minor child, or the patient's legal guardian or health care surrogate.

(5) During the course of treatment, the APRN shall query the PDMP no less than once every three (3) months for the twelve (12) month period immediately preceding the request for available data on the patient. The APRN shall maintain in the patient's record all PDMP report identification numbers and the date of issuance of each PDMP report or a copy or saved image of the PDMP report. If neither an identification number nor an image can be saved to the patient's record as a result of technical limitations of the APRN's electronic health record system, the APRN shall make a concurrent note in the patient's record documenting the date and time that the APRN reviewed the patient's PDMP report.

(6) These requirements may be satisfied by other licensed practitioners in a single group practice if:

(a) Each licensed practitioner involved has lawful access to the patient's medical record;

(b) Each licensed practitioner performing an action to meet these requirements is acting within the scope of practice of his or her profession; and

(c) There is adequate documentation in the patient's medical record reflecting the actions of each practitioner.

(7) If prescribing a controlled substance for the treatment of chronic, non-cancer pain, the APRN, in addition to the requirements of this section, shall obtain a baseline drug screen and further random drug screens if the APRN:

(a) Finds a drug screen clinically appropriate; or

(b) Believes that it is appropriate to determine whether the controlled substance is being taken by the patient.

(8) If prescribing a controlled substance for the treatment of a mental health condition, the APRN shall meet the requirements of this section and KRS 314.011(8)(a) and (b).

(9) Prior to prescribing a controlled substance for a patient in the emergency department of a hospital that is not an emergency situation, the APRN shall:

(a) Obtain the patient's medical history, conduct an examination of the patient, and document the information in the patient's medical record. An APRN certified in psychiatric - mental health shall obtain a medical and psychiatric history, perform a mental health assessment, and document the information in the patient's medical record;

(b) Query the PDMP for the twelve (12) month period immediately preceding the request for available data on the patient and document the data in the patient's record;

(c) Develop a written treatment plan stating the objectives of the treatment and further diagnostic examinations required; and

(d) Discuss the risks and benefits of the use of controlled substances with the patient, the patient's parent if the patient is an unemancipated minor child, the patient's legal guardian, or health care surrogate, including the risks of tolerance and drug dependence, and document that the discussion occurred and that the patient consented to that treatment.

(10) For each patient for whom an APRN prescribes a controlled substance, the APRN shall keep accurate, readily accessible, and complete medical records, which include:

(a) Medical history and physical or mental health examination;

(b) Diagnostic, therapeutic, and laboratory results;

(c) Evaluations and consultations;

(d) Treatment objectives;

(e) Discussion of risk, benefits, and limitations of treatments;

(f) Treatments;

(g) Medications, including date, type, dosage, and quantity prescribed;

(h) Instructions and agreements;

(i) Periodic reviews of the patient's file; and

(j) The date and time of the request and review of each PDMP query[All PDMP report identification numbers and the date of issuance of each PDMP report].

(11) The requirement to query the PDMP shall not apply to:

(a) An APRN prescribing or administering a controlled substance immediately prior to, during, or within the fourteen (14) days following an operative or invasive procedure or a delivery if the prescribing or administering is medically related to the operative or invasive procedure of the delivery and the medication usage does not extend beyond the fourteen (14) days;

(b) An APRN prescribing or administering a controlled substance necessary to treat a patient in an emergency situation; or

(c) An APRN prescribing a controlled substance:

1. For administration in a hospital or long-term-care facility with an institutional account, or an APRN in a hospital or facility without an institutional account, if the hospital, long-term-care facility, or licensee queries the PDMP for all available data on the patient or resident for the twelve (12) month period immediately preceding the query within twelve (12) hours of the patient's or resident's admission and places a copy of the query in the patient's or resident's medical records during the duration of the patient's stay at the facility;

2. As part of the patient's hospice or end-of-life treatment;

3. For the treatment of pain associated with cancer or with the treatment of cancer;

4. To assist a patient with submitting to a diagnostic test or procedure;

5. Within seven (7) days of an initial prescription pursuant to subsection (1) of this section if the prescriber:

a. Substitutes a controlled substance for the initial prescribing;

b. Cancels any refills for the initial prescription; and

c. Requires the patient to dispose of any remaining unconsumed medication;

6. Within ninety (90) days of an initial prescription pursuant to subsection (1) of this section if the prescribing is done by another licensee in the same practice or in an existing coverage arrangement, if done for the same patient for the same condition;

7. To a research subject enrolled in a research protocol approved by an institutional review board that has an active federal-wide assurance number from the United States Department of

VOLUME 51, NUMBER 3– September 1, 2024

Health and Human Services, Office for Human Research Protections if the research involves single, double, or triple blind drug administration or is additionally covered by a certificate of confidentiality from the National Institutes of Health;

8. During the effective period of any disaster or situation with mass casualties that have a direct impact on the APRN's practice;

9. As part of the administering or ordering of controlled substances to prisoners in a state, county, or municipal correctional facility;

10. That is a Schedule IV controlled substance for no longer than three (3) days for an established patient to assist the patient in responding to the anxiety of a nonrecurring event; or

11. That is classified as a Schedule V controlled substance.

(12) In accordance with 21 C.F.R. 1306.12(b)(1)(iv) - (v), federal regulation 21 C.F.R. 1306.12(b) concerning the issuance of multiple prescriptions for Schedule II controlled substances shall not apply to APRNs in this state.

(13) No less than once every six (6) months, an APRN who holds a DEA Controlled Substance Registration Certificate shall query and review the[a-reverse] PDMP [report] for the preceding six (6) months to determine if the information contained in the PDMP is correct. If the information is incorrect, the APRN shall comply with 902 KAR 55:110 and take the necessary steps to seek correction of the information, by:

(a) First contacting the reporting pharmacy;

(b) Contacting law enforcement if suspected fraudulent activity;

or

(c) Contacting the Drug Enforcement Professional Practices Branch, Office of Inspector General, Cabinet for Health and Family Services.

(14) An APRN shall not issue a prescription for hydrocodone combination products for more than a three (3) day supply if the prescription is intended to treat pain as an acute medical condition, except if:

(a) The APRN, in his or her professional judgment, believes that more than a three (3) day supply of hydrocodone combination products is medically necessary to treat the patient's pain as an acute medical condition and the APRN adequately documents the acute medical condition and lack of alternative treatment options that justifies deviation from the three (3) day supply limit on the patient's medical records;

(b) The prescription for hydrocodone combination products is prescribed to treat chronic pain;

(c) The prescription for hydrocodone combination products is prescribed to treat pain associated with a valid cancer diagnosis;

(d) The prescription for hydrocodone combination products is prescribed to treat pain while the patient is receiving hospice or end-of-life treatment;

(e) The prescription for hydrocodone combination products is prescribed as part of a narcotic treatment program licensed by the Cabinet for Health and Family Services;

(f) The prescription for hydrocodone combination products is prescribed to treat pain following a major surgery, which is any operative or invasive procedure or a delivery, or the treatment of significant trauma; or

(g) Hydrocodone combination products are administered directly to an ultimate user in an inpatient setting.

(15) Prescriptions written for hydrocodone combination products pursuant to subsection (14)(a) through (g) of this section shall not exceed thirty (30) days without any refill.

(16) An APRN may prescribe electronically. Electronic prescription shall be as established in KRS 218A.171.

(17) For any prescription for a controlled substance, the prescribing APRN shall discuss with the patient the effect the patient's medical condition and medication may have on the patient's ability to safely operate a vehicle in any mode of transportation.

Section 11. Immediate Family Member and Self-prescribing or Administering Medications.

(1) An APRN shall not self-prescribe or administer controlled substances.

(2) An APRN shall not prescribe or administer controlled substances to his or her immediate family member except as established in subsections (3) and (4) of this section.

(3) An APRN may prescribe or administer controlled substances to an immediate family member:

(a) In an emergency situation;

(b) For a single episode of an acute illness through one (1) prescribed course of medication; or

(c) In an isolated setting, if no other qualified practitioner is available.

(4)

(a) An APRN who prescribes or administers controlled substances for an immediate family member pursuant to subsections (3)(a) or (b) of this section shall document all relevant information and notify the appropriate provider.

(b) An APRN who prescribes or administers controlled substances for an immediate family member pursuant to subsection (3)(c) of this section shall maintain a provider-practitioner relationship and appropriate patient records.

Section 12. Incorporation by Reference.

(1) The following material is incorporate by reference:

(a) "AACN Scope and Standards for Adult-Gerontology and Pediatric Acute Care Nurse Practitioners~~[Practitioner Practice]~~", 2021~~[2017]~~ Edition, American Association of Critical-Care Nurses;

(b) "AACN Scope and Standards for Acute Care Clinical Nurse Specialist Practice", 2022~~[2014]~~ Edition, American Association of Critical-Care Nurses;

(c) "Neonatal Nursing: Scope and Standards of Practice", 2021, 3rd~~[2013]~~ Edition, American Nurses Association/ National Association of Neonatal Nurses;

(d) "Nursing: Scope and Standards of Practice", 2021, 4th~~[2015]~~ Edition, American Nurses Association;

(e) "Pediatric Nursing: Scope and Standards of Practice", 2015, 2nd Edition, American Nurses Association/ Society of Pediatric Nursing/ National Association of Pediatric Nurse Practitioners;

(f) "Psychiatric-Mental Health Nursing: Scope and Standards of Practice", 2022, 3rd Edition~~[2014]~~, American Nurses Association/ American Psychiatric Nursing Association;

(g) "Scope of Practice for Nurse Practitioners", 2022~~[2019]~~ Edition, American Association of Nurse Practitioners;

(h) "Standards of Practice for Nurse Practitioners", 2022~~[2019]~~ Edition, American Association of Nurse Practitioners;

(i) "Scope of Nurse Anesthesia Practice", 2020~~[2013]~~ Edition, American Association of Nurse Anesthetists;

(j) "Standards for Nurse Anesthesia Practice", 2019 Edition, American Association of Nurse Anesthetists;

(k) ~~"Standards for Office-Based Anesthesia Practice", 2019 Edition, American Association of Nurse Anesthetists;~~

~~[l]~~ "Standards for the Practice of Midwifery", 2022~~[2014]~~ Edition, American College of Nurse Midwives;

~~[m]~~ "Oncology Nursing Scope and Standards of Practice", 2019 Edition, Oncology Nursing Society;

~~[n]~~ "The Women's Health Nurse Practitioner: Guidelines for Practice and Education", 2020, 8th~~[2014]~~ Edition, Association of Women's Health, Obstetric and Neonatal Nurses/Nurse Practitioners in Women's Health;

~~[o]~~ "Definition of Midwifery and Scope of Practice of Certified Nurse-Midwives and Certified Midwives", 2021~~[2012]~~ Edition, American College of Nurse Midwives;

~~[p]~~ "Standards for Professional Nursing Practice in the Care of Women, Newborns, and People Across the Life Span~~[and Newborns]~~", 2023, 9th~~[2019]~~ Edition, Association of Women's Health, Obstetric and Neonatal Nurses;

~~[q]~~ "Standardized CAPA-CS Agreement Form", 9/2023; and

~~[r]~~ "CAPA-NS Agreement 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, 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>.

VOLUME 51, NUMBER 3– September 1, 2024

AUDRIA DENKER, President

APPROVED BY AGENCY: June 20, 2024

FILED WITH LRC: August 6, 2024 at 9:50 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 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 October 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 October 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, 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 APRN practice.

(b) The necessity of this administrative regulation: This administrative regulation is necessary because of KRS 314.042.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by setting standards of practice.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by setting standards of practice.

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

(a) How the amendment will change this existing administrative regulation: The amendments update the regulation to reflect changes in technology and that the electronic prescription drug monitoring program system for monitoring scheduled controlled substances (PDMP) is maintained online. It may be queried for information, including access and review times for audit purposes. The PDMP does not necessarily produce a physical report with a report number. Also, the material incorporated by reference (MIR) has been updated to the current updated or revised versions.

(b) The necessity of the amendment to this administrative regulation: These regulation amendments were necessary due updates in technology and the MIR.

(c) How the amendment conforms to the content of the authorizing statutes: By clearly stating prescribing requirements.

(d) How the amendment will assist in the effective administration of the statutes: By clearly stating standards, procedures, and requirements.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Kentucky APRNs, approximately 14,000 licensees.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: APRNs with prescriptive authority who

query the PDMP pursuant to this regulation will need to document in the patient file the date and time the PDMP was queried.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No additional cost.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will be following the administrative regulation and KRS 314.042 and will be authorized to prescribe controlled substances.

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

(a) Initially: No additional cost.

(b) On a continuing basis: No additional cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency funds.

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

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

(9) TIERING: Is tiering applied? The changes will apply equally, there is no tiering.

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)(a), (b), 314.131(1), 314.042, and 314.193.

(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: None.

Revenues: None.

Cost Savings: None.

(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 regulation updates language regarding PDMP reporting, and the material incorporated by referenced. Revenues are unaffected.

(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.

KENTUCKY HOUSING CORPORATION
(Amendment)

202 KAR 2:020. Rural Housing Trust Fund.

RELATES TO: KRS 198A.740 - 198A.750

STATUTORY AUTHORITY: KRS 198A.744, 198A.746(5), 198A.748(5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 198A.744 authorizes Kentucky Housing Corporation to administer the Rural Housing Trust Fund by providing loans or grants for eligible activities, as established in KRS 198A.746, to create new sources of funding or to supplement existing sources of funding for the development of housing for moderate-income individuals or families in rural areas. KRS 198A.746 authorizes Kentucky Housing Corporation to define relocation costs to be paid if the development of rural housing displaces moderate-income individuals or families. This administrative regulation establishes additional criteria to qualify for the loans and grants and establishes the procedures to be followed in paying relocation costs.

Section 1. Qualification Criteria.

(1) Applications shall be prioritized based on the priorities established in KRS 198A.748(6).

(2) Single-family project applications shall be competitively ranked based on the following criteria:

(a) Willingness to serve those in a federally declared disaster area or displaced by an event triggering a federal disaster declaration within twenty-four (24) months of the event triggering the federal disaster declaration~~[the most impacted and distressed disaster counties];~~

(b) Readiness to proceed;

(c) Number of units to be addressed by the project;

(d) Demonstrated experience in development or repair of housing;

(e) Projects to house disaster survivors still living in shelters, doubled up with family, or in another unsustainable housing situation;

(f) Established relationships and mechanisms to ensure a pipeline of moderate-income homebuyer referrals;

(g) Demonstrated expansion of capacity to develop at scale;~~[and]~~

(h) Demonstrated financial capacity to carry out larger-scale housing projects;~~[-]~~

(i) Creation of new housing supply;

(j) Location in rural areas with significant job growth;

(k) Location in counties shown to have a housing supply gap; or

(l) Projects awarded contributions from local government, a local employer, or a combination of local sources.

(3) Multifamily project applications shall be competitively ranked based on the following criteria:

(a) Willingness to serve those in a federally declared disaster area or displaced by an event triggering a federal disaster declaration within twenty-four months of the event triggering the federal disaster declaration~~[the most impacted and distressed western Kentucky disaster counties];~~

(b) Readiness to proceed;

(c) Experience in development of multifamily housing utilizing Kentucky Housing Corporation financing resources;

(d) Demonstrated financial capacity to carry out larger-scale housing projects;~~[-and]~~

(e) Projects awarded under the Kentucky Housing Corporation tax exempt bond notice of funding availability in accordance with the terms of the notice of funding availability;~~[-]~~

(f) Creation of new housing supply;

(g) Location in rural areas with significant job growth;

(h) Location in counties shown to have a housing supply gap; or

(i) Projects awarded contributions from local government, a local employer, or a combination of local sources.

(4) Approval of applications shall be based on the numerical ranking received and the availability of funds.

Section 2. Relocation Costs. In the development of rural housing under the Rural Housing Trust Fund, displacement of moderate-income individuals or families shall not be permitted unless the project pays all reasonable relocation costs. Reasonable relocation costs shall be determined on a case-by-case basis based on the following criteria:

(1) Provision of relocation advisory services to displaced tenants and owner occupants;

(2) Provision of a minimum of ninety (90) days written notice to vacate prior to requiring possession;

(3) Reimbursement for moving expenses; and

(4) Provision of payments for the added cost of renting or purchasing comparable replacement housing.

WINSTON E. MILLER, Executive Director

APPROVED BY AGENCY: August 1, 2024

FILED WITH LRC: August 6, 2024 at 2:40 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on October 21, 2024 at 1:00 p.m. at Kentucky Housing Corporation, 1231 Louisville Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until 11:59 p.m. on October 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: Samuel Thorner, General Counsel, Kentucky Housing Corporation, 1231 Louisville Road, Frankfort, Kentucky 40601; phone (502) 564-7630, fax (502) 564-7322; email sthorner@kyhousing.org.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Samuel Thorner

(1) Provide a brief summary of:

(a) What this administrative regulation does: Establishes uniform criteria for qualifying for Rural Housing Trust Fund grants and loans and establishes criteria for the payment of relocation costs.

(b) The necessity of this administrative regulation: Sets standards to create new sources of funding or to supplement existing sources of funding for the development of housing for moderate-income individuals or families in rural areas. Sets standards for payment of relocation costs if development of rural housing displaces moderate-income individuals or families.

(c) How this administrative regulation conforms to the content of the authorizing statutes: Kentucky Housing Corporation may administer the Rural Housing Trust Fund, by KRS 198A.744, KRS 198A.746, and KRS 198A.748, to promote development of housing for moderate-income individuals and families in rural areas.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By providing clear notice to organizations eligible for funding of any standards and rules which exist in regard to the use of funds in housing development and relocation costs.

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

(a) How the amendment will change this existing administrative regulation: This amendment adds criteria for qualifying for Rural Housing Trust Fund grants and loans.

(b) The necessity of the amendment to this administrative regulation: This amendment adds criteria for qualifying for Rural Housing Trust Fund grants and loans to address the housing supply gap in rural areas.

(c) How the amendment conforms to the content of the authorizing statutes: Kentucky Housing Corporation may administer the Rural

Housing Trust Fund, by KRS 198A.744, KRS 198A.746, and KRS 198A.748, to promote the development of housing for moderate-income individuals and families in rural areas.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will set standards to create new sources of funding or to supplement existing sources of funding for the development of housing for moderate-income individuals or families in rural areas.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects all potential applicants seeking to apply for loans or grants for eligible activities under the Rural Housing Trust Fund, which includes local governments, local government housing authorities, nonprofit organizations, regional or statewide housing assistance organizations, and business organizations that undertake new construction or rehabilitation of rural housing units for moderate-income individuals.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This amendment adds criteria for selection of applications for funding under the Rural Housing Trust Fund and defines reasonable relocation costs. The identified entities must ensure the project pays all reasonable relocation costs in the event it involves displacement of moderate-income individuals or families.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This amendment adds criteria for selection of applications for funding under the Rural Housing Trust Fund and defines reasonable relocation costs. There is no cost to complying with the criteria portion of the regulation. In the event reasonable relocation projects must be paid, those costs will be paid by the project, not the identified entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This amendment adds criteria for the evaluation and selection of applications for funding under the Rural Housing Trust Fund. The more criteria a project application meets, the more likely it is to be funded. The portion of the regulation establishing reasonable relocation costs will not cause any benefits to accrue to the identified entities. (5) Provide an estimate of how much it will cost to implement this administrative regulation:

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

(a) Initially: Administrative costs associated with notifying appropriate organizations of funding, designing and reviewing applications, administering funding to eligible applicants and monitoring funded agencies.

(b) On a continuing basis: There will be some long-term direct costs associated with continued monitoring of funded agencies to ensure long-term compliance.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Administrative fees charged to the Rural Housing Trust Fund.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: There are no fees directly or indirectly increased by this administrative regulation.

(9) TIERING: Is tiering applied? Tiering is not applied, all organizations applying for funds will be subject to the same requirements to provide a fair and equitable selection process.

FISCAL IMPACT STATEMENT

(1) Identify each state statute, federal statute, or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 198A.744, KRS 198A.746, and KRS 198A.748 require and authorize the actions taken by this administrative regulation.

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: This administrative regulation will affect the promulgating agency, Kentucky Housing Corporation.

(a) Estimate the following for the first year:

Expenditures: Kentucky Housing Corporation expects that this administrative regulation amendment will cost no more to administer than is currently expended.

Revenues: It is not expected or intended that this administrative regulation will generate any revenue.

Cost Savings: Kentucky Housing Corporation expects that this administrative regulation will not generate any specific cost savings.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? Kentucky Housing Corporation does not anticipate expenditures, revenues, or cost savings to differ in subsequent years.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): This administrative regulation affects organizations eligible for funding from the Rural Housing Trust Fund which includes all local governments and local government housing authorities that undertake new construction or rehabilitation of rural housing units for moderate-income individuals.

(a) Estimate the following for the first year:

Expenditures: Kentucky Housing Corporation expects that this administrative regulation amendment will cost no more to administer than is currently expended.

Revenues: It is not expected or intended that this administrative regulation will generate any revenue.

Cost Savings: Kentucky Housing Corporation expects that this administrative regulation will not generate any specific cost savings for the regulated entities.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? Kentucky Housing Corporation does not anticipate expenditures, revenues, or cost savings to differ in subsequent years.

(4) Identify additional regulated entities not listed in questions (2) or (3): This administrative regulation affects organizations eligible for funding from the Rural Housing Trust Fund which includes nonprofit organizations, regional or statewide housing assistance organizations, and business organizations that undertake new construction or rehabilitation of rural housing units for moderate-income individuals.

(a) Estimate the following for the first year:

Expenditures: Kentucky Housing Corporation expects that this administrative regulation amendment will cost no more to administer than is currently expended.

Revenues: It is not expected or intended that this administrative regulation will generate any revenue.

Cost Savings: Kentucky Housing Corporation expects that this administrative regulation will not generate any specific cost savings for the regulated entities.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? Kentucky Housing Corporation does not anticipate expenditures, revenues, or cost savings to differ in subsequent years.

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: Kentucky Housing Corporation expects that this administrative regulation will have little to no fiscal impact on the regulated entities, outside those expenditures already undertaken.

(b) Methodology and resources used to determine the fiscal impact: This determination of the administrative regulation's fiscal impact is made by the listed contact person and other agency staff based on their collective experience with the subject matter.

(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) Kentucky Housing Corporation does not expect this administrative regulation will result in a negative or adverse major economic impact to the entities identified in questions (2) - (4).

(b) The methodology and resources used to reach this conclusion: This conclusion is made by the listed contact person and other agency staff based on their collective experience with the subject matter.

ENERGY AND ENVIRONMENT CABINET
Department for Natural Resources
Division of Mine Permits
(Amendment)

405 KAR 10:001. Definitions for 405 KAR Chapter 10.

RELATES TO: KRS Chapter 350, 7 C.F.R. Part 657, 30 C.F.R. [Parts]700.5, 701.5, 707.5, 730-733, 735, 761.5, 762.5, 773.5, 800.5, 843.5, 917, 40 C.F.R. Part 136, 30 U.S.C. Chapter 25, 1253, 1255, 1291

STATUTORY AUTHORITY: KRS 350.028, 350.465, 350.500 - 350.521, 7 C.F.R. Part 657, 30 C.F.R. [Parts]700.5, 701.5, [707.5, 730-733, 735, [761.5, 762.5,]773.5, 800.5, [843.5,]917, 40 C.F.R. Part 136, 30 U.S.C. 1253, 1255, 1291

NECESSITY, FUNCTION, AND CONFORMITY: KRS Chapter 350 requires the cabinet to promulgate administrative regulations pertaining to surface coal mining and reclamation operations under the permanent regulatory program. This administrative regulation establishes definitions for terms used in 405 KAR Chapter 10.

Section 1. Definitions.

(1) "Acquisition" means the purchase, lease, or option on the land for the purpose of conducting or allowing through resale, lease, or option the action of conducting surface coal mining and reclamation operations.

(2) "Active acre":

(a) Means an acre of land or fraction thereof, permitted and bonded for surface disturbance pursuant to a surface coal mining permit as of July 1, 2013; and

(b) Does not mean:

1. Acreage contained in a permit for which the entire permit has not been initially disturbed by the permittee after permit issuance;

2. Acreage contained in a permit, or increment thereof, that has completed initial reclamation and received a minimum of a Phase 1 bond release; or

3. Undisturbed acreage completely released from liability as a result of a bond release or bond reduction.

(3) "Actuarial soundness" is defined by KRS 350.500(1).

(4) "Adjacent area" means land located outside the affected area or permit area, depending on the context in which "adjacent area" is used, where air, surface, surface water, groundwater, fish, wildlife, vegetation, or other resources protected by KRS Chapter 350 could be adversely impacted by surface coal mining and reclamation operations.

(5) "Affected area" means any land or water area that is used to facilitate, or is physically altered by, surface coal mining and reclamation operations. The affected area includes:

(a) The disturbed area;

(b) Any area upon which surface coal mining and reclamation operations are conducted;

(c) Any adjacent lands the use of which is incidental to surface coal mining and reclamation operations;

(d) All areas covered by new or existing roads used to gain access to, or for hauling coal to or from, surface coal mining and reclamation operations, except as established in this definition;

(e) Any area covered by surface excavations, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, or shipping areas;

(f) Any areas upon which are sited structures, facilities, or other property or material on the surface resulting from, or incident to, surface coal mining and reclamation operations;

(g) The area located above underground workings associated with underground mining activities;

(h) Auger mining or in situ mining; and

(i) Every road used for the purposes of access to, or for hauling coal to or from, surface coal mining and reclamation operations, unless the road:

1. Was designated as a public road pursuant to the laws of the jurisdiction in which it is located;

2. Is maintained with public funds and constructed in a manner similar to other public roads of the same classification within the jurisdiction; and

3. There is substantial (more than incidental) public use.

(6) "Applicant" means any person seeking a permit, permit revision, permit amendment, permit renewal or transfer, assignment, or sale of permit rights from the cabinet to conduct surface coal mining and reclamation operations pursuant to KRS Chapter 350 and 405 KAR Chapters 7 through 24.

(7) "Cabinet" is defined by KRS 350.010(10).

(8) "C.F.R." means Code of Federal Regulations.

(9) "Coal" means combustible carbonaceous rock, classified as anthracite, bituminous, subbituminous, or lignite by ASTM Standard D 388-77.

(10) "Coal mined and sold" means coal severed or removed as a result of surface coal mining operations and subsequently sold, transferred, or used by the permittee or operator.

(11) "Collateral bond" means an indemnity agreement in a sum certain payable to the cabinet executed by the permittee and supported by the deposit with the cabinet of cash, negotiable certificates of deposit, or an irrevocable letter of credit of any bank organized and authorized to transact business in the United States.

(12) "Cropland" means land used for the production of adapted crops for harvest, alone or in a rotation with grasses and legumes, and includes row crops, small grain crops, hay crops, nursery crops, orchard crops, and other similar specialty crops.

(13) "Day" means calendar day unless otherwise specified to be a working day.

(14) "Department" means the Department for Natural Resources.

(15) "Disturbed area" means an area where vegetation, topsoil, or overburden is removed or upon which topsoil, spoil, coal processing waste, underground development waste, or noncoal waste is placed by surface coal mining operations. Those areas are classified as "disturbed" until reclamation is complete, and the performance bond or other assurance of performance required by 405 KAR Chapter 10 is released.

(16) "Dormancy fee" means the annual fee established in KRS 350.518(2)(f).

(17) "FDIC" means Federal Deposit Insurance Corporation.

(18) "Federal lands":

(a) Means any lands, including mineral interests, owned by the United States, without regard to how the United States acquired ownership of the lands or which agency manages the lands; and

(b) Does not mean Indian lands.

(19) "Final disposition" means the status of an enforcement action taken by the cabinet pursuant to KRS Chapter 350 for which a final secretary's order has been entered and the time for appeal has expired or all appeals have been exhausted, or an agreed order has been entered.

(20) "FSLIC" means Federal Savings and Loan Insurance Corporation.

(21) "Full-cost bonding" means performance bonds that have been submitted by a permittee for surface coal mining operation permits in lieu of participation and membership in the Kentucky Reclamation Guaranty Fund.

(22) "Historically used for cropland" means land that:

(a) Has been used for cropland for any five (5) years or more out of the ten (10) years immediately preceding the:

1. Application; or

2. Acquisition of the land for the purpose of conducting surface coal mining and reclamation operations;

(b) Would likely have been used as cropland for any five (5) out of the last ten (10) years immediately preceding the acquisition or the application but for some fact of ownership or control of the land unrelated to the productivity of the land; or

(c) The cabinet determines, on the basis of additional cropland history of the surrounding land and the land under consideration, are clearly cropland but fall outside the specific five (5) years in ten (10) criterion.

(23) "Impoundment" means a closed basin, naturally formed or artificially built, which is dammed or excavated for the retention of water, sediment, or waste.

VOLUME 51, NUMBER 3– September 1, 2024

(24) "KRGF" means the Kentucky Reclamation Guaranty Fund.

(25) "Land use" means specific functions, uses, or management-related activities of an area, and could be identified in combination when joint or seasonal uses occur and could include land used for support facilities that are an integral part of the use. In some instances, a specific use can be identified without active management.

(26) [~~"Long term treatment" means the use of any active or passive water treatment necessary to meet water quality effluent standards at the time a permit or any affected permit increment attains phase one (1) bond release standards as determined by the cabinet pursuant to 405 KAR 10:040.~~]

[(27)] "Member" means a permittee in the Kentucky Reclamation Guaranty Fund.

[(27)] [(28)] "Non-production fee" means the annual fee established in KRS 350.518(2)(e).

[(28)] [(29)] "Notice of noncompliance and order for remedial measures" means a written document and order prepared by an authorized representative of the cabinet that establishes with specificity the violations of KRS Chapter 350, 405 KAR Chapters 7 through 24, or permit conditions that the authorized representative of the cabinet determines to have occurred based upon an inspection, and the necessary remedial actions, if any, and the time schedule for completion thereof, necessary and appropriate to correct the violations.

[(29)] [(30)] "Operations" is defined by KRS 350.010(6).

[(30)] [(31)] "Operator" is defined by KRS 350.010(8).

[(31)] [(32)] "Opt-out" means the decision by a permittee to not participate in the KRGF and to provide full-cost bonding pursuant to 405 KAR 10:080.

[(32)] [(33)] "Order for cessation and immediate compliance" means a written document and order issued by an authorized representative of the cabinet when:

(a) A person to whom a notice of noncompliance and order for remedial measures was issued has failed, as determined by a cabinet inspection, to comply with the terms of the notice of noncompliance and order for remedial measures within the time limits set therein, or as subsequently extended; or

(b) The authorized representative finds, on the basis of a cabinet inspection, any condition or practice or any violation of KRS Chapter 350, 405 KAR Chapters 7 through 24, or any condition of a permit or exploration approval that:

1. Creates an imminent danger to the health or safety of the public; or
2. Is causing or can reasonably be expected to cause significant, imminent environmental harm to land, air, or water resources.

[(33)] [(34)] "ORGF" means the Office of the Reclamation Guaranty Fund.

[(34)] [(35)] "Owned or controlled" and "owns or controls" mean any one (1) or a combination of the relationships established in paragraphs (a) and (b) of this definition:

(a)

1. Being a permittee of a surface coal mining operation;
2. Based on instruments of ownership or voting securities, owning of record in excess of fifty (50) percent of an entity; or
3. Having any other relationship that gives one (1) person authority directly or indirectly to determine the manner in which an applicant, an operator, or other entity conducts surface coal mining operations; and

(b) One (1) of the following relationships, which constitutes ownership or control unless a person demonstrates that the person subject to the presumption does not in fact have the authority directly or indirectly to determine the manner in which the relevant surface coal mining operation is conducted:

1. Being an officer or director of an entity;
2. Being the operator of a surface coal mining operation;
3. Having the ability to commit the financial or real property assets or working resources of an entity;
4. Being a general partner in a partnership;
5. Based on the instruments of ownership or the voting securities of a corporate entity, owning of record ten (10) through fifty (50) percent of the entity; or

6. Owning or controlling coal to be mined by another person under a lease, sublease, or other contract and having the right to receive the coal after mining or having authority to determine the manner in which that person or another person conducts a surface coal mining operation.

[(35)] [(36)] "Performance bond" means a surety bond, a collateral bond, or a combination thereof, or bonds filed pursuant to the provisions of the Kentucky Reclamation Guaranty Fund (405 KAR 10:070, KRS 350.595, and 350.500[~~—~~—]350.521), by which a permittee assures faithful performance of all the requirements of KRS Chapter 350, 405 KAR Chapters 7 through 24, and the requirements of the permit and reclamation plan.

[(36)] [(37)] "Permit" means written approval issued by the cabinet to conduct surface coal mining and reclamation operations.

[(37)] [(38)] "Permit area" means the area of land, indicated on the approved map submitted by the permittee with an application, required to be covered by the permittee's performance bond pursuant to 405 KAR Chapter 10 and that includes the area of land upon which the permittee proposes to conduct surface coal mining and reclamation operations pursuant to the permit, including all disturbed areas. Areas adequately bonded under another valid permit, pursuant to 405 KAR Chapter 10, could be excluded from the permit area.

[(38)] [(39)] "Permittee" means an operator or a person holding or required by KRS Chapter 350 or 405 KAR Chapters 7 through 24 to hold a permit to conduct surface coal mining and reclamation operations during the permit term and until all reclamation obligations imposed by KRS Chapter 350 and 405 KAR Chapters 7 through 24 are satisfied.

[(39)] [(40)] "Person" is defined by KRS 350.010(9).

[(40)] [(41)] "Person having an interest that is or may be adversely affected" or "person with a valid legal interest" includes any person:

(a) Who uses any resource of economic, recreational, aesthetic, or environmental value that could be adversely affected by coal exploration or surface coal mining and reclamation operations, or by any related action of the cabinet; or

(b) Whose property is or could be adversely affected by coal exploration or surface coal mining and reclamation operations, or by any related action of the cabinet.

[(41)] [(42)] "Prime farmland" means those lands defined by the Secretary of Agriculture in 7 C.F.R. 657 and that have been "historically used for cropland".

[(42)] [(43)] "Reclamation" is defined by KRS 350.010(12).

[(43)] [(44)] "Secretary" is defined by KRS 350.010(11).

[(44)] [(45)] "SMCRA" means Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. Chapter 25 [~~of 1977~~](Pub. L. [PL] 95-87), as amended.

[(45)] [(46)] "Surety bond" means an indemnity agreement in a sum certain, payable to the cabinet and executed by the permittee, which is supported by the performance guarantee of a corporation licensed to do business as a surety in the Commonwealth of Kentucky.

[(46)] [(47)] "Surface coal mining and reclamation operations" is defined by KRS 350.010(3).

[(47)] [(48)] "Surface coal mining operations" is defined by KRS 350.010(1).

[(48)] [(49)] "Suspended solids" or nonfilterable residue, expressed as milligrams per liter, means organic or inorganic materials carried or held in suspension in water that are retained by a standard glass fiber filter in the procedure outlined by the U.S. EPA's regulations for waste water and analyses (40 C.F.R. 136).

[(49)] [(50)] "Ton" means 2,000 pounds avoirdupois (0.90718 metric ton).

[(50)] [(51)] "Topsoil" means the A and E soil horizon layers of the four (4) master soil horizons.

[(51)] [(52)] "U.S. EPA" means United States Environmental Protection Agency.

[(52)] [(53)] "Voluntary Bond Pool" is defined by KRS 350.500(5).

[(53)] [(54)] "Willfully" and "willful violation" mean that a person acted either intentionally, voluntarily, or consciously, and with intentional disregard or plain indifference to legal requirements, in authorizing, ordering, or carrying out an act or omission that constituted a violation of SMCRA, KRS Chapter 350, 405 KAR

VOLUME 51, NUMBER 3– September 1, 2024

Chapters 7 through 24, or a permit condition, or that constituted a failure or refusal to comply with an order issued pursuant to SMCRA, KRS Chapter 350, or 405 KAR Chapters 7 through 24.

REBECCA W. GOODMAN, Secretary

APPROVED BY AGENCY: August 7, 2024

FILED WITH LRC: August 15, 2024 at 9:59 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 28, 2024, at 5:00 p.m. (Eastern Time) in Training Room C of the Energy and Environment Cabinet at 300 Sower Blvd, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. 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 October 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: Dawn Baase, Environmental Scientist Consultant II, Department for Natural Resources, Office of the Commissioner, 300 Sower Blvd, 2nd Floor, Frankfort, Kentucky 40601, phone (502) 782-6311, fax (502) 564-4245, email Dawn.Baase@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Dawn Baase

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation defines terms used in 405 KAR Chapter 10.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to clearly define the terms used in 405 KAR Chapter 10.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS Chapter 350 provides the department the authority to promulgate administrative regulations for implementing a permanent program to regulate coal mining in the Commonwealth. This administrative regulation defines terms used in 405 KAR Chapter 10.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation defines terms used in 405 KAR Chapter 10 and will assist in the interpretation of those administrative regulations.

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

(a) How the amendment will change this existing administrative regulation: This amendment removes the definition for "long term treatment" and makes technical corrections.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to remove the definition of "long-term treatment" from 405 KAR Chapter 10. These amendments are needed for the cabinet's permanent program to be no less effective and no less stringent than those required by Federal law. It also necessary to make minor technical corrections.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the authorizing statutes by removing the definition of "long-term treatment" from 405 KAR Chapter 10. These amendments are necessary for the cabinet's permanent program to be no less effective and no less stringent than those required by Federal law.

(d) How the amendment will assist in the effective administration of the statutes: KRS 350.028 provides the department the authority to enforce a permanent regulatory program in the Commonwealth. These amendments are necessary for the cabinet's permanent program to be no less effective and no less stringent than those required by Federal law.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This provision would apply to any entity

operating a surface coal mine operation in the Commonwealth. There are currently 1,022 surface coal mines operating in Kentucky.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The entities identified do not have any actions or requirements due the amendments of this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The entities identified will not have additional costs due to this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Entities will benefit by removing a definition that is no less effective and no less stringent than those required by Federal law. The definition of "long-term treatment" was not approved by the federal Office of Surface Mining Reclamation and Enforcement.

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

(a) Initially: There is no cost associated with implementing this amendment.

(b) On a continuing basis: There will be no costs associated with the implementation of this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The funding for the implementation and enforcement of this administrative regulation will be with a combination of general and restricted funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: This regulatory amendment will not require an increase in fees or funding.

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

(9) TIERING: Is tiering applied? No, tiering is not applied to this administrative regulation as it only contains definitions for 405 KAR Chapter 10.

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 350.028, 350.465, 350.500 - 350.521, 7 C.F.R. Part 657, 30 C.F.R. 700.5, 701.5, 730-733, 735, 773.5, 800.5, 917, 40 C.F.R. Part 136, 30 U.S.C. 1253, 1255, 129

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: The Energy and Environment Cabinet, Department for Natural Resources, Division of Mine Permits, and Division of Mine Reclamation and Enforcement.

(a) Estimate the following for the first year:
Expenditures: There are no known effects on current expenditures.

Revenues: There are no known effects on current revenues.

Cost Savings: There are no known cost savings.

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

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): There are no known effects for local entities.

(a) Estimate the following for the first year:

Expenditures: There are no known effects on expenditures.

Revenues: There are no known effects on revenues.

Cost Savings: There are no known cost savings.

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

(4) Identify additional regulated entities not listed in questions (2) or (3): Regulated entities are those who have obtained a surface coal mine permit in the Commonwealth.

(a) Estimate the following for the first year:

Expenditures: There are no known effects on expenditures.

Revenues: There are no known effects to revenues for regulated entities.

Cost Savings: There are no known cost savings for regulated entities.

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

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: There are no fiscal impacts from this administrative regulation.

(b) Methodology and resources used to determine the fiscal impact: This administrative regulation only establishes definitions of the terms used in 405 KAR Chapter 10.

(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 a negative or adverse major economic impact to the entities identified.

(b) The methodology and resources used to reach this conclusion: This administrative regulation only establishes definitions of the terms used in 405 KAR Chapter 10.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 30 C.F. R. Part 701

(2) State compliance standards. KRS 350.028 and KRS 350.060.

(3) Minimum or uniform standards contained in the federal mandate. 30 C.F.R. 701.5

(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 or additional requirements than the federal regulation. These amendments conform to Federal law ensuring the cabinet's permanent program is no less effective and no less stringent than those required by Federal law.

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. NA

ENERGY AND ENVIRONMENT CABINET Department for Natural Resources Division of Mine Permits (Amendment)

405 KAR 10:015. General bonding provisions.

RELATES TO: KRS 350.020, 350.060, 350.062, 350.064, 350.093, 350.095, 350.100, 350.151, 350.465, 350.503, 30 C.F.R. Parts 800, 917, 30 U.S.C. Chapter 25

STATUTORY AUTHORITY: KRS 350.028, 350.060, 350.062, 350.064, 350.093, 350.095, 350.100, 350.151, 350.465, 350.515, 350.518, 30 C.F.R. Parts 800, 917

NECESSITY, FUNCTION, AND CONFORMITY: KRS Chapter 350 authorizes the cabinet to promulgate administrative regulations to establish procedures for determining amounts for performance bonds for surface coal mining operations. This administrative regulation establishes criteria for the base determination of bond amounts and requires certain periods of liability during which the bonds shall remain in effect. This administrative regulation establishes requirements for filing and maintaining performance bonds and provides for adjustments in bond amounts and additional information related to minimum bonds and application of bonds to ensure performance of the requirements of KRS Chapter 350 in the event work is performed by the cabinet, taking into consideration such things as topography, geology, future land use, and the difficulty of reclamation.

Section 1. Bonding Requirements.

(1) An applicant shall not disturb surface acreage or extend an underground shaft, tunnel, or operation prior to receipt of approval

from the cabinet of a performance bond covering an area to be affected by surface operations and facilities.

(2) After an application for a new, amended, revised, or renewed permit to conduct surface coal mining and reclamation operations has been approved pursuant to 405 KAR Chapter 8, but before the permit is issued, the applicant shall file with the cabinet, on Performance Bond, Form SME-42, a performance bond payable to the cabinet.

(a) The applicant shall file the Performance Bond, Form SME-42, for an operation on land other than federal lands, or the Performance Bond for Surface Coal Mining and Reclamation on Federal Lands, Form SME-42-F, for an operation on federal land.

(b) The performance bond shall be conditioned upon compliance with all [ef-]the requirements of KRS Chapter 350, 405 KAR Chapters 7 through 24, and the provisions of the reclamation plan and permit, and shall cover all surface coal mining and reclamation operations to be conducted within the permit area or increment thereof until all reclamation requirements of 405 KAR Chapters 7 through 24 have been met.

(c) The amount, duration, type, conditions, and terms of the performance bond shall conform to the requirements of this administrative regulation.

(3) A permit shall not be revised or amended to include additional area unless the liability of the current bond is extended to cover the entire permit area or increment as revised or amended, and the liability of the supplemental bond covers the entire permit area as revised or amended. Unless these conditions are met with respect to the bond, the additional area shall be permitted as a separate increment of the current permit area or pursuant to a new permit.

(4) A rider to the applicable performance bond, confirming coverage of the revision, shall be submitted by the applicant if a revision to a permit does not change the acreage of the permit area or increment but:

(a) Adds a coal washer, a crush and load facility, a refuse pile, or a coal mine waste impoundment to the existing permit; or

(b) Alters the boundary of a permit area or increment.

Section 2. Terms and Conditions of Performance Bond.

(1) The performance bond shall be in an amount determined by the cabinet as established in Sections 6, 7, and 8 of this administrative regulation.

(2) The performance bond shall be payable to the cabinet.

(3) The performance bond shall be conditioned upon faithful performance of all [ef-]the requirements of KRS Chapter 350, 405 KAR Chapters 7 through 24, and the conditions of the permit and shall cover the entire permit area or the incremental area as the cabinet has approved pursuant to Section 4(2) of this administrative regulation.

(4) The duration of the bond shall be for a time period established in Section 9 of this administrative regulation.

(5) Surety bonds shall be subject to the conditions established in paragraphs (a) through (d) of this subsection.

(a) The cabinet shall not accept the bond of a surety company unless the bond shall not be cancelable by the surety at any time for any reason.

1. Surety bond coverage for permitted lands not disturbed shall be cancelled only with the written approval of the cabinet, provided the surety gives written notice to both the permittee and the cabinet of the intent to cancel prior to the proposed cancellation.

a. A cancellation notice shall be by certified mail.

b. Cancellation shall not be effective for lands subject to bond coverage that are affected after receipt of notice, but prior to approval by the cabinet.

c. The cabinet shall approve a cancellation only if a replacement bond has been filed by the permittee, or if the permit area has been reduced by revision to the extent that the remaining bond amount, after cancellation, is sufficient to cover all the costs attributable to the completion of reclamation operations on the reduced permit area in accordance with Section 10 of this administrative regulation.

2. The cabinet shall advise the surety, within thirty (30) days after receipt of a notice to cancel bond, if the bond may be cancelled on an undisturbed area.

VOLUME 51, NUMBER 3– September 1, 2024

(b) The bond shall provide that the surety and the permittee shall be jointly and severally liable.

(c)

1. The surety shall give prompt notice to the permittee and the cabinet of a notice received or action filed alleging the insolvency or bankruptcy of the surety, or alleging violations of regulatory requirements that could result in suspension or revocation of the surety's license to do business.

2. ~~If [In the event]~~ the surety becomes unable to fulfill its obligations pursuant to the bond, the surety shall promptly provide written notice to the permittee and the cabinet.

3. Upon the incapacity of a surety by reason of bankruptcy, insolvency, or suspension or revocation of its license or certificate of authority, the permittee shall be deemed to be without proper bond coverage and shall promptly notify the cabinet.

a. Nothing in this paragraph shall relieve the permittee of responsibility pursuant to the permit or the surety of liability on the permittee's bond.

b. The cabinet shall issue a notice to the permittee specifying a reasonable period to replace bond coverage, not to exceed ninety (90) days.

c. If an adequate bond is not posted by the end of the period allowed, the permittee shall cease coal extraction and coal processing operations and shall comply with the provisions of 405 KAR 16:010, Section 6, or 405 KAR 18:010, Section 4, and shall immediately begin to conduct reclamation operations in accordance with the reclamation plan.

d. Coal extraction and coal processing operations shall not resume until the cabinet has determined that, in accordance with 405 KAR Chapters 7 through 24, an acceptable bond has been posted.

e. If an acceptable bond has not been posted by the end of the period allowed, the cabinet shall suspend the permit until acceptable bond, in accordance with 405 KAR Chapters 7 through 24, is posted.

(d) A surety bond shall be executed by the operator and a corporate surety licensed to do business in the Commonwealth of Kentucky.

(6) Collateral bonds may include cash deposits with the cabinet, certificates of deposit, or letters of credit. Collateral bonds, except for letters of credit, shall be subject to the conditions established in paragraphs (a) through (f) of this subsection.

(a) The cabinet or its authorized agent shall obtain possession of and keep in custody all collateral deposited by the applicant, until authorized for release or replacement as established in 405 KAR Chapter 10.

(b) The cabinet shall require that certificates of deposit be assigned to the cabinet or its authorized agent in writing, through the submittal of Escrow Agreement, Form SME-64, and the assignment evidenced on the books of the bank issuing the certificates.

(c) The cabinet shall not accept an individual certificate of deposit unless it is issued by an FDIC or FSLIC insured financial institution, and the cabinet shall not in any circumstance accept a denomination in excess of the maximum insurable amount as determined by FDIC and FSLIC.

(d) The cabinet shall require the issuer of certificates of deposit to waive all rights of setoff or liens that it has or might have against those certificates.

(e) Persons with an interest in collateral posted as a bond, and who desire notification of actions pursuant to the bond, shall request the notification in writing to the cabinet upon an offering of collateral.

(f) The cabinet shall require the applicant to deposit sufficient amounts of certificates of deposit, so as to assure that the cabinet will be able to liquidate those certificates prior to maturity, upon forfeiture, for the amount of the bond required by this chapter.

(7) A letter of credit shall be subject to the conditions established in paragraphs (a) through (d) of this subsection.

(a)

1. The letter shall only be issued by a bank organized or authorized to do business in the United States.

2. A letter of credit issued by a non-Kentucky lending institution shall be confirmed by an approved Kentucky lending institution.

(b) A letter of credit shall be irrevocable.

(c) The letter shall be payable to the cabinet upon demand and receipt from the cabinet of a notice of forfeiture issued in accordance with 405 KAR 10:050, or in the event the bank wishes to terminate the letter on its expiration date, the cabinet may draw upon demand. The Irrevocable Standby Letter of Credit, Form SME-72, and the Confirmation of Irrevocable Standby Letter of Credit, Form SME-72-A, shall be submitted to the cabinet, as necessary.

(d)

1. The issuer shall give prompt notice to the permittee and the cabinet of notice received or action filed alleging the insolvency or bankruptcy of the issuer, or alleging violations of regulatory requirements that could result in suspension or revocation of the issuer's charter or license to do business.

2. In the event the issuer becomes unable to fulfill its obligations pursuant to the letter of credit, notice shall be given immediately to the permittee and the cabinet.

3. Upon the incapacity of an issuer by reason of bankruptcy, insolvency, or suspension or revocation of its charter or license, the permittee shall be deemed to be without proper performance bond coverage and shall promptly notify the cabinet.

a. Nothing in this paragraph shall relieve the permittee of responsibility pursuant to the permit or the issuer of liability on the letter of credit.

b. The cabinet shall issue a notice to the permittee specifying a reasonable period to replace bond coverage, not to exceed ninety (90) days.

c. If an adequate bond is not posted by the end of the period allowed, the permittee shall cease coal extraction and coal processing operations and shall comply with the provisions of 405 KAR 16:010, Section 6, or 405 KAR 18:010, Section 4, and shall immediately begin to conduct reclamation operations in accordance with the reclamation plan.

d. Coal extraction and coal processing operations shall not resume until the cabinet has determined that an acceptable bond has been posted.

e. If an acceptable bond has not been posted by the end of the period allowed, the cabinet shall suspend the permit until acceptable bond is posted.

(8) If a permittee chooses to combine two (2) or more bonds for one (1) permit area or increment, the bonds may be accompanied by a schedule, acceptable to the cabinet and agreed to by all parties, which sets forth the agreed distribution of bond amounts to be released or reduced pursuant to 405 KAR 10:040 and Section 10 of this administrative regulation, respectively. If no schedule is submitted, the cabinet may release equal percentages of each bond.

(9) Permit specific bonds posted by members of the Voluntary Bond Pool on existing permits prior to the establishment of the Kentucky Reclamation Guaranty Fund shall be released in their entirety upon successfully achieving reclamation Phase I bond release in accordance with 405 KAR 10:040, Section 2(4)(a). Permit specific bonds posted by members of the Voluntary Bond Pool on new permits after the establishment of the Kentucky Reclamation Guaranty Fund shall be released in equal percentages at each reclamation phase with the Kentucky Reclamation Guaranty Bond.

Section 3. Types of Performance Bond.

(1) The cabinet shall approve performance bonds of only those types established in this section.

(2) The performance bond shall be a:

(a) Surety bond;

(b) Collateral bond;

(c) Bond filed pursuant to the provisions of the Kentucky Reclamation Guaranty Fund, KRS 350.518;

(d) Bond filed by the Voluntary Bond Pool; or

(e) Combination of the bond types listed in paragraphs (a) through (d) of this subsection.

(3) Bonds filed by the Voluntary Bond Pool prior to its repeal in 2013 Ky. Acts ch. 78, Section 12, shall be deemed valid and convey the same legal right as bonds issued by the KRGF. The amount, duration, conditions, and terms of bonds issued by the Voluntary Bond Pool shall be deemed in compliance with the requirements of this administrative regulation.

VOLUME 51, NUMBER 3– September 1, 2024

Section 4. Bonding Methods. The method of performance bonding for a permit area shall be selected by the applicant and approved by the cabinet prior to the issuance of a permit, and shall consist of one (1) of the methods established in subsections (1) or (2) of this section.

(1) Method "S" - single area bonding. A single area bond shall be a bond that covers the entire permit area as a single undivided area, for which the applicant shall file the entire bond amount required by the cabinet prior to issuance of the permit.

(a) Liability pursuant to the bond shall extend to every part of the permit area at all times.

(b) Except as established in Section 9(2) of this administrative regulation regarding extended bond liability, there shall not be a release of all or part of the bond amount for completion of a particular phase of reclamation on a part of the permit area pursuant to 405 KAR 10:040 until that phase of reclamation has been successfully completed on the entire permit area.

(2) Method "I" - incremental bonding. Incremental bonding shall be a method of bonding in which the permit area shall be divided into individual increments, each of which is bonded separately and independently, and for which a bond shall be filed as operations proceed through the permit area.

(a) The permit area shall be divided into distinct increments subject to approval by the cabinet based on this subsection.

1. Each increment shall be of sufficient size and configuration to provide for efficient reclamation operations should reclamation operations by the cabinet become necessary.

2. If the approved postmining land use is of such nature that successful implementation of the postmining land use capability depends upon an area being integrally reclaimed, then that area shall be contained within a single increment.

3. These increments shall be clearly identified on maps submitted in the permit application pursuant to 405 KAR Chapter 8, and the applicant shall describe the approximate time schedule for beginning operations in each increment.

(b) Prior to issuance of a permit, the applicant shall file with the cabinet the full bond amount required by the cabinet for the first increment or increments of the permit area to be disturbed, which shall be not less than the minimum bond required for the permit area required pursuant to Section 7 of this administrative regulation.

(c) The permittee shall not engage in surface coal mining and reclamation operations on an increment of the permit area unless the full bond amount required by the cabinet has been filed with the appropriate regional office of the department for that increment, the cabinet has verified the validity of the bond, and written authorization to conduct surface coal mining and reclamation operations on that increment is issued by the administrator of the regional office. Credit shall not be given for reclamation on other increments.

(d) The boundaries of each increment shall be physically marked at the site in a manner approved by the cabinet pursuant to 405 KAR 16:030.

(e) The bond amount for an increment shall be released or forfeited independently of another increment of the permit area, and liability pursuant to the performance bond shall extend only to the increment expressly covered by the bond. A single bond amount may be filed to cover more than one (1) increment, in which case the increments covered shall be treated as a single increment.

(f) Except as established in Section 9(2) of this administrative regulation regarding extended bond liability, there shall not be a release of bond for completion of a phase of reclamation on part of an increment until that phase of reclamation has been successfully completed on the entire increment.

(g) If the bond for an increment is completely released pursuant to 405 KAR 10:040, the increment shall be deleted from the permit area.

Section 5. Substitution of Bonds.

(1) The cabinet may allow permittees to substitute existing surety or collateral bonds for equivalent surety or collateral bonds, in which case the liability that has accrued against the permittee on the permit area or increment shall be transferred to the substitute bonds.

(2) The cabinet shall not release existing performance bonds until the permittee has submitted and the cabinet has, in accordance with 405 KAR Chapters 7 through 24, approved acceptable substitute performance bonds. A substitution of performance bonds pursuant to this section shall not constitute a release of bond pursuant to 405 KAR 10:040.

(3) The cabinet may refuse to allow substitution of bonds if an action for revocation or suspension of the permit covered by the bond is pending or if there is a pending action for forfeiture of the bond.

Section 6. Determination of Bond Amounts.

(1) In determining the bond amount, the cabinet shall, using the Bond Computation Form, estimate the cost to the cabinet if the cabinet had to perform the reclamation, restoration, and abatement work required of a person who conducts surface coal mining and reclamation operations pursuant to KRS Chapter 350, 405 KAR Chapters 7 through 24, and the permit, except as established in subsection (4) of this section. This amount shall be based on:

(a) The estimated costs submitted by the permittee in accordance with 405 KAR 8:030, Section 24(4), or 405 KAR 8:040, Section 24(4), or both if applicable;

(b) The additional estimated costs to the cabinet that may arise from applicable public contracting requirements or the need to bring personnel and equipment to the permit area after its abandonment by the permittee to perform reclamation, restoration, and abatement work;

(c) All additional estimated costs necessary, expedient, and incident to the satisfactory completion of the requirements established in this section;

(d) An additional amount based on factors of cost changes during the previous five (5) years for the types of activities associated with the reclamation to be performed; and

(e) Other cost information required or available to the cabinet.

(2) If the reclamation cost calculated submitted in a permit application is higher than the minimum bond or bond calculated by the cabinet, the higher calculation shall be used in any issued permit.

(3) The cabinet shall review the bonding amounts established in Sections 7 and 8 of this administrative regulation at a minimum of every two (2) years to determine if the amounts are adequate due to inflation and increases in reclamation costs.

(4) Full cost bonding participants shall provide the cabinet a cost estimate that reflects the costs of reclamation to the cabinet in accordance with the requirements of 405 KAR 10:080, Section 3.

Section 7. Minimum Bond Amount. The minimum amount of the bond for surface coal mining and reclamation operations at the time the permit is issued or amended shall be:

(1) \$75,000 for the entire surface area under one (1) permit;

(2) \$75,000 per increment for incrementally bonded permits, subject to Section 4(2) of this administrative regulation;

(3) \$50,000 for a permit or increment operating on a previously mined area, as defined by of 405 KAR 8:001, Section 1(86), to be evaluated by the cabinet; or

(4) \$10,000 for underground mines that have only underground operations.

Section 8. Bonding Rate of Additional Areas. Areas of a surface coal mine and reclamation operation shall be bonded at the rates established in subsections (1) through (7) of this section for a permit issued by the Division of Mine Permits.

(1) Coal haul roads, other mine access roads, and mine management areas shall be bonded at \$2,500 per acre and each fraction thereof.

(2) Refuse disposal areas shall be bonded at a minimum rate of \$7,500 per acre and each fraction thereof.

(3)

(a) An embankment sediment control pond shall be bonded at a rate of \$10,000 per acre and each fraction thereof, with each pond being measured separately, if the pond is located off-bench and located downstream and outside the proposed mining or spoil storage area.

VOLUME 51, NUMBER 3– September 1, 2024

(b) This rate may be applied to partial embankment structures as necessary to meet the requirements of Section 6(1) of this administrative regulation.

(4) Coal preparation plants shall be bonded at the base acreage rate, in accordance with subsection (6) of this section, in addition to the costs associated with demolition and disposal costs relating to concrete, masonry, steel, timber, and other materials associated with surface coal mining and reclamation operations.

(5) Operations on a previously mined area, as defined by 405 KAR 8:001, Section 1(86), shall be bonded at rate of \$2,000 per acre and each fraction thereof.

(6) All areas of surface coal mining and reclamation operations not otherwise addressed in subsections (1) through (5) of this section shall be bonded at the rate of \$3,500 per acre and each fraction thereof.

(7)

(a) For permits that have been identified as requiring long-term treatment, the cabinet shall, using the Kentucky Long-Term Treatment Bond Calculation Form, calculate an additional bond or other financial assurance instrument amount based on the estimated annual treatment cost, provided by the permittee and verified by the cabinet, multiplied by a factor of twenty-five (25) plus any capital costs of the treatment system.

(b) The long-term treatment cost estimate shall be subject to verification and acceptance by the cabinet. The department shall use its own estimate for annual treatment costs if the department cannot verify the accuracy of the permittee's estimate.

Section 9. Period of Liability.

(1) Liability pursuant to a performance bond applicable to an entire permit area or increment thereof shall continue until all reclamation, restoration, and abatement work required of persons who conduct surface coal mining and reclamation operations pursuant to requirements of KRS Chapter 350, 405 KAR Chapters 7 through 24, and the provisions of the permit have been completed, and the permit or increment terminated by release of the permittee from further liability in accordance with 405 KAR 10:040.

(2) In addition to the period necessary to achieve compliance with all of the requirements of KRS Chapter 350, 405 KAR Chapters 7 through 24, and the permit, including the standards for the success of revegetation as required by 405 KAR 16:200 and 405 KAR 18:200, the period of liability pursuant to a performance bond shall continue for a period of five (5) years beginning with the last year of augmented seeding, fertilizing, irrigation, or other work.

(a) The period of liability shall begin again upon augmented seeding, fertilizing, irrigation, or other work required or conducted on the site prior to bond release.

(b) Isolated and clearly defined portions of a bonded area requiring extended liability because of augmentation may be separated from the original area and bonded separately upon approval by the cabinet.

(c) These areas shall be limited in extent, and not constitute a scattered, intermittent, or checkerboard pattern of failure.

(d) Access to the separated areas for remedial work may be included in the area pursuant to extended liability if necessary.

(3) If the cabinet approves a long-term intensive agricultural postmining land use in accordance with 405 KAR 16:210, augmented seeding, fertilization, irrigation, or other husbandry practices normally associated with the approved postmining land use shall not require restarting the five (5) year period of liability.

(4) The bond liability of the permittee shall include only those actions that the permittee is required to take pursuant to the permit, including completion of the reclamation plan in a manner that the land shall be capable of supporting a postmining land use approved pursuant to 405 KAR 16:210. Actions of third parties beyond the control and influence of the permittee and for which the permittee is not responsible pursuant to the permit shall not be covered by the bond.

Section 10. Adjustment of Amount.

(1) The amount of the performance bond liability applicable to a permit or increment shall be adjusted by the cabinet if the:

(a) Acreage in the permit area or increment is either increased or decreased; or

(b) Cabinet determines that the cost of future reclamation, restoration, or abatement work has changed. If it is determined that an adjustment pursuant to this paragraph is necessary, the cabinet shall:

1. Notify the permittee, the surety, and any person with a property interest in collateral who has previously requested a notification in writing; and

2. Provide the permittee an opportunity for an informal conference on the adjustment. The requirements of 400 KAR 1:090 and 400 KAR 1:110 shall not apply to the conduct of the conference.

(2) The amount of the performance bond liability applicable to a permit or increment may be adjusted by the cabinet upon application by the permittee pursuant to 405 KAR 8:010, Section 20, to delete acreage from the permit area or increment thereof if the acreage has not been affected by the surface coal mining and reclamation operation. The provisions of 405 KAR 10:040, Section 2(3), shall apply. A reduction due to a deletion of acreage shall not constitute a bond release and shall not be subject to the procedures of 405 KAR 10:040, Section 1.

(3) The cabinet may grant reduction of the required performance bond amount if the permittee's method of operation or other circumstances will reduce the maximum estimated cost to the cabinet to complete the reclamation responsibilities and therefore warrant a reduction of the bond amount. The request shall not be considered as a request for partial bond release subject to the procedures of 405 KAR 10:040, Section 1.

(4) The cabinet shall refuse to approve a reduction of the performance bond liability amount if an action for revocation or suspension of the permit covered by the bond is pending, if there is a pending action for forfeiture of the bond, or if the permittee is currently in violation of 405 KAR Chapters 7 through 24 on that permit or increment.

Section 11. Supplemental Assurance.

(1) If alternative distance limits or additional pits are approved pursuant to 405 KAR 16:020, Section 3[-], the applicant shall submit to the cabinet supplemental assurance in the amount established in this section. This supplemental assurance shall be for the purpose of assuring the reclamation of the additional unreclaimed disturbed area and shall be in addition to the performance bond required pursuant to 405 KAR Chapter 10. The applicant shall submit supplemental assurance on the cabinet form, Supplemental Assurance, Form SME-42 (SA). This form shall be accompanied by the Escrow Agreement, Form [(for use with Supplemental Assurance form only);] SME-64[-(SA)].

(a) The supplemental assurance shall not be subject to the bond release requirements of 405 KAR 10:040, but shall be returned in accordance with the requirements of this section.

(b) The requirements of Sections 2, 3, and 5 of this administrative regulation and 405 KAR 10:035 and 10:050 shall apply to supplemental assurance.

(2) Single seam contour mining. For single seam contour operations subject to 405 KAR 16:020, Section 3[-], the amount required shall be \$150,000 per 1,500 feet, or any portion thereof, of additional distance approved for the first pit pursuant to 405 KAR 16:020, Section 3.[:] If an additional pit or pits are approved, the amount shall be \$150,000 per 1,500 feet, or any portion thereof, including the first 1,500 feet of each additional pit.

(3) Multiple seam contour mining. For multiple seam contour mining operations subject to 405 KAR 16:020, Section 3(6), the amount required shall be \$150,000 per 1,500 feet, or any portion thereof, of additional distance approved for the first multiple seam operation pursuant to 405 KAR 16:020, Section 3.[:] If additional multiple seam operations are approved, the amount shall be \$150,000 per 1,500 feet, or any portion thereof, including the first 1,500 feet of each additional multiple seam operation.

(4) Mountaintop removal. If a mountaintop removal operation begins by mining a contour cut around all or a portion of the mountaintop, that contour portion shall require the same supplemental assurance established in subsection (2) of this section.

VOLUME 51, NUMBER 3– September 1, 2024

(5) Area mining. The amount required shall be \$150,000 for any four (4) spoil ridges, or any portion thereof, of additional distance approved for the first pit pursuant to 405 KAR 16:020, Section 3.[.] If an additional pit or pits are approved, the amount shall be \$150,000 for any four (4) spoil ridges, or any portion thereof, including the first four (4) spoil ridges of each additional pit.

(6) Return of supplemental assurance. Supplemental assurance shall be returned to the person that submitted it upon:

(a) Application to the cabinet for the return; and

(b) Inspection and written documentation (including photographs) by the cabinet verifying that the area for which the supplemental assurance was submitted has been backfilled and graded (or in the case of mountaintop removal, the associated highwall has been eliminated by mining operations).

Section 12. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Performance Bond, Form SME-42", August 2024[~~June 2013~~];

(b) "Performance Bond for Surface Coal Mining and Reclamation on Federal Lands, Form SME-42-F", August 2024[~~Irrevocable Standby Letter of Credit, Form SME-72", July 1994~~];

(c) "Supplemental Assurance, Form SME-42 (SA)", August 2024[~~Confirmation of Irrevocable Standby Letter of Credit, Form SME-72-A", July 1994~~];

(d) "Escrow Agreement, Form SME-64", August 2024[~~Supplemental Assurance, SME-42 (SA)", July 1994~~];

(e) "Irrevocable Standby Letter of Credit, Form SME-72", August 2024[~~Escrow Agreement (for use with Supplemental Assurance form only), SME-64 (SA)", July 1994~~];

(f) "Confirmation of Irrevocable Standby Letter of Credit, Form SME-72-A", August 2024[~~Escrow Agreement, Form SME-64", October 2008~~]; [and]

(g) "Bond Computation Form", May 2014[~~Performance Bond for Surface Coal Mining and Reclamation on Federal Lands, Form SME-42-F", June 2013~~]; and

(h) "Kentucky Long-Term Treatment Bond Calculation Form", May 2022.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department for Natural Resources, 300 Sower Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

(3) This material may also be obtained at the Division of Mine Permits Web site at <https://eec.ky.gov/Natural-Resources/Mining/Mine-Permits/Pages/electronic-forms.aspx>.

REBECCA W. GOODMAN, Secretary

APPROVED BY AGENCY: August 7, 2024

FILED WITH LRC: August 15, 2024 at 9:59 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 28, 2024, at 5:00 p.m. (Eastern Time) in Training Room C of the Energy and Environment Cabinet at 300 Sower Blvd, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. 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 October 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: Dawn Baase, Environmental Scientist Consultant II, Department for Natural Resources, Office of the Commissioner, 300 Sower Blvd, 2nd Floor, Frankfort, Kentucky 40601, phone (502) 782-6311, fax (502) 564-4245, email Dawn.Baase@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Dawn Baase

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes criteria for the determination of reclamation bond amounts, liability periods, long-term treatment financial assurance and requirements for filing and maintaining performance bonds for surface coal mining operations.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to ensure adequate bonds or other financial assurance instruments are held by the cabinet to ensure performance of the requirements of KRS Chapter 350 in the event reclamation or remediation work is performed by the cabinet on disturbed coal mine sites.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS Chapter 350 provides the department the authority to promulgate administrative regulations for implementing a permanent program to regulate coal mining in the Commonwealth. This administrative regulation establishes procedures for determining amounts for performance bonds for surface coal mining operations.

(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 criteria for determination of bond amounts, liability periods, long-term treatment financial assurance and requirements for filing and maintaining performance bonds for surface coal mining operations and ensures adequate bonds are held by the cabinet to perform the requirements of KRS Chapter 350 in the event reclamation or remediation work is performed by the cabinet.

(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 provides the cabinet's bonding calculation forms that are currently being used and have been approved by the federal Office of Surface Mining Reclamation and Enforcement. The amendment also makes technical corrections.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation provides the cabinet's bonding calculation forms as required by KRS 350.060 and makes minor technical corrections.

(c) How the amendment conforms to the content of the authorizing statutes: KRS Chapter 350 provides the cabinet the authority to promulgate administrative regulations to establish procedures for determining amounts and additional information for performance bonds for surface coal mining operations. This administrative regulation provides the cabinet's bonding calculation forms as required by KRS 350.060.

(d) How the amendment will assist in the effective administration of the statutes: KRS 350.028 provides the department the authority to enforce a permanent regulatory program in the Commonwealth. Adding the cabinet's bonding calculation forms to the administrative regulation are necessary to comply to KRS 350.060(11).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This provision would apply to any entity operating a surface coal mine operation in the Commonwealth. There are currently 1,022 surface coal mines operating in Kentucky.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The entities identified do not have any actions or requirements due to the amendments of this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The entities identified will not have a standard cost increase associated with the amendments of this administrative regulation. Regulated entities will continue to be responsible for bond premiums and collateral requirements. Premiums vary and are dependent on the bonding company and the credit rating of the company. Over the past two years, permittees that have been identified as requiring long-term treatment have had a cost increase in long-term treatment bonds as

VOLUME 51, NUMBER 3– September 1, 2024

they are being recalculated by the cabinet. There are no changes to the minimum bonding amounts imposed by this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Entities will benefit by readily having access to the departments bonding calculations as approved by the federal Office of Surface Mining Reclamation and Enforcement.

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

(a) Initially: There is no cost associated with implementing this amendment.

(b) On a continuing basis: There will be no costs associated with the implementation of this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The funding for the implementation and enforcement of this administrative regulation will be with a combination of general and restricted funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: This regulatory amendment will not require an increase in fees or funding.

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

(9) TIERING: Is tiering applied? (Explain why or why not) No, tiering is not applied to this administrative regulation. All entities that operate a coal mine will be required to comply with the applicable bonding requirements.

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 350.028, 350.060, 350.062, 350.064, 350.093, 350.095, 350.100, 350.151, 350.465, 350.515, 350.518, 30 C.F.R. Parts 800, 917

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: The Energy and Environment Cabinet, Department for Natural Resources, Division of Mine Permits, and Division of Mine Reclamation and Enforcement.

(a) Estimate the following for the first year:

Expenditures: There are no known effects on current expenditures.

Revenues: There are no known effects on current revenues.

Cost Savings: There are no known cost savings.

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

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): There are no known effects for local entities.

(a) Estimate the following for the first year:

Expenditures: There are no known effects on expenditures.

Revenues: There are no known effects on revenues.

Cost Savings: There are no known cost savings.

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

(4) Identify additional regulated entities not listed in questions (2) or (3): Regulated entities are those who have obtained a surface coal mine permit in the Commonwealth who currently have posted a bond with the cabinet.

(a) Estimate the following for the first year:

Expenditures: There is not a standard cost increase associated with this administrative regulation. Regulated entities will continue to be responsible for bond premiums and collateral requirements. Premiums vary and are dependent on the bonding company and the credit rating of the company. Over the past two years, permittees that have been identified as requiring long-term treatment have had a cost increase in long-term treatment bonds as they are being recalculated by the cabinet. Based on the long-term treatment bonds that have been recalculated by the cabinet since 2022, the average cost increase in these bonds is estimated to be \$1.2M. There are no

changes to the minimum bonding amounts imposed by this administrative regulation.

Revenues: There are no known effects to revenues for regulated entities.

Cost Savings: There are no known cost savings for regulated entities.

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

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: There are currently 1,233 permits who currently have bonds posted. The current cumulative amount of all types of bonds posted is \$7.9M. There are no changes to the minimum bonding amounts imposed by this administrative regulation. There is not a standard cost increase associated with this administrative regulation. Regulated entities will continue to be responsible for bond premiums and collateral requirements. Premiums vary and are dependent on the bonding company and the credit rating of the company. Costs to a permittee that have been identified as requiring long-term treatment are increasing as these bond amounts are recalculated. Long-term treatment costs are based on the estimated annual treatment cost multiplied by a factor of 25 plus any capital costs of the treatment system. The Division of Mine Permits is in the process of recalculating long-term treatment bonds for the 90 permits identified as requiring long-term treatment. Approximately 40% of the long-term treatment bonds have been recalculated since 2022.

(b) Methodology and resources used to determine the fiscal impact: Adequate bond amounts are required to ensure the cabinet has the financial means to cover costs in the event reclamation or remediation work is performed by the cabinet on disturbed coal mine sites. The fiscal impact was determined using the current cumulative amount of bonds posted and the projected increase to long-term treatment bonds as they are recalculated by the Division of Mine Permits. Based on the long-term treatment bonds that have been recalculated by the cabinet since 2022, the average cost increase in these bonds is estimated to be \$1.2M. There are no changes to the minimum bonding amounts imposed by 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) The Division of Mine Permits is currently recalculating long-term treatment bonds for those entities identified as requiring long-term treatment. Approximately 40% of the long-term treatment bonds have been recalculated totaling \$3.9M. The increase in long-term treatment bonds is required to ensure the cabinet has the financial means to cover costs for the treatment of discharges in the event reclamation or remediation work is performed by the cabinet in the event of a forfeiture. There are no changes to the minimum bonding amounts imposed by this administrative regulation.

(b) The methodology and resources used to reach this conclusion: Long-term treatment bonds are based on the estimated annual treatment cost, provided by the permittee and verified by the cabinet, multiplied by a factor of 25 plus any capital costs of the treatment system.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 30 C.F.R. Part 800

(2) State compliance standards. KRS 350.028 and KRS 350.060.

(3) Minimum or uniform standards contained in the federal mandate. 30 C.F.R. Part 800 are federal regulations related to bonding and insurance requirements for surface coal mining and reclamation operations under regulatory programs.

(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 or additional requirements than the federal regulation.

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. NA

TRANSPORTATION CABINET
Office for Civil Rights and Small Business Development
(Amendment)

600 KAR 4:010. Certification of disadvantaged business enterprises.

RELATES TO: 49 C.F.R. Parts 23, 26, 15 U.S.C. 637 (a), (d), (m), Titles 23 U.S.C., 49 U.S.C., Pub. L. 114-94

STATUTORY AUTHORITY: KRS 174.080, 49 C.F.R. 26.3, 26.21

NECESSITY, FUNCTION, AND CONFORMITY: 49 C.F.R. 26.3 and 26.21 require that recipients of federal-aid highway funds authorized under Titles I and V of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), Titles 23 and 49 U.S.C., or Titles I, III, and V of the Transportation Equity Act for the 21st Century (TEA-21), and Fix America's Surface Transportation Act of 2015 (FAST), Pub. L. 114-94, from the United States Department of Transportation (USDOT) implement a program to ensure nondiscrimination in the award and administration of USDOT-assisted contracts in its highway financial assistance programs. The Kentucky Transportation Cabinet, as a recipient of these funds, is required by 49 C.F.R. 26.21 to have a program that requires the participation of disadvantaged, minority, and women-owned business enterprises in contracts financed in whole or in part with these funds. This administrative regulation establishes the requirements for certification of DBE firms pursuant to federal law.

Section 1. Definitions.

(1) "ACDBE" means an Airport Concession Disadvantaged Business Enterprise as defined by 49 C.F.R. 23.3{(2)}.

(2) "Applicant" or "firm" means any corporation, partnership, sole proprietorship, or joint venture applying with the Transportation Cabinet for certification or continuation as a disadvantaged business enterprise.

(3) "Approval" means that the applicant has been determined by the DBE Certification Committee to comply with the disadvantaged business enterprise eligibility criteria as established in 49 C.F.R. Part 26, Subpart D and 49 C.F.R. Part 23.

(4) "Cabinet" means the Transportation Cabinet.

(5) "Certification" means the process used by the Transportation Cabinet to determine if an applicant complies with the disadvantaged business enterprise criteria established in 49 C.F.R. Part 26, Subpart D and 49 C.F.R. Part 23.

(6) "Denial" means the cabinet has determined that the applicant does not comply with the disadvantaged business enterprise eligibility criteria established in 49 C.F.R. Part 26, Subpart D and as required by this administrative regulation.

(7) "Department" or "DOT" means the United States Department of Transportation.

(8) "Disadvantaged business enterprise" or "DBE" is defined by 49 C.F.R. 26.5, Subpart D.

(9) [~~Ineligibility complaint~~] means ~~an action of a third party alleging verbally or in writing that a firm is ineligible to participate in the DBE program.~~

{(10)} "Notice" means a written or electronic notice from the Transportation Cabinet or Office for Civil Rights and Small Business Development delivered by[via] certified mail to the business address listed on the application form.

{(11)}{(14)} "On-site visit" means an interview conducted by the Office for[of] Civil Rights and Small Business Development with principals of the firm at its primary place of business, reviewing business-related documents, and inspecting business facilities or equipment pursuant to 49 C.F.R. 26.83(c).

{(12)}{(15)} "Program" is defined by 49 C.F.R. 26.5.

{(13)}{(16)} "Removal" or "removed" means that a firm or business enterprise that has been certified by the cabinet as a disadvantaged business enterprise has been determined to be ineligible, and is no longer entitled to the rights and privileges of a firm or business that has been certified by the cabinet as a disadvantaged business enterprise.

{(14)}{(17)} "Small Business Administration" or "SBA" is defined by 49 C.F.R. 26.5.

{(15)}{(18)} "Small business concern" is defined by 49 C.F.R. 26.5.

{(16)}{(19)} "Socially and economically disadvantaged individual" is defined by 49 C.F.R. 26.5.

{(17)}{(20)} "Uniform[Unified] Certification Application[Program]" or "UCA"[UCP]" is defined by 49 C.F.R. 26.84-.

{(18)}{(21)} "USDOT" means the United States Department of Transportation.

Section 2. Certification Committee.

(1) The cabinet shall establish and maintain a Certification Committee for the purpose of determining the eligibility of an applicant for certification as a DBE[~~as established in 49 C.F.R. 26.83~~].

(2) The Certification Committee shall include:

(a) The following voting members:

1. Executive Director, Office of Project Development, or a proxy;
2. Director of the Division of Construction, or a proxy; and
3. Director of the Division of Construction Procurement, or a proxy; and

(b) The non-voting member, Manager of the Small Business Development Branch, or a proxy who shall chair the Certification Committee.

(3) The Kentucky administrator of the Federal Highway Administration or FHWA, or a proxy may attend Certification Committee meetings as a non-voting member[~~ex-officio~~].

Section 3. Advisory Panel.

(1) The cabinet shall establish a DBE Certification Advisory Panel whose members may be called upon as needed by the Certification Committee to provide technical counsel regarding a firm's eligibility.

(2) The DBE Certification Advisory Panel shall be comprised of representatives of the following cabinet divisions:

- (a) Division of Contract Procurement;
- (b) Division of Professional Services;
- (c) Division of Highway Design;
- (d) Division of Audits;
- (e) Division of Highway Safety;
- (f) Division of Licensing; and
- (g) Office of Legal Services.

Section 4. Certification Committee Procedures.

(1) Upon voting, a simple majority shall constitute a quorum. [~~If only two (2) voting members are in attendance, they can still vote and be a quorum provided they vote in agreement.~~] If only two (2) certification members vote and if they disagree rendering the vote a tie, the Executive Director of the Office for Civil Rights and Small Business Development, or the executive director's proxy, [~~the~~] shall cast the tie breaking vote.

(2) A summary record of each DBE Certification Committee meeting shall be retained by the Office for Civil Rights and Small Business Development for at least three (3) years from the date of initial notice of certification.

(3) The completed applications, staff summaries, and recommendations shall be provided to the DBE Certification Committee members no less than five (5) business days in advance of the scheduled meeting in which the application is to be considered.

(4) The Certification Committee shall have the authority to remove a firm's eligibility for DBE certification as established in 49 C.F.R. 26.87.

Section 5. Applications for Certification.

(1) The UCA [Uniform Certification Application][UCP application] review process for approval of certification, and continuation of certification as a DBE, or ACDBE shall be conducted pursuant to 49 C.F.R. 26.83, 26.85, and 26.86.

(2) A UCA[UCP application] shall be approved by the Federal Highway Administration pursuant to Appendix F to 49 C.F.R. Part 26. A link to the electronic version of the application form shall be available on the Kentucky Transportation Cabinet Web site.

(3) The completed UCA[UCP application] shall be submitted electronically to the cabinet's Office for Civil Rights and Small Business.

(4) An incomplete ~~UCA[UCP application]~~ missing the required information or documentation shall not be processed until the documentation and information requirements are received by the Office for Civil Rights and Small Business Development.

(5) A ~~UCA[UCP application]~~ submitted by a firm having a principal business office registered in the Commonwealth of Kentucky shall be reviewed in accordance with 49 C.F.R. Parts 23 and 26, Subpart D.

(6) A ~~UCA[UCP application]~~ submitted by a firm whose primary office is registered in a state other than Kentucky shall be submitted for approval of DBE certification in Kentucky to the Office for Civil Rights and Small Business Development for review in accordance with 49 C.F.R. 23 and 49 C.F.R. 26.85.

(7) The Office for Civil Rights and Small Business Development shall conduct an on-site visit at the firm's primary place of business pursuant to 49 C.F.R. 26.83(c).

(8) An applicant for DBE, or ACDBE certification, or a certified DBE or ACDBE may withdraw without penalty from the DBE program prior to the Certification Committee making a decision regarding the application.

Section 6. Appeals.

(1) The appeal of a decision by the Certification Committee shall be ~~emailed~~ to ~~DBEAppeals@dot.gov[S33AppealsManagementRecords@dot.gov]~~ within ~~forty-five (45)[ninety (90)]~~ days of the date of the decision of the committee. The appeal shall include the denied certification notice and other pertinent information and provide a full and specific statement as to why the decision is erroneous, what significant fact was not considered, or what provisions of 49 C.F.R. Part 26 were not properly applied. USDOT shall not accept notices of intent or partial or otherwise non-compliant submissions.

~~(2) If there is a removal of certification, the removed firm shall have the option to appeal in writing in response to a removal notice letter or in the alternative, request an informal hearing. After the written appeal or informal hearing, the firm may appeal the final decision to the DBEAppeals@dot.gov within forty-five (45) days of the date of the decision pursuant to subsection (1) of this section.[An applicant who is denied certification, or whose certification is removed by the committee, shall not reapply for DBE certification for six (6) months from the date of notice of the denial or removal.]~~

~~(3) If an applicant or firm would like an alternate appeal process, they may elect to appeal final decisions under this section pursuant to KRS 13B.~~

~~(4) An applicant who is denied certification, or whose certification is removed by the committee, shall not reapply for DBE certification for six (6) months from the date of notice of the denial or removal.~~

JIM GRAY, Secretary

TONY YOUSSEFI, Executive Director

APPROVED BY AGENCY: August 12, 2024

FILED WITH LRC: August 15, 2024 at 11:40 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 23, at 10:00 a.m. EST, at the Transportation Cabinet, Transportation Cabinet Building, 200 Mero Street, Frankfort, Kentucky 40622. 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 you have a disability for which the Transportation Cabinet needs to provide accommodations, please notify us of your requirement five working days prior to the hearing. This request does not have to be in writing. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. EST on October 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: Jon Johnson, Staff Attorney Manager / Assistant General Counsel, Transportation Cabinet, Office of Legal Services, 200 Mero Street, Frankfort, Kentucky 40622, phone (502) 782-8180, fax (502) 564-5238, email Jon.Johnson@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jon Johnson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for certification of a Disadvantaged Business Enterprise or DBE firm.

(b) The necessity of this administrative regulation: This administrative regulation is required by 49 C.F.R. 26.21 to establish an application and certification process for DBE and ACDBE firms to be certified.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statute contained in KRS 174.080 and 49 C.F.R. 26.3, 26.21 by setting forth definitions, application process, certification, and appeals of DBE and ACDBE firms.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will establish the regulatory requirements of DBE and ACDBE application and certification processes pursuant to KRS 174.080.

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

(a) How the amendment will change this existing administrative regulation: This amendment will change source of membership of certification committee members and update current appeal process.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary due to the modifications of federal regulation(s) 49 C.F.R. Parts 23 and 26, in May 2024.

(c) How the amendment conforms to the content of the authorizing statutes: The establishment and implementation of a DBE program is required by 49 C.F.R. Parts 23 and 26 as a condition for receipt of federal highway funding.

(d) How the amendment will assist in the effective administration of the statutes: This amendment expedites and redefines the appeal process, pursuant to USDOT DBE/ACDBE Program Flexibilities Guidance.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects disadvantaged, minority, and women-owned businesses desiring to apply for certification with the cabinet's DBE program. This administrative regulation also affects the KYTC Office for Civil Rights and Small Business Development.

(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 to the DBE program will continue to submit their applications as usual, however, the processes for review and requested appeals will be more efficient.

(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 or fees associated with this regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This amendment will improve the efficiency of the DBE program and clarify the appeals process.

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

(a) Initially: There are no costs associated with these amendments.

(b) On a continuing basis: There are no continuing costs associated with these amendments.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding is necessary.

VOLUME 51, NUMBER 3– September 1, 2024

(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 new fees or funding will be necessary to implement this amendment.

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

(9) TIERING: Is tiering applied? No. All DBE applicants are subject to the same scrutiny and regulations. However, non-resident applicant firms who are certified under the federal DBE program in their jurisdiction of original certification (JOC) are subject to a provision in the federal regulations (49 C.F.R. 26.85) that provides a presumption of eligibility if making an initial application for DBE certification by the cabinet.

FISCAL IMPACT STATEMENT

(1) Identify each state statute, federal statute, or federal regulation that requires or authorizes the action taken by the administrative regulation. 49 C.F.R. Parts 23 and 26.

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: Kentucky Transportation Cabinet's Office for Civil Rights and Small Business Development,

(a) Estimate the following for the first year:

Expenditures: There is no cost to administer this regulation in the first year.

Revenues: Revenue will not be generated by this regulation for state or local government for the first year.

Cost Savings: N/A

(b) How will expenditures, revenues, or cost savings differ in subsequent years? There will be no costs or revenues generated in subsequent years.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): This amendment should not have any effect on expenditures and revenues of a state or local government agency.

(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): N/A

(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

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: Neutral

(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) N/A

(b) The methodology and resources used to reach this conclusion: N/A

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 49 C.F.R. Parts 23, 26, 15 U.S.C. 637 (a), (d), (m), Titles 23 U.S.C., 49 U.S.C., Pub. L. 114-94

(2) State compliance standards. KRS 174.080.

(3) Minimum or uniform standards contained in the federal mandate. 49 C.F.R. Parts 23, 26, 15 U.S.C. 637 (a), (d), (m), Titles 23 U.S.C., 49 U.S.C., Pub. L. 114-94

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

stricter requirements, or additional or different responsibilities or requirements than those required by federal mandate.

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. No stricter standard, or additional or different responsibilities or requirements are imposed.

EDUCATION AND LABOR CABINET
Kentucky Board of Education
Department of Education
(Amendment)

702 KAR 1:116. Annual in-service training of district board members.

RELATES TO: KRS 160.180

STATUTORY AUTHORITY: KRS 156.070, 160.180

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.070

authorizes the Kentucky Board of Education to manage and control the common schools, including prescribing administrative regulations the Kentucky Board of Education deems necessary for the efficient management, control, and operation of public schools. KRS 160.180 requires that all local school board members complete an established number of hours of in-service training annually, based on number of years of experience, and requires that the Kentucky Board of Education identify the criteria for fulfilling the requirements. This administrative regulation establishes standards for the annual in-service training of district board members.

Section 1. Content of Training.

(1) Each school district board of education member shall complete the in-service training requirements established in KRS 160.180 and this administrative regulation.~~[The in-service training requirements for all district school board members established in KRS 160.180 shall include:]~~

~~[(a)] [Three (3) hours of school finance training annually, one (1) hour of ethics training annually, and one (1) hour of superintendent evaluation training annually for school board members with zero to three (3) years of experience. School board members with zero to three (3) years of experience may acquire the remainder of their hours in these topics or topics listed in Section 2(1)(b) of this administrative regulation;]~~

~~[(b)] [Two (2) hours of school finance training annually, one (1) hour of ethics training annually, and one (1) hour of superintendent evaluation training annually for school board members with four (4) to seven (7) years of experience; or]~~

~~[(c)] [One (1) hour of school finance training annually, one (1) hour of ethics training annually, and one (1) hour of superintendent evaluation training biennially for school board members with eight (8) or more years of experience.]~~

(2) Each school district board of education member shall complete training hours on the topics and at the frequency established in KRS 160.180. School district board of education members shall complete training in one or more of the topics set forth in Section 2(1)(b) and (c) of this administrative regulation to satisfy the remaining training hours required by KRS 160.180.~~[For board members with four (4) or more years of experience, the remaining hours of required training may include the following subjects:]~~

~~[(a)] [The basic role and responsibility of the district school board and its members;]~~

~~[(b)] [Curriculum and instruction;]~~

~~[(c)] [Relations with superintendent and staff;]~~

~~[(d)] [School law; and]~~

~~[(e)] [Community relations.]~~

(3) To qualify toward meeting the in-service board member training requirements of KRS 160.180 and this administrative regulation, the required training activity shall not be:

(a) The regular work of the school board, such as the attendance of meetings or the conduct of hearings;

(b) Irrelevant to the pertinent knowledge and skills of school board membership; or

VOLUME 51, NUMBER 3– September 1, 2024

(c) A public relations or social activity, such as graduation or other student events.

Section 2. Providers of Training.

(1)

(a) The Kentucky School Boards Association (KSBA) shall be the provider of eight (8) hours of annual district board member in-service training for school board members, except the Kentucky School Boards Association (KSBA) shall be the provider of four (4) hours of annual district board member in-service training for school board members who are required to complete four (4) hours of annual in-service training pursuant to KRS 160.180(5)(c). [who are required to obtain twelve (12) hours of in-service training annually.] Board members may acquire remaining hours of training required by KRS 160.180 from either the KSBA or other providers as described in subsection (2) of this section.

(b) The KSBA shall offer training on no less than eight (8) of the [eleven (11)] following topics annually, four (4) of which shall include the topics set forth at subparagraphs 1.-4. of this paragraph, and shall offer training on all [fourteen (14)] [eleven (11)] topics at least once during every twenty-four (24) month period:

1. Open meetings act and open records act; [School law;]
2. School finance;
3. Ethics [Community relations];
4. Employment and evaluation of the superintendent [Policy development];
5. Personnel relations;
6. Curriculum and instruction;
7. Superintendent/board relations;
8. Goal setting/decision making;
9. Employment and evaluation of the superintendent;
10. Educational services provided for the exceptional, gifted, and other special population children; ~~and~~
11. School law [Ethics-]
12. Community relations;
13. Policy development; and
14. Roles and responsibilities of the board of education and its members.

(c) The KSBA shall coordinate with the chief state school officer annually to develop an in-service training plan for approval by the Kentucky Board of Education on or before November 1 of each year for use in the following calendar year.

(2) Training providers, other than the KSBA, shall only provide training through courses that are:

- (a) Customized for school board members;
- (b) Approved by the department; and

(c) In compliance with the requirements of this administrative regulation.

(3)

(a) If board members opt to get all of their training hours through the KSBA, then they shall have KSBA credit them for these hours. If they obtain hours from any provider other than the KSBA, a copy of proof of attendance including a recitation of the time, date, location, and description of the in-service training shall be sent by the course provider to KSBA within two (2) weeks of completion of the training so that proper credit can be given.

(b) The KSBA shall combine such hours with hours of in-service training received through KSBA training activities. These records shall be submitted annually by the KSBA to the Kentucky Board of Education.

(c) Each provider of training hours shall conduct an evaluation of each training course, which is offered by the provider during a calendar year and submitted by a local board member for training hours credit under this administrative regulation, and compile responses to be submitted to the KSBA within sixty (60) days of completion of the training.

Section 3. Failure to Acquire Training. Subject to extensions granted under Section 4 of this administrative regulation, the names of all district school board members who fail to complete the required in-service training set forth in KRS 160.180 and this administrative regulation shall be transmitted by the department to the Attorney General.

Section 4. Extension of Time.

(1) The Kentucky Board of Education may grant newly appointed or elected school board members who take office after June 30th of a particular year an extension of time within which to acquire a maximum number of unacquired hours equal to the difference between the required number of hours and one (1) hour per month for each full month actually served during the year, and the extensions shall extend no longer than through the remainder of the term being served or the next two (2) calendar years, whichever is longer.

(2) The Kentucky Board of Education may grant newly appointed or elected members who take office prior to July 1, but on or after March 1, of a particular year an extension of time, for an appropriate period of time not to exceed two (2) calendar years, within which to obtain the balance of any required but unacquired in-service hours for the initial year of new service. An extension to acquire hours shall not exceed the difference between the required number of hours and one (1) hour per month for each full month actually served during the year.

(3) The Kentucky Board of Education, in cases of emergency as demonstrated by the district board member, may grant an extension of time within which a local board member shall complete the required hours of in-service training. Serving as a district board member less than a full year shall not constitute an emergency for which an extension may be granted pursuant to this subsection.

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).

ROBBIE FLETCHER, Ed.D., Commissioner

SHARON PORTER ROBINSON, Chairperson

APPROVED BY AGENCY: August 8, 2024

FILED WITH LRC: August 9, 2024 at 3:05 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held October 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 hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through October 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: Todd G. Allen, General Counsel, Kentucky Department of Education, 300 Sower Boulevard, 5th Floor, Frankfort, Kentucky 40601, phone 502-564-4474, fax 502-564-9321, email regcomments@education.ky.gov

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Todd G. Allen

(1) Provide a brief summary of:

(a) What this administrative regulation does: Establishes annual in-service training requirements for Kentucky school board members, specifying hours and topics for training, and designating the Kentucky School Boards Association as a primary provider of local board member training.

(b) The necessity of this administrative regulation: KRS 160.180 requires that all local school board members complete an established number of hours of in-service training and requires the Kentucky Board of Education to identify criteria for fulfilling the requirements. This regulation ensures that school board members receive continuous education to perform their roles effectively and comply with statutory requirements.

(c) How this administrative regulation conforms to the content of the authorizing statutes: Aligns with KRS 160.180 by detailing the

required training topics for school board members, as well as providing how the training hours and topics will be provided, tracked, and reported to the Kentucky Board of Education.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Provides a clear framework for training, ensuring school board members are knowledgeable and capable of fulfilling their responsibilities.

(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: Refines the training requirements to comply with statutory changes resulting from HB 449 from the 2024 legislative session.

(b) The necessity of the amendment to this administrative regulation: Annual training requirements were amended by HB 449 from the 2024 legislative session, requiring amendments to this regulation.

(c) How the amendment conforms to the content of the authorizing statutes: Continues to meet the requirements of KRS 160.180, adding specificity to accommodate different board member needs.

(d) How the amendment will assist in the effective administration of the statutes: Ensures all board members receive pertinent education, improving their governance and decision-making capabilities.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: School districts across Kentucky and their board members; Training providers, especially the Kentucky School Boards Association.

(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: Board members must complete the specified training hours and topics. Training providers must align their courses with the new requirements.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): School districts already bear the cost of the training required of district board members in KRS 160.180. There would be no additional cost to continue to meet the training requirements of that statute and this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Board members receive targeted, relevant training, improving their ability to govern effectively.

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

(a) Initially: The agency does not anticipate any additional cost as a result of this amendment.

(b) On a continuing basis: The agency does not anticipate any additional cost as a result of this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: General funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: This regulation does not establish or increase any fees. An increase in fees or funding is unlikely as Kentucky School Boards Association typically manages such training within existing budgets. Should there be a need for additional resources, it may come from state or district funds.

(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 fees.

(9) TIERING: Is tiering applied? Tiering is applied in 701 KAR 1:116 only to the extent it is provided in the authorizing statute, KRS 160.180, to address the varying training needs of school board members based on their years of experience.

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 160.180, 156.070.

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: Kentucky Board of Education; Kentucky Department of Education.

(a) Estimate the following for the first year:

Expenditures: No additional expenditures are anticipated as a result of the amendment.

Revenues: No additional revenue will be generated by this regulation.

Cost Savings: No additional cost savings will be generated by this regulation.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? No additional expenditures, revenues, or cost savings are anticipated in subsequent years.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): School Districts

(a) Estimate the following for the first year:

Expenditures: School districts already bear the cost of the training required of district board members in KRS 160.180. No additional cost is anticipated to continue to meet the training requirements of that statute and this administrative regulation. In any event, the training requirements are statutorily prescribed, not created by this regulation.

Revenues: No additional revenue will be generated by this regulation.

Cost Savings: No additional cost savings will be generated by this regulation.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? No additional expenditures, revenues, or cost savings are anticipated in subsequent years.

(4) Identify additional regulated entities not listed in questions (2) or (3): No additional regulated entities.

(a) Estimate the following for the first year:

Expenditures: Not applicable as no additional regulated entities have been identified.

Revenues: Not applicable as no additional regulated entities have been identified.

Cost Savings: Not applicable as no additional regulated entities have been identified.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? Not applicable as no additional regulated entities have been identified.

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: The fiscal impact of this regulation is expected to be neutral, as no additional cost will be incurred beyond those already mandated by the general assembly under KRS 160.180. This regulation is designed to facilitate the statutory requirements for in-service training for school board members, ensuring that the necessary training is conducted efficiently and effectively.

(b) Methodology and resources used to determine the fiscal impact: The regulation does not establish any new training requirements. The actual training requirements are established by the General Assembly in KRS 160.180. The agency reviewed current administrative requirements compared with those contained in the amendment and found there is no substantial change in administrative requirements and no additional fiscal impact is anticipated.

(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 is not anticipated to have an overall negative or adverse major economic impact. Training is a requirement of KRS 161.180, not this administrative regulation. As a result, the cost of training is not an economic impact of this regulation. Costs are expected to be manageable within existing budgets.

(b) The methodology and resources used to reach this conclusion: Reading the requirements of KRS 161.180 and the proposed amendment to this regulation.

EDUCATION AND LABOR CABINET
Board of Education
Department of Education
(Amendment)

702 KAR 4:090. Property disposal.

RELATES TO: KRS 45A.425, 156.070, 156.160, 160.160(8), 162.010, 424.170, 2 C.F.R. 200.310, 200.311

STATUTORY AUTHORITY: KRS 156.070, 156.160

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.160 requires the Kentucky Board of Education[State Board for Elementary and Secondary Education] to promulgate administrative regulations establishing standards for[dealing with] the disposal of real [and personal] property owned by local boards of education. This administrative regulation is necessary to provide for real property disposal, leases, and easements in accordance with an approved educational program. KRS 156.070 provides that the Kentucky Board of Education shall have the management and control of the common schools.

Section 1. Definitions.[Disposition of Real Property.]

(1) "District Facilities Plan" or "DFP" means a school district's capital construction plan prepared every four years pursuant to 702 KAR 4:180.

(2) "Facilities Planning and Construction System" or "FACPAC" means the Kentucky Department of Education's web-based application for construction, planning, and real property transactions.

(3) "BG-1" means the form used to initiate and revise a capital construction project or property transaction in FACPAC.

(4) "BG-5" means the form used to closeout a capital construction project or property transaction in FACPAC.

(5) "Fair Market Value" or "FMV" means the value of a site based on an appraisal performed by a real property appraiser licensed to practice in the Commonwealth of Kentucky under KRS Chapter 324A.

(6) "Survey" means a formal assessment of a real property that is sealed and signed by a professional land surveyor providing an official record of its size, location, and features, including applicable boundaries, easements, title, and any requirements of the purchaser for disposal.[School property proposed for disposal shall be surplus to the educational program need of the district as determined by the effective district facility plan. Surplus property includes real property designated as a "Transitional Center" or not listed on the effective district facility plan. Request for approval to dispose of real property shall be submitted in writing to the Kentucky Department of Education. The request shall identify the property by its address and last reported name and include a plan for resolving mortgage liens or other encumbrances. Upon receipt of written contingent approval from the department, the district may start the disposal process using one (1) of the following methods that secures the fair market value for the property and ensures that the district retains no residual interest as owner or lender:]

[(a)] [By public auction;]

[(b)] [By accepting sealed bids; or]

[(c)] [By setting a minimum acceptable price, which is at least the fair market value of the property.]

[(2)] [For property disposal by public auction or sealed bids, the proposed sale shall be advertised in accordance with KRS 424.130(1)(b), and the legal notice shall include the following statement: "The board of education reserves the right to reject any and all bids and final approval by the Kentucky Department of Education is required." Following the conclusion of the auction or receipt of bids, the local board of education shall submit the following to the department for review and final approval:]

[(a)] [The appraisal;]

[(b)] [An affidavit attesting to the publication of legal notice;]

[(c)] [Results of the public auction or sealed bids;]

[(d)] [The proposed sale agreement reviewed and approved by the board's attorney; and]

[(e)] [The local board order approving the sale contingent on approval by the department.]

[(3)] [For property disposal by setting a minimum acceptable price, the minimum acceptable price shall be the fair market value, which shall be determined by an appraisal from a certified general real property appraiser commissioned by the school district and obtained in connection with the disposal of the property. Following receipt of an acceptable offer to purchase, the local board of education shall submit the following documentation to the department for review and final approval:]

[(a)] [The appraisal;]

[(b)] [The proposed sale agreement reviewed and approved by the board's attorney; and]

[(c)] [The local board order approving the sale contingent on approval by the department.]

[(4)] [Upon receipt of written final approval from the department, the local school district may execute the sale agreement. The district shall provide the department with a copy of the executed agreement within thirty (30) days from the date of execution.]

Section 2. Disposition Process[by Easement].

(1) Real property for disposal shall be declared surplus to the educational needs of the district by the local school board. Real property may include a transitional center and property not included in the DFP.

(2) A local board of education requesting approval from the Kentucky Department of Education to dispose of real property by sale, lease, or easement shall submit the request and required documentation electronically through the FACPAC system.

(3) The district shall provide the applicable contingent, final, and closeout documentation by electronic submission in the FACPAC system in a format approved by the department for review.

(4) All documentation required by this administrative regulation shall be reviewed by the local board's legal counsel, and if applicable, the district's insurance carrier and fiscal agent or bond counsel prior to being presented to the local board of education and submission to the department.

(5) Disposal of property purchased or improved using federal funds that is no longer needed for the originally authorized purpose shall comply with state and federal requirements.

(6) The department shall review and provide the applicable contingent approval, final approval, closeout approval, or disapproval, to the local school district within thirty (30) business days of receipt of a completed documentation. [Prior to the execution of a proposed easement upon school property, the agreement shall be reviewed by the local district's board attorney. The reviewed agreement and an appraisal from a certified general real property appraiser commissioned by the school district and obtained in connection with the easement shall be submitted to the local board of education for its consideration. Upon approval, the local school district's written board order shall be forwarded to the department for review and approval. The local board of education shall include assurance that disposal will not affect the integrity or usefulness of property crucial to the educational needs of the district.]

[(2)] [Proposed easement agreements, including utility and access easement agreements, shall include:]

[(a)] [The parties to the agreement;]

[(b)] [A legal description of the easement;]

[(c)] [Documentation regarding receipt of fair market value as determined by an appraisal from a certified general real property appraiser commissioned by the school district and obtained in connection with the disposal of the property or equivalent valuable consideration;]

[(d)] [A reversionary clause that reverts the property back to the exclusive unrestricted control of the local board of education when the need for the easement no longer exists; and]

[(e)] [A plat by a licensed surveyor indicating the easement boundaries, acreage, and its relationship to the larger property.]

[(3)] [Upon receipt of written final approval from the department, the local school district may execute the agreement. The district shall provide the department with a copy of the executed agreement within thirty (30) days from the date of execution.]

[(4)] [Temporary and construction easements shall not require department approval but shall include provisions related to the

VOLUME 51, NUMBER 3– September 1, 2024

amount of time in effect, and a requirement that any disturbed areas shall be returned to original condition.}]

Section 3. Disposition by Sale[~~Lease~~—(District—~~as Lessor/Landlord~~)].

(1) A request for disposal shall be approved by the local board of education and submitted to the department. The request shall include:

(a) Initial, signed BG-1 identifying the following:

1. Address or general legal property description;
2. Current official reported name through the District and School Collection Repository (DASCR);
3. Approximate acreage or area;

(b) Declaration assuring that the disposal shall not affect the integrity or usefulness of property crucial to the educational needs of the district; and

(c) Plan for resolving mortgage liens or other encumbrances as applicable.

(2) Upon receipt of written contingent approval from the department through an approved initial BG-1, the district may continue the disposal process using one of the following methods to secure the fair market value with assurance that the district will not retain any residual interest as owner or lender:

(a) By public auction;

(b) By accepting sealed bids; or

(c) By setting a minimum acceptable price, which is at least the fair market value of the property.

(3) For real property disposal by public auction or sealed bids, the proposed sale shall be advertised in accordance with KRS 424.130(1)(b) which shall include the statement, "The board of education reserves the right to reject any and all bids and final approval by the Kentucky Department of Education is required."

(4) Following the conclusion of the auction or receipt of bids for which fair market value is received, the local board of education shall approve and submit the following to the department for review and consideration for final approval:

(a) A revised BG-1 noting the agreed-upon sale price and any costs incurred;

(b) The appraisal;

(c) A copy of the published legal notice and an affidavit attesting to publication;

(d) The results of the public auction or sealed bids; and,

(e) The proposed sale agreement.

(5) The local board shall notify the department in the event the auction or receipt of bids failed to attain the required fair market value.

(6) For real property disposal by setting a minimum acceptable price, the local board of education shall approve and submit the following documentation to the department for review and final approval:

(a) A revised BG-1 noting the agreed-upon sale price and any costs incurred by the local school district;

(b) The appraisal; and

(c) The proposed sale agreement.

(7) Upon receipt of an approved revised BG-1 from the department, the local school district may execute the sale agreement.

(8) To complete and closeout the disposal process, the local board shall approve and submit the following to the department:

(a) a copy of the executed sale agreement; and,

(b) Signed BG-5. [Prior to the execution of a proposed lease agreement for school property, the proposed lease agreement shall be reviewed by the local district's board attorney and the board's insurance carrier. The proposed lease agreement shall be submitted to the local board of education for its consideration and a written board order forwarded to the department for review and approval. The local board of education shall provide assurance that the disposal will not affect the integrity or the usefulness of the property subject to the educational need of the district.]

[(2)] [The proposed lease agreement shall include the following provisions:]

[(a)] [The parties to the agreement;]

[(b)] [The proposed use and occupation;]

[(c)] [A description of the leased space including square footage and description of common areas if applicable;]

[(d)] [Use of site and parking;]

[(e)] [Term of lease including beginning and ending dates. The term shall include annual renewal and cancellation provisions;]

[(f)] [Determination of fair market value and how payments are to be made;]

[(g)] [Insurance requirements of the parties;]

[(h)] [Identification of the parties' responsibilities for payment of utilities, performance of maintenance, and related supplies;]

[(i)] [Notice provisions;]

[(j)] [Provisions for security;]

[(k)] [Requirements for compliance with established board policies if tenants will be in contact with students; and]

[(l)] [Any other applicable terms or conditions.]

[(3)] [Upon receipt of written final approval from the department, the local school district may execute the lease agreement. The district shall provide the department with a copy of the executed agreement within thirty (30) days from the date of execution.]

Section 4. Disposition by Sale to a Governmental or Quasi-Governmental Agency[~~Conflict of Interest~~].

(1) Districts conducting a disposal with another governmental or quasi-governmental agency under KRS 160.160(8) shall submit the following to the department within thirty (30) business days after the completion of the transaction for record keeping and data collection: [If a local school board uses a third party to dispose of or lease property, the third party shall not have any financial interest in the transaction or adjacent property beyond a standard commission approved by the school board. If the third party has any financial interest in the transaction or adjacent property beyond a standard commission, the third party shall publicly disclose his or her conflict of interest to the local school board and the conflict shall be spread on the local school board's meeting minutes. The local school board shall provide minutes of any such meeting to the department when requesting approval under any section of this administrative regulation.]

(a) The initial, signed BG-1 identifying the following:

1. Address or general legal description of the property;

2. Last official reported name through the District and School Collection Repository (DASCR), if applicable;

3. Approximate acreage or area;

(b) Declaration assuring that the disposal will not affect the integrity or usefulness of property crucial to the educational needs of the district;

(c) The appraisal; and

(d) Executed copy of the sale agreement.

(2) Upon receipt of a processed initial BG-1 from the department, the local board of education shall submit: Signed BG-5.

Section 5. Disposition by Easement.

(1) Easements shall not conflict with the requirements contained in 702 KAR 4:050 and 702 KAR 4:170.

(2) The local board shall approve and submit the following to the department for review and approval consideration:

(a) Initial, signed BG-1 identifying:

1. Address or general legal property description and

2. Approximate acreage or area.

(b) Declaration assuring that the disposal will not affect the integrity or usefulness of property crucial to the educational needs of the district.

(c) A survey by a professional land surveyor indicating the easement boundaries, size, and its relationship to the larger property;

(d) The appraisal; and,

(e) A copy of the proposed easement agreement with language that includes:

1. The parties to the agreement;

2. The official address of the district property;

3. The legal description and easement type;

4. A reversionary clause that reverts the property back to the exclusive unrestricted control of the local board of education when the need for the easement no longer exists; and

VOLUME 51, NUMBER 3– September 1, 2024

5. Receipt of fair market value or equivalent valuable consideration for permanent access and permanent utility easements.

(3) Easements for the exclusive use of the district do not require receipt of fair market value unless the easement is expanded to benefit additional parties beyond the local school district.

(4) Upon receipt of an approved initial BG-1 from the department, the local board may execute the easement agreement.

(5) The local board shall approve and submit to the department the following to close the disposal process:

- (a) a copy of the executed easement agreement; and
- (b) Signed BG-5.

Section 6. Disposition by Lease (District as Lessor/Landlord).

(1) The local board shall approve and submit the following to the department for review and approval consideration:

(a) Initial, signed BG-1 identifying:

1. Address or general legal property description and
2. Approximate floor area or acreage.

(b) Declaration assuring that the disposal will not affect the integrity or usefulness of property crucial to the educational needs of the district;

(c) Affirmation that the proposed lease agreement has been reviewed by the local board attorney and district insurer carrier; and

(d) The proposed lease agreement which shall include the following:

1. The parties to the agreement;
2. The proposed use;
3. A description of the leased space including leased area, use, and common areas as applicable or description of the leased land including use and acreage as applicable;
4. Conditions of site access and parking;
5. Beginning and ending dates, including annual renewal and cancellation provisions;
6. Determination of fair market value and how payments are to be made;
7. Insurance requirements of the parties;
8. Identification of the parties' responsibilities for payment of utilities, performance of maintenance, and related supplies;
9. Notice provisions;
10. Provisions for security
11. Requirements for compliance with established board policies if tenants will be in contact with students; and
12. Other applicable terms or conditions.

(2) Upon receipt of an approved initial BG-1 from the department, the local board may execute the lease agreement.

(3) The local board shall approve and submit the following to the department:

- (a) a copy of the executed lease agreement; and,
- (b) Signed BG-5.

Section 7. Waiver Process.

(1) A local board may request a waiver of the required submission items by submitting a written request with supporting documentation to the Commissioner of Education or designee who shall approve or disapprove the request within thirty (30) business days.

(2) A disapproved waiver request may be appealed by a local board to the Kentucky Board of Education.

Section 8. Disapproval and Appeals Process. After evaluation of the submitted documentation, should the Kentucky Department of Education disapprove the proposed disposal, the local board of education may:

- (1) Discontinue the disposal process;
- (2) Provide the department with updated documentation for reconsideration; or
- (3) Appeal to the Kentucky Board of Education.

Section 9. Conflict of Interest.

(1) If a local school board uses a third party to dispose of or lease property, the third party shall not have any financial interest in the transaction or adjacent property beyond a standard commission approved by the school board. If the third party has any financial

interest in the transaction or adjacent property beyond a standard commission, the third party shall publicly disclose his or her conflict of interest to the local school board and shall be documented in the local school board's meeting minutes.

(2) The local school board shall provide the minutes of any such meeting to the department when requesting approval under any section of this administrative regulation.

Section 10. Incorporation by References.

(1) The following material is incorporated by reference:

- (a) "BG-1 Project Application Form", July 2024.
- (b) "BG-5 Project Closeout Form", July 2024.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Education, 300 Sower Boulevard 4th Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. or this material may be viewed on the Kentucky Department of Education's Web site at <https://www.education.ky.gov/districts/fac/Pages/Construction.aspx>

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).

ROBBIE FLETCHER, Commissioner
SHARON PORTER ROBINSON, Chair

APPROVED BY AGENCY: August 12, 2024

FILED WITH LRC: August 13, 2024 at 3:00 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held October 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 hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through October 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: Todd G. Allen, General Counsel, Kentucky Department of Education, 300 Sower Boulevard, 5th Floor, Frankfort, Kentucky 40601, phone 502-564-4474, fax 502-564-9321, email regcomments@education.ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Todd G. Allen

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes the process by which a school district disposes of surplus property.

(b) The necessity of this administrative regulation: KRS 156.160 requires the Kentucky Board of Education to promulgate administrative regulations establishing standards for the disposal of surplus local school district property.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes the standards for districts to dispose of surplus property.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation establishes standards for the disposal of surplus property as required by KRS 156.160.

(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 attempts to provide a clearer and more efficient process for a district to dispose of surplus property by clarifying procedures and delegating authority from the Kentucky

Board of Education to the Department of Education to waive certain filing requirements.

(b) The necessity of the amendment to this administrative regulation: Since the original promulgation of this regulation as required by KRS 156.160, it has become clear through the experience of school districts that it is necessary to improve the disposal process to increase agency timeliness and efficiency.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation establishes the standards for local school districts to dispose of surplus property as required by KRS 156.160.

(d) How the amendment will assist in the effective administration of the statutes: The regulation sets forth the process by which a local school district may dispose of surplus property.

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

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Changes to the regulation should establish a clear and efficient process by which a district may dispose of surplus property. In addition to cleaning up and reorganizing the existing regulation, the amendment provides for the delegation of the authority to waive certain submittal requirements to the Kentucky Department of Education.

(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 to school districts.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The property disposal process should be more clearer and take less time for local school districts.

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

(a) Initially: Cost to implement on the administrative body should be minimal.

(b) On a continuing basis: The ongoing cost to the Kentucky Department of Education will be minimal. In fact, there may be cost savings in reduced staff time processing district disposals.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: General Funds

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: There are no fees associated with this regulation.

(9) TIERING: Is tiering applied? Tiering is not applied. The regulation applies uniformly.

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 156.160 requires the Kentucky Board of Education to promulgate administrative regulations establishing standards for local school districts to dispose of surplus property.

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: The Kentucky Board of Education, the Department of Education and local school districts.

(a) Estimate the following for the first year:

Expenditures: Any expenditures are expected to be minimal to nil.

Revenues: The proposed amendment is not expected to generate revenue for the state agency or local school districts.

Cost Savings: Any cost savings will result from an expedited disposal process.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? Expenditures are expected to continue to be minimal to nil.

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

(a) Estimate the following for the first year:

Expenditures: There are no expected costs to school districts.

Revenues: The regulation is not expected to generate revenue for local school districts.

Cost Savings: Costs savings may be realized as a result of more a more efficient disposal process.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? They are all expected to remain consistent and as previously described.

(4) Identify additional regulated entities not listed in questions (2) or (3): N/A

(a) Estimate the following for the first year:

Expenditures: N/A.

Revenues: The proposed regulation is not expected to generate revenue.

Cost Savings:

(b) How will expenditures, revenues, or cost savings differ in subsequent years? All expenditures, revenues or costs are expected to remain consistent as described herein.

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: The proposed regulation establishes the process by which local school districts may dispose of surplus property. The regulation attempts to lessen the administrative burden while preserving record keeping. There should be no additional costs associated with the regulation. Districts may see cost savings resulting from less staff time and quicker disposal times.

(b) Methodology and resources used to determine the fiscal impact: The estimates contained herein are based on prior program operations.

(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 administrative regulation is not expected to have an overall negative or adverse major economic impact.

(b) The methodology and resources used to reach this conclusion: Given the nature of the proposed amendments with revisions not impacting costs, expenditures are not expected to increase over current program expenses.

EDUCATION AND LABOR CABINET Kentucky Board of Education Department of Education (Amendment)

703 KAR 5:080. Administration Code for Kentucky's Educational Assessment Program.

RELATES TO: KRS 158.6453, 158.6455

STATUTORY AUTHORITY: KRS 156.070, 158.6453, 158.6455

NECESSITY, FUNCTION, AND CONFORMITY: KRS ~~158.6453~~[158.6455] requires the Kentucky Board of Education to promulgate administrative regulations that minimize the number of days of testing and outline the procedures to be used during the testing process to ensure test security, including procedures for testing makeup days, and to comply with federal assessment requirements[to establish a system for identifying and rewarding successful schools and to establish appropriate consequences for schools failing to meet or exceed their assistance line]. This administrative regulation establishes an Administration Code for Kentucky's Educational Assessment Program for appropriate testing practices for state required tests.

Section 1. Incorporation by Reference.

(1) The "Administration Code for Kentucky's Educational Assessment Program", August 2024[February 2014], is incorporated by reference.

VOLUME 51, NUMBER 3– September 1, 2024

(2) This document may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Education, Office of Assessment and Accountability, 5th Floor, 300 Sower Boulevard, Frankfort, Kentucky, Monday through Friday, 8 a.m. through 4:30 p.m. This material may be viewed at: https://www.education.ky.gov/AA/distsupp/Documents/703_KAR_5_080.pdf.

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).

ROBBIE FLETCHER, Ed.D., Commissioner

SHARON PORTER ROBINSON, Chairperson

APPROVED BY AGENCY: August 8, 2024

FILED WITH LRC: August 9, 2024 at 3:05 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 23, 2024 at 10 a.m., in the State Board Room, Fifth Floor, 300 Sower Boulevard, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by 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 October 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: Todd G. Allen, General Counsel, Kentucky Department of Education, 300 Sower Boulevard, 5th Floor, Frankfort, Kentucky 40601, phone 502-564-4474, fax 502-564-9321, email regcomments@education.ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Todd Allen

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes administrative procedures and guidelines for administering state-required assessments included in accountability reporting.

(b) The necessity of this administrative regulation: KRS 158.6453 requires the Kentucky Board of Education to promulgate administrative regulations that minimize the number of days of testing and outline the procedures to be used during the testing process to ensure test security, including procedures for testing makeup days, and to comply with federal assessment requirements.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes administrative procedures and guidelines for administering state-required assessments included in accountability reporting, including processes for ensuring test security.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides specific details and guidance to ensure consistent implementation and security of the state-required assessments.

(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 updates language to reflect the transition from paper-based testing to primarily online testing and other updates that improve test security and test administration practices.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary due to a transition from primarily paper-based tests to primarily online tests and to provide clarity regarding test administration procedures.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment establishes practices that protect the confidentiality and validity of the state-required tests.

(d) How the amendment will assist in the effective administration of the statutes: This amendment establishes procedures and

guidelines for consistent implementation of the state-required tests in Kentucky's assessment program.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Local schools and districts and the Kentucky Department of Education are impacted by this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The Kentucky Department of Education will update training materials. Minimal action is required by schools and districts as a result of the amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no additional cost to Kentucky's public schools or districts or the Kentucky Department of Education.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Protecting the security and validity of state-required assessments supports trust in the score results and the accountability results to which they contribute.

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

(a) Initially: Additional costs are not anticipated.

(b) On a continuing basis: Additional costs are not anticipated.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Kentucky Department of Education's general funds will be used for the implementation and enforcement of this administrative regulation.

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

(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 either directly or indirectly.

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all school districts.

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 158.6453 requires the Kentucky Board of Education to promulgate administrative regulations that minimize the number of days of testing and outline the procedures to be used during the testing process to ensure test security, including procedures for testing makeup days, and to comply with federal assessment requirements.

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: The Kentucky Board of Education is the promulgating agency. The Kentucky Department of Education.

(a) Estimate the following for the first year:

Expenditures: No additional expenditures are anticipated as a result of this administrative regulation.

Revenues: No revenue will be generated as a result of this administrative regulation.

Cost Savings: Cost savings are not expected as a result of this administrative regulation.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? No differences in expenditures, revenues, or cost savings are expected as a result of this administrative regulation.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): The affected local entities are Kentucky public school districts.

(a) Estimate the following for the first year:

Expenditures: Kentucky's public-school districts will not incur cost. Revenues: No revenue will be generated as a result of this administrative regulation.

Cost Savings: This regulation will not generate cost savings for Kentucky's public-school districts.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? No differences in expenditures, revenues, or cost savings are expected as a result of this administrative regulation.

(4) Identify additional regulated entities not listed in questions (2) or (3): There are no additional regulated entities not mentioned in questions 2 or 3.

(a) Estimate the following for the first year:

Expenditures: Not applicable

Revenues: Not applicable

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 does not result in any new expenditures, revenues, or cost savings.

(b) Methodology and resources used to determine the fiscal impact: This administrative regulation does not result in any new expenditures, revenues, or cost savings.

(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 a major economic impact.

(b) The methodology and resources used to reach this conclusion: The administrative regulation is not anticipated to result in any new expenditures for the entities identified in questions (2) – (4).

EDUCATION AND LABOR CABINET
Kentucky Board of Education
Department of Education
(Amendment)

703 KAR 5:240. Accountability administrative procedures and guidelines.

RELATES TO: KRS 36.042, 158.150, 158.6451, 158.6453, 158.6455

STATUTORY AUTHORITY: KRS 158.6453, 158.6455

NECESSITY, FUNCTION, AND CONFORMITY: KRS 158.6453(3)(a) and KRS 158.6455(1)(2)(a) require the Kentucky Board of Education to promulgate administrative regulations to create and implement a balanced statewide assessment and accountability program that measures the achievement of students, schools, and districts; complies with the federal Every Student Succeeds Act of 2015, 20 U.S.C. 6301 et seq.; and ensures accountability. This administrative regulation establishes administrative procedures and guidelines for Kentucky's assessment and accountability program.

Section 1. Definitions.

(1) "Accountable School[A4]" means a school that is:

(a) Under administrative control of a principal and eligible to establish a school-based decision-making council; and

(b) Not an alternative education program operated by, or as a part of, another school.

(2) "Alternative education program" is defined by KRS 160.380(1)(b).

(3) "Full Academic Year" means 100 or more instructional days of enrollment within the school year.

(4) "Full-Time Enrolled Online, Virtual and Remote Learning Program" is defined by 704 KAR 3:535, Section 1(5).

Section 2. Assigning Students for School and District Accountability.

(1)

(a) A student enrolled in an accountable[A4] school for a full academic year shall be counted in the accountability membership of the accountable[A4] school and shall be attributed to the

accountable[A4] school for accountability purposes. [~~This shall include state agency children or other students who have been enrolled in an A4 school by any authority.~~]

(b) A student qualifying as an early graduate based on criteria established in 704 KAR 3:305 shall be included in the school's accountability calculation in the year in which the student graduates, whether or not the student has a full academic year of enrollment.

(2) A student enrolled in an accountable[A4] school and attending an alternative education program during the year as a result of local school district policies or procedures shall be counted in the accountability membership of the accountable[A4] school and shall be attributed to the accountable[A4] school for accountability purposes if the student's combined enrollment in the accountable[A4] school and alternative education program is a full academic year.

(3) A student enrolled in an alternative education program for a full academic year as a result of local school district policies or procedures without any enrollment in an accountable[A4] school during the same year shall be attributed to the accountability of the district that the student would have attended if not enrolled in the alternative education program.

(4) A student not enrolled in any accountable[A4] school or an alternative education program for a full academic year, but enrolled in a district for a full academic year, shall be assigned to the district for accountability purposes.

(5) The Department of Education shall monitor alternative school placements. If evidence indicates a district is inappropriately placing students into alternative programs to avoid inclusion in accountability, the district shall be further investigated by the Department of Education.

Section 3. Assigning Students for State Accountability.

(1) Students [~~enrolled in alternative education programs, and~~] not attributed to an accountable[A4] school or a district, shall be aggregated into a state level accountability report.

(2) If a student, before completing a full academic year in a school or district as established in Section 2 of this administrative regulation, is enrolled in an alternative education program by a court, a governmental agency other than a Kentucky public school[,], or Kentucky school district, the student shall be accountable to the state.

Section 4. Inclusion of Schools in Accountability.

(1) All accountable[A4] schools shall receive annual accountability classifications as established in 703 KAR 5:270, for the state's assessment and accountability system.

(2)

(a) For reporting purposes, all alternative education programs and full-time enrolled online, virtual and remote learning programs shall receive annual accountability reports based on tested students.

(b) Reports for alternative education programs and full-time enrolled online, virtual and remote learning programs shall be separate from the accountable[A4] school accountability reporting.

(c) The alternative education program and full-time enrolled online, virtual and remote learning program reports shall state the unique features and characteristics of each[~~the alternative education~~] program and the appropriate uses and limitations of the data.

Section 5. Standard Grade Configuration for Accountability.

(1) Accountable grade level configurations shall be elementary, middle, or high school.

(a) Elementary shall include any configuration of grades K-5 or K-6.

(b) Middle school shall include any configuration of grades 5-8 or 6-8.

(c) High school shall include any configuration of grades 9-12.

(2) An accountable[A4] school or an alternative education program or a full-time enrolled online, virtual and remote learning program shall fall into one (1), two (2), or three (3) grade level configurations for accountability reporting.

VOLUME 51, NUMBER 3– September 1, 2024

Section 6. Reporting of Schools with Changed School Service Area.

(1)

(a) For reporting purposes, a school's past data trend shall be removed from public reporting if a school has a significant change in its stable population.

(b) A school shall be considered to have a stable population, if as a result of a change in service area boundaries or local board of education policies affecting student population served by a school, the population of the school remains at sixty (60) percent or higher of its original students from the previous year in the accountability grades.

(c) To determine if the population is stable, the number of students in the stable population shall be divided by the total number of students in the grades included in the accountability calculations.

1. If the stable population is sixty (60) percent or higher, the school's past trend data shall be reported.

2. If the stable population is less than sixty (60) percent, the school's past trend data shall not be reported.

(2) A school district shall notify the Department of Education of any school that will have an unstable population compared to the prior year by June 30.

Section 7. Data Review and School or District Appeal of Accountability Classifications.

(1) A written request for a data review shall be submitted to the Department of Education within ten (10) days after the Department of Education officially releases the final accountability classifications as established in 703 KAR 5:270, to the public.

(2) A written appeal of a final accountability classification shall be submitted to the Commissioner of Education within forty-five (45) days after the Department of Education officially releases the accountability classifications. The appeal of a final classification shall:

(a) Identify clearly the basis for the wrongful effect on the calculations used to place a school into a classification; and

(b) State in detail the requested adjustment to be made to the calculations used to place a school into a classification.

(3)

(a) The request for an appeal for a school accountability classification shall be signed by the principal upon approval of the school council. If there is no school council, the request shall also be signed by the superintendent, upon approval of the local board of education.

(b) The request for an appeal for a district accountability classification shall be signed by the superintendent upon approval of the local board of education.

(4)

(a) Department of Education staff shall review the request for an appeal against the standards established in KRS 158.6455(6).

(b) A committee shall be appointed by the Commissioner of Education to review the pending appeals and make recommendations to the Commissioner of Education as to whether or not to dispute an appeal. The committee may include a teacher, a parent, a principal, a district assessment coordinator, a superintendent, and a counselor.

(c) If the appeal is disputed by the department, it shall submit the request to the hearing officer for the Kentucky Board of Education.

(5) The hearing officer shall conduct a hearing in accordance with KRS Chapter 13B. The hearing officer shall submit a written recommended order to the Kentucky Board of Education for the board's consideration in rendering its final order, in accordance with KRS Chapter 13B.

Section 8. Student Participation in State Assessments.

(1)

(a) All students enrolled shall participate at the appropriate grade level for the state-required assessments in grades 3-12.

(b) For assessment and accountability purposes, the state shall not use the primary level designator and all students in grades 3-12 shall be assigned a single grade level. The assigned grade level shall determine the state tests to administer.

(c) Exceptions for testing shall be made for medical-exempted students.

(d) Students categorized as English Learners (EL) shall follow testing guidelines established by the federal Every Student Succeeds Act of 2015, 20 U.S.C. 6301 et seq.

(2) For the state assessments in grades 3-12, a school shall test all students during the test window that are enrolled in each accountability grade on the first day of the school's testing window and shall complete a roster in the electronic application provided by the Department of Education.

(3) A student retained in a grade in which state-required assessments are administered shall participate in the assessments for that grade again and shall continue to be included in all accountability calculations.

(4) A student who is suspended or expelled but continues to receive instructional services required under KRS 158.150 shall participate in the state-required assessments.

Section 9. Students Not Participating in State-Required Assessments.

(1) If a student does not participate in state-required assessments, the school at which the student was enrolled on the first day of the testing window shall include the student in the roster in the electronic application provided by the Department of Education.

(2) A student who does not take the state assessments and does not qualify for approved exempted status shall be assigned the lowest reportable score on the appropriate test for accountability calculations.

(3) A student reaching the age of twenty-one (21) years of age who no longer generates state funding under Support Education Excellence in Kentucky shall not be required to participate in state-required assessments.

(4) A student who is expelled and legally not provided instructional services under the standards established in KRS 158.150 shall not be considered to be enrolled for a full academic year and shall not be included in accountability calculations.

(5) If a student has been expelled or suspended at some point during a year and is enrolled but does not complete the state-required assessment, the student shall be included in the accountability calculation.

(6)

(a) If participation in the state-required assessment would jeopardize a student's physical, mental, or emotional well-being, a school or district shall submit a request for medical exemption ~~to the Department of Education for approval. The request shall state which shall be subject to the approval of the Department of Education and that states~~ the medical condition that warrants exempting a student from the assessments.

(b) An identified disability or handicapping condition alone shall not be considered sufficient reason for granting a medical exemption to state-required assessment and accountability requirements.

(c) A student with an approved medical exemption shall be excluded from state-required assessments and ~~state and federal~~ accountability calculations.

(7) If the student moves out of state or to a private school before state-required assessments can be completed in the school or district's announced testing window, the student shall be excluded from accountability calculations.

Section 10. Required Participation in the National Assessment of Educational Progress (NAEP) and State-Required Field Testing.

(1) If a school is selected by the U.S. Department of Education or its designated contractors to participate in NAEP testing, the school shall participate fully.

(2) If a school is selected by the Department of Education to participate in field testing for state assessment purposes, the school shall participate fully.

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).

ROBBIE FLETCHER, Ed.D., Commissioner

VOLUME 51, NUMBER 3– September 1, 2024

SHARON PORTER ROBINSON, Chairperson

APPROVED BY AGENCY: August 8, 2024

FILED WITH LRC: August 9, 2024 at 3:05 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 23, 2024 at 10 a.m., in the State Board Room, Fifth Floor, 300 Sower Boulevard, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by 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 October 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: Todd G. Allen, General Counsel, Kentucky Department of Education, 300 Sower Boulevard, 5th Floor, Frankfort, Kentucky 40601, phone 502-564-4474, fax 502-564-9321, email regcomments@education.ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Todd Allen

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes administrative procedures and guidelines for Kentucky's assessment and accountability program.

(b) The necessity of this administrative regulation: KRS 158.6453(3)(a) and KRS 158.6455(1)(a) require the Kentucky Board of Education to promulgate administrative regulations to create and implement a balanced statewide assessment and accountability program that measures the achievement of students, schools, and districts; complies with the federal Every Student Succeeds Act of 2015, 20 U.S.C. secs. 6301 et seq., or its successor; and ensures accountability.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation provides administrative procedures and guidelines for the state assessment and accountability system.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides administrative procedures and guidelines to ensure consistent implementation of the state assessment and accountability system.

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

(a) How the amendment will change this existing administrative regulation: The amendment adds language regarding students participating in the Full-Time Enrolled Online, Virtual and Remote Learning Program and technical changes.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary due to the establishment of Full-Time Enrolled Online, Virtual and Remote Learning Program as defined in 704 KAR 3:535. Adding new language is necessary to address accountability reporting for these programs.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment establishes procedures and guidelines for Kentucky's assessment and accountability program related to Full-Time Enrolled Online, Virtual and Remote Learning Programs.

(d) How the amendment will assist in the effective administration of the statutes: This amendment provides specific procedures and guidelines to ensure consistent implementation of accountability in Kentucky schools and districts in regard to Full-Time Enrolled Online, Virtual and Remote Learning Programs.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Local schools and districts and the Kentucky Department of Education.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The Kentucky Department of Education will create accountability reports for Full-Time Enrolled Online, Virtual and Remote Learning Programs. Minimal action is required by schools and districts as a result of the amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no additional cost to Kentucky's public schools or districts or the Kentucky Department of Education.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The Kentucky Department of Education and Kentucky's public schools and districts will be able to evaluate the performance of Full-Time Enrolled Online, Virtual and Remote Learning Programs.

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

(a) Initially: Initial costs are not anticipated.

(b) On a continuing basis: The Kentucky Department of Education incurs an ongoing cost of staff and resources in administering the assessment and accountability program. However, there are no additional anticipated costs related to this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Kentucky Department of Education's general funds will be used for the implementation and enforcement of this administrative regulation.

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

(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 was not appropriate in this administrative regulation because the administrative regulation applies equally to all school districts.

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 158.6453(3)(a) and KRS 158.6455(1)(a) require the Kentucky Board of Education to promulgate administrative regulations to create and implement a balanced statewide assessment and accountability program that measures the achievement of students, schools, and districts; complies with the federal Every Student Succeeds Act of 2015, 20 U.S.C. secs. 6301 et seq., or its successor; and ensures accountability.

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: The Kentucky Board of Education is the promulgating agency. The Kentucky Department of Education.

(a) Estimate the following for the first year:

Expenditures: No additional expenditures are anticipated as a result of this administrative regulation.

Revenues: No revenue will be generated as a result of this administrative regulation.

Cost Savings: Cost savings are not expected as a result of this administrative regulation.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? No differences in expenditures, revenues, or cost savings are expected as a result of this administrative regulation.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): The affected local entities are Kentucky public school districts.

(a) Estimate the following for the first year:

Expenditures: Kentucky's public-school districts will not incur cost.

Revenues: No revenue will be generated as a result of this administrative regulation. Cost Savings: This regulation will not generate cost savings for Kentucky's public-school districts.

Cost Savings: Not applicable.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? No differences in expenditures, revenues, or cost savings are expected as a result of this administrative regulation.

(4) Identify additional regulated entities not listed in questions (2) or (3): There are no additional regulated entities not mentioned in questions 2 or 3.

(a) Estimate the following for the first year:

Expenditures: Not applicable.

Revenues: Not applicable.

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 does not result in any new expenditures, revenues, or cost savings.

(b) Methodology and resources used to determine the fiscal impact: This administrative regulation does not result in any new expenditures, revenues, or cost savings.

(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 economic impact on any identified entities.

(b) The methodology and resources used to reach this conclusion: This regulation will not have an overall negative or adverse economic impact on any identified entities.

EDUCATION AND LABOR CABINET
Kentucky Board of Education
Department of Education
(Amendment)

704 KAR 3:305. Minimum requirements for high school graduation.

RELATES TO: KRS 156.160(1)(a), (d), (e), 158.140(6), 158.141, 158.142, 158.622(3), 158.645, 158.1411, 158.1413(1), 158.6451

STATUTORY AUTHORITY: KRS 156.070, 156.160(1)(a), (d), (e), 158.140(6), 158.142, 158.1411

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.160 requires the Kentucky Board of Education to promulgate administrative regulations relating to the courses of study for the different grades and the minimum requirements for high school graduation. KRS 158.142(3)(b) requires the board to promulgate administrative regulations establishing requirements for early graduation from high school. The content standards for the courses of study are established in the Kentucky academic standards incorporated by reference in [704 KAR 3:303 and] 704 KAR Chapter 8. This administrative regulation establishes the minimum requirements necessary for entitlement to a high school diploma.

Section 1. Definitions.

(1) "Continuity of services plan" means a plan that outlines the ways in which a student will receive access to essential services that will end if the student graduates early.

(2) "Early Graduation Scholarship Certificate" means a certificate, awarded by the district and signed by the principal and superintendent, that shall qualify the recipient to be awarded a high school diploma and a scholarship award for the next academic year following graduation [equal to one-half (1/2) of the state portion of the average statewide per pupil guaranteed base funding level,] to be used at a Kentucky public two (2) year community and technical college or a Kentucky four (4) year public or non-profit independent institution accredited by the Southern Association of Colleges and Schools.

(3) "Early Graduation Program" or "EGP" means an optional, criteria-based program in which a student may receive a high school diploma from the school district, an Early Graduation Scholarship Certificate, and a scholarship award upon successful completion of

all program requirements provided in Section 4[5] of this administrative regulation in three (3) academic years or less.

(4) "Graduate early" means a student is awarded a high school diploma from the district, in under four (4) academic years from the start of grade 9, based upon meeting all[the] minimum graduation[credit] requirements of this administrative regulation and additional requirements as may be imposed by a local board of education.

(5) "Individual Learning Plan" or "ILP" is defined in 704 KAR 19:002.

(6) "Performance-based project, portfolio, or capstone" means a multifaceted academic and intellectual experience culminating in a student-led demonstration of critical knowledge, skills, and capacities required for postsecondary and career success.

Section 2.

(1) A district shall implement an advising and guidance process throughout the middle and high schools to provide support for the development and implementation of an individual learning plan for each student. The plan shall include career development and awareness and specifically address the content as provided in the Kentucky academic standards for career studies established in 704 KAR 8:080[Chapter 8]. The individual learning plan shall not be a substitute for the statement of transition service needs for students with disabilities as provided in 707 KAR 1:320.

(2) A district shall develop a method to evaluate the effectiveness and results of the individual learning plan process. The evaluation method shall include input from students, parents, and school staff. As part of the evaluation criteria, the district shall include indicators related to the status of the student in the twelve (12) months following the date of graduation.

(3) A feeder middle school and a high school shall work cooperatively to ensure that each student and parents[parent] receives information and advising regarding the relationship between education and career opportunities. Advising and guidance shall include information about financial planning for postsecondary education.

(4) A school shall maintain each student's individual learning plan. The individual learning plan shall be readily available to the student and parents[parent] and reviewed and approved at least annually by the student, parents, and school officials.

(5) Beginning with a student's eighth grade year, the individual learning plan shall set learning goals for the student based on academic and career interests and shall identify required academic courses, electives, and extracurricular opportunities aligned to the student's postsecondary goals. The school shall use information from the individual learning plans about student needs for academic and elective courses to plan academic and elective offerings.

(6) The development of the individual learning plan for each student shall be established within the first ninety (90) days of the sixth grade year and shall focus[be focused] on career exploration and related postsecondary education and training needs.

Section 3.

~~[(1)] [For students entering grade 9 on or before the first day of the 2018-2019 academic year, each student in a public school shall have a total of at least twenty-two (22) credits for high school graduation.]~~

~~[(2)] [Those credits shall include the content standards as provided in the Kentucky academic standards, established in 704 KAR 3:303 and KAR Chapter 8.]~~

~~[(3)] [Additional standards-based learning experiences shall align to the student's individual learning plan and shall consist of standards-based content.]~~

~~[(4)] [The required credits and demonstrated competencies shall include the following minimum requirements:]~~

~~[(a)] [Language arts - four (4) credits (English I, II, III, and IV) to include the content contained in the Kentucky academic standards for this content area and comply with the following:]~~

~~[1.] [Language arts shall be taken each year of high school; and]~~

~~[2.] [If a student does not meet the college readiness benchmarks for English and language arts as established by the Council on Postsecondary Education in 13 KAR 2:020, the student~~

VOLUME 51, NUMBER 3– September 1, 2024

~~shall take an English and language arts transitional course or intervention, which is monitored to address remediation needs, before exiting high school;]~~

~~[(b)] [Social studies—three (3) credits to include the content contained in the Kentucky academic standards for this content area;]~~

~~[(c)] [Mathematics—three (3) credits to include the content contained in the Kentucky academic standards for this content area and include the following minimum requirements:]~~

~~[1.] [Algebra I, Geometry, and Algebra II. An integrated, applied, interdisciplinary, occupational, or technical course that prepares a student for a career path based on the student's individual learning plan may be substituted for a traditional Algebra I, Geometry, or Algebra II course on an individual student basis if the course meets the content standards in the Kentucky academic standards, established in 704 KAR 3:303 and 704 Chapter 8;]~~

~~[2.] [A mathematics course or its equivalent as determined by the district shall be taken each year of high school to ensure readiness for postsecondary education or the workforce;]~~

~~[3.] [Any mathematics course other than Algebra I, Geometry, or Algebra II shall be counted as an elective; and]~~

~~[4.] [If a student does not meet the college readiness benchmarks for mathematics as established by the Council on Postsecondary Education in 13 KAR 2:020, the student shall take a mathematics transitional course or intervention, which is monitored to address remediation needs, before exiting high school;]~~

~~[(d)] [Science—three (3) credits that shall incorporate lab-based scientific investigation experiences and include the content contained in the Kentucky academic standards for this content area;]~~

~~[(e)] [Health—one-half (1/2) credit to include the content contained in the Kentucky academic standards for this content area;]~~

~~[(f)] [Physical education—one-half (1/2) credit to include the content contained in the Kentucky academic standards for this content area;]~~

~~[(g)] [Visual and performing arts—one (1) credit to include the content contained in the Kentucky academic standards for this content area or a standards-based specialized arts course based on the student's individual learning plan;]~~

~~[(h)] [Academic and career interest standards-based learning experiences—seven (7) credits including four (4) standards-based learning experiences in an academic or career interest based on the student's individual learning plan; and]~~

~~[(i)] [Demonstrated performance-based competency in technology.]~~

~~[Section 4.]~~

~~(1) [Beginning with students who enter grade 9 on or after the first day of the 2019-2020 academic year,] In order to receive a high school diploma, each student in a public school shall earn a total of at least twenty-two (22) credits for high school graduation.~~

~~(2) The required credits shall include the content standards as provided in the Kentucky academic standards, established in [704 KAR 3:303 and] 704 KAR Chapter 8.~~

~~(3) Additional standards-based learning experiences shall align to the student's individual learning plan and shall consist of standards-based content.~~

~~(4) Each student shall be required to earn[complete] the following ten (10) foundational credits[—and—demonstrated competencies, consisting of ten (10) credits]:~~

~~(a) English/language arts - two (2) credits (English I and II) to include the content contained in the Kentucky academic standards for this content area;~~

~~(b) Social studies - two (2) credits to include the content contained in the Kentucky academic standards for this content area;~~

~~(c) Mathematics - two (2) credits (Algebra I and Geometry) to include the content contained in the Kentucky academic standards for this content area;~~

~~(d) Science - two (2) credits that shall incorporate lab-based scientific investigation experiences and include the content contained in the Kentucky academic standards for this content area;~~

~~(e) Health - one-half (1/2) credit to include the content contained in the Kentucky academic standards for this content area;~~

~~(f) Physical education - one-half (1/2) credit to include the content contained in the Kentucky academic standards for this content area; and~~

~~(g) Visual and performing arts - one (1) credit to include the content contained in the Kentucky academic standards for this content area or a standards-based specialized arts course based on the student's individual learning plan.~~

~~(5) Each[In addition to the foundational requirements established in subsection (4) of this Section, every] student shall be required to earn, the following[a minimum of] twelve (12) personalized credits[in order to receive a high school diploma. These twelve (12) personalized credits shall include]:~~

~~(a) Two (2) additional English/Language Arts credits that include the content contained in the Kentucky academic standards for this content area and are aligned to the student's individual learning plan;~~

~~(b) Two (2) additional mathematics credits that include the content contained in the Kentucky academic standards for this content area and are aligned to the student's individual learning plan;~~

~~(c) One (1) additional science credit that includes the content contained in the Kentucky academic standards for this content area and is aligned to the student's individual learning plan;~~

~~(d) One (1) additional social studies credit that includes the content contained in the Kentucky academic standards for this content area and is aligned to the student's individual learning plan; and~~

~~(e) Academic and career interest standards-based learning experiences - six (6) credits including four (4) standards-based learning experiences based on the student's individual learning plan.];]~~

~~(6) To earn a high school diploma, each student shall complete the following additional requirements:~~

~~(a)[(f)] Successfully demonstrate performance-based competency in technology that includes the content contained in the Kentucky academic standards for this content area and is aligned to the student's individual learning plan[as approved by the Kentucky Department of Education];~~

~~(b)[(g)] Successfully meet the civics requirement pursuant to[Pass a civics test as required by] KRS 158.141; and~~

~~(c)[(h)] [Beginning with students entering grade 9 on or after the first day of the 2020-2021 academic year,] Successfully complete one (1) or more courses or programs that meet the financial literacy requirements pursuant to KRS 158.1411 and standards as established in 704 KAR Chapter 8.~~

Section 4.[Section 5.]

~~(1) Only students who meet the criteria established in this section shall be eligible for the Early Graduation Program:~~

~~(a) Students wishing to participate in the EGP shall indicate that intent to the secondary school principal by submitting the Early Graduation Program Letter of Intent Form[in writing] at the beginning of grade 9 or as soon as the intent is known to the student, but no later than the first thirty (30) school days of the academic year in which the student intends to graduate;~~

~~(b) Schools and districts shall not prohibit a student from completing the EGP if the student meets all [EGP] requirements provided in this section;~~

~~(c) Students who enroll in the EGP and meet the criteria provided in this section shall receive [from the school district] a high school diploma, [and—] an Early Graduation Scholarship Certificate[early graduation certificate], and scholarship award;~~

~~(d) The school or district shall enter the enrolled EGP student into the student information system by October 15 of the year in which the student intends to graduate; and~~

~~(e) [Students participating in the EGP shall complete all requirements set forth in this section applicable to the academic year in which the student intends to graduate; and]~~

~~[(f)] A student who has indicated an intent to complete the EGP may participate in the state administration of the college entrance exam prior to the junior year, if needed.~~

VOLUME 51, NUMBER 3– September 1, 2024

~~[(2)] [To participate in the EGP and graduate during the 2022-2023 school year, a student shall:]~~

~~[(a)] [Meet the requirements of subsection 1 of this section;]~~

~~[(b)] [Meet the college readiness exam benchmarks established by the Council on Postsecondary Education in 13 KAR 2:020 for placement in credit-bearing courses without the need for remediation;]~~

~~[(c)] [Complete one (1) or more courses or programs that meet the financial literacy requirements pursuant to KRS 158.1411; and]~~

~~[(d)] [Obtain a passing grade on the civics test pursuant to KRS 158.1413.]~~

~~[(2)]~~~~[(3)]~~ The local~~[By July 1, 2023, each]~~ school district shall provide each high school ~~[within the district]~~ with a~~[the]~~ policy established by the local board of education for students wishing to participate in the EGP ~~and earn an Early Graduation Certificate and scholarship~~. The district policy shall include:

(a) Criteria for supporting the development and monitoring of the student individual learning plan, as provided in Section 2 of this administrative regulation;

(b) Goal planning related to the demonstration~~[attainment]~~ of the capacities listed in KRS 158.645 and the~~[established district]~~ essential workplace ethics characteristics listed in programs as provided in KRS 158.1413(1);

(c) Completion of a professional resume; and

(d) Completion of one (1) postsecondary admissions application that may be used at a Kentucky public two (2) year community and technical college or a Kentucky four (4) year public or non-profit independent institution accredited by the Southern Association of Colleges and Schools in which the student is interested in applying.

~~[(3)]~~~~[(4)]~~ [Beginning with the 2023-2024 academic year,] [Each~~[each]~~ EGP participant, with the support of the comprehensive school counselor, or designee, shall:

(a) Submit the Early Graduation Program Student Letter of Intent Form, signed by the student's parents, to the principal as required in subsection (1)(a) of this section;

~~[(b)]~~~~[(a)]~~ Identify all EGP requirements and develop a strategy within the individual learning plan for meeting those requirements; ~~including the district's established workplace ethics program provided in KRS 158.1413; and];~~

~~[(c)]~~~~[(b)]~~ Complete an entrance interview with the principal, or designee, to discuss postsecondary goals and career aspirations; ~~[-]~~

~~[(5)]~~ [Beginning with the 2023-2024 academic year, to successfully complete the EGP and earn an Early Graduation Certificate and scholarship, the student shall:]

~~[(a)]~~ [Communicate intent to the principal as required in subsection (1) of this section;]

~~[(d)]~~~~[(b)]~~ Meet the college readiness~~[entrance exam]~~ benchmarks established by the Council on Postsecondary Education in 13 KAR 2:020 for placement in credit-bearing courses without the need for remediation;

~~[(e)]~~~~[(c)]~~ Earn the ten (10) foundational credits listed in Section 3(4) of this administrative regulation~~[that shall include the content standards as provided in the Kentucky academic standards, established in 704 KAR 3:303 and 704 KAR Chapter 8];~~

~~[(d)]~~ [Complete the essential workplace ethics program requirements established by the school district pursuant to KRS 158.1413;]

~~[(f)]~~~~[(e)]~~ Successfully complete~~[Complete]~~ one (1) or more courses or programs that meet the financial literacy requirements pursuant to KRS 158.1411 and standards as established in 704 KAR Chapter 8; ~~[-and]~~

~~[(g)]~~~~[(f)]~~ Successfully meet the civics requirement~~[Obtain a passing grade on the civics test]~~ pursuant to KRS 158.141; and ~~[-]~~

(h) Successfully complete the EGP performance-based project, portfolio, or capstone established in this section.

~~[(4)]~~~~[(6)]~~ The~~[By July 1, 2024, each]~~ local board of education shall establish a policy requiring high schools to develop~~[determine]~~ performance descriptors and evaluation procedures for an EGP performance-based project, portfolio, or capstone ~~required for students who intend to complete the EGP beginning with the 2024-2025 academic year].~~

(a) Performance descriptors and evaluation procedures developed by the high school shall be designed to provide [an opportunity for the student]~~students an opportunity~~ to demonstrate [attainment of the following]~~the~~ critical knowledge, skills, and capacities required for postsecondary and career success and shall include the following:

~~[(a)]~~ [Attainment of essential workplace ethics program components as established by the board of education pursuant to KRS 158.1413;]

1. Demonstration of capacities listed in KRS 158.645 and the essential workplace ethics characteristics listed in KRS 158.1413(1);

~~2.~~~~[(b)]~~ Demonstration of an ability to apply the Kentucky academic standards, established in ~~[704 KAR 3:303 and]~~704 KAR Chapter 8, as a life-long learner and contributing member of society;

~~3.~~~~[(e)]~~ Demonstration of written and verbal communication skills needed for postsecondary and career success; and

~~4.~~~~[(d)]~~ Demonstration of an ability to think critically, synthesize information, and draw conclusions.

~~[(7)]~~ [Beginning July 1, 2024, the performance-based project, portfolio, or capstone shall be required for completion of the EGP.]

~~[(b)]~~~~[(8)]~~ A school shall maintain and make readily available to the Kentucky Department of Education the EGP participant's performance-based project, portfolio, or capstone for a minimum of five (5) years.

Section 5.~~[Section 6.]~~

(1) A local board of education may substitute an integrated, applied, interdisciplinary, occupational, technical, or higher level course for a required course if the alternative course provides rigorous content.

(2) For students with disabilities, a local board of education may substitute a functional, integrated, applied, interdisciplinary, occupational, technical, or higher level course for a required course if the alternative course provides rigorous content. These shall be based on grade-level content standards and may be modified to allow for a narrower breadth, depth, or complexity of the general grade-level content standards.

Section 6.~~[Section 7.]~~

(1) A local board of education shall award credit toward high school graduation based on:

(a) A standards-based Carnegie unit credit that shall consist of at least 120 hours of instructional time in one (1) subject; or

(b) A performance-based credit based on~~[A local board of education may award credit toward high school graduation for satisfactory demonstration of learning based on content standards described in] the Kentucky academic standards, established in [704 KAR 3:303 and] 704 KAR Chapter 8, regardless of the number of instructional hours in one (1) subject~~~~[and a rigorous performance standards policy established by the local board of education].~~

(2) A local board of education which has chosen to award performance-based credit shall adopt a policy that awards performance-based credit toward high school graduation for satisfactory demonstration of learning based on rigorous performance standards aligned to 704 KAR Chapter 8.

(3) A school shall establish performance descriptors and evaluation procedures to determine if the content and performance standards have been met.

~~[(2)]~~ [A local board of education shall award credit toward high school graduation based on:]

~~[(a)]~~ [A standards-based Carnegie unit credit that shall consist of at least 120 hours of instructional time in one (1) subject; or]

~~[(b)]~~ [A performance-based credit based on standards, regardless of the number of instructional hours in one (1) subject.]

~~[(4)]~~~~[(3)]~~ A local board of education which has chosen to award performance-based credit shall award a standards-based credit earned by a student enrolled in grade 5, 6, 7, or 8 if:

(a) The content of the course is the same as that described in the Kentucky academic standards, established in ~~[704 KAR 3:303 and] 704 KAR Chapter 8; and~~

(b) The district has criteria in place to make a reasonable

determination that the middle level student is capable of success in the high school course.

~~(5)~~~~(4)~~ A local board of education which has chosen to award performance-based credit shall establish a policy ~~for a performance-based credit system~~ that shall include~~includes~~:

(a) The procedures for developing a performance-based credit system~~systems~~ and for amending the system;

(b) The conditions under which each high school may grant performance-based credits and the related performance descriptors and assessments;

(c) Objective grading and reporting procedures;

(d) Alignment to content standards established in ~~[704 KAR 3:303 and]~~704 KAR Chapter 8;

(e) The extent to which state-provided assessments will be used in the local performance-based credit system;

(f) The ability for students to demonstrate proficiency and earn credit for learning acquired outside of school or in prior learning; and

(g) Criteria to ensure that internships, cooperative learning experiences, and other learning experiences in the school and community are:

1. Designed to further student progress towards the individual learning plan;
2. Supervised by qualified instructors; and
3. Aligned with state and local content and performance standards.

~~(6)~~~~(5)~~ A board of education may award standards-based, performance-based credit toward high school graduation for:

(a) Standards-based course work that constitutes satisfactory demonstration of learning in any high school course, consistent with ~~[Sections 3 and 4 of]~~this administrative regulation;

(b) Standards-based course work that constitutes satisfactory demonstration of learning in a course for which the student failed to earn credit when the course was taken previously;

(c) Standards-based portfolios, projects~~senior year~~, or capstones~~capstone projects~~;

(d) Standards-based online or other technology mediated courses;

(e) Standards-based dual credit or other equivalency courses; or

(f) Standards-based internship, cooperative learning experience, or other supervised experience in the school or the community.

~~[(6)]~~ ~~[Each local board of education shall maintain a copy of its policy on high school graduation requirements. This policy shall include a description of how the requirements address KRS 158.6451(4)(b).]~~

Section 7.~~[Section 8.]~~

(1) A student who satisfactorily completes the requirements of this administrative regulation and additional requirements as may be imposed by a local board of education or meets the requirements for the Early Graduation Program established in Section ~~4~~~~5~~ of this administrative regulation shall be awarded a graduation diploma.

(2) A local board shall not adopt any high school graduation requirements that include achieving a minimum score on a statewide assessment as established in KRS 158.140.

(3) The local board of education shall award the diploma.

(4) Each local board of education shall maintain a copy of its policy on high school graduation requirements. This policy shall include a description of how the requirements address KRS 158.6451(1)(b).

Section 8.~~[Section 9.]~~ This administrative regulation shall not be interpreted as prohibiting a local governing board, superintendent, principal, or teacher from awarding special recognition to a student.

Section 9.~~[Section 10.]~~

(1) If the severity of an exceptional student's disability precludes a course of study that meets the high school graduation requirements established in ~~[Sections 3 and 4 of]~~this administrative regulation leading to receipt of a high school diploma, an alternative course of study shall be offered.

(2) This course of study shall be based upon student needs and the provisions established in ~~[704 KAR 3:303 and]~~704 KAR Chapter 8, and shall be reviewed at least annually.

(3) A student who completes this course of study shall receive an alternative high school diploma to be awarded by the local board of education consistent with the graduation practices for all students.

(4) A local board of education may establish policies to award an alternative high school diploma to a former student who has received a certificate or certificate of attainment.

Section 10.~~[Section 11.]~~

(1) Any student seeking to graduate early who receives services deemed essential by the local school district shall engage in meaningful consultation with a school-based mental health services provider, as defined by KRS 158.4416, on the creation of a continuity of services plan prior to graduation.

(2) School districts shall ensure the creation of a continuity of services plan for all students identified as a homeless child pursuant to 42 U.S.C. 11434, a migratory child pursuant to 20 U.S.C. 6399, or youth engaged in foster care pursuant to KRS 620.020(5).

(3) The completion of a transition plan for children aging out of foster care, as described by 42 U.S.C. 675(5)(H), shall meet the requirements outlined in this section.

Section 11. Incorporation by Reference.

(1) The "Early Graduation Program Student Letter of Intent Form", August 2024, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Education, 5th floor, 300 Sower Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m. This material may be viewed at: <https://www.education.ky.gov/districts/legal/Pages/Kentucky-Revised-Statutes.aspx>.

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).

ROBBIE FLETCHER, Ed.D., Commissioner

SHARON PORTER ROBINSON, Chairperson

APPROVED BY AGENCY: August 8, 2024

FILED WITH LRC: August 9, 2024 at 3:05 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held October 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 hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through October 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: Todd G. Allen, General Counsel, Kentucky Department of Education, 300 Sower Boulevard, 5th Floor, Frankfort, Kentucky 40601, phone 502-564-4474, fax 502-564-9321, email regcomments@education.ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Todd G. Allen

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the minimum requirements for entitlement to a high school diploma in Kentucky.

(b) The necessity of this administrative regulation: KRS 156.160 requires the Kentucky Board of Education (KBE) to promulgate administrative regulations relating to the courses of study for the

VOLUME 51, NUMBER 3– September 1, 2024

different grades and the minimum requirements for high school graduation. KRS 158.142(3) requires the KBE to promulgate administrative regulations establishing requirements for early graduation from high school. This administrative regulation establishes the minimum requirements necessary for entitlement to a high school diploma.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 156.160 requires the KBE to promulgate administrative regulations relating to the courses of study for the different grades and the minimum requirements for high school graduation. The content standards for the courses of study are established in the Kentucky core academic standards incorporated by reference in 704 KAR Chapter 8. KRS 158.142(3) requires the board to promulgate administrative regulations establishing requirements for early graduation from high school. KRS 158.1411 requires the KBE to promulgate administrative regulations establishing a graduation requirement for financial literacy. This administrative regulation establishes the minimum requirements necessary for entitlement to a high school diploma.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation outlines the minimum requirements for high school graduation for Kentucky public school students.

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

(a) How the amendment will change this existing administrative regulation: The amendments to 704 KAR 3:305 serve three purposes. First, to provide clean-up language needed throughout the regulation for clarity and consistency. Second, the amendment conforms to HB 535 (2024) which modified the requirements for high school graduation as it relates to civics, as established under KRS 158.141. Third, the amendment incorporates by reference the intent form required by students participating in the Early Graduation Program (EGP) as provided under KRS 158.142(2).

(b) The necessity of the amendment to this administrative regulation: HB 535 (2024) modified the requirements for high school graduation as it relates to civics as established under KRS 158.141 to require, beginning with students entering grade 9 in the 2025-2026 school year, a one-half credit course in civic literacy or a civics test composed of 100 questions drawn from those that are set forth within the civics test administered by the United States Citizenship and Immigration Services to persons seeking to become naturalized citizens. KRS 158.142(2) requires the Kentucky Department of Education (KDE) to provide the form for students indicating their intent to participate in the EGP.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 156.160 requires the KBE to promulgate administrative regulations relating to the courses of study for the different grades and the minimum requirements for high school graduation. The amendments conform to the following: KRS 158.142(2) requires the KDE to provide the form for students indicating their intent to participate in the EGP. KRS 158.1411 requires the KBE to promulgate administrative regulations establishing a graduation requirement for financial literacy.

(d) How the amendment will assist in the effective administration of the statutes: KRS 156.160 requires the KBE to promulgate administrative regulations relating to the courses of study for the different grades and the minimum requirements for high school graduation. The amendments to 704 KAR 3:305 conform to the passage of HB 535 (2024). The addition of the intent form as a material incorporated by reference conforms to KRS 158.142(2).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Local schools, districts, and the KDE are affected by this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The local districts must comply with the amended graduation requirement for civics, provided under HB 535 (2024), beginning with students entering grade 9 in 2025-2026.

Pursuant to KRS 158.142(2), local schools are required to use the intent form, included as a material incorporated by reference, for students participating in the EGP. The KDE has developed the intent form and issued guidance to schools and districts explaining the options available under HB 535 (2024) for implementing the civics graduation requirement for students entering grade 9 in 2025-2026 and beyond.

(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 anticipated costs to local schools and districts as a result of the amendments to 704 KAR 3:305. Districts that choose to implement the one-half credit option for civics may need to adjust staffing depending on the size, needs, and course options provided by the local schools but that is not a requirement of the district. Districts that continue using the civics test will not have increased costs as a result of the amendments to 704 KAR 3:305. There is no cost associated to schools and districts for using the EGP intent form, provided as a material incorporated by reference, as required under KRS 158.142(2).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The compliance of local schools and school districts ensure that statutory requirements provided under HB 535 (2024) are met and that students complete the civics requirement for high school graduation as provided under KRS 158.141. The KDE will assist schools and districts in complying with the amendments to 704 KAR 3:305 by providing guidance to assist in the effective implementation of HB 535 (2024). The addition of the EGP intent form as a material incorporated by reference ensures that schools comply with the requirements established under KRS 158.142.

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

(a) Initially: The KDE has staffing in place to provide guidance to local schools and districts on implementing the amended civics requirement for high school graduation as established under HB 535 (2024) and for utilizing the intent form for participants of the EGP.

(b) On a continuing basis: The KDE has staffing in place to provide guidance to local schools and districts on a continuing basis for both the implementation of the civics graduation requirement provided under HB 535 (2024) and to assist schools and districts with ongoing support for students participating in the EGP.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: State 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 KDE does not anticipate a need for increased fees or funding as a result of the amendments to 704 KAR 3:305. Districts that choose to implement the one-half credit option for civics may need to adjust staffing depending on the size, needs, and course options provided by the local schools but that is not a requirement of the district. Districts that continue using the civics test will not have increased costs as a result of the amendments to 704 KAR 3:305. The KDE has staffing in place to provide guidance to local schools and districts on a continuing basis for both the implementation of the civics graduation requirement provided under HB 535 (2024) and to assist schools and districts with ongoing support for students participating in the EGP.

(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 fees.

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all schools and districts.

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 156.160, 158.142, 156.070, 158.140, 158.1411.

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: The KBE is the promulgating agency. The Kentucky Board of Education (KBE) and the Kentucky Department of

Education (KDE) will support local schools and districts in implementing 704 KAR 3:305.

(a) Estimate the following for the first year:

Expenditures: The KDE does not anticipate expenditures in the first year.

Revenues: No revenue in the first year.

Cost Savings: The administrative regulation will not generate cost savings in the first year.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? This regulation does not result in any new expenditures, revenues, or cost savings.

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

(a) Estimate the following for the first year:

Expenditures: \$0.00

Revenues: \$0.00

Cost Savings: \$0.00

(b) How will expenditures, revenues, or cost savings differ in subsequent years? This regulation does not result in any new expenditures, revenues, or cost savings.

(4) Identify additional regulated entities not listed in questions (2) or (3): No additional regulated entities.

(a) Estimate the following for the first year:

Expenditures: Not applicable as no additional regulated entities have been identified.

Revenues: Not applicable as no additional regulated entities have been identified.

Cost Savings: Not applicable as no additional regulated entities have been identified.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? Not applicable as no additional regulated entities have been identified.

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: The regulation does not result in any new expenditures, revenues, or cost savings.

(b) Methodology and resources used to determine the fiscal impact: The regulation does not result in any new expenditures, revenues, or cost savings.

(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 economic impact on any identified entities.

(b) The methodology and resources used to reach this conclusion: This regulation will not have an overall negative or adverse economic impact on any identified entities.

**EDUCATION AND LABOR CABINET
Kentucky Board of Education
Department of Education
(Amendment)**

704 KAR 3:535. Full-time enrolled online, virtual and remote learning programs.

RELATES TO: KRS 156.070, 156.160, 158.070, 158.1413, 158.4416, 158.6451, 160.345, 160.380

STATUTORY AUTHORITY: KRS 156.070, 156.160

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.070 authorizes the Kentucky Board of Education to have management and control of programs operated in the common schools. KRS 156.160 requires the Kentucky Board of Education to promulgate administrative regulations establishing standards which school districts shall meet in program service to students. This administrative regulation establishes minimum requirements for the operation of full-time enrolled online, virtual and remote learning programs in school districts for grades K-[Kindergarten through grade]-12.

Section 1. Definitions.

(1) "Accountable School" is defined by 703 KAR 5:240, Section 1(1).

(2) "Alternative Education Program" is defined by KRS 160.380(1)(b).

(3)[(4)] "Asynchronous learning" means forms of education, instruction, and learning that do not require interaction with others to occur at the same time through a variety of strategies and tools.

(4)[(2)] "Child with a disability" is defined by 707 KAR 1:002, Section 1(9).

(5)[(3)] "Full-Time Enrolled Online, Virtual and Remote Learning Program" means a public school district program that enrolls K-12 students on a full-time basis, where teachers and students are not in the same physical location and all or most of the instruction is provided online through a combination of synchronous and asynchronous learning strategies. A full-time enrolled online, virtual and remote learning program shall not be classified as an alternative education program as set forth in 704 KAR 19:002.

(6)[(4)] "Individual education program" or "IEP" is defined by 707 KAR 1:002, Section 1(34).

(7)[(5)] "Individual learning plan" or "ILP" is defined by 704 KAR 19:002, Section 1(6).

(8)[(6)] "Synchronous learning" means forms of education, instruction, and learning that occur at the same time through a variety of strategies and tools.

(9)[(7)] "Virtual and Performance-Based" means course setup and attendance verification pursuant to 702 KAR 7:125, Section 1[(4)](4)(g) and 704 KAR 3:305, Section 6[(7)]. [Performance-Based virtual students included in the exception set forth at 702 KAR 7:125(1)(4)(g) shall not be covered by this administrative regulation.]

(10)[(8)] "Voluntary placement" means the placement of a student in an online, virtual and remote learning program at the request of the parent or emancipated student and with the approval of the school district to:

(a) Ensure the health and safety of the individual student including the social, emotional, and mental health needs of the student[learner]; and

(b) Meet the educational needs of the student.

Section 2. Program Requirements.

(1) For any full-time enrolled online, virtual and remote program it operates, school districts shall ensure that:

(a) All of the education services and requirements as a physical school to fully support the academic, social, emotional, and mental health needs of students[the learner] are provided;

(b) The online, virtual and remote learning program meets the requirements set forth in 704 KAR 3:305;

(c) The online, virtual and remote learning program is aligned to the academic and curricular requirements of the district; and

(d) A student enrolled in a full-time enrolled online, virtual and remote learning program shall be eligible to participate in one (1) or more types of programs to address student learning needs, which shall include credit acceleration, credit accumulation, and an innovative path to graduation.

(2) Each local board of education shall adopt and annually review policies and procedures for the operation of each full-time enrolled online, virtual and remote learning program within the district. Locally-adopted policies and procedures shall include:

(a) The purpose of the program, including the ways the program supports the district's postsecondary readiness goals for students;

(b) Locally defined eligibility criteria, as appropriate;

(c) Procedures for enrolling students in the program, including procedures to ensure voluntary placement;

(d) Procedures for transitioning students out of the program;

(e) Procedures for regular, periodic monitoring of the program by the district;

(f)[(e)] Procedures for the development and implementation of student ILPs as required by 704 KAR 3:305; and

(g)[(f)] Implementation of an application and on-boarding process to ensure students and families understand the expectations for students in a full-time enrolled online, virtual and remote learning program and a determination of candidacy.

(3) Only students with determined appropriate digital access and support beyond the school campus shall be candidates for the full-time enrolled online, virtual and remote learning program.[enrollment in the virtual school, program, or academy.]

VOLUME 51, NUMBER 3– September 1, 2024

The district shall ensure all students enrolled in ~~the [a virtual school,] program, [or academy]~~ have appropriate digital access to fully participate ~~[in and access the online, virtual and remote learning program].~~

(4) Full-time enrolled online, virtual and remote learning program curriculum shall be aligned with the Kentucky Academic Standards established in ~~[704 KAR 3:303,] 704 KAR Chapter 8,~~ and the student learning goals in the ILP.

(5) Each student enrolled in a full-time enrolled online, virtual and remote learning program shall be subject to the minimum graduation requirements established in 704 KAR 3:305 and any additional local district graduation requirements.

(6) Each student enrolled in a full-time enrolled online, virtual and remote learning program shall participate in the state-required assessment program and be included in the state accountability system as set forth in 703 KAR Chapter 5.

(7) A full-time enrolled online, virtual and remote learning program shall be subject to all applicable requirements of 703 KAR 5:225 and Kentucky's Consolidated State Plan implementing the Elementary and Secondary Education Act of 1965 as amended by the Every Student Succeeds Act of 2015, or its successor.

(8) Each student participating in a full-time enrolled online, virtual and remote learning program shall be eligible to access extracurricular activities and programs as allowed by local district and school council policies and by 702 KAR 7:065 or other applicable organization rules.

(9) Each student enrolled in a full-time enrolled online, virtual and remote learning program shall have access to instructional and support resources and services available to other students in the district, which shall include instructional materials, tutoring, intervention, and counseling services, in furtherance of each student's educational program as determined through the development of the ILP.

(10) The school district shall document each student enrolled in a full-time enrolled online, virtual and remote learning program as non-transported in the state student information system for transportation funding purposes.

Section 3. Placement of Students.

(1) Enrollment of any student in a full-time enrolled online, virtual and remote learning program shall be a voluntary placement.

(2) A student entering a full-time enrolled [a] online, virtual and remote learning program shall meet the eligibility requirements for the program established by the local board pursuant to Section 2 of this administrative regulation.

(3) Voluntary placement of a child with a disability in a full-time enrolled online, virtual and remote learning program shall be made through the Admissions and Release Committee (ARC) pursuant to 707 KAR 1:320. The ARC shall document the student's voluntary placement in the full-time enrolled online, virtual, and remote learning program in the ARC Conference Summary.

(a) The voluntary placement decisions for a student who has been identified under 29 U.S.C. §794, Section 504 of the Rehabilitation Act of 1973, as amended, shall be made through a team process consistent with the applicable requirements outlined in 34 C.F.R. Part 104.

(b) The district shall fully implement any accommodation required by 29 U.S.C. §794, Section 504 of the Rehabilitation Act of 1973, as amended and any IEP for a child with a disability in a full-time enrolled online, virtual and remote learning program. The district shall ensure the Section 504 Team and Admissions and Release Committee (ARC) was involved in determining how all special education, related services, and accommodations shall be implemented for a child with a disability in the ~~[full-time enrolled online, virtual and remote learning] program.~~

Section 4. Costs and Expenditures. Each district shall use the statewide financial management system and chart of accounts to track costs and expenditures associated with each full-time enrolled online, virtual and remote learning program operating in the district.

Section 5. Data.

(1) Each district shall utilize the student information system to enter data regarding each student in a full-time enrolled online, virtual and remote learning program.

(2) Data collected shall include demographic, programmatic, or other data fields contained in the student information system or required by the department to track and report student enrollment, educational programming, achievement, and transition to and from enrollment in the full-time enrolled online, virtual and remote learning programs. Beginning with the 2025-2026 school year, each student in a full-time enrolled online, virtual and remote learning program shall be enrolled in an accountable school in the state student information system.

Section 6. Personnel.

(1) Full-time enrolled online, virtual and remote learning program teachers and administrators shall be:

(a) Subject [subject] to the teacher certification requirements established in KRS 161.020;

(b) Subject to [and shall comply with] the classified and certified assignment restrictions established in KRS 160.380; and ~~(3);~~

(c) Employed pursuant to an employee contract with a Kentucky public school district for no less than 185 days and paid pursuant to a single salary schedule as established in KRS 157.350(1) and (3).

(2) The district shall ensure a system of high-quality professional learning on the high-quality instructional resources and on evidence-based instructional practices for virtual learning.

Section 7. Class Size. Full-time enrolled online, virtual and remote learning programs shall meet the requirements set forth in KRS 157.360 and 702 KAR 3:190 for maximum class sizes and exemptions thereto.

Section 8. Student Attendance.

(1) Students in a full-time enrolled online, virtual and remote learning program authorized by this administrative regulation shall be counted in attendance.

(2) Attendance for students in a full-time enrolled online, virtual and remote learning program authorized by this administrative regulation shall be collected as follows:

(a) Attendance shall be recorded at the course level for ~~[virtual]~~ middle and high school students by certified teachers;

(b) Attendance shall be recorded at least two (2) times each school day for ~~[virtual]~~ elementary school students with checks three (3) hours apart by certified teachers;

(c) Attendance for each course shall be recorded in the student information system attendance tables;

(d) Courses shall not be set up as virtual and performance-based;

(e) Attendance clerks or other assigned district personnel shall reconcile attendance for each course or period to ensure proper codes are entered for absent students. Attendance event absence codes shall be entered at the office level (for example, doctor excuses or parent excuses); and

(f) District attendance records for full-time enrolled online, virtual and remote learning programs ~~[program attendance records]~~ shall be subject to audit by the Kentucky Department of Education.

(3) Students in a full-time enrolled online, virtual and remote learning program shall be subject to the compulsory attendance laws set forth in KRS Chapter 159, [159.150 and 159.180.] School districts operating a full-time enrolled online, virtual and remote learning program shall develop and implement policies to address attendance absences, which shall include:

(a) The attendance status of students with an internet outage;

(b) The process to return students to in-person instruction for truancy violations; and

(c) The district process for actions it shall take pursuant to KRS Chapter 159 for truant students.

Section 9. Curriculum, Content, and Instruction.

(1) The full-time enrolled online, virtual and remote learning

VOLUME 51, NUMBER 3– September 1, 2024

program shall provide instruction aligned to the grade-level expectations established in the Kentucky Academic Standards in [at 704 KAR 3:303 and]704 KAR Chapter 8, including the selection, vetting, and implementation of high-quality instructional resources aligned to the Kentucky Academic Standards and grade-level appropriate assignments. Districts shall maintain evidence of having systemic formative assessment processes in place to:

(a) Accurately measure student progress on grade-level standards for students enrolled in a full-time enrolled online, virtual and remote learning program; and

(b) Support students enrolled in the full-time enrolled online, virtual and remote learning program needing accelerated learning on grade-level standards within universal instruction as well as those students who need more targeted interventions and supports.

(2) The full-time enrolled online, virtual and remote learning program shall implement synchronous learning strategies and digital platforms for two-way visual and verbal interactions. Additionally, the full-time enrolled online, virtual and remote learning program shall utilize a learning management system [(LMS)] or other digital platforms that allows teachers to monitor student's progress, interactions and engagement with the teacher, and other students online for the review of student work and completion of assignments through both synchronous and asynchronous interactions.

(3) Students in a full-time enrolled online, virtual and remote learning program shall be assigned a schedule that aligns with the standard day of in-person students. Virtual student schedules shall adhere to the standard day and hour requirements set forth at KRS 158.070.

(4) The full-time enrolled online, virtual and remote learning program shall ensure attainment of the declarations and goals set forth by KRS 158.6451.

(5) Students in the full-time enrolled online, virtual and remote learning program shall receive access to the essential workplace ethics programs, including characteristics critical to success in the workplace, as established in KRS 158.1413.

Section 10. Virtual and Performance-Based Students. Students with courses utilizing virtual and performance-based course set up and attendance verification pursuant to 702 KAR 7:125, Section 1(4)(g) and 704 KAR 3:305, Section 7 may be enrolled in the full-time enrolled online, virtual and remote learning program but shall not be covered by this administrative regulation.

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).

DR. ROBBIE FLETCHER, Commissioner

SHARON PORTER ROBINSON, Chairperson

APPROVED BY AGENCY: August 12, 2024

FILED WITH LRC: August 13, 2024 at 3:00 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held October 23, 2024 at 10:00 am, in the State Board Room, Fifth Floor, 300 Sower Boulevard, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through October 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: Todd G. Allen, General Counsel, Kentucky Department of Education, 300 Sower Boulevard, 5th Floor, Frankfort, Kentucky 40601, phone 502-564-4474, fax 502-564-9321, email regcomments@education.ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Todd G. Allen

(1) Provide a brief summary of:

(a) What this administrative regulation does: KRS 156.070 grants the Kentucky Board of Education the authority over the management and control of programs operated in the common schools. KRS 156.160 grants the Kentucky Board of Education the specific authority to promulgate administrative regulations establishing standards which school districts shall meet in program service to students. This administrative regulation establishes minimum requirements for the operation of online, virtual and remote learning programs in school districts.

(b) The necessity of this administrative regulation: This regulation ensures Kentucky's public school districts have the ability to create high-quality full-time enrolled online, virtual and remote learning opportunities for students.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation conforms to the authority given to the Kentucky Board of Education in KRS 156.070 and 156.160.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Districts may utilize the funding mechanism and program standards established in this regulation to support a full-time enrolled online, virtual and remote learning program.

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

(a) How the amendment will change this existing administrative regulation: Amendments to 704 KAR 3:535 are being made to: To ensure students in these programs and through this specific funding mechanism are appropriately included in the accountability system, to provide clarifications around teachers and administrators of full-time enrolled online, virtual and remote learning programs, to provide a point of emphasis regarding the adoption and annual review of policies and procedures regarding periodic monitoring by the district, and to make minor technical corrections.

(b) The necessity of the amendment to this administrative regulation: The primary purpose of the amendment is to align language in 704 KAR 3:535 with 703 KAR 5:240, Accountability administrative procedures and guidelines.

(c) How the amendment conforms to the content of the authorizing statutes: The regulation continues to conform to the authority given to the Kentucky Board of Education in KRS 156.070 and 156.160.

(d) How the amendment will assist in the effective administration of the statutes: This amended regulation ensures Kentucky's public school districts have the ability to create high-quality full-time enrolled online, virtual and remote learning opportunities for students while also ensuring the students in these programs and through this specific funding mechanism are appropriately included in the accountability system as well as providing a point of emphasis regarding the adoption and annual review of policies and procedures regarding periodic monitoring by the district.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Those affected by this administrative regulation include: All Kentucky public school district-created full-time enrolled online, virtual and remote learning programs for K-12 students and the Kentucky Department of Education (KDE).

(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 establishment of a full-time enrolled online, virtual and remote learning program will be voluntary. Thus, action will only be necessary for those Kentucky public school districts seeking to establish this program. For those districts, the following actions will be taken: Students in these programs will need to be primarily enrolled in an accountable school and each local board of education shall adopt and annually review policies and procedures for the operation of each full-time enrolled online, virtual and remote learning program within the district. Locally-adopted policies and procedures shall include: 1. Purpose of the program, including the ways the program supports the district's postsecondary readiness goals for students; 2. Locally defined eligibility criteria, as appropriate;

VOLUME 51, NUMBER 3– September 1, 2024

3. Procedures for enrolling students in the program, including procedures to ensure voluntary placement; 4. Procedures for transitioning students out of the program; 5. Procedures for regular, periodic monitoring of the program by the district; 6. Procedures for the development and implementation of student ILPs as required by 704 KAR 3:305, and 7. Implementation of an application and on-boarding process to ensure students and families understand the expectations for students in a full-time enrolled online, virtual and remote learning program and a determination of candidacy.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There should be little to no additional costs for public school districts to comply with this administrative regulation. The Kentucky Department of Education will be impacted by staff time to provide guidance and support.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Compliance with the amended administrative regulation will ensure students are appropriately included in the accountability system and provides a point of emphasis regarding the adoption and annual review of policies and procedures regarding periodic monitoring by the district.

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

(a) Initially: Public school districts choosing to establish a full-time enrolled online, virtual and remote learning program should incur little to no added expense to implement the requirements of this regulation. The KDE will incur no new additional costs to implement this regulation.

(b) On a continuing basis: Public school districts may incur additional costs in support of the established program but are dependent on locally controlled decisions. The KDE incurs an ongoing cost of staff and resources that are already in place. The cost of these resources could be affected in the future by program growth and supports needed to maintain high-quality opportunities for students.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Enforcement of this regulation is funded by the KDE 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: This regulation will not require an increase in fees or funding.

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

(9) TIERING: Is tiering applied? Tiering was not appropriate as the administrative regulation applies equally to all schools and districts.

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 156.070, KRS 156.160

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: Kentucky Board of Education, Kentucky Department of Education.

(a) Estimate the following for the first year:

Expenditures: No additional expenditures are anticipated; may include staff time to provide guidance to local districts for implementation.

Revenues: No revenue. However, a district offering this program could see new revenue from net new enrollment (for example, homeschooled students that were previously unenrolled in the district).

Cost Savings: No additional cost savings are expected to be generated by this amended regulation.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? No additional expenditures, revenues, or cost savings are anticipated in subsequent years.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): School Districts

(a) Estimate the following for the first year:

Expenditures: Public school district and Kentucky Department of Education staff time may be impacted by the need for implementation, guidance, and general support.

Revenues: No additional revenue is anticipated by this amended regulation.

Cost Savings: No additional cost savings are expected by this amended regulation.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? No additional expenditures, revenues, or cost savings are anticipated in subsequent years.

(4) Identify additional regulated entities not listed in questions (2) or (3): No additional regulated entities.

(a) Estimate the following for the first year:

Expenditures: Not applicable as no additional regulated entities have been identified.

Revenues: Not applicable as no additional regulated entities have been identified.

Cost Savings: Not applicable as no additional regulated entities have been identified.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? Not applicable as no additional regulated entities have been identified.

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: The fiscal impact of this regulation is expected to be neutral, as no additional cost will be incurred. This regulation is designed to facilitate district options for full-time online, virtual and remote learning programs.

(b) Methodology and resources used to determine the fiscal impact: The amended regulation does not establish any new mandatory requirements for all school districts. It does, however, establish a new enrollment requirement for districts who choose to establish these programs. Beyond establishing initial policies and procedures, no additional fiscal impact is anticipated.

(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 is not anticipated to have an overall negative or adverse major economic impact.

(b) The methodology and resources used to reach this conclusion: Based on the assessment of the agency, this regulation alone will not have a major economic impact on state or local regulated entities. The regulation is aimed at establishing the minimum requirements for the operation of full-time enrolled online, virtual and remote learning programs. The Commonwealth spends well over \$500,000 providing public education to elementary and secondary education students each year. However, those expenses would continue to exist absent this administrative regulation.

EDUCATION AND LABOR CABINET
Kentucky Board of Education
Department of Education
(Amendment)

780 KAR 3:072. Attendance, compensatory time, and leave for certified and equivalent service.

RELATES TO: KRS 156.808, Chapter 337, 29 C.F.R. 825, 29 U.S.C. 201-219

STATUTORY AUTHORITY: KRS 156.808(3)(g)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.808 requires the Kentucky Board of Education to promulgate administrative regulations establishing personnel policies and procedures for all 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[consistent with the provisions of KRS 156.800 to 156.860]. KRS 156.808(3)(g) requires the Kentucky Board of Education to promulgate administrative regulations for the certified and equivalent staff of state-operated area technology centers governing attendance, including hours of work, compensatory time, and annual, court, military, sick, voting, and special leaves of absence. The Family and Medical Leave Act of 1993, 29 U.S.C. 2601 et seq., as implemented by 29 C.F.R. Part 825, requires the granting of family and medical leave to eligible employees. This administrative regulation establishes those leave requirements.

VOLUME 51, NUMBER 3– September 1, 2024

Section 1. Attendance.

(1) A full-time employee shall be required to work thirty-seven and one-half (37.5) hours per week for any positions unless otherwise specified by the appointing authority.

(2) A full-time employee shall fulfill a daily work obligation of seven and one-half (7.5) hours. Exceptions to the schedule may be granted on a temporary basis with the supervisor's authorization or on a permanent basis with the approval of the appointing authority.

(3)~~(2)~~ The normal work day for a school-based employee shall coincide with the appropriate school schedule as recommended by the principal and approved by the associate commissioner for career and technical education.

(4)~~(3)~~ The associate commissioner for career and technical education may require an employee to work hours and work days other than the normal schedule including an inclement weather schedule if it is in the best interest of the agency.

(5)~~(4)~~ An employee who works within a division which requires more than one (1) shift per day, or seven (7) days a week operation, may be reassigned from one (1) shift to another and from one (1) post to another or alternate days to meet staffing requirements, or to maintain or provide essential services of the agency, or to meet scheduling needs of students. An employee shall be given as much advance notice as possible when schedules are changed.

(6)~~(5)~~ The employee shall give timely~~reasonable~~ notice to the employees' immediate supervisor in advance of absence from a work station with the exception of emergencies.

(6) ~~[An employee may be allowed up to two (2) professional days for the purpose of continuing staff development or participation in professional organization workshops and meetings without loss of pay.]~~

Section 2. Compensatory Leave ~~and Overtime~~.

(1) Accrual of compensatory leave ~~and overtime~~.

(a) An appointing authority shall comply with the overtime and compensatory leave provisions of the Fair Labor Standards Act (FLSA), 29 U.S.C. Chapter 8.

(b) An employee, except teachers and principals, who is directed to, or who requests and is authorized to, work in excess of the prescribed hours of duty shall be granted compensatory leave ~~or paid overtime~~ subject to the provisions of the Fair Labor Standards Act, the Kentucky Revised Statutes and this administrative regulation.

(c) An employee, except teachers and principals, deemed to be "exempt" under the provisions of the FLSA shall accumulate compensatory time on an hour-for-hour basis for hours actually worked in excess of the regular work schedule. Teachers and principals shall not accumulate compensatory time.

(d) ~~[An employee deemed to be "nonexempt" by the provisions of the FLSA shall be paid for all hours worked in excess of forty (40) hours per week.]~~

(e) ~~[Compensatory leave shall be accumulated or taken off in one-quarter (1/4) hour increments.]~~

(f) ~~[The maximum amount of compensatory leave that may be carried forward from one (1) pay period to another shall be 200 hours.]~~

(d)~~(g)~~ An employee who is transferred or otherwise moved from the jurisdiction of one (1) agency to another shall retain the compensatory leave in the receiving agency. The compensatory leave balance shall be frozen until such a time the employee leaves the teaching or principal position.

(2) Reductions in compensatory leave balances.

(a) An appointing authority may require an employee who has a balance of at least 100 hours compensatory leave to use compensatory leave before annual leave, unless the employee's annual leave balance exceeds the maximum number of hours that may be carried forward under Section 3(2)(f) of this administrative regulation, and shall otherwise allow the use of compensatory leave if it shall not unduly disrupt the operations of the agency.

(b) If an employee's prescribed hours of duty are normally less than forty (40) hours per week, the employee shall receive compensatory leave for the number of hours worked that:

1. Exceed the number of normally prescribed hours of duty; and

2. Do not exceed the maximum amount of 200 compensatory hours.

(c) Upon separation from state service, an employee shall be paid for all unused compensatory leave at the greater of the:

1. Regular hourly rate of pay; or
2. Average regular rate of pay for the final three (3) years of employment.

~~[(d)] [Any school-based employee who has accumulated compensatory leave shall be permitted to take time off when school is not in session.]~~

~~[(e)] [All certified and equivalent employees shall be permitted to use accumulated compensatory time when practicable and requested in advance and if approved by the respective supervisor.]~~

Section 3. Annual and Personal Leave.

(1) Accrual of annual leave.

(a) Each full-time employee, except teachers and principals, shall accumulate annual leave at the following rate:

Months of Service	Annual Leave Days
0-59 months	1 day per month
60-119 months	1 1/4 days per month
120-179 months	1 1/2 days per month
180-239 months	1 3/4 days per month
240 months & over	2 days per month

(b) A full-time employee shall have worked, or been on paid leave, other than educational leave with pay, for 100 or more regular hours per month to accrue annual leave.

(c) Annual leave shall be accumulated only in the months in which the employee is hired to work.

~~[(d)] [Beginning in the 2018-2019 school year, teachers and principals shall be entitled to twenty-two and one-half hours (22.5) of personal leave. Personal leave shall accumulate at the beginning of each school year. Any unused personal leave in accordance with this section shall be converted to sick leave at the end of each school year.]~~

~~[(d)]~~(e) Accrued leave shall be credited on the first day of the month following the month in which the annual leave is earned.

~~[(e)]~~(f) In computing months of total service for the purpose of earning annual leave, only the months for which an employee earned annual leave shall be counted.

~~[(f)]~~(g) An employee, who retired from a position covered by a state-administered retirement system, who is receiving retirement benefits and who returns to state service, shall not receive credit for annual months of service prior to retirement.

~~[(g)]~~(h) A former employee who is appointed, reinstated, or re-employed, other than a former employee receiving benefits under a state-administered retirement system, shall receive credit for prior annual months of service.

~~[(h)]~~(i) An employee dismissed for cause who has been reinstated to state service shall receive credit for annual months of service prior to dismissal, except if the dismissal resulted from a violation of KRS 156.838.

~~[(i)]~~(j) Part-time, temporary, or seasonal employees shall not be entitled to annual leave.

(2) Personal Leave.

(a) Teachers and principals shall be entitled to twenty-two and one-half hours (22.5) of personal leave annually. Personal leave shall be credited at the beginning of each school year. Any unused personal leave in accordance with this section shall be converted to sick leave at the end of each school year.

(b) Part-time, temporary, or seasonal employees shall not be entitled to annual leave.

(c) Personal leave shall be prorated for employees that are employed after the first day of the calendar year based on the number of contract days they will have in the remainder of the calendar year.

(3)~~(2)~~ Use and retention of annual and personal leave.

(a) Annual leave shall be used in increments of hours or of one-quarter (1/4) hours~~;~~ except for teachers~~[Teachers]~~ and principals,

VOLUME 51, NUMBER 3– September 1, 2024

who shall use personal leave in three and three-quarter hour (3.75) increments.

(b) Except as provided in paragraph (c) of this subsection, an employee who makes a timely request for annual or personal leave shall be granted annual or personal leave by the appointing authority, up to at least the amount of time earned that year, if the operating requirements of the agency permit.

(c) An appointing authority may require an employee who has a balance of at least 100 hours of compensatory leave to use compensatory leave before the employee's request to use annual leave is granted, unless the employee's annual leave balance exceeds the maximum number of hours that may be carried forward under Section 3(2)(f) of this administrative regulation.

(d) Absence due to sickness, injury, or disability in excess of the amount available for those purposes shall, at the request of the employee, be charged against annual leave or personal leave.

(e) An employee who is transferred or otherwise moved from the jurisdiction of one (1) agency to another shall retain his accumulated annual leave in the receiving agency.

(f) Annual leave may be carried from one (1) calendar year to the next as provided in this paragraph:

Months of Service	Maximum Amount
0-59 months	Thirty (30) workdays
60-119 months	Thirty-seven (37) workdays
120-179 months	Forty-five (45) workdays
180-239 months	Fifty-two (52) workdays
240 months and over	Sixty (60) workdays

(g) Annual leave in excess of the maximum amounts specified in paragraph (f) of this subsection shall be converted to sick leave at the end of the calendar year or upon retirement, whichever comes first.

(h) The amount of annual leave that may be carried forward and the amount of annual leave that may be converted to sick leave shall be determined by computing months of service as provided by subsection (1)(e) of this section.

~~(4)(3)~~ Annual and personal leave on separation.

(a) As set forth in KRS 161.780, an[A] employee who is separated by proper resignation or retirement shall be paid in a lump sum for accumulated annual leave not to exceed the amounts established by subsection (2)(f) of this section. Following payment of annual leave at resignation, leave remaining after the payment of the maximum provided shall be removed from the balance. A teacher or principal who is separated by proper resignation or retirement shall be paid in a lump sum for accumulated personal leave not to exceed twenty-two and one-half hours (22.5).

(b) An employee who is laid off shall be paid in a lump sum for all accumulated annual, or personal, or annual and personal leave. Payment for personal leave shall not exceed twenty-two and one-half hours (22.5).

(c) An employee in the unclassified service who resigns or terminates one (1) workday and returns to certified and equivalent service the next workday shall retain accumulated annual leave in the receiving agency.

(d) An employee who has been dismissed for cause related to misconduct or who has failed, without proper excuse, to give proper notice of resignation or retirement shall not be paid for accumulated annual or personal leave.

(e) Notice of separation by resignation must be submitted to the supervisor in written form and forwarded to the Personnel/Payroll Officer.

(f) Certified and equivalent employees seeking to resign or terminate contracts in force shall do so in compliance with KRS 161.780.

~~(g)(e)~~ Upon the death of an employee, the employee's estate shall be entitled to receive pay for the unused portion of the employee's accumulated annual, or personal, or annual and personal leave. Payment for personal leave shall not exceed twenty-two and one-half hours (22.5).

~~(h)(f)~~ An employee may request in writing that accumulated annual leave not be paid upon resignation, and that all or part of the amount of his accumulated annual leave that does not exceed the amount established by subsection (2)(f) of this section be waived, if:

1. The employee resigns, or is laid off because of an approved plan of privatization of the services he performed; and
2. The successor employer has agreed to credit the employee with an equal amount of annual leave.

Section 4. Sick Leave.

(1) Accrual of sick leave.

(a) An employee, except teachers, principals, and part-time employees, shall accumulate sick leave with pay at the rate of one (1) working day per month.

(b) A full-time employee, except teachers and principals, shall have worked or been on paid leave, other than educational leave, for 100 or more regular hours in a month to accrue sick leave.

(c) An employee, except teachers and principals, shall be credited with additional sick leave [up]on the first day of the month following the month in which the sick leave is earned.

~~(d) [Beginning in the 2018-2019 school year,]~~ teachers and principals shall be credited with seventy-five (75) hours of sick leave at the beginning of each school year.

(e) A full-time employee, ~~except teachers and principals~~, who completes 120 months of total service with the state shall be credited with ten (10) additional days of sick leave upon the first day of the month following the completion of 120 months of service. A teacher or principal who completes ten (10) years of total service with the state shall be credited with ten (10) additional days of sick leave upon the first day of the following school year.

(f) A full-time employee, ~~except teachers and principals~~, who completes 240 months of total service with the state shall be credited with ten (10) additional days of sick leave upon the first day of the month following the completion of 240 months of service. A teacher or principal who completes twenty (20) years of total service with the state shall be credited with ten (10) additional days of sick leave upon the first day of the following school year.

(g) In computing months of total service for the purpose of crediting sick leave, only the months for which an employee earned sick leave shall be counted.

(h) The total service shall be verified before the leave is credited to the employee's record.

(i) An employee, who retired from a position covered by a state-administered retirement system, who is receiving retirement benefits and who returns to state service, shall not receive credit for sick months of service prior to retirement.

(j) A former employee who is appointed, reinstated, or re-employed, other than a former employee receiving benefits under a state-administered retirement system, shall receive credit for the unused sick leave balance credited upon the separation and shall receive credit for prior sick months of service.

(k) An employee dismissed for cause who has been rehired to state service shall receive credit for sick months of service prior to the dismissal, unless the dismissal resulted from a violation of KRS 156.838.

(l) Sick leave may be accumulated with no maximum.

(2) Use and retention of sick leave with pay.

(a) The appointing authority or his designee shall grant or may require the use of accrued sick leave with pay if an employee:

1. Is unable to work due to medical, dental, or optical examination or treatment;
2. Is disabled by illness or injury. The appointing authority or his designee may require the employee to provide a doctor's statement certifying the employee's inability to perform his duties for the days or hours sick leave is requested;
3. Is required to care for or transport a member of the immediate family in need of medical attention for a reasonable period of time. The appointing authority or his designee may require the employee to provide a doctor's statement certifying the employee's need to care for a family member;
4. Would jeopardize the health of himself or others at the work station because of a contagious disease or demonstration of behavior that might endanger the employee or others;

VOLUME 51, NUMBER 3– September 1, 2024

5. Has lost by death a spouse, parent, grandparent, child, brother or sister, or the spouse of any of them, or, if granted by the appointing authority, another relative of close association. Leave under this subparagraph shall be limited to five (5)~~three (3)~~ days; or

6. Requires leave for the birth, placement, or adoption of a child.

(b) At the termination of sick leave with pay, the appointing authority shall return the employee to his former position.

(c) ~~Employees, except teachers and principals, shall use sick leave~~~~[Sick leave shall be used]~~ in increments ~~[of hours or increments]~~ of one-quarter (1/4) hours.

(d) An employee who is transferred or otherwise moved from the jurisdiction of one (1) agency to another shall retain accumulated sick leave in the receiving agency.

(e) An employee shall be credited for accumulated sick leave if separated by proper resignation, layoff, or retirement as provided in KRS 161.780.

(3) Sick leave without pay.

(a) The appointing authority or his designee shall grant sick leave without pay for the duration of an employee's impairment by injury or illness, if:

1. The total continuous leave does not exceed one (1) year; and

2. The employee has used or been paid for all accumulated annual, compensatory and sick leave, unless he has requested to retain up to ten (10) days of accumulated sick leave.

(b) For continuous leave without pay in excess of thirty (30) working days, excluding holidays, the appointing authority or his designee shall notify the employee in writing of the leave without pay status.

(c) The appointing authority or his designee may require a periodic doctor's statement during the period of leave without pay~~[year]~~ attesting to the employee's continued inability to perform essential functions of his duties with or without reasonable accommodation.

(d) The appointing authority or his designee may grant sick leave without pay to an employee who does not qualify for family and medical leave provided in Section 5 of this regulation due to lack of service time and who has exhausted all accumulated paid leave if the employee is required to care for a member of the immediate family for a period not to exceed thirty (30) working days.

(e) If an employee has given notice of his ability to resume his duties following sick leave without pay, the appointing authority or his designee shall return the employee to the original position or to a position for which he is qualified and which resembles his former position as closely as circumstances permit.

(f) If reasonable accommodation to the employees' duties is requested, the employee shall:

1. Inform the employer; and

2. Upon request, provide supportive documentation from a certified professional.

(g) An employee shall be considered to have resigned if he:

1. Has been on one (1) year continuous sick leave without pay;

2. Has been requested by the appointing authority or his designee in writing to return to work~~[at least ten (10) days prior to the expiration of sick leave]~~;

3. Is unable to return to his former position;

4. Has been given priority consideration by the appointing authority or his designee for a vacant, budgeted position with the same agency, for which he qualified and is capable of performing its essential functions with or without reasonable accommodation; and

5. Has not been placed by the appointing authority or his designee in a vacant position.

(h) Sick leave granted under this subsection shall not be renewable after the employee has been medically certified as able to return to work.

(i) An employee who has been resigned under paragraph (g) of this subsection shall retain reinstatement privileges.

(4) Workers' compensation.

(a) If an absence is due to illness or injury for which workers' compensation benefits are received, accumulated sick leave may be used to maintain regular full salary.

(b) If paid sick leave is used to maintain regular full salary, workers' compensation pay benefits shall be assigned to the state for the period of time the employee received paid sick leave.

(c) The employee's sick leave shall be immediately reinstated to the extent that workers' compensation benefits are assigned.

(5) Application for sick leave and supporting documentation.

(a) An employee shall file a written application for sick leave with or without pay within a reasonable time.

(b) Except for an emergency illness, an employee shall request advance approval for sick leave for medical, dental or optical examinations, and for sick leave without pay.

(c) If the employee is too ill to work, an employee shall notify the immediate supervisor or the designee. Failure, without good cause, to do so in a reasonable period of time shall be cause for denial of sick leave for the period of absence.

(d) The appointing authority or his designee may, for good cause and on notice, require an employee to supply supporting evidence in order to receive sick leave.

(e) A medical certificate may be required, signed by a licensed practitioner and certifying to the employee's incapacity, examination, or treatment.

(f) The appointing authority or his designee shall grant sick leave if the application is supported by acceptable evidence but may require confirmation if there is reasonable cause to question the authenticity of the certificate or its contents.

Section 5. Family and Medical Leave.

~~[(1)]~~ The appointing authority or his designee shall comply with the requirements of the Family and Medical Leave Act (FMLA) of 1993, 29 U.S.C. 2601, et seq., and the federal regulations implementing the Act, 29 C.F.R. Part 825.

~~[(2)] [An employee in state service shall qualify for twelve (12) weeks of unpaid family and medical leave if the employee has:]~~

~~[(a)] [Completed twelve (12) months of service; and]~~

~~[(b)] [Worked or been on paid leave at least 1,250 hours in the twelve (12) months immediately preceding the first day of family and medical leave.]~~

~~[(3)] [Family and medical leave shall be awarded on a calendar-year basis.]~~

~~[(4)] [An employee shall be entitled to a maximum of twelve (12) weeks of accumulated annual or sick leave, unpaid family and medical leave, or a combination thereof, for the birth, placement, or adoption of a child.]~~

~~[(5)] [While an employee is on unpaid family and medical leave, the state contribution for health and life insurance shall be maintained by the employer.]~~

~~[(6)] [If the employee would qualify for family and medical leave, but has an annual, compensatory or sick leave balance, the agency shall not designate the leave as FMLA leave until:]~~

~~[(a)] [The employee's leave balance has been exhausted; or]~~

~~[(b)] [The employee requests to reserve ten (10) days of accumulated sick leave and be placed on unpaid FMLA leave.]~~

Section 6. Court Leave.

(1) An employee shall be entitled to court leave during his scheduled working hours without loss of time or pay for the amount of time necessary to:

(a) Comply with a subpoena by a court, administrative agency, body of the federal or state government, or any political subdivision thereof; or

(b) Serve as a juror or a witness, unless the employee or a member of his family is a party to the proceeding.

(2) Court leave shall include necessary travel time.

(3) If relieved from duty as a juror or witness during normal working hours, the employee shall return to work or use annual or compensatory leave.

(4) An employee shall not be required to report as court leave attendance at a proceeding that is part of his assigned duties.

Section 7. Military Leave.

(1) Upon request, an employee who is an active member of the

VOLUME 51, NUMBER 3– September 1, 2024

United States Army Reserve, the United States Air Force Reserve, the United States Naval Reserve, the United States Marine Corps Reserve, the United States Coast Guard Reserve, the United States Public Health Service Reserve, or the Kentucky National Guard shall be relieved from the civil duties, to serve under order or training duty without loss of the regular compensation for a period not to exceed the number of working days specified in KRS 61.394 for a federal fiscal year.

(2) The absence shall not be charged against accumulated~~te~~ leave.

(3) Absence that exceeds the number of working days specified in KRS 61.394 for a federal fiscal year shall be charged to annual leave, personal leave, compensatory leave, or leave without pay.

(4) ~~The employee shall provide~~~~appointing authority or his designee may require~~ a copy of the orders requiring the attendance of the employee before ~~granting~~ military leave is granted.

(5) The appointing authority or his designee shall grant an employee entering military duty a leave of absence without pay for a period of the duty not to exceed six (6) years. Upon receiving military duty leave of absence, all accumulated annual, personal, and compensatory leave shall be paid in a lump sum, if requested by the employee.

Section 8. Voting and Election Leave.

(1) An employee, except teachers and principals, who is eligible and registered to vote shall be allowed, upon prior request and approval, four (4) hours, for the purpose of voting. Teachers and principals shall not be eligible for leave for the purpose of voting.

(2) An election officer shall receive additional leave if the total for election day does not exceed a regular workday.

(3) The absence shall not be charged against leave.

(4) A central office employee who is permitted or required to work during the employee's regular work hours, in lieu of voting leave, shall be granted compensatory leave on an hour-for-hour basis for the hours during the time the polls are open, up to a maximum of four (4) hours. ~~School-based employees shall receive time off to vote.~~

Section 9. Special Leave of Absence.

(1) If approved by the associate commissioner for career and technical education, the appointing authority or their designee may grant a leave of absence for continuing education or training.

(a) Leave may be granted for a period not to exceed twenty-four (24) months.

(b) If granted, leave shall be with pay if the employee enters into a service commitment contract, or without pay in the absence of a service commitment contract.

(c) Leave shall be restricted to attendance at a college, university, vocational or business school for training in subjects that relate to the employee's work and will benefit the state.

(2) The appointing authority or his designee ~~with approval of the secretary,~~ may grant an employee a leave of absence without pay for a period not to exceed one (1) year for purposes other than specified in this administrative regulation that are of tangible benefit to the state.

(3) The appointing authority or his designee may place an employee on special leave with pay for investigative purposes for a period of time not to exceed sixty (60) working days pending an investigation into allegations of employee misconduct.

(a) The employee shall be notified in writing by the appointing authority or his designee that he is being placed on special leave for investigative purposes, and the reasons for being placed on leave.

(b) If the investigation reveals no misconduct on behalf of the employee, all records relating to the investigation shall be purged from the Office of Career and Technical Education.

(c) The appointing authority or his designee shall notify the employee, in writing, of the completion of the investigation and the action taken. This notification shall be made to the employee, whether the employee has remained in state service, or has voluntarily resigned in the interim.

Section 10. Absence Without Leave.

(1) An employee who is absent from duty without prior approval shall report the reason for the absence to the supervisor immediately.

(2) Unauthorized or unreported absence shall:

(a) Be considered absence without leave;

(b) Be treated as leave without pay for an employee covered by the provision of the Fair Labor Standards Act; and

(c) Constitute grounds for disciplinary action.

(3) An employee who has been absent without leave or notice to the supervisor for a period of five (5)~~ten (10)~~ working days shall be considered to have resigned the employment.

Section 11. Absences Due to Adverse Weather.

(1) An employee, who is not designated for mandatory operations, and who chooses not to report to work or chooses to leave early in the event of adverse weather conditions, shall have the time of the absence reported as:

(a) Charged to annual, personal, or compensatory leave;

(b) Taken as leave without pay, if annual and compensatory leave has been exhausted; or

(c) Deferred in accordance with subsections (3) and (4) of this section.

(2) An employee who is on prearranged annual, personal, emergency, compensatory or sick leave shall charge leave as originally requested.

(3) If operational needs allow, except for an employee in mandatory operations, management shall make every reasonable effort to arrange schedules whereby an employee shall be given an opportunity to make up time not worked rather than charging it to leave.

(4) An employee shall not make up work if the work would result in the employee working more than forty (40) hours in a workweek.

(a) Except as provided in this paragraph, time lost shall be made up within 123 days~~four (4) months~~ of the occurrence of the absence. If it is not made up within 123 days~~four (4) months~~, annual, personal, or compensatory leave shall be deducted to cover the absence, or leave without pay shall be charged if no annual or compensatory leave is available.

(b) If an employee transfers or separates from employment before the leave is made up, the leave shall be charged to annual, personal, or compensatory leave or deducted from the final paycheck.

(5) If adverse weather conditions occur, and it becomes necessary for authorities to order evacuation or shut down the place of employment, the provisions established in this subsection shall apply.

(a) An employee who is required to evacuate or who would report to a location that has been shut down shall not be required to make up the time that is lost from work during the period officially declared hazardous due to adverse weather conditions.

(b) An employee who is required to work in an emergency situation shall be compensated pursuant to the provisions of Section 2 of this administrative regulation and the Fair Labor Standards Act as amended.

(6) Adverse weather leave shall not be used by school-based employees when school is in session. Adverse weather leave may be used by school-based employees under extraordinary circumstances, as determined by the associate commissioner for career and technical education.

Section 12. Blood Donation Leave.

(1) An employee who, during regular working hours, donates blood at a licensed blood center certified by the Food and Drug Administration shall receive four (4) hours leave time, with pay, for the purpose of donating and recuperating from the donation.

(2) Leave granted under this section shall be used at the time of the donation unless circumstances as specified by the supervisor require the employee to return to work. If the employee returns to work, the unused portion of the leave time shall be credited as compensatory leave.

VOLUME 51, NUMBER 3– September 1, 2024

(3) An employee shall request leave in advance to qualify for blood donation leave.

(4) An employee who is deferred from donating blood shall not:

(a) Be charged leave time for the time spent in the attempted donation; and

(b) Qualify for the remainder of the blood donation leave.

(5) School-based employees shall not receive blood donation leave.

Section 13. Emergency Leave. [~~Beginning in the 2018-2019 school year,~~] Teachers and principals shall be entitled to twenty-two and one-half (22.5) hours of emergency leave.

(1) Emergency leave shall be credited[~~accumulate~~] at the beginning of each school year. Any unused emergency leave in accordance with this section shall expire at the end of each school year. Remaining emergency leave balances shall not be paid out upon separation of an employee. Emergency leave shall be prorated for employees that are employed after the first day of the calendar year based on the number of contract days they will have in the remainder of the calendar year.

(2) Emergency leave may be used due to death, illness, injury, or certain other urgent matters. Teachers and principals shall give as much advance notice as possible to their supervisor prior to using emergency leave.

(3) Emergency leave shall be used in three and three-quarter hour (3.75) increments[~~when possible~~].

Section 14. Eligibility for State-paid Health and Life Insurance Benefits.

(1) A twelve (12) month employee [~~who~~] is eligible for state-paid life insurance benefits under the provisions of KRS Chapter 156 if they[shall] have worked or been on paid leave or family and medical leave, other than educational leave, during any part of the previous month.

(2) A twelve (12) month employee [~~who~~] is eligible for state-paid health insurance benefits under the provisions of KRS Chapter 156 if they[shall] have worked or been on paid leave or family and medical leave, other than educational leave, during any part of the previous pay period.

(3) A teacher or principal [~~who~~] is eligible for state-paid life insurance benefits under the provisions of KRS Chapter 156 if they[shall] have worked or been on paid leave or family and medical leave, other than educational leave, during any part of the previous month, except between the last day of school of the previous year and first day of school of the following year.

(4) A teacher or principal [~~who~~] is eligible for state-paid health benefits under the provisions of KRS Chapter 156 if they[shall] have worked or been on paid leave or family and medical leave, other than educational leave, during any part of the previous pay period, except between the last day of school of the previous year and first day of school of the following year.

(5) A teacher or principal [~~who~~] is eligible for state-paid health and life insurance benefits under the provisions of KRS Chapter 156 and shall be entitled to state-paid health and life insurance benefits between the last day of school of the previous year and first day of school of the following year.

(6) If an employee is unable to work and uses paid leave to qualify for state-paid health and life insurance benefits, the employee shall use paid leave days consecutively.

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).

ROBBIE FLETCHER, Ed. D., Commissioner

SHARON PORTER ROBINSON, Chairperson

APPROVED BY AGENCY: August 12, 2024

FILED WITH LRC: August 13, 2024 at 3:00 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 23, 2024 at 10:00 a.m. Eastern Time, in the State Board Room, Fifth Floor, 300 Sower Boulevard, Frankfort, Kentucky 40601. Individuals interested in being heard at this meeting shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If

no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may want to submit written comments on the proposed administrative regulation. Written comments shall be accepted through October 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: 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 regcom-ments@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 governing attendance, compensatory time, and annual, personal, court, military, sick, voting and special leaves of absence for certified and equivalent staff of state-operated area technology centers.

(b) The necessity of this administrative regulation: KRS 156.808 requires the Kentucky Board of Education to promulgate personnel policies and procedures for all 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.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation provides that policies and procedures for all 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 shall be provided by the Kentucky Board of Education.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the policies and procedures for attendance, compensatory time, and annual, personal, court, military, sick, voting and special leaves of absence for certified and equivalent staff of state-operated area technology centers.

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

(a) How the amendment will change this existing administrative regulation: This amendment will update the existing regulation to parallel the statute and will clarify the specific policies and procedures of the Kentucky Board of Education to govern the state-operated area technology centers.

(b) The necessity of the amendment to this administrative regulation: Changes were made to KRS 156.808; consequently, the administrative regulation should be updated as well. Additionally, this regulation has not been updated in many years and needs to be revised, from the attendance practices to how the Office of Career and Technical Education handles compensatory, personal, and emergency leave for certified and equivalent employees.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment provides conformity with the authorizing statute, KRS 156.808 by aligning to the policies and procedures implemented for area technology center certified and equivalent staff.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation amendment aligns details in the regulation to statute language.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All certified and equivalent staff in the Office of Career and Technical Education state-operated area technology centers will be affected by this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: There will be no additional action needed from any certified or equivalent staff from the Office of Career and Technical Education state-operated area technology centers to comply with this administrative regulation. Amendments reflect current operations within the Department of Education.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This change to the administrative regulation requires no additional direct costs to any certified or equivalent staff from the Office of Career and Technical Education state-operated area technology centers.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance, all certified and equivalent staff of the Office of Career and Technical Education will benefit by having access to pertinent information regarding annual, personal, and emergency leave provisions.

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

(a) Initially: This amendment requires no additional cost.

(b) On a continuing basis: This amendment requires no additional cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: State generated 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 increased fees or funding are anticipated as a result of this regulation amendment.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No increased fees or funding are anticipated as a result of this regulation amendment.

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to the Office of Career and Technical Education and all state-operated area technology centers.

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 156.808

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: The Department of Education, secondary state-operated area technology centers

(a) Estimate the following for the first year:

Expenditures: \$0

Revenues: \$0

Cost Savings: \$0

(b) How will expenditures, revenues, or cost savings differ in subsequent years? The amendment to this regulation does not result in any new 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: \$0

Revenues: \$0

Cost Savings: \$0

(b) How will expenditures, revenues, or cost savings differ in subsequent years? The amendment to this regulation does not result in any new expenditures, revenues, or cost savings.

(4) Identify additional regulated entities not listed in questions (2) or (3): The amendment to this regulation does not impact any additional regulated entities.

(a) Estimate the following for the first year:

Expenditures: \$0

Revenues: \$0

Cost Savings: \$0

(b) How will expenditures, revenues, or cost savings differ in subsequent years? The amendment to this regulation does not result in any new expenditures, revenues, or cost savings.

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: The amendment to this regulation does not result in any new expenditures, revenues, or cost savings.

(b) Methodology and resources used to determine the fiscal impact: The amendment to this regulation does not result in any new expenditures, revenues, or cost savings.

(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 not have an overall negative or adverse economic impact on any identified entities.

(b) The methodology and resources used to reach this conclusion: The amendment to this regulation will not have an overall negative or adverse economic impact on any identified entities.

**EDUCATION AND LABOR CABINET
Kentucky Board of Education
Department of Education
(Amendment)**

780 KAR 3:080. Extent and duration of school term, use of school days and extended employment.

RELATES TO: KRS 156.808

STATUTORY AUTHORITY: KRS 156.808(1), (2), and (3)(i)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.808(1) requires the Kentucky Board of Education to promulgate administrative regulations establishing personnel policies and procedures for all 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. KRS 156.808(3)(i) requires the Kentucky Board of Education to promulgate administrative regulations relating to the extent and duration of the state-operated area technology centers [Kentucky Tech System] school term, use of school days, and extended employment. This administrative regulation establishes the school term and employment provisions for employees.

Section 1.

(1) Except as provided in Section 2 of this administrative regulation, the regular work year for any teacher in a state-operated area technology center shall be 190 work days between July 1 and June 30 annually, to be scheduled by the center principal.

(2) During this work year, secondary students shall begin classes based on the participating school district schedules.

(3) An area technology center shall serve [not be closed if] secondary school students [need to be served] for [the] participating school districts either in-person or virtually when those participating school districts have non-traditional or traditional instructional days.

(4) Any employee required to work on an official state holiday in order to serve students shall [be compensated] have their calendar adjusted to reflect a modification to their working days.

(5) The duties of an area technology center principal shall consist of 228 work days between July 1 and June 30 annually, to be scheduled by the associate commissioner for career and technical education or their designee.

(6) If the school district where the center is located closes due to inclement weather, staff in the area technology center shall not report to work and the work day will be re-scheduled to meet student needs. [Non-traditional instruction days may be allowed at the discretion of the associate commissioner for career and technical education.]

(7) The school calendar shall be adopted on or before May 30 of each year by the associate commissioner of career and technical education or their designee.

Section 2.

(1) A teacher may request to be employed beyond the 190 work days [if requested and approved by the associate commissioner for career and technical education or their designee].

VOLUME 51, NUMBER 3– September 1, 2024

(2) The principal, associate commissioner for career and technical education or their designee may request that the teacher perform other essential services for which extended employment shall be provided. The special request shall be handled on an individual basis.

(3)

(a) To request extended employment, a teacher in an area technology center shall submit a written request to the teacher's principal.

(b) If the principal approves the request, the principal shall sign the request and submit it to the area supervisor.

(c) If the area supervisor approves the request, the area supervisor shall sign the request and submit it to the associate commissioner for career and technical education or their designee by April 15.

(d) The associate commissioner for career and technical education or their designee shall send written notification regarding the decision to the teacher by May 30. The notification shall indicate:

1. If the request was approved, the number of days for which approval was granted and a description of the additional duties or essential services to be performed; or

2. If the request was not approved, the reasons for denial.

Section 3.

(1) Any teacher employed 190 working days ~~shall~~may request that their salary be paid in twenty-four (24) paychecks.

(2) The last two (2) paychecks shall be adjusted if necessary to reflect any salary variance due to changes in work schedules.

Section 4.

(1) All area technology centers shall be officially closed to students on the official state holidays designated for Christmas and New Year's.

(2) The principal may require an employee to work for safety or security reasons.

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).

ROBBIE FLETCHER, Ed. D., Commissioner
SHARON PORTER ROBINSON, Chairperson

APPROVED BY AGENCY: August 12, 2024

FILED WITH LRC: August 13, 2024 at 3:00 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 23, 2024 at 10:00 a.m. Eastern Time, in the State Board Room, Fifth Floor, 300 Sower Boulevard, Frankfort, Kentucky 40601. Individuals interested in being heard at this meeting shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may want to submit written comments on the proposed administrative regulation. Written comments shall be accepted through October 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: Todd G. Allen, General Counsel, Kentucky Department of Education, 300 Sower Boulevard, 5th Floor, Frankfort, Kentucky 40601, phone 502-564-4474, fax 502-564-9321, email regcomments@education.ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Todd Allen

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the school term and employment provisions for certified and equivalent employees of state-operated area technology centers.

(b) The necessity of this administrative regulation: KRS 156.808 requires the Kentucky Board of Education to promulgate administrative regulations relating to the extent and duration of the state-operated area technology centers school term, use of school days, and extended employment

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation provides that 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 shall be provided by the Kentucky Board of Education.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the school term and employment provisions for certified and equivalent employees of state-operated area technology centers.

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

(a) How the amendment will change this existing administrative regulation: This amendment will update the existing regulation to parallel the statute and will clarify the specific policies and procedures of the Kentucky Board of Education to govern the state-operated area technology centers.

(b) The necessity of the amendment to this administrative regulation: Changes were made to KRS 156.808; consequently, the administrative regulation should be updated as well. Additionally, this regulation has not been updated in many years and needs to be revised.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment provides conformity with the authorizing statute, KRS 156.808 by aligning to the policies and procedures implemented for area technology center certified and equivalent staff.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation amendment aligns details in the regulation to statute language.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All certified and equivalent staff in the Office of Career and Technical Education state-operated area technology centers will be affected by this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: There will be no additional action needed from the Office of Career and Technical Education state-operated area technology centers staff to comply with this administrative regulation. Amendments reflect current operations within the Department of Education.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This change to the administrative regulation requires no additional direct costs to the Kentucky Department of Education or the state-operated area technology center staff.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Amendments reflect current operations of the Office of Career and Technical Education under the Department of Education.

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

(a) Initially: This amendment requires no additional cost.

(b) On a continuing basis: This amendment requires no additional cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: State generated 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 increased fees or funding are anticipated as a result of this regulation amendment.

VOLUME 51, NUMBER 3– September 1, 2024

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No increased fees or funding are anticipated as a result of this regulation amendment.

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to the Office of Career and Technical Education and all state-operated area technology centers.

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 156.808

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: The Department of Education and secondary state-operated area technology centers.

(a) Estimate the following for the first year:

Expenditures: \$0

Revenues: \$0

Cost Savings: \$0

(b) How will expenditures, revenues, or cost savings differ in subsequent years? The amendment to this regulation does not result in any new 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: \$0

Revenues: \$0

Cost Savings: \$0

(b) How will expenditures, revenues, or cost savings differ in subsequent years? The amendment to this regulation does not result in any new expenditures, revenues, or cost savings.

(4) Identify additional regulated entities not listed in questions (2) or (3): The amendment to this regulation does not impact any additional regulated entities.

(a) Estimate the following for the first year:

Expenditures: \$0

Revenues: \$0

Cost Savings: \$0

(b) How will expenditures, revenues, or cost savings differ in subsequent years? The amendment to this regulation does not result in any new expenditures, revenues, or cost savings.

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: The amendment to this regulation does not result in any new expenditures, revenues, or cost savings.

(b) Methodology and resources used to determine the fiscal impact: The amendment to this regulation does not result in any new expenditures, revenues, or cost savings.

(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 not have an overall negative or adverse economic impact on any identified entities.

(b) The methodology and resources used to reach this conclusion: The amendment to this regulation will not have an overall negative or adverse economic impact on any identified entities.

CABINET FOR HEALTH AND FAMILY SERVICES
Office of Human Resource Management
(Amendment)

900 KAR 1:009. Employee Access to Federal Tax Information (FTI).

RELATES TO: KRS 18A.095, 194A.005, 194A.062, 335B.010, 335B.020, 26 C.F.R. 301.6103(p)(7)-1, 26 U.S.C. 6103

STATUTORY AUTHORITY: KRS 194A.062[(2)]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.062(1) requires each employee of the cabinet, including contract staff, with access to or use of federal tax information (FTI) to submit to a criminal background investigation by means of a

fingerprint check by the Department of Kentucky State Police and the Federal Bureau of Investigation. KRS 194A.062(5)[(2)] requires the cabinet to promulgate an administrative regulation to implement that requirement. This administrative regulation establishes requirements for fingerprint-based state and national criminal background checks for prospective and current employees, including contract staff whose job duties include access to or use of FTI.

Section 1. Definitions.

(1) "Cabinet" is defined by KRS 194A.005(1).

(2) "Disqualifying offense" means a conviction, plea of guilty, Alford plea, or plea of nolo contendere to any felony, misdemeanor during the preceding seven (7) years, or offense the nature of which indicates that the employee constitutes an unreasonable and immediate risk to the security of federal tax information, as determined by the cabinet.

(3) "Federal tax information" or "FTI" means federal tax returns and return information that may:

(a) Contain personally identifiable information; and

(b) Include information created by the recipient that is:

1. Derived from federal return or return information; and

2. Received directly from the Internal Revenue Service (IRS) or obtained through an authorized secondary source, which may include:

a. Social Security Administration (SSA);

b. Federal Office of Child Support Enforcement (OCSE);

c. Bureau of the Fiscal Service (BFS);

d. Centers for Medicare and Medicaid Services (CMS); or

e. Another entity acting on behalf of the IRS.

(4) "Rap back service" means a notification program in which the cabinet or responsible agency, upon approval to participate in the program, will be informed if an individual who has undergone a fingerprint-based criminal background check in accordance with the requirements of this administrative regulation, and whose fingerprints are retained by the Department of Kentucky State Police or the Federal Bureau of Investigation, is subsequently arrested.

(5) "Responsible agency" means an office or department within the cabinet, or an entity under contract with the cabinet, that employs or offers a job to an individual in a position for which the job duties include access to or use of FTI.

Section 2. Requirement for Criminal Background Checks.

(1) As a condition of initial application for employment or continued employment either directly or by contract in a position for which the job duties include access to or use of FTI, the cabinet or responsible agency shall require a prospective or current employee, including contract staff, to submit to a fingerprint-based state and national criminal background check:

(a) After the individual is offered a job but before he or she begins working; and

(b) At least one (1) time during each five (5)[ten (10)] year period for a current employee or contract staff.

(2) The responsible agency that requests a fingerprint-based state and national criminal background check on behalf of a prospective or current employee shall incur all fees included in the actual cost of each background check requested, including the rap back service.

(3) The cabinet or responsible agency shall not employ directly or by contract an individual in a position for which the job duties include access to or use of FTI if the individual:

(a) Refuses to consent to a fingerprint-based state and national criminal background check; or

(b) Is found to have a disqualifying offense.

(4) The cabinet or responsible agency shall notify each prospective or current employee determined to have a disqualifying offense.

Section 3. Disqualification for Other Criminal Offenses or Factors. The cabinet or responsible agency shall not be obligated to employ or offer employment to an individual with a criminal offense not specifically listed in Section 1(2) of this administrative regulation

VOLUME 51, NUMBER 3– September 1, 2024

or other factor that bears upon the fitness of the individual to work in a position for which the job duties include access to or use of FTI.

Section 4. Challenges to Criminal History Record Information. An individual subject to a criminal background check required by KRS 194A.062(1) and this administrative regulation shall have the right to request and inspect his or her criminal history record and to request correction of any inaccurate information.

Section 5. Rehabilitation Review.

(1) A prospective or current cabinet employee found to have a disqualifying offense upon completion of the criminal background check shall be eligible for consideration of rehabilitation under an independent review process.

(2) A prospective or current cabinet employee may submit a written request for a rehabilitation review to the Office of Human Resource Management no later than fourteen (14) calendar days from the date of notice of a disqualifying offense issued pursuant to Section 2(4) of this administrative regulation.

(3) A current cabinet employee who requests a rehabilitation review may be retained on staff if the employee is assigned duties that do not include access to or use of FTI.

(4) The request for a rehabilitation review shall include the following information:

- (a) A written explanation of each disqualifying offense, including:
 1. A description of the events related to the disqualifying offense;
 2. The number of years since the occurrence of the disqualifying offense;
 3. The age of the offender at the time of the disqualifying offense;
 4. Evidence that the individual has pursued or achieved rehabilitation with regard to the disqualifying offense; and
 5. Any other circumstances surrounding the offense;

(b) Official documentation showing that all fines, including court-imposed fines or restitution, have been paid or documentation showing adherence to a payment schedule, if applicable;

(c) The date probation or parole was satisfactorily completed, if applicable; and

(d) Employment and character references, including any other evidence demonstrating the ability of the individual to perform the employment responsibilities and duties competently.

(5) A rehabilitation review shall be conducted by a committee of three (3) employees of the Office of Human Resource Management.

(6) The committee shall consider the information required under subsection (4) of this section, and shall also consider mitigating circumstances including:

(a) The amount of time that has elapsed since the disqualifying offense;

(b) The lack of a relationship between the disqualifying offense and the:

1. Position for which the prospective employee has applied; or
2. Cabinet employee's current position; and

(c) Evidence that the prospective or current cabinet employee has pursued or achieved rehabilitation with regard to the disqualifying offense.

(7) No later than thirty (30) calendar days from receipt of the written request for the rehabilitation review, the Office of Human Resource Management shall send the committee's determination on the rehabilitation waiver to the prospective or current employee.

(8) The prospective or current employee may appeal the results of a rehabilitation review to the Personnel Board in accordance with KRS 18A.095.

Section 6. Pardons and Expungement. An applicant or current employee who has received a pardon for a disqualifying offense or has had the record expunged may be employed in a position with job duties that include access to or use of FTI.

MICHELE BARNES, Executive Director

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: July 25, 2025

FILED WITH LRC: August 14, 2025 at 2:10 p.m.

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

on October 21, 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 October 14, 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 October 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: Jay Klein or Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes requirements for fingerprint-based state and national criminal background checks for prospective and current cabinet employees including contract staff whose job duties include access to or use of Federal Tax Information (FTI).

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with the fingerprint-based background check requirement established by IRS Publication 1075 (Rev. 11-2021) and KRS 194A.062.

(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 requirements for fingerprint-based state and national criminal background checks for prospective and current cabinet employees including contract staff whose job duties include access to or use of FTI.

(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 requirements for fingerprint-based state and national criminal background checks for prospective and current cabinet employees including contract staff whose job duties include access to or use of FTI.

(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 frequency of the background checks is revised from ten (10) years to five (5) years.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to meet the new requirement of IRS Publication 1075 (Rev. 11-2021) for a background check to be every five (5) years.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment revises the background check requirement from every ten (10) to every five (5) years.

(d) How the amendment will assist in the effective administration of the statutes: The amendment revises the background check requirement from every ten (10) to every five (5) years.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects prospective and current cabinet employees including contract staff whose job duties include access to or use of FTI and are therefore subject to fingerprint-based state and national background checks in accordance with IRS Publication 1075 (Rev. 11-2021) and KRS 194A.062.

(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: Prospective and current cabinet employees including contract staff will be subject to fingerprint-based state and national background checks in accordance with the IRS Publication 1075 (Rev. 11-2021) and KRS 194A.062.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The cabinet will absorb the cost of the fingerprint-based state and national background checks required by IRS Publication 1075 (Rev. 11-2021) and KRS 194A.062.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Determining the suitability of individuals who require access to FTI is a key factor in ensuring adequate information security. Moreover, this administrative regulation ensures the cabinet's compliance with current state and federal requirements governing the security of FTI.

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

(a) Initially: The cabinet estimates approximately 3,000 staff will be subject to fingerprint-based state and national criminal background checks, resulting in approximately \$73,575 in costs to the cabinet.

(b) On a continuing basis: Cabinet expenditures on a continuing basis are indeterminable but anticipated to be less than the costs incurred during the first year of implementation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding to be used for the implementation and enforcement of this administrative regulation is from State 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 cabinet will absorb costs associated with the required fingerprint checks.

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

(9) TIERING: Is tiering applied? Tiering is not applicable as compliance with this administrative regulation applies equally to all individuals or entities regulated by it.

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.062

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: This administrative regulation affects the Cabinet for Health and Family Services, Office of Human Resource Management, who will administer the requirements to prospective and current cabinet employees including contract staff whose job duties include access to or use of FTI and are therefore subject to fingerprint-based state and national background checks in accordance with IRS Publication 1075 (Rev. 11-2021) and KRS 194A.062.

(a) Estimate the following for the first year:

Expenditures: \$73,575

Revenues: None

Cost Savings: None

(b) How will expenditures, revenues, or cost savings differ in subsequent years? Subsequent years will have lower expenditures until the five year mark is reached again for employees and contract staff still employed since the first background checks. Due to attrition and a turnover rate of approximately 10%, the costs will even out in future years. New employees and contract staff cost is \$65.25 for the initial background check and the redetermination of existing staff is \$20.00 per background check.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): Because the Department of Kentucky State Police (KSP) charges \$25 for a criminal background check, including rap back, and approximately 300 cabinet staff and contractors are expected to submit to fingerprint checks during the first year, this administrative regulation is expected to generate approximately \$7,500 in revenue for KSP initially.

(a) Estimate the following for the first year:

Expenditures: The volume of fingerprint checks facilitated in accordance with this administrative regulation is indeterminable during subsequent years.

Revenues: None

Cost Savings: None

(b) How will expenditures, revenues, or cost savings differ in subsequent years? No change expected due to the turnover rate.

(4) Identify additional regulated entities not listed in questions (2) or (3): None.

(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: The cabinet will absorb costs associated with the required fingerprint checks.

(b) Methodology and resources used to determine the fiscal impact: Approximately 3,000 employees have access to FTI, and there is an estimated 10% turnover rate. Accordingly, 300 would have an initial background checks at the \$65.25 rate, and the remaining 2,700 at the \$20 redetermination rate per current employee. The cost of 300 new staff at \$65.25 is \$19,575. The cost of 2,700 existing employees at \$20 is \$54,000, added to \$19,575 totals \$73,575.

(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

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. IRS Publication 1075 (Rev. 11-2021), 26 C.F.R. 301.6103(p)(7)-1, 26 U.S.C. 6103.

(2) State compliance standards. KRS 194A.062

(3) Minimum or uniform standards contained in the federal mandate. IRS Publication 1075 (Rev. 11-2021) requires an FBI fingerprint check for any individual granted access to FTI. 26 C.F.R. 301.6103(p)(7)-1 allows the Internal Revenue Service (IRS) to terminate or suspend disclosure of returns and return information to any authorized recipient if the IRS determines that: (1) The authorized recipient has allowed an unauthorized inspection or disclosure of returns or return information and the authorized recipient has not taken adequate corrective action to prevent the recurrence of an unauthorized inspection or disclosure; or (2) The authorized recipient does not satisfactorily maintain the safeguards for protecting returns and return information, and has made no adequate plan to improve its system to maintain the safeguards satisfactorily. 26 U.S.C. 6103 pertains to the confidentiality and disclosure of returns and return information.

(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 than those required by 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 Medicaid Services
Division of Fiscal Management
(Amendment)

907 KAR 10:015. Payments for outpatient hospital services.

RELATES TO: KRS 205.520, 205.637, 216.380, 42 C.F.R. 400.203, 413.70, 413.75, 440.2, 440.20(a), 447.321, 42 U.S.C. 1395l(h), 1396r-8(a)(7)

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.560, 205.637(3), 205.6310, 205.8453, 42 U.S.C. 1396a, 1396b, 1396d

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, has the responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes the method for determining amounts payable by the Medicaid Program for outpatient hospital services.

Section 1. Definitions.

(1) "Critical access hospital" or "CAH" means a hospital meeting the licensure requirements established in 906 KAR 1:110 and KRS 216.380.

(2) "Department" means the Department for Medicaid Services or its designee.

(3) "Emergency medical condition" is defined by 42 U.S.C. 1395dd(e)(1).

(4) "Federal financial participation" is defined in 42 C.F.R. 400.203.

(5) "Finalized" means approved or final as determined by the Centers for Medicare and Medicaid Services (CMS).

(6) "Flat rate" means a set and final rate representing reimbursement in entirety with no subsequent cost settling.

(7) "Lock-in recipient" means a recipient enrolled in the department's lock-in program pursuant to 907 KAR 1:677.

(8) "Lock-in recipient's designated hospital" means the hospital designated to provide nonemergency care for a lock-in recipient pursuant to 907 KAR 1:677.

(9) "Nonemergency" means that a condition or situation does not require an emergency service pursuant to 42 C.F.R. 438.114[447.53].

(10) "Outpatient cost-to-charge ratio" means the ratio determined by dividing the costs reported on Supplemental Worksheet E-3, Part III, Page 12 column 2, line 27 of the cost report by the charges reported on column 2, line 20 of the same schedule.

(11) "Recipient" is defined by KRS 205.8451(9).

Section 2. In-State Outpatient Hospital Service Reimbursement.

(1)

(a) Except for critical access hospital services, outpatient hospital laboratory services, or a service referenced in subsection (6) of this section, the department shall reimburse on an interim basis for in-state outpatient hospital services at a facility specific outpatient cost-to-charge ratio based on the facility's most recently filed cost report.

(b) An outpatient cost-to-charge ratio shall be expressed as a percent of the hospital's charges.

(2) Except as established in subsection (6) of this section, a facility specific outpatient cost-to-charge ratio paid during the course of a hospital's fiscal year shall be designed to result in reimbursement, at the hospital's fiscal year end, equaling ninety-five (95) percent of a facility's total outpatient costs incurred during the hospital's fiscal year.

(3) Except as established in subsections (4) and (6) of this section:

(a) Upon reviewing an in-state outpatient hospital's as submitted cost report for the hospital's fiscal year, the department shall preliminarily settle reimbursement to the facility equal to ninety-five (95) percent of the facility's total outpatient costs, excluding laboratory services, incurred in the corresponding fiscal year; and

(b) Upon receiving and reviewing an in-state outpatient hospital's finalized cost report for the hospital's fiscal year, the department shall settle final reimbursement, excluding laboratory services, to the facility equal to ninety-five (95) percent of the facility's total outpatient costs incurred in the corresponding fiscal year.

(4)

(a) The department's total reimbursement for outpatient hospital services shall not exceed the aggregate limit established in 42 C.F.R. 447.321.

(b) If projections indicate for a given state fiscal year that reimbursing for outpatient hospital services at ninety-five (95) percent of costs would result in the department's total outpatient hospital service reimbursement exceeding the aggregate limit established in 42 C.F.R. 447.321, the department shall proportionately reduce the final outpatient hospital service reimbursement for each hospital to equal a percent of costs which shall result in the total outpatient hospital reimbursement equaling the aggregate limit established in 42 C.F.R. 447.321.

(5) In accordance with 42 U.S.C. 1396r-8(a)(7), a hospital shall include the corresponding healthcare common procedure coding (HCPC) code if billing a revenue code of 250 through 261 or 634 through 636 for an outpatient hospital service.

(6)

(a) Except for a critical access hospital, the department shall reimburse a flat rate of twenty-five (25) dollars for a screening of a lock-in recipient to determine if an emergency medical condition exists.

(b) A hospital shall use revenue code 451 to bill for a service referenced in paragraph (a) of this subsection.

(c) A service or reimbursement for a service referenced in paragraph (a) of this subsection, shall not be included:

1. With a hospital's costs for reimbursement purposes; and
2. In any cost settlement between the department and hospital.

(7) In accordance with 907 KAR 10:014:

(a) Except for a service referenced in subsection (6) of this section, the department shall not reimburse for a nonemergency service, other than a screening in accordance with 907 KAR 10:014, Section 2(6)(a), provided to a lock-in recipient if provided by a hospital other than the lock-in recipient's designated hospital.

(b) The department shall not reimburse for a nonemergency service provided to a lock-in recipient in an emergency department of a hospital.

Section 3. Out-of-State Outpatient Hospital Service Reimbursement. Excluding services provided in a critical access hospital and laboratory services, reimbursement for an outpatient hospital service provided by an out-of-state hospital shall be ninety-five (95) percent of the average in-state outpatient hospital cost-to-charge ratio.

Section 4. Critical Access Hospital Outpatient Service Reimbursement.

(1) The department shall reimburse for outpatient hospital services in a critical access hospital as established in 42 C.F.R. 413.70(b) through (d).

(2) A critical access hospital shall comply with the cost reporting requirements established in Section 6 of this administrative regulation.

Section 5. Outpatient Hospital Laboratory Service Reimbursement.

(1) The department shall reimburse for an in-state or out-of-state outpatient hospital laboratory service:

(a) At the Medicare-established technical component rate for the service in accordance with 907 KAR 1:028 if a Medicare-established component rate exists for the service; or

(b) By multiplying the facility's current outpatient cost-to-charge ratio by its billed laboratory charges if no Medicare rate exists for the service.

(2) Laboratory service reimbursement, in accordance with subsection (1) of this section, shall be:

(a) Final; and

VOLUME 51, NUMBER 3– September 1, 2024

(b) Not settled to cost.

(3) An outpatient laboratory hospital laboratory service shall be reimbursed in accordance with this section regardless of whether the service is performed in an emergency room setting or in a nonemergency room setting.

Section 6. Direct Graduate Medical Education Costs at In-State Hospitals with Graduate Medical Education Programs.

(1) If federal financial participation for outpatient direct graduate medical education (DGME) costs is not provided to the department, the department shall not reimburse eligible in-state hospitals for outpatient DGME costs.

(2) If federal financial participation for outpatient DGME costs is provided to the department, the department shall:

(a) Provide a supplemental outpatient DGME payment to in-state hospitals for the outpatient direct costs of a graduate medical education program approved by Medicare as established in this subsection.

1. Effective for the state fiscal year beginning July 1, 2024, the department shall make an annual outpatient DGME supplemental payment for the direct costs of graduate medical education incurred by in-state hospitals with a graduate medical education program approved by Medicare.

2. A supplemental DGME payment shall be made:

a. Separately from the per visit and cost settlement payment methodologies;

b. On an annual basis; and

c. Using the hospital's cost report period ending in the calendar year one (1) year prior to the beginning of the state fiscal year. For example, for the state fiscal year beginning July 1, 2024, the cost report period ending in calendar year 2023 shall be utilized.

(b) The annual supplemental DGME payment shall equal the difference between the supplemental DGME amount minus any DGME payments received through outpatient cost settlements and any outpatient DGME payments received from managed care organizations.

(c) The department shall determine a supplemental DGME amount equal to the product of:

1. Total DGME costs, obtained from Worksheet B, Part 1, Line 118, Columns 21 and 22 of the hospital's Medicare cost report; and

2. The hospital's Medicaid outpatient net revenue, including both fee-for-service and managed care, divided by net revenue from Medicaid, obtained from Worksheet S-10, line 2 of the hospital's Medicare cost report.

Section 7. Indirect Medical Education Payments at In-State Hospitals with Graduate Medical Education Programs.

(1) If federal financial participation for outpatient indirect medical education (IME) costs is not provided to the department, the department shall not reimburse eligible in-state hospitals for outpatient IME costs.

(2) If federal financial participation for outpatient IME costs is provided to the department, the department shall:

(a) As established in this subsection, provide a supplemental outpatient IME payment to a hospital that is owned or operated by a state university or a state university related party organization, with a state university affiliated graduate medical education program approved by Medicare.

(b) Effective for the state fiscal year beginning July 1, 2024, make an annual IME payment to state university teaching hospitals equal to:

1. The total of all outpatient hospital base payments received from fee-for-service Medicaid during the previous year multiplied by the sum of one (1) and the adjusted hospital specific IME factor determined in accordance with subparagraph 4.; plus

2. The total of all outpatient hospital base payments received from managed care organizations in the previous year multiplied by the sum of one (1) and the adjusted hospital specific IME factor in accordance with subparagraph 4., minus

3. IME payments, if any, included in the outpatient cost settlement.

4. The adjusted hospital-specific IME factor shall be calculated pursuant to 42 C.F.R. § 412.105(d), except that the count of FTE

residents reported on worksheet E Part A, Lines 10 and 11, Column 1 of the Medicare cost report shall be substituted for the numerator of the ratio of full-time equivalent residents to beds described in paragraph (d)(1) therein.

5. The annual calculation described in this subsection shall utilize the hospital's cost report period ending in the calendar year one (1) year prior to the beginning of the state fiscal year. For example, for the state fiscal year beginning July 1, 2024, the cost report period ending in calendar year 2023 shall be utilized.

Section 8. Cost Reporting Requirements.

(1) An in-state outpatient hospital participating in the Medicaid Program shall submit to the department a copy of the Medicare cost report it submits to CMS, an electronic cost report file (ECR), the Supplemental Medicaid Schedule KMAP-1, the Supplemental Medicaid Schedule KMAP-4 and the Supplemental Medicaid Schedule KMAP-6.

(a) A cost report shall be submitted:

1. For the fiscal year used by the hospital; and
2. Within five (5) months after the close of the hospital's fiscal year.

(b) Except as provided in subparagraph 1 or 2 of this paragraph, the department shall not grant a cost report submittal extension.

1. The department shall grant an extension if an extension has been granted by Medicare. If an extension has been granted by Medicare, when the facility submits its cost report to Medicare, it shall simultaneously submit a copy of the cost report to the department.

2. If a catastrophic circumstance exists, as determined by the department (for example flood, fire, or other equivalent occurrence), the department shall grant a thirty (30) day extension.

(2) If a cost report submittal date lapses and no extension has been granted, the department shall immediately suspend all payment to the hospital until a complete cost report is received.

(3) If a cost report indicates payment is due by a hospital to the department, the hospital shall submit the amount due or submit a payment plan request with the cost report.

(4) If a cost report indicates a payment is due by the hospital to the department and the hospital fails to remit the amount due or request a payment plan, the department shall suspend future payment to the hospital until the hospital remits the payment or submits a request for a payment plan.

(5) An estimated payment shall not be considered payment-in-full until a final determination of cost has been made by the department.

(6) A cost report submitted by a hospital to the department shall be subject to departmental audit and review.

(7) Within seventy (70) days of receipt from the Medicare intermediary, a hospital shall submit to the department a printed copy of the final Medicare-audited cost report including adjustments.

(8)

(a) If it is determined that an additional payment is due by a hospital after a final determination of cost has been made by the department, the additional payment shall be due by a hospital to the department within sixty (60) days after notification.

(b) If a hospital does not submit the additional payment within sixty (60) days, the department shall withhold future payment to the hospital until the department has collected in full the amount owed by the hospital to the department.

Section 9.[Section–7.] Federal Financial Participation. A provision established in this administrative regulation shall be null and void if the Centers for Medicare and Medicaid Services:

- (1) Denies federal financial participation for the provision; or
- (2) Disapproves the provision.

Section 10.[Section–8.] Appeals. A hospital may appeal a decision by the department regarding the application of this administrative regulation in accordance with 907 KAR 1:671.

Section 11.[Section–9.] Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Supplemental Worksheet E-3, Part III, Page 12", May 2004 edition[²];

VOLUME 51, NUMBER 3– September 1, 2024

(b) "Supplemental Medicaid Schedule KMAP-1", January 2007 edition;

(c) "Supplemental Medicaid Schedule KMAP-4", January 2007 edition; and

(d) "Supplemental Medicaid Schedule KMAP-6", January 2007 edition.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m., or online, <https://www.chfs.ky.gov/agencies/dms/Pages/default.aspx>.

LISA D. LEE, Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: August 8, 2024

FILED WITH LRC: August 14, 2024 at 2:10 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on October 21, 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 October 14, 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 October 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: Jonathan Scott or Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes payment requirements and processes for outpatient services provided within a hospital setting.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish requirements and processes for reimbursing outpatient hospital services.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by providing processes to reimburse for hospital outpatient services.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the authorizing statutes by establishing payment requirements for outpatient services.

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

(a) How the amendment will change this existing administrative regulation: The amendments to this administrative regulation establish direct and indirect graduate medical education reimbursement requirements. A process – requiring federal approval – is established to allow for hospitals to receive reimbursement for direct costs of graduate medical education expenses incurred by in-state hospitals with graduate medical education programs. A separate process establishes a method for in-state hospitals to receive a supplemental outpatient payment for indirect medical education costs. A requirement for both processes is established to utilize a cost report that is for the period that is one year prior to the state fiscal year for which a payment is provided.

(b) The necessity of the amendment to this administrative regulation: The amendments serve to expand payments available to hospitals who provide graduate medical education programs. These amendments are for outpatient services and are appropriately located in this administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by establishing clear processes to seek federal approval and establish reimbursement procedures for hospitals that are providing this type of education.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the authorizing statutes by allowing hospitals to seek reimbursement for costs associated with providing medical education.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are approximately 93 hospitals in Kentucky who may be eligible for one of these payments.

(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: Hospitals with the appropriate educational program will need to utilize the processes in the regulation to apply for reimbursement.

(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 entity. The Medicaid program will reimburse if federal approval is granted and the hospital demonstrates costs as established in the administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Hospitals will be able to provide graduate education programs on a more sustainable basis. This will benefit the hospital in having additional providers in the community.

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

(a) Initially: DMS does not anticipate additional costs as a result of this amendment. The amendment will serve to address a cumulative \$4.4 million in direct and indirect costs in training prospective medical professionals

(b) On a continuing basis: DMS continues to not anticipate additional costs as a result of this amendment. The amendment will serve to address a cumulative \$4.4 million in direct and indirect costs in training prospective medical professionals

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

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

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

(9) TIERING: Is tiering applied? Tiering is not applied as the policies apply equally to the regulated entities.

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.030(2), 194A.050(1), 205.520(3), 205.560, 205.637(3), 205.6310, 205.8453, 42 U.S.C. 1396a, 1396b, 1396d

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: The Department for Medicaid Services, Division of Health Policy

(a) Estimate the following for the first year:

Expenditures: DMS does not anticipate additional costs as a result of this amendment. The amendment will serve to address a cumulative \$4.4 million in direct and indirect costs in training prospective medical professionals

Revenues: This administrative regulation is not expected to generate revenue to DMS.

Cost Savings: There are no expected cost savings to DMS.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? DMS continues to not anticipate additional costs as a result of this amendment. The amendment will serve to address a cumulative \$4.4 million in direct and indirect costs in training prospective medical professionals.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): N/A this regulation will not affect local entities.

(a) Estimate the following for the first year:

Expenditures: N/A there is no impact on local entities

Revenues: N/A there is no impact on local entities

Cost Savings: N/A there is no impact on local entities

(b) How will expenditures, revenues, or cost savings differ in subsequent years? The department does not anticipate that this administrative regulation will have a fiscal impact on local entities.

(4) Identify additional regulated entities not listed in questions (2) or (3): Hospitals that provide graduate medical education residency slots.

(a) Estimate the following for the first year:

Expenditures: N/A - the regulation will address additional uncompensated costs for these entities.

Revenues: The 93 identified hospitals will collectively receive reimbursement to address a cumulative \$4.4 million in direct and indirect costs in training prospective medical professionals.

Cost Savings: The 93 identified hospitals will collectively receive reimbursement to address a cumulative \$4.4 million in direct and indirect costs in training prospective medical professionals.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? The Department anticipates that this amendment will continue to address direct and indirect hospital training costs for training prospective medical professionals.

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: The amendment will serve to address a cumulative \$4.4 million in direct and indirect costs in training prospective medical professionals

(b) Methodology and resources used to determine the fiscal impact: The department has completed an actuarial analysis and fiscal impact statement when designing and evaluating needs within the graduate medical education space. This proposal has also been evaluated by some impacted hospitals and third-party consultants.

(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 – as defined by KRS 13A.010 – on regulated entities.

(b) The methodology and resources used to reach this conclusion: The department has completed an actuarial analysis and fiscal impact statement when designing and evaluating needs within the graduate medical education space. This proposal has also been evaluated by some impacted hospitals and third-party consultants.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 42 C.F.R. 413.75

(2) State compliance standards. KRS 205.520(3) states: "Further, it is the policy of the Commonwealth to take advantage of all federal funds that may be available for medical assistance. To qualify for federal funds the secretary for health and family services may by regulation comply with any requirement that may be imposed or opportunity that may be presented by federal law. Nothing in KRS 205.510 to 205.630 is intended to limit the secretary's power in this respect."

(3) Minimum or uniform standards contained in the federal mandate. 42C.F.R. 413.75 establishes general requirements for direct graduate medical education payments.

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

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

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

907 KAR 20:035. Spousal impoverishment and nursing facility requirements for Medicaid.

RELATES TO: KRS 194A.505, 205.520, 205.619, 304.14-640, 304.14-642, 38 U.S.C. 5503

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 42 C.F.R. Part 435, 42 U.S.C. 1396a, 1396d, 1396r-5

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services has the responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with a requirement that may be imposed, or opportunity presented, by federal law to qualify for federal Medicaid funds. This administrative regulation establishes spousal impoverishment and nursing facility requirements for Medicaid eligibility determinations for individuals for whom resources are considered for Medicaid eligibility purposes.

Section 1. Resource Assessment.

(1) Pursuant to 42 U.S.C. 1396r-5(c)(1)(B), an assessment of the joint resources of an institutionalized spouse and the community spouse shall be made:

(a) Upon request of either spouse at the beginning of a continuous period of institutionalization of the institutionalized spouse; and

(b) Upon receipt of relevant documentation of resources.

(2) Resources that have been protected from estate recovery due to a long-term care partnership insurance policy shall be excluded from the eligibility determination by the eligibility worker at the time of application.

(3) An assessment shall contain the total value of the joint resources and computation of the spousal share.

(4) The department shall complete the assessment within forty-five (45) days following submission of complete documentation or verification.

(5) Upon completion of a resource assessment, each spouse shall:

(a) Receive a copy of the assessment; and

(b) Be notified that the right of appeal of the assessment shall exist at the time the institutionalized spouse applies for Medicaid.

Section 2. Protection of Income and Resources of the Couple for Maintenance of the Community Spouse.

(1) The income provisions established in this subsection shall apply for an individual beginning a continuous period of institutionalization on or after September 30, 1989.

(a) Except as provided in paragraph (b) of this subsection, during a month in which an institutionalized spouse is in the institution, income of the community spouse shall not be deemed available to the institutionalized spouse.

(b) In determining the income of an institutionalized spouse or community spouse, after the institutionalized spouse has been determined or redetermined to be eligible for Medicaid, the provisions of 42 U.S.C. 1396r-5(b)(2) shall apply.

(2) The resource provisions established in this subsection shall apply to an individual beginning a continuous period of institutionalization on or after September 30, 1989.

VOLUME 51, NUMBER 3– September 1, 2024

(a) Except as provided in subsection (4)(b) of this section, in calculating the resources of an institutionalized spouse at the time of an initial eligibility determination for a benefit under Medicaid, the resources held by either the institutionalized spouse, community spouse, or both, shall be considered to be available to the institutionalized spouse.

(b) The following protected amounts shall be deducted from a couple's combined countable resources at the time of the determination of initial eligibility of the institutionalized spouse:

1. The greater amount of:

a. The spousal share which shall not exceed a maximum of \$60,000 to be increased for each calendar year in accordance with 42 U.S.C. 1396r-5(g); or

b. The state resource standard; and

2.

a. If applicable, an additional amount transferred under a court support order; or

b. If applicable, an additional amount designated by a hearing officer.

(c) The institutionalized spouse shall not be ineligible by reason of resources determined under paragraphs (a) and (b) of this subsection to be available for the cost of care in the following circumstances:

1. The institutionalized spouse has assigned to the department his or her right to support from the community spouse;

2.

a. The institutionalized spouse lacks the ability to execute an assignment due to physical or mental impairment; and

b. The state has the right to bring a support proceeding against a community spouse without the assignment; or

3. The department determines that denial of eligibility would work an undue hardship.

(d) After eligibility for benefits is established for the individual:

1. During the continuous period in which an institutionalized spouse is in an institution and after the month in which an institutionalized spouse is determined to be eligible for a Medicaid benefit, the resources of the community spouse shall not be deemed available to the institutionalized spouse; and

2. Resources of the institutionalized spouse protected for the needs of the community spouse shall be considered available to the institutionalized spouse if the resources are not transferred to the community spouse within six (6) months of the initial eligibility determination.

(e) The equity value of an automobile in excess of the limits established by 907 KAR 20:025 shall not be included as a countable resource.

(3) The provisions established in this subsection shall apply with regard to protecting income for a community spouse.

(a) After an institutionalized spouse is determined or redetermined to be eligible for Medicaid, in determining the amount of the spouse's income that is to be applied monthly to payment for the costs of care in the institution, there shall be deducted from the spouse's monthly income the following amounts in the following order:

1. A personal needs allowance of ~~sixty (60)~~~~forty (40)~~ dollars plus a mandatory withholding from income, including a mandatory payroll deduction that is a condition of employment and federal, state, and local taxes that the government requires the payer to deduct before payment is made to the payee;

2. A community spouse monthly income allowance to the extent income of the institutionalized spouse is made available to, or for the benefit of, the community spouse;

3. A family allowance determined in accordance with the definition of other family member's maintenance standard; and

4. An amount for incurred expenses for medical or remedial care for the institutionalized spouse.

(b)

1. The community spouse income allowance shall be the sum of the standard maintenance amount and the excess shelter allowance, not to exceed the community spouse maintenance standard.

2. The community spouse maintenance standard shall be set at \$1,500 per month, to be increased for each calendar year in accordance with 42 U.S.C. 1396r-5(g).

(c) If a court has entered an order against an institutionalized spouse for monthly income for the support of the community spouse, the community spouse income allowance for the spouse shall not be less than the amount ordered.

(4) The provisions established in this subsection shall apply regarding a transfer of resources from an institutionalized spouse.

(a)

1. An institutionalized spouse may, without regard to the prohibition against disposal of assets for less than fair market value, transfer to the community spouse, or to another for the sole benefit of the community spouse, an amount equal to the spousal protected resource amount to the extent the resources of the institutionalized spouse are transferred to, or for the sole benefit of, the community spouse.

2. The transfer shall be made as soon as practicable after the initial determination of eligibility, taking into account the time necessary to obtain a court order under paragraph (c) of this subsection.

(b)

1. The spousal protected resource amount shall be the greater of:

a. The spousal share which shall not exceed a maximum of \$60,000 to be increased for each calendar year in accordance with 42 U.S.C. 1396r-5(g); or

b. The state spousal resource standard.

2. The state spousal resource standard shall be set at \$20,000.

3. For an individual, the spousal protected resource amount may be a higher amount established by a hearing officer or a higher amount transferred under a court order as specified in paragraph (c) of this subsection.

(c) If a court has entered an order against an institutionalized spouse for the support of a community spouse, the prohibition against disposal of assets for less than fair market value shall not apply to the amount of resources transferred pursuant to the order for the support of the spouse.

(5) Except for a transfer of resources to the community spouse as specified in subsection (4) of this section, the transfer of resource policies established by 907 KAR 20:030 shall apply.

(6)

(a) The department shall send the notice specified in paragraph (b) of this subsection to both spouses upon a:

1. Determination of eligibility for Medicaid of an institutionalized spouse; or

2. Request by:

a. The institutionalized spouse;

b. The community spouse; or

c. A representative acting on behalf of either spouse.

(b) The notice shall state the:

1. Amount of the community spouse monthly income allowance;

2. Amount of a family allowance, if any;

3. Method of computing the amount of the community spouse resources allowance; and

4. Spouse's right to an administrative hearing in accordance with 907 KAR20:060.

(7)

(a) Both the institutionalized spouse and community spouse shall be entitled to an administrative hearing in accordance with 907 KAR 20:060 if the spouse is dissatisfied with the action of the agency including determination of the following:

1. The community spouse monthly income allowance;

2. The amount of monthly income determined to be otherwise available to the community spouse;

3. The attribution of resources at the time of the initial eligibility determination; or

4. The determination of the community spouse resource allowance.

(b) If either the institutionalized spouse or community spouse establishes during the administrative hearing that the community

VOLUME 51, NUMBER 3– September 1, 2024

spouse needs income above the level otherwise provided by the monthly maintenance needs allowance, due to an exceptional circumstance resulting in significant financial duress, an amount adequate to provide the necessary additional income shall be substituted for the monthly maintenance needs allowance.

(c) If either spouse established during the hearing process that the community spouse resource allowance, in relation to the amount of income generated by an allowance, is inadequate to raise the community spouse's income to the monthly maintenance needs allowance, there shall be substituted for the community spouse resource allowance an amount adequate to provide the monthly maintenance needs allowance.

Section 3. Specified Individuals in Nursing Facilities. For an individual who is aged, blind, or has a disability and who is in a medical institution or nursing facility but does not have a community spouse, the requirements established in this section with respect to income limitations and treatment of income shall apply.

(1)

(a) In determining eligibility, the appropriate medically needy standard or special income level, disregards, and exclusions from income shall be used.

(b) In determining patient liability for the cost of institutional care, gross income shall be used as provided in subsections (2) and (3) of this section.

(2)

(a) Income protected for basic maintenance shall be sixty (60)[~~forty (40)~~] dollars monthly plus mandatory withholdings.

(b) Mandatory withholdings shall:

1. Include minimum state and federal taxes; and

2. Not include court-ordered child support, alimony, or similar payment resulting from an action by the recipient.

(3) An amount excluded under a plan to achieve self-support, as an impairment related work expense, or a blind work expense (BWE) shall be considered an increased personal needs allowance for a Medicaid recipient except a recipient for whom a quarterly spenddown process as established in 907 KAR 20:020 is applicable.

(4) Income in excess of the amount protected for basic maintenance shall be applied to the cost of care except as provided in this subsection.

(a) Available income in excess of the basic maintenance allowance shall be first conserved as needed to provide for the needs of a minor child up to the appropriate family size amount from the scale as established by 907 KAR 20:020, Section 1(1).

(b) Remaining available income shall be applied to the incurred costs of medical and remedial care that are not subject to payment by a third party (except that the incurred costs may be reimbursed under another public program of the state or political subdivision of the state), including Medicare and health insurance premiums or medical care recognized under state law but not covered under the state's Medicaid plan.

(5) The basic maintenance standard allowed an individual during the month of entrance into or exit from the nursing facility shall take into account the home maintenance costs.

(6) If an individual loses eligibility for a supplementary payment due to entrance into a participating nursing facility and the supplementary payment is not discontinued on a timely basis, the amount of an overpayment shall be considered as available income to offset the cost of care to the Medicaid Program.

(7)

(a) An SSI benefit payment, mandatory state supplement payment, or optional state supplement payment received by a specified institutionalized Medicaid eligible individual in accordance with 42 U.S.C. 1382(e)(1)(G) shall be excluded from consideration as either income or a resource.

(b) The payment shall not be used in the posteligibility process to increase the patient liability.

(8)

(a) Ninety (90) dollars of Veterans Affairs benefits received by a veteran or the spouse of a veteran shall be excluded from consideration as income.

(b) The ninety (90) dollars shall not be counted in the eligibility or the posteligibility calculation.

(9) Veterans Affairs payments for unmet medical expenses and aid and attendance shall:

(a) Be excluded in a Medicaid eligibility determination for a veteran or the spouse of a veteran residing in a nursing facility;

(b) Be excluded in the posteligibility determination for a veteran or the spouse of a veteran residing in a nonstate-operated nursing facility; and

(c) Not be excluded in the posteligibility determination process for a veteran or the spouse of a veteran residing in a state-operated nursing facility.

(10) Income placed in a qualifying income trust established in accordance with 42 U.S.C. 1396p(d)(4) and 907 KAR 20:030, Section 3(5), shall be counted in the posteligibility determination.

Section 4. Special Needs Contributions for Institutionalized Individuals.

(1) A voluntary payment made by a relative or other party on behalf of a nursing facility resident or patient shall not be considered as available income if made to obtain a special privilege, service, or item not covered by the Medicaid Program.

(2) A special service or item shall include television or telephone service, private room or bath, or a private duty nursing service.

Section 5. Applicability.

(1) The provisions and requirements established in this administrative regulation shall not apply to an individual whose Medicaid eligibility is determined:

(a) Using the modified adjusted gross income standard pursuant to 907 KAR 20:100; or

(b) Pursuant to 907 KAR 20:075.

(2) Resources shall not be considered for eligibility purposes for an individual:

(a) Whose Medicaid eligibility is determined using the modified adjusted gross income standard pursuant to 907 KAR 20:100; or

(b) Between the age of nineteen (19) and twenty-six (26) years:

1. Who formerly was in foster care;

2. Who aged out of foster care while receiving Medicaid coverage; and

3. For whom the Medicaid eligibility standards are established in 907 KAR 20:075.

LISA D. LEE, Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: August 5, 2024

FILED WITH LRC: August 14, 2024 at 2:10 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on October 21, 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 October 14, 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 October 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: Jonathan Scott or Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes spousal impoverishment and nursing facility requirements for Medicaid eligibility determinations for individuals for whom resources are considered for Medicaid eligibility purposes.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish spousal impoverishment and nursing facility requirements for Medicaid eligibility determinations for individuals for whom resources are considered for Medicaid eligibility purposes.

(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 spousal impoverishment and nursing facility requirements for Medicaid eligibility determinations for individuals for whom resources are considered for Medicaid eligibility purposes.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the authorizing statutes by establishing spousal impoverishment and nursing facility requirements for Medicaid eligibility determinations for individuals for whom resources are considered for Medicaid eligibility purposes.

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

(a) How the amendment will change this existing administrative regulation: The amendments to this regulation updates the personal needs allowance to sixty (60) dollars. This is an increase from the original provision of forty (40) dollars.

(b) The necessity of the amendment to this administrative regulation: The amendments serve to reduce the amount of the community spouse's income that is to be applied monthly to payment for the costs of care of an institutionalized spouse. This change is required by HB 6 of the 2024 regular session (Acts Ch. 175). The 2024 budget established a new base rate for nursing facilities that includes the enhanced personal needs allowance. As a result, it is appropriate to include the noncodified budget direction in a permanent administrative regulation amendment.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by implementing the updated personal needs allowance amount as required by HB 6 of the 2024 regular session.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the authorizing statutes by implementing the updated personal needs allowance amount as required by HB 6 of the 2024 regular session.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are 291 nursing provider types enrolled in the Medicaid provider type that may be affected by this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Facilities will need to facilitate an additional twenty dollars in personal needs allowance for married individuals. The funding is provided by the state budget.

(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 entity. The state budget assumes the additional cost to the facilities as a result of this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Entities will benefit from having recipients with a higher personal needs budget, which can help enhance the health of existing patients.

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

(a) Initially: The state budget provided \$3,775,000 in each fiscal year to increase the personal needs allowance.

(b) On a continuing basis: On a continuing basis, the personal needs allowance funding will continue through the 2026 state fiscal

year. If the personal needs allowance is not continued to be funded by the legislature, it will cost the Medicaid program \$3.7 million per year.

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

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

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

(9) TIERING: Is tiering applied? Tiering is not applied as the policies apply equally to the regulated entities.

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.505, 205.520, 205.619, 304.14-640, 304.14-642, 38 U.S.C. 5503

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: The Department for Medicaid Services, Division of Health Policy

(a) Estimate the following for the first year:

Expenditures: The department anticipates \$3.7 million in expenditures in each fiscal year, through fiscal year 2026. This was provided by HB 6.

Revenues: This administrative regulation is not expected to generate revenue.

Cost Savings: There are no expected cost savings

(b) How will expenditures, revenues, or cost savings differ in subsequent years? DMS continues to estimate a \$3.7 million increase that will need to be funded by the legislature following fiscal year 2026.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): N/A this regulation will not affect local entities.

(a) Estimate the following for the first year:

Expenditures: N/A there is no impact on local entities

Revenues: N/A there is no impact on local entities

Cost Savings: N/A there is no impact on local entities

(b) How will expenditures, revenues, or cost savings differ in subsequent years? The department does not anticipate that this administrative regulation will have a fiscal impact on local entities.

(4) Identify additional regulated entities not listed in questions (2) or (3): The department has not identified any additional regulated entities.

(a) Estimate the following for the first year:

Expenditures: N/A - the department has not identified any additional regulated entities.

Revenues: N/A - the department has not identified any additional regulated entities.

Cost Savings: N/A - the department has not identified any additional regulated entities.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? N/A - the department has not identified any additional regulated entities.

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: This administrative regulation is anticipated to have an annual impact of \$3.7 million that will need to be funded going forward.

(b) Methodology and resources used to determine the fiscal impact: The department has completed an actuarial analysis and fiscal impact statement when reviewing the proposed legislation in the 2024 HB 6 which includes the change to this personal needs allowance.

(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 – as defined by KRS 13A.010 – on regulated entities.

(b) The methodology and resources used to reach this conclusion: An actuarial analysis of this provision as well as other research into nursing home rate rebasing was conducted as part of the state budget process. This amendment does not establish costs to regulated entities.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 42C.F.R. Part 483.

(2) State compliance standards. KRS 205.520(3) states: "Further, it is the policy of the Commonwealth to take advantage of all federal funds that may be available for medical assistance. To qualify for federal funds the secretary for health and family services may by regulation comply with any requirement that may be imposed or opportunity that may be presented by federal law. Nothing in KRS 205.510 to 205.630 is intended to limit the secretary's power in this respect."

(3) Minimum or uniform standards contained in the federal mandate. 42C.F.R. Part 483 establishes general requirements for states to follow when regulating nursing homes and long-term care facilities.

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

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

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Family Support
(Amendment)

921 KAR 3:030. Application process.

RELATES TO: KRS 116.048, [205.2005,–]7 C.F.R. 273.2, 7 U.S.C. 2020(e)(2)(B), 42 U.S.C. 2000d, 52 U.S.C. 20506

STATUTORY AUTHORITY: KRS [116.048(1),–]194A.010(2), 194A.050(1), 7 C.F.R. 271.4, 7 C.F.R. 273.2(i), 7 U.S.C. 2011-2029

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.010(2) requires the Cabinet for Health and Family Services to administer income-supplement programs that protect, develop, preserve, and maintain families and children in the Commonwealth. KRS 194A.050(1) requires the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to implement programs mandated by federal law or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. 7 U.S.C. 2011 to 2029 and 7 C.F.R. 271.4 authorize the cabinet to administer a Supplemental Nutrition Assistance Program (SNAP) and prescribe the manner in which the program shall be implemented. 7 U.S.C. 2020(e)(2)(B) requires the cabinet to develop a uniform application process. KRS 116.048(1) designates the cabinet as a voter registration agency in accordance with 52 U.S.C. 20506. This administrative regulation establishes the application and the voter registration processes used by the cabinet in the administration of the SNAP.

Section 1. Right to Apply or Reapply.

(1) An individual shall have the right to apply or reapply for SNAP benefits on the same day that the household first contacts the Department for Community Based Services (DCBS) office during office hours.

(2) The cabinet shall make the application process readily accessible to a household.

(3) In accordance with the procedures established in 920 KAR 1:070, interpreter services shall be provided for a person who is:

(a) Deaf; or

(b) Hard of hearing.

(4) In accordance with 42 U.S.C. 2000d, interpreter services shall be provided for a person who is Limited English Proficient.

(5) An application shall be considered filed if:

(a) A FS-1, Application for SNAP, containing the name, address, and signature of the applicant is received by a DCBS office; or

(b) Application for benefits and another public assistance program is made in accordance with 921 KAR 2:040 and Section 6 of this administrative regulation.

(6) An application shall be processed after the:

(a) Applicant or representative is interviewed;

(b) Required information and verification for the application is provided to the DCBS office; and

(c) Application and all related documents are received by the DCBS office, in accordance with Section 3(1) of this administrative regulation.

Section 2. Who May Sign an Application. An application for SNAP shall be signed by:

(1) An adult or emancipated child who is a responsible member of the household; or

(2) The household's authorized representative.

Section 3. Where an Application is Filed.

(1) Except as provided in subsection (2) of this section, an application shall be filed in any DCBS office or online at benefind.ky.gov.

(2) A concurrent application for Supplemental Security Income (SSI) and SNAP shall be filed in the service area office of the Social Security Administration.

Section 4. Prompt Action on an Application. The cabinet shall provide an eligible household that completes the initial SNAP application process an opportunity to participate as soon as possible. The cabinet shall not provide an opportunity to participate later than:

(1) Thirty (30) days after the application is filed for a household ineligible for expedited services; or

(2) The fifth calendar day following the date an application is filed for a household eligible for expedited services.

Section 5. Expedited Service. The cabinet shall provide expedited services to a household that is eligible in accordance with 7 C.F.R. 273.2(i).

Section 6. Public Assistance Application Process.

(1) A household applying for Kentucky Transitional Assistance Program (KTAP) shall be allowed to simultaneously apply for SNAP benefits. A single interview shall be conducted for both programs.

(2) Time standards established in Section 4 of this administrative regulation shall not apply to a public assistance application. A public assistance application shall be governed by the time standards established in 921 KAR 2:035, Section 3.

(3) A household in which every member receives, or is authorized to receive, SSI shall be considered categorically eligible unless:

(a) The entire household is institutionalized;

(b) ~~A household member is ineligible due to a drug-related felony conviction and does not meet the criteria to remain eligible established in KRS 205.2005;~~

~~[(e)] A household member is disqualified due to an intentional program violation, defined in 921 KAR 3:010;~~

~~[(c)] [(4)] The head of the household is disqualified for failure to comply with the work requirements established in 921 KAR 3:027; or~~

~~[(d)] [(e)] The entire household is disqualified due to lottery or gambling winnings pursuant to 921 KAR 3:020, Section 7.~~

(4) A household in which any member receives, or is authorized to receive cash, in-kind, or other benefits funded under the Temporary Assistance for Needy Families (TANF) Block Grant shall be considered categorically eligible unless:

(a) The entire household is institutionalized;

VOLUME 51, NUMBER 3– September 1, 2024

(b) ~~[A household member is ineligible due to a drug-related felony conviction and does not meet the criteria to remain eligible established in KRS 205.2005;]~~

~~[(e)]~~ A household member is disqualified due to an intentional program violation, defined in 921 KAR 3:010;

~~[(d)]~~ The head of household is disqualified for failure to comply with the work requirements established in 921 KAR 3:027; or

~~[(e)]~~ The entire household is disqualified due to lottery or gambling winnings pursuant to 921 KAR 3:020, Section 7.

(5) If verified by the program, a categorically eligible household shall not be required to verify the following eligibility factors:

- (a) Resources;
- (b) Gross and net income;
- (c) Social Security number;
- (d) Sponsored immigrant information; and
- (e) Residency.

(6) A household that receives a TANF information sheet at application, which makes the household aware of other programs for which the household may qualify, shall be considered expanded categorically eligible.

(7) If verified by the program, an expanded categorically eligible household shall not be required to verify the following factors:

- (a) Resources;
- (b) Social Security number;
- (c) Sponsored immigrant information; and
- (d) Residency.

Section 7. Joint SSI and SNAP Application Process. A household in which every member is an applicant or recipient of SSI shall be allowed to simultaneously apply for both SSI and SNAP in accordance with Section 3(2) of this administrative regulation.

Section 8. Voter Registration.

(1) In accordance with KRS 116.048 and 52 U.S.C. 20506, a SNAP applicant or recipient shall be provided the opportunity to complete an application to register to vote or update current voter registration if the applicant or recipient is:

- (a) Age eighteen (18) or over; and
- (b) Not registered to vote or not registered to vote at his or her current address.

(2) PAFS-706, Voter Registration Rights and Declination, shall be utilized to document a SNAP applicant or recipient's choice to:

- (a) Register to vote;
- (b) Not register to vote; or
- (c) Indicate that they are currently registered to vote.

(3) A voter registration application shall be completed if a SNAP applicant or recipient wants to:

- (a) Register to vote; or
- (b) Update voter registration to provide a new address.

(4) The voter registration process shall not apply to an individual not included in the assistance application, such as an authorized representative.

(5) All information utilized in the voter registration process shall remain confidential and be used only for voter registration purposes.

(6) The State Board of Elections shall approve the application to register to vote and send a confirmation or denial notice to the voter registration applicant.

Section 9. Incorporation by Reference.

(1) The following material is incorporated by reference:

- (a) "FS-1, Application for SNAP", 8/24[4/24]; and
- (b) "PAFS-706, Voter Registration Rights and Declination", 1/21.

(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/dcbcs/Pages/default.aspx>.

LESA DENNIS, Commissioner
ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: August 8, 2024

FILED WITH LRC: August 14, 2024 at 2:10 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on October 21, 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 October 14, 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 October 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: Jessica Hinkle or Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the application and the voter registration processes used by the Cabinet for Health and Family Services, Department for Community Based Services, in the administration of the Supplemental Nutrition Assistance Program (SNAP).

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish uniform application standards for SNAP.

(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 an application process for SNAP.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the administration of the statutes by establishing procedures used in the administration of SNAP.

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

(a) How the amendment will change this existing administrative regulation: This amendment changes the incorporated form, FS-1, Application for SNAP, to replace the federal nondiscrimination statement with the updated federally required statement and to add a question related to convictions. The amendment deletes language related to drug felonies.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to update the nondiscrimination statement that states are federally required to include on the application for SNAP. The amendment adds a question to the FS-1 form in order to indicate if an applicant resides in a drug and alcohol addiction treatment center to assist staff in assigning the application to a specialist, removes reference to individuals with a drug felony consistent with KRS 205.2005, and adds internet utility expenses, which is now an allowable shelter deduction. The amendment removes language in Section 6(4)(b) stating that drug felons are disqualified from receiving SNAP as that is no longer accurate. The amendment will meet current federal requirements on providing nondiscrimination information to applicants.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment utilizes the current nondiscrimination statement required by the federal government.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will allow the agency to be in compliance with federal regulations and is consistent with Kentucky statutes.

VOLUME 51, NUMBER 3– September 1, 2024

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The application for SNAP, the FS-1, is being amended to update the federal nondiscrimination statement and make updates related to drug treatment facilities and felonies. All SNAP applicants will use the amended form.

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

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

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no cost to complete a SNAP application.

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

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

(a) Initially: No new costs are associated with the amendment.

(b) On a continuing basis: No ongoing costs are associated with the amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: SNAP benefits are 100% federally funded. Administrative functions are funded at a 50% state and 50% federal match rate. The funding has been appropriated in the current enacted budget, and the form will continue to be printed and used as in previous years.

(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 amendment.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: There are no fees established by this administrative regulation or amendment.

(9) TIERING: Is tiering applied? Tiering is not applied, as the amendment will be enforced statewide.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? The amendment will not cause changes in expenditures, revenue, or savings, as the amended form will be utilized as it is currently.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): This administrative regulation does not affect local entities.

(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 is expected.

(4) Identify additional regulated entities not listed in questions (2) or (3): The amendment will not affect any other entities.

(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: No fiscal impact is anticipated as the amendment only changes a form already utilized for SNAP applications.

(b) Methodology and resources used to determine the fiscal impact: The amendment has no fiscal impact as it only changes language on a form already being utilized and makes other updates conforming with state or federal law.

(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 no major economic impact.

(b) The methodology and resources used to reach this conclusion: The amendment only revises the incorporated SNAP application form and makes other conforming, not substantial changes.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 7 C.F.R. 271.2, 273.1, 273.2, 273.4, 273.5, 273.10, 273.11, 273.12, 273.14, 274, 280.1, 7 U.S.C. 2014, 2015, 42 U.S.C. 5122, 5179

(2) State compliance standards. KRS 194A.010(2) and 194A.050(1)

(3) Minimum or uniform standards contained in the federal mandate. The provisions of the administrative regulation comply with the federal mandate.

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation does not impose stricter, 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. Justification for the imposition of a stricter standard, or additional or different responsibilities or requirements, 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. KRS 116.048, 194A.010(2), 194A.050(1), 7 C.F.R. 271.4, 7 C.F.R. 273.2(i), 7 U.S.C. 2011-2029

(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 the promulgating agency.

(a) Estimate the following for the first year:

Expenditures: None.

Revenues: None.

Cost Savings: None.

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

922 KAR 1:470. Central registry.

RELATES TO: KRS 17.165(6), 61.876, 160.151, 160.380, 194A.380-194A.383, 199.466, 199.896(19), 199.8982(1)(a), 211.684(1)(a), 403.352, 600.020(1), (40), [(64),--](62), 620.050, 620.051, 625.050-625.120, 42 U.S.C. 671(a)(20), 5106a(b), 9858f

STATUTORY AUTHORITY: KRS 194A.050(1), 605.130(7), 605.150(1), 620.051(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the Secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate the programs and fulfill the responsibilities vested in the cabinet. KRS 605.150(1) authorizes the cabinet to promulgate administrative regulations to implement the provisions of KRS Chapter 605, including KRS 605.130(7), which authorizes the cabinet to perform services necessary for the protection of children. KRS 620.051(2) requires the cabinet to promulgate administrative regulations to establish the central registry and the process for a background check of the cabinet's child abuse and neglect records. This administrative regulation establishes the procedure by which the cabinet shall conduct a child abuse or neglect check using information in the central registry.

Section 1. Definitions.

(1) "Abused or neglected child" is defined by KRS 600.020(1).

(2) "Administrative review" means that the status of the individual subject to the central registry check is pending the outcome of an:

(a) Investigation or assessment in accordance with 922 KAR 1:330; or

VOLUME 51, NUMBER 3– September 1, 2024

- (b) Appeal concerning a cabinet substantiated finding of child abuse or neglect.
- (3) "Child fatality" is defined by KRS 211.684(1)(a).
- (4) "Near fatality" is defined by KRS 600.020(40) and 42 U.S.C. 5106a(b)(4)(A).
- (5) "Sexual abuse" is defined by KRS 600.020(62)(64).
- (6) "Sexual exploitation" is defined by KRS 600.020(63)(62).

Section 2. Central Registry.

- (1) The central registry shall include the name of each individual:
 - (a) Who has been found by the cabinet to have abused or neglected a child on or after October 1, 1998; and
 - (b)
 - 1. Who waived the right to appeal a substantiated finding of child abuse or neglect in accordance with:
 - a. 922 KAR 1:480;
 - b. 922 KAR 1:320; or
 - c. 922 KAR 1:330, Section 11; or
 - 2. Whose substantiated incident was upheld upon appeal.
 - (2) Each name shall:
 - (a) Remain on the central registry for a period of at least seven (7) years; and
 - (b) Be removed from the central registry after a period of seven (7) years if:
 - 1. No additional incident of child abuse or neglect has been substantiated by the cabinet since the time of the incident for which the individual's name was placed on the registry; and
 - 2. Cabinet records indicate that the incident for which the individual's name was placed on the registry did not relate to:
 - a. Sexual abuse or sexual exploitation of a child;
 - b. A child fatality related to abuse or neglect;
 - c. A near fatality related to abuse or neglect; or
 - d. Involuntary termination of parental rights in accordance with KRS 625.050 through 625.120.

- (3) This administrative regulation shall not apply to cabinet background checks required by 922 KAR 1:490.
- (4) This administrative regulation shall not limit the cabinet's ability to disclose information in accordance with KRS 620.050 and 42 U.S.C. 5106a(b)(2)(B)(viii), (ix), or (x).

Section 3. Procedure for Requesting a Central Registry Check.

- (1) If information from the central registry is required or authorized by law, a request for a central registry check may be made by an:
 - (a) Individual;
 - (b) Organization; or
 - (c) Other entity.
- (2) The cabinet shall conduct a check of the central registry for each individual who:
 - (a) Submits a request for a check of the central registry in accordance with subsection (4) of this section; and
 - (b)
 - 1. Applies for initial licensure;
 - 2. Is considered for hire, hired by, or volunteers with[-] an entity required by law to obtain information contained in the central registry; or
 - 3. Is considered for hire, hired by, or volunteers with[-] an entity that may require a central registry check as a condition for working with children on a regular basis.
- (3) An individual who is not required or authorized by law to obtain information contained in the central registry shall not receive a completed check and may instead submit an open records request in accordance with 922 KAR 1:510.
- (4) A request for a central registry check shall be made:
 - (a) By electronically submitting to the cabinet through the Kentucky Online Gateway:
 - 1.
 - a. A completed DCC-374, Child Care Central Registry Check, for an individual in child care as specified by 42 U.S.C. 9858f, KRS 199.466, or 922 KAR 2:280; or
 - b. A completed DPP-156, Central Registry Check, for an individual required by a law not specified in clause a. of this subparagraph no later than five (5) working days after:

- (i) The date of employment of an individual required by law to submit to a central registry check; or
- (ii) A volunteer's first day, if the volunteer is required by law to submit to a central registry check; and
- 2. A nonrefundable fee of ten (10) dollars paid by credit or debit card; or
- (b) Through another cabinet system, including the Kentucky National Background Check Program established by 906 KAR 1:190.
- (5) A parent or guardian shall be required to consent to the central registry check of an individual who is under the age of eighteen (18).
- (6) A state requesting a child abuse or neglect check from the cabinet as required by 42 U.S.C. 671(a)(20) shall follow the procedures described in 922 KAR 1:490, Section 5.

Section 4. Administrative Review.

- (1) The cabinet shall indicate on a central registry check if the individual is pending administrative review by the cabinet.
- (2) An individual subject to administrative review in accordance with this section may submit a request for the disclosure of records in accordance with 922 KAR 1:510 to be fulfilled once the administrative review process is complete.

Section 5. Incorporation by Reference.

- (1) The following material is incorporated by reference:
 - (a) "DPP-156, Central Registry Check," 8/2024[4/2022]; and
 - (b) "DCC-374, Child Care Central Registry Check," 4/2022.
- (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/dcps/Pages/default.aspx>.

LESA DENNIS, Commissioner
ERIC C. FRIEDLANDER, Secretary
APPROVED BY AGENCY: August 2, 2024
FILED WITH LRC: August 14, 2024 at 2:10 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on October 21, 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 October 14, 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 October 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: Amy Smith or Krista Quarles

(1) Provide a brief summary of:

- (a) What this administrative regulation does: This administrative regulation establishes the procedures by which the cabinet shall conduct a child abuse and neglect check using information in the central registry.

VOLUME 51, NUMBER 3– September 1, 2024

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish cabinet procedures for child abuse and neglect checks of the central registry.

(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 cabinet procedures for conducting child abuse and neglect checks of the central registry, as required by KRS 620.051(2).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation currently assists in the effective administration of the statutes through its establishment of cabinet procedures for child abuse and neglect checks of the central registry.

(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 checking the central registry for prospective employees and updates the DPP-156 registry check request form as a result of the passage of Senate Bill 145 (2024 Regular Session of the General Assembly), which included that health facilities and health care providers enrolled in Medicaid may request a check of the child abuse or neglect registry for a prospective or current employee to ensure that the employee has not been the subject of a child abuse or neglect substantiation.

(b) The necessity of the amendment to this administrative regulation: This amendment is needed for compliance with Senate Bill 145 (2024 Regular Session), codified as KRS 216.2955.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 620.051(2) requires the cabinet to promulgate administrative regulations to establish the central registry and the process for a check of the cabinet's child abuse and neglect records. This amendment further outlines this process consistent with passed legislation.

(d) How the amendment will assist in the effective administration of the statutes: This amendment clarifies the process of requesting a check of the central registry and amends the incorporated form consistent with passed legislation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are 9,097 health facilities licensed or surveyed by the Office of the Inspector General and approximately 46,000 health care providers enrolled in Medicaid. These facilities will have the ability to submit a prospective or current employee to a child abuse or neglect central registry 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: It is not mandatory, but health facilities and health care providers enrolled in Medicaid will be able to submit a current or prospective employee to a check of the child abuse or neglect registry to ensure that the employee has not been the subject of a child abuse or neglect substantiation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Each check of the central registry costs \$10.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This is optional, but these facilities will have more assurance that their prospective or current employee has not had a child abuse or neglect substantiation that would result in them being listed on the registry.

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

(a) Initially: There is no cost associated.

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

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: N/A

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: The administrative regulation includes a fee established by the General Assembly and codified in KRS 620.051(1). The fee is unchanged through this amendment.

(9) TIERING: Is tiering applied? Tiering is not applied, because this administrative regulation will be implemented in a like manner statewide.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 42 U.S.C. 671(a)(20), 5106a(b), 9858f

(2) State compliance standards. KRS 194A.050(1), 605.130(7), 605.150(1), 620.051(2)

(3) Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 671(a)(20), 5106a(b), 9858f

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The administrative regulation does not impose stricter 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. The 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. KRS 194A.050(1), 605.130(7), 605.150(1), 620.051(2), 42 U.S.C. 671(a)(20), 5106a(b), 9858f.

(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.

(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? The amendment does not alter expenditures, revenues, or cost savings.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): No affected local entities have been identified.

(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 is expected.

(4) Identify additional regulated entities not listed in questions (2) or (3): Health facilities as defined in KRS 216B.015 and health care providers enrolled in Medicaid will be able to request checks of the central registry once this amendment is effective, but this is optional.

(a) Estimate the following for the first year:

Expenditures: There will only be expenditures if the facilities choose to request central registry checks of prospective or current employees.

Revenues: None.

Cost Savings: None.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? No change is expected.

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: This amendment does not have a fiscal impact. There is only a \$10 charge per check if a check of the registry is requested and this is not mandatory.

(b) Methodology and resources used to determine the fiscal impact: This amendment implements SB 145 (2024 Regular Session), which authorized but did not require central registry checks.

(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, this administrative regulation does not have a negative or adverse economic impact.

(b) The methodology and resources used to reach this conclusion: This amendment authorizes other facilities to request a check of the central registry for prospective or current employees, but it is not mandatory.

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

922 KAR 5:120. Vulnerable adult maltreatment registry and appeals.

RELATES TO: KRS 194A.060, Chapter 209, 216.2955, 216B.015(13), 42 U.S.C. 1320d - 1320d-9, 1397 - 1397e, 1397m-1

STATUTORY AUTHORITY: KRS 194A.050(1), 209.032(5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary to adopt all administrative regulations necessary under applicable state laws to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of the individual citizens of the Commonwealth and necessary to operate the programs and fulfill the responsibilities vested in the cabinet. KRS 209.032(5) requires the cabinet to promulgate administrative regulations necessary to implement a central registry of substantiated findings. This administrative regulation establishes the vulnerable adult maltreatment registry, due process prior to the addition of an individual to the registry, and error resolution for correction of the cabinet's records.

Section 1. Definitions.

- (1) "Abuse" is defined by KRS 209.020(8).
- (2) "Adult" is defined by KRS 209.020(4).
- (3) "Cabinet" means the Cabinet for Health and Family Services.
- (4) "Department" is defined by KRS 209.020(3).
- (5) "Employee" is defined by KRS 209.032(1)(a).
- (6) "Exploitation" is defined by KRS 209.020(9).
- (7) "Good cause" means justification for failure to carry forward with a legal obligation related to an appeal, including:
 - (a) An appellant's inability to comprehend the cabinet's written statement describing appeal rights; or
 - (b) A cabinet-sanctioned determination that the appellant or the appellant's legal representative is not at fault for failure to:
 - 1. Submit a written request for appeal; or
 - 2. Participate in a proceeding related to an administrative hearing.
- (8) "Health facility" is defined by KRS 216B.015(13).
- (9) "Investigation" is defined by KRS 209.020(10).
- (10) ~~(9)~~ "Near fatality" means an injury or condition, as certified by a physician, that places an adult in serious or critical condition.
- (11) ~~(10)~~ "Neglect" is defined by KRS 209.020(16).
- (12) ~~(11)~~ "Records" is defined by KRS 209.020(15).
- (13) ~~(12)~~ "Secure methodology" means the deployment of technology to protect the application's authenticity and to keep user communications, browsing, and identity private in accordance with KRS 209.032.
- (14) ~~(13)~~ "Validated substantiated finding of adult abuse, neglect, or exploitation" is defined by KRS 209.032(1)(b).
- (15) ~~(14)~~ "Vulnerable adult services provider" is defined by KRS 209.032(1)(c).

Section 2. Vulnerable Adult Maltreatment Registry.

- (1) The cabinet shall establish a vulnerable adult maltreatment registry that contains an individual:
 - (a) Who was an employee or a person acting with the expectation of compensation;
 - (b) Who was the perpetrator of adult abuse, neglect, or exploitation;

- 1. Pursuant to 922 KAR 5:070; and
- 2. Substantiated on or after July 15, 2014; and
- (c) With a validated substantiated finding of adult abuse, neglect, or exploitation; or
- (d) With a pending appeal.
- (2) An individual with a validated substantiated finding of adult abuse, neglect, or exploitation shall:
 - (a) Remain on the vulnerable adult maltreatment registry for a period of at least seven (7) years; and
 - (b) Be removed from the vulnerable adult maltreatment registry:
 - 1. In accordance with the error resolution process established in Section 6 of this administrative regulation if an error is confirmed; or
 - 2. After a period of seven (7) years if:
 - a. No additional validated substantiated finding of adult abuse, neglect, or exploitation has occurred since the last finding for which the individual's name was placed on the vulnerable adult maltreatment registry; and
 - b. Cabinet records indicate that the incident for which the individual's name was placed on the vulnerable adult maltreatment registry did not relate to an adult fatality or near fatality related to adult abuse or neglect.
- (3) The vulnerable adult maltreatment registry shall be available for a web-based query using a secure methodology by:
 - (a) A vulnerable adult services provider in accordance with KRS 209.032(2);
 - (b) An individual in accordance with KRS 209.032(3); ~~and~~
 - (c) An employee of the cabinet with a legitimate interest in the case;
 - (d) A health facility in accordance with KRS 216.2955; or
 - (e) A health care provider enrolled in the Kentucky Medicaid Program in accordance with KRS 216.2955.
 - (4) The vulnerable adult maltreatment registry with pending appeals shall be available for a web-based query using a secure methodology by a vulnerable adult service provider in accordance with KRS 209.032(2).

~~(5)~~ ~~(4)~~ The vulnerable adult maltreatment registry shall be accessible through:

- (a) The department's main webpage; or
- (b) Another cabinet system, such as the Kentucky Applicant Registry and Employment Screening (KARES) Program established in accordance with 906 KAR 1:190.

~~(6)~~ ~~(5)~~ If an individual or a vulnerable adult services provider established in KRS 209.032(1)(c)11 does not have access to the internet, the individual or provider shall submit a signed and completed DPP-246, Vulnerable Adult Maltreatment Registry Self-Query, to conduct a self-query in accordance with KRS 209.032(2) or (3).

Section 3. Notification of Finding.

- (1) If the cabinet finds that an employee or a person acting with the expectation of compensation has committed adult abuse, neglect, or exploitation in accordance with 922 KAR 5:070, the cabinet shall send notice of the finding to the perpetrator by certified mail to the perpetrator's last known address.
- (2) The cabinet's notice of a finding of adult abuse, neglect, or exploitation to an employee or a person acting with the expectation of compensation shall include:
 - (a) The factual basis for the finding of adult abuse, neglect, or exploitation;
 - (b) The results of the investigation;
 - (c) The perpetrator's right to appeal the substantiated finding in accordance with KRS 209.032 and this administrative regulation;
 - (d) A statement that a finding shall become a validated substantiated finding of adult abuse, neglect, or exploitation in accordance with KRS 209.032 and Section 5 of this administrative regulation; and
 - (e) A statement that a perpetrator of a validated substantiated finding of adult abuse, neglect, or exploitation shall be added to the vulnerable adult maltreatment registry.
- (3)
 - (a) The cabinet shall reserve the right, in its sole discretion, to amend, modify, or reverse its investigative finding of adult abuse,

VOLUME 51, NUMBER 3– September 1, 2024

neglect, or exploitation at any time if the finding appears to be improper based upon:

1. A review of the cabinet's records; or
2. Subsequent discovery of additional information.

(b) If amendment, modification, or reversal of an investigative finding results in a substantiated finding of abuse or neglect of an adult, the cabinet shall act in accordance with Section 3(1) and (2) of this administrative regulation.

Section 4. Request for Appeal.

(1) In accordance with KRS 209.032, if the cabinet makes a finding that an employee or a person acting with the expectation of compensation has committed adult abuse, neglect, or exploitation, the individual shall have the right to appeal the substantiated finding through an administrative hearing.

(2) A request for appeal shall:

(a) Be submitted:

1. In writing by the appellant, with the assistance of the cabinet if the appellant is unable to comply without assistance; and

2. To the cabinet no later than thirty (30) calendar days from the individual's receipt of the notice in accordance with Section 3(1) of this administrative regulation;

(b) State the nature of the investigative finding;

(c) State the reason the individual disputes the cabinet's substantiated finding; and

(d) Include a copy of the notice of a substantiated finding in accordance with Section 3 of this administrative regulation, if available.

(3) The cabinet shall not dismiss a request for appeal as untimely if an appellant demonstrates good cause.

(4) A final administrative decision made by the cabinet or cabinet's designee as a result of a previous appeal on the same issue or an unsubstantiated finding of adult abuse, neglect, or exploitation shall not be reviewed through an administrative hearing.

Section 5. Administrative Hearing.

(1) An administrative hearing conducted by the Office of Administrative Hearings within the Department of Law [cabinet or its designee] shall be in accordance with KRS Chapter 13B and 209.032.

(2) The cabinet's investigative finding shall become a validated substantiated finding of adult abuse, neglect, or exploitation if the:

(a) Perpetrator does not request an administrative hearing in accordance with Section 4 of this administrative regulation;

(b) Perpetrator fails to:

1. Participate in any stage of the proceedings after requesting an appeal in accordance with Section 4 of this administrative regulation; and

2. Demonstrate good cause; or

(c) Cabinet's substantiated finding is upheld through the administrative hearing process.

(3) The secretary or designee shall issue the final order in accordance with KRS 13B.120 and 209.032.

(4) A party aggrieved by the [secretary's] decision shall have the right to pursue judicial review in accordance with KRS 13B.140, 13B.150, and 209.032(1)(b).

(5) The proceedings of the administrative hearing shall be disclosed only in accordance with KRS 194A.060, 42 U.S.C. 1320d - 1320d-9, 1397 - 1397e, 1397m-1, 920 KAR 1:060, and 922 KAR 1:510.

(6) If the matter is not subject to the requirements of this section, the cabinet shall inform the person that the matter may be pursued through:

(a) A service complaint process established in 922 KAR 1:320; or

(b) The error resolution process in accordance with Section 6 of this administrative regulation.

Section 6. Error Resolution.

(1) In accordance with KRS 209.032(5)(a), an individual seeking error resolution shall:

(a) Submit a written request for record correction to the Commissioner of the Department for Community Based Services, 275 East Main Street (3W-A), Frankfort, Kentucky 40621;

(b) State the:

1. Date of the vulnerable adult maltreatment registry query which resulted in the error being identified; and

2. Error contained in the vulnerable adult maltreatment registry query results; and

(c) Provide documentation that verifies the error, if available.

(2) Within thirty (30) days of receipt of a request in accordance with subsection (1) of this section, the commissioner or designee shall:

(a) Determine if an error exists; and

(b)

1. If the cabinet confirms an error:

a. Correct the records; and

b. Notify the requesting individual that the records have been corrected; or

2. If the cabinet cannot confirm an error:

a. Notify the individual that an error cannot be confirmed based upon the information and documentation submitted with the request; and

b. Include information or documentation to verify an error pursuant to the individual's request, if any.

Section 7. Incorporation by Reference.

(1) The "DPP-246, Vulnerable Adult Maltreatment Registry Self-Query", 12/23, is incorporated by reference.

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

LESA DENNIS, Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: August 1, 2024

FILED WITH LRC: August 14, 2024 at 2:10 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on October 21, 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 October 14, 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 October 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 CHFSEregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Amy Smith or Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the vulnerable adult maltreatment registry, due process prior to the addition of an individual to the registry, and error

resolution for correction of the cabinet's records.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish standards for the operation of the vulnerable adult maltreatment registry, including due process and error resolution for correction of the cabinet's records.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the authorizing statutes by establishing a vulnerable adult maltreatment registry for individuals who have a substantiated adult abuse, neglect, or exploitation finding.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation currently assists in the effective administration of the statutes through its establishment of a vulnerable adult maltreatment registry.

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

(a) How the amendment will change this existing administrative regulation: This amendment implements legislation that passed in the 2024 Regular Session of the General Assembly, Senate Bill (SB) 145. This amendment authorizes health facilities or health care providers enrolled in Medicaid to check the adult misconduct registry for current or prospective employees. Vulnerable adult service providers will also be notified if a queried individual has appealed a substantiated finding of adult abuse, neglect, or exploitation and that the appeal is pending.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to conform to KRS 216.2955, established by SB 145 from the 2024 Regular Session.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to KRS 216.2955, which authorizes additional facilities to access the vulnerable adult misconduct registry for current or prospective employees. Additionally, vulnerable adult service providers will be notified if a queried individual has appealed a substantiated finding of adult abuse, neglect, or exploitation, and that the appeal is pending.

(d) How the amendment will assist in the effective administration of the statutes: KRS 209.032(5) requires the cabinet to promulgate administrative regulations necessary to implement a central registry of substantiated findings, including the vulnerable adult maltreatment registry. This amendment conforms to authorizing statutes that provide registry access to additional facilities.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are 9,097 health facilities licensed or surveyed by the Office of the Inspector General and approximately 46,000 health care providers enrolled in Medicaid. These facilities will have the ability to submit an inquiry to the vulnerable adult misconduct registry for a prospective or current employee. The vulnerable adult maltreatment registry currently lists 666 individuals, 30 of which were added from July 2022 to June 2023. Additionally, there were 549 adult protective service inquiries and 128 registry cases processed.

(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 is no new action required on the part of regulated entities above and beyond those that are statutorily prescribed or originally prescribed through this administrative regulation.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Regulated entities will benefit from the amendment identifying Department staff have accessibility during an investigation and service delivery.

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

(a) Initially: There are no anticipated costs with this amendment.

(b) On a continuing basis: There are no anticipated costs with this amendment.

(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 are funded through state general funds and the federal Social Services Block Grant.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: An increase in fees or funding will not be necessary to implement this 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 any fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering is not applied, because this administrative regulation is applied in a like manner statewide.

FISCAL 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) and 209.032(5).

(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 the promulgating agency.

(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? The amendment does not alter 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: None.

Revenues: None.

Cost Savings: None.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? No change is expected.

(4) Identify additional regulated entities not listed in questions (2) or (3): Health facilities or health care providers enrolled in Medicaid will be able to submit an inquiry to the vulnerable adult maltreatment registry for current or prospective employees. This is optional, not a requirement.

(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 is expected.

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: This amendment does not have a fiscal impact.

(b) Methodology and resources used to determine the fiscal impact: This amendment implements SB 145 (2024 Regular Session), which authorized but did not require submitting an inquiry to the vulnerable adult maltreatment registry.

(6) Explain:

(a) Whether this administrative regulation will have an overall negative or adverse economic impact to the entities identified in questions (2) - (4). (\$500,000 or more, in aggregate) No, this administrative regulation does not have a negative or adverse economic impact.

(b) The methodology and resources used to reach this conclusion: This amendment authorizes additional facilities to request submit an inquiry to the vulnerable adult maltreatment registry for prospective or current employees, but it is not mandatory.

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](#).

COUNCIL ON POSTSECONDARY EDUCATION
(New Administrative Regulation)

13 KAR 6:010. Aviation training scholarships.

RELATES TO: KRS 164.7011, 164.7013, 164.7015
STATUTORY AUTHORITY: KRS 164.7013, 164.7015
NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.7013(8)(a) requires the Council on Postsecondary Education to promulgate administrative regulations to administer the Kentucky aerospace, aviation, and defense investment fund. KRS 164.7015 requires the Council to set forth the requirements for partnership proposals between aviation programs and aviation industry partners to provide aviation training scholarships to Kentucky residents enrolled in aviation programs.

Section 1. Definitions.

- (1) "Advisory committee" is defined by KRS 164.7011(1).
- (2) "Aviation" is defined by KRS 164.7011(2).
- (3) "Aviation industry partner" is defined by KRS 164.7011(3).
- (4) "Aviation program" is defined by KRS 164.7011(4).
- (5) "Council" is defined by KRS 164.001(8).
- (6) "Dedicated money" is defined by KRS 164.7011(6).
- (7) "Eligible aviation credential" is defined by KRS 164.7011(7).
- (8) "Fund" is defined by KRS 164.7011(8).
- (9) "Kentucky resident" is defined by KRS 164.020(8).
- (10) "Match" means general fund appropriation monies from the fund provided to the institution subject to funds availability, based on at least a dollar-for-dollar contribution from the aviation industry partner pursuant to KRS 164.7015(3)(a).

Section 2. Notice of Funding Opportunities.

(1) Each year that general fund appropriations are available for distribution through the aerospace, aviation, and defense investment fund, the Council shall publish notice of availability of funding opportunities for partnerships and issue a request for partnership proposals.

(2) The notice and request for partnership proposals shall include:

- (a) The funding period;
- (b) The date by which to submit a partnership proposal;
- (c) The dollar amount of available matching funds;
- (d) A list of priority eligible aviation credentials with high workforce demand as determined by the advisory committee;
- (e) The partnership proposal evaluation criteria and relative weighting of each criterion;
- (f) How to submit a partnership proposal; and
- (g) The targeted date for making awards.

Section 3. Partnership Proposals. To be eligible for funding, a partnership proposal shall include:

- (1) The participating aviation industry partners and aviation programs certified by the signature of their respective chief executive officers and a designated point of contact and contact information for each partner;
- (2) Certification that the aviation program meets the definition in KRS 164.7011(4);
- (3) The total proposed budget for the program, which includes the aviation industry partner contribution and the amount of aerospace, aviation, and defense investment funds requested for match in accordance with requirements set forth by the Council;
- (4) A narrative explaining how the aviation program plans to use the aviation industry partner contribution and match from the fund to award aviation training scholarships in eligible aviation credentials;
- (5) A description of the aviation program's plan for student recruitment, scholarship award criteria, and selection process;

(6) An explanation of how the aviation program shall increase student enrollment in eligible aviation or aerospace credentials, program completion, and meet local, regional, or state workforce demands;

(7) If using dedicated moneys, an explanation of how the aviation industry partner shall onboard and retain graduates;

(8) An explanation of how graduates shall be supported through their service obligations;

(9) A description of how the partnership proposal shall meet the priorities set forth in KRS 164.7015(2);

(10) A response to any other partnership proposal criteria as determined by the advisory committee;

(11) A statement of assurances that both the aviation industry partner and the aviation program shall adhere to the statutory requirements in any written partnership contract as set forth in KRS 164.7015(3); and

(12) The amount of the aviation industry partner's contribution certified by its chief financial officer and supported by appropriate documentation.

Section 4. Evaluation Process.

(1) The advisory committee shall review and rank each timely submitted and complete proposal giving priority for proposals targeted to eligible aviation credentials with high workforce demand as determined by the advisory committee.

(2) Each proposal shall be evaluated based on any other objective criterion developed by the advisory committee.

Section 5. Partnership Awards.

(1) Upon award, the Council, the aviation industry partner, and aviation program shall enter into a partnership contract in accordance with the terms set forth in KRS 164.7015(3).

(2) Once the partnership contract is finalized, the Council shall disburse from the fund monies deposited by the aviation industry partner and the matching funds appropriated by the General Assembly to the aviation program.

Section 6. Responsibilities of the Aviation Program. After an award is made and a partnership contract is finalized, the aviation program shall:

(1) Establish and enforce an aviation training scholarship application and process for solicitation, acceptance, and review of scholarship applications from students who are Kentucky residents in collaboration with the aviation industry partner;

(2) Require aviation training scholarship applicants to complete the Free Application for Federal Student Aid, if applicable;

(3) Establish aviation training scholarship deadlines;

(4) Award aviation training scholarships;

(5) Develop and administer a scholarship contract between the recipient and the aviation program in accordance with KRS 164.7015(6) and (7); and

(6) Meet any reporting requirements set forth in the partnership contract.

MADISON SILVERT, Chair

STERLING CRAYTON, Attorney

APPROVED BY AGENCY: July 25, 2024

FILED WITH LRC: July 30, 2024 at 4:00 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 22, 2024 at 10:00 a.m. EST at the Council on Postsecondary Education, 100 Airport Road, Second Floor, Frankfort, Kentucky 40601 in Conference Room A. Individuals interested in being heard at this hearing shall notify this agency in writing five workdays prior to the hearing of their intent to attend. If no notification to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given

VOLUME 51, NUMBER 3– September 1, 2024

an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until October 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: Sterling Crayton, Attorney, Council on Postsecondary Education, 100 Airport Road, Second Floor, Frankfort, Kentucky 40601, phone 502.573.1555, email sterling.crayton@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Sterling Crayton

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the Kentucky Aviation Training Scholarships, established in KRS 164.7015, designed to reduce the financial barriers of Kentucky residents seeking high-demand eligible aviation or aerospace credentials.

(b) The necessity of this administrative regulation: KRS 164.7013(8) requires the Council on Postsecondary Education to promulgate regulations to administer the programs related to the Kentucky aerospace, aviation, and defense investment fund. KRS 164.7015 requires the Council to set forth the requirements for partnership proposals between aviation programs and aviation industry partners to provide aviation training scholarships to Kentucky residents enrolled in eligible aviation programs in Kentucky.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The administrative regulation conforms explicitly to the authorizing statute.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation creates a process for issuing notice of funding opportunities, sets requirements for partnership proposals, creates an evaluation process, and a process for making awards as required by the statutes.

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Council on Postsecondary Education; any education or training program located in Kentucky that issues eligible aviation or aerospace credentials or is a specific requirement to earning an eligible aviation or aerospace credential, including but not limited to an institution that is a member of Kentucky's public postsecondary education system or a public high school vocational program; any flight training program that is a certified pilot school regulated by the Federal Aviation Administration in accordance with 14 C.F.R. pt. 141 or is a public high school vocational program; and aviation industry partners, which are grantors that the Council determines customarily employs individuals with an eligible aviation or aerospace credential in a relevant aviation role in the usual course of the grantor's business. The number of entities affected could be dozens, if not hundreds, but none are required to participate.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: To be eligible for funding, an aviation industry partner and aviation program submit a partnership proposal. Upon proposal evaluation and subsequent award, the Council, the aviation industry partner, and aviation program shall enter into a

partnership contract in accordance with the terms set forth in relevant statutes and this regulation.

(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 some administrative cost in creating and submitting a proposal.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Once the partnership contract is finalized, the Council shall disburse from the fund moneys deposited by the aviation industry partner and the matching funds appropriated by the General Assembly to the aviation program. This will allow the aviation program to provide scholarships to students in programs offering eligible aviation credentials as outlined in the partnership agreement. Aviation industry partners who are employers may employ these individuals upon graduation for the period to fulfill their scholarship service requirements and hopefully beyond. (5) Provide an estimate of how much it will cost to implement this administrative regulation:

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

(a) Initially: approximately \$150,000 once funding is received for awards to be made.

(b) On a continuing basis: Same as above.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? CPE staff are currently funded from appropriations made by the General Assembly in the 2022-2024 budget. Moving forward, a portion of the general fund appropriations made to the aerospace, aviation, and defense investment fund may be used for administration pursuant to KRS 164.7013(7).

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: This regulation does not assess fees. Funding is allocated for administration per the legislation.

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

(9) TIERING: Is tiering applied? Tiering is not applicable because similarly situated entities are treated similarly under this administrative regulation. However, upon advice of the advising committee, the Council may create separate pools of funding to meet geographic aviation and/or workforce needs.

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 164.7011, KRS 164.7013, KRS 164.7015

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: The Council on Postsecondary Education and any public aviation program, which would include members of Kentucky's public postsecondary education system or a public high school vocational program that issues eligible aviation credentials.

(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.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): Any public aviation program, which would include members of Kentucky's public postsecondary education system or a public high school vocational program that issues eligible aviation credentials.

(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): An education or training program located in Kentucky that

VOLUME 51, NUMBER 3– September 1, 2024

issues eligible aviation or aerospace credentials or is a specific requirement to earning an eligible aviation or aerospace credential, any flight training program that is a certified pilot school regulated by the Federal Aviation Administration in accordance with 14 C.F.R. pt. 141, and aviation industry partners, which are grantor to the fund that the Council determines customarily employs individuals with an eligible aviation or aerospace credential in a relevant aviation role in the usual course of the grantor's business.

(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.

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: Duties related to this regulation are generally assumed by Council staff members as part of their many other responsibilities. There will be additional costs of administration of approximately \$150,000.

(b) Methodology and resources used to determine the fiscal impact: General analysis.

(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 is not anticipated to have negative impact on any regulated entities. Participation is voluntary and this regulation establishes a program that will fulfill workforce needs and provide high wage employment to participants which should provide a major positive economic impact to the Commonwealth.

(b) The methodology and resources used to reach this conclusion: General analysis.

COUNCIL ON POSTSECONDARY EDUCATION (New Administrative Regulation)

13 KAR 6:020. Aviation equipment grants.

RELATES TO: KRS 164.7011, 164.7013, 164.7017

STATUTORY AUTHORITY: KRS 164.7013, 164.7017

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.7013(8) requires the Council on Postsecondary Education to promulgate administrative regulations to administer the Kentucky aerospace, aviation, and defense investment fund. KRS 164.7017 requires the Council to set forth the requirements for partnership proposals between aviation programs and aviation industry partners to provide aviation or aviation equipment grants for a public high school vocational program or public postsecondary education institution to maintain, acquire, or lease aviation or aviation equipment.

Section 1. Definitions.

(1) "Advisory committee" is defined by KRS 164.7011(1).

(2) "Aviation" is defined by KRS 164.7011(2).

(3) "Aviation industry partner" is defined by KRS 164.7011(3).

(4) "Aviation program" is defined by KRS 164.7011(4).

(5) "Council" is defined by KRS 164.001(8).

(6) "Dedicated money" is defined by KRS 164.7011(6).

(7) "Eligible aviation credential" is defined by KRS 164.7011(7).

(8) "Fund" is defined by KRS 164.7011(8).

(9) "Match" means general fund appropriation monies from the fund provided to the institution subject to funds availability, based on at least a dollar-for-dollar contribution from the aviation industry partner pursuant to KRS 164.7017(2)(a).

(10) "Public aviation program" is defined by KRS 164.7011(12).

Section 2. Notice of Funding Opportunities.

(1) Each year that general fund appropriations are available for distribution through the fund, the Council shall publish notice of availability of funding opportunities for partnerships and issue a request for partnership proposals.

(2) The notice and request for partnership proposals shall include:

- (a) The funding period;
- (b) The date by which to submit a partnership proposal;
- (c) The dollar amount of available matching funds;
- (d) The partnership proposal evaluation criteria and relative weighting of each criterion;
- (e) How to submit a partnership proposal; and
- (f) The targeted date for making awards.

Section 3. Partnership Proposals. To be eligible for funding, a partnership proposal shall include:

(1) The participating aviation industry partners and aviation programs certified by the signature of their respective chief executive officers and a designated point of contact and contact information for each partner;

(2) Certification that the public aviation program meets the definition in KRS 164.7011(12);

(3) The total proposed budget for the program, which includes the aviation industry partner contribution and the amount of aerospace, aviation, and defense investment funds requested for match in accordance with requirements set forth by the Council;

(4) A narrative explaining how the partnership would meet the criteria for prioritization set forth in KRS 164.7017(3)(a);

(5) A response to any other partnership proposal criteria as determined by the advisory committee; and

(6) The amount of the aviation industry partner's contribution certified by its chief financial officer and supported by appropriate documentation.

Section 4. Evaluation Process. The advisory committee shall review and rank each timely submitted and complete proposal based on its published evaluation criteria, which shall include the priorities set forth in KRS 164.7017(3)(a) and any other objective criteria developed by the advisory committee.

Section 5. Partnership Awards.

(1) Upon award, the Council, the aviation industry partner, and aviation program shall enter into a partnership contract in accordance with the terms set forth in KRS 164.7017(2).

(2) Once the partnership contract is finalized, the Council shall disburse from the fund monies deposited by the aviation industry partner and the matching funds appropriated by the General Assembly to the aviation program.

Section 6. Responsibilities of the Aviation Program. After an award is made and a partnership contract is finalized, the aviation program shall:

(1) Submit proof that the entire amount of the aviation equipment grant is invested in accordance with KRS 164.7017(4); and

(2) Meet any reporting requirements set forth in the partnership contract.

MADISON SILVERT, Chair

STERLING CRAYTON, Attorney

APPROVED BY AGENCY: July 25, 2024

FILED WITH LRC: July 30, 2024 at 4:00 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 21, 2024 at 10:00 a.m. EST at the Council on Postsecondary Education, 100 Airport Road, Second Floor, Frankfort, Kentucky 40601 in Conference Room A. Individuals interested in being heard at this hearing shall notify this agency in writing five workdays prior to the hearing of their intent to attend. If no notification to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until October 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: Sterling Crayton, Attorney, Council on Postsecondary Education, 100 Airport Road, Second Floor, Frankfort,

VOLUME 51, NUMBER 3– September 1, 2024

Kentucky 40601, phone 502.573.1555, email sterling.crayton@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Sterling Crayton

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the Kentucky Aviation Equipment Grants, established in KRS 164.7017, designed to increase investment in public aviation programs and strengthen the pipeline of aviation professionals in Kentucky.

(b) The necessity of this administrative regulation: KRS 164.7013(8) requires the Council on Postsecondary Education to promulgate regulations to administer the programs related to the Kentucky aerospace, aviation, and defense investment fund. KRS 164.7017 requires the Council to set forth the requirements for partnership proposals between public aviation programs and aviation industry partners to provide equipment grants for public aviation programs to maintain, acquire, or lease aviation equipment.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The administrative regulation conforms explicitly to the authorizing statute.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation creates a process for issuing notice of funding opportunities, sets requirements for partnership proposals, creates an evaluation process, and a process for making awards as required by the statutes.

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Council on Postsecondary Education; any public aviation program which are members of Kentucky's public postsecondary education system or a public high school vocational programs that offer eligible aviation credentials; and aviation industry partners, which are grantors that the Council determines customarily employs individuals with an eligible aviation or aerospace credential in a relevant aviation role in the usual course of the grantor's business. The number of entities affected could be dozens, if not hundreds, but none are required to participate.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: To be eligible for funding, an aviation industry partner and public aviation program shall submit a partnership proposal. Upon proposal evaluation and subsequent award, the Council, the aviation industry partner, and public aviation program shall enter into a partnership contract in accordance with the terms set forth in relevant statutes and this 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 imposed on entities will not exceed the amount designated as their aviation industry partner contribution. There will be some administrative cost in creating and submitting a proposal.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Once the partnership contract is finalized, the Council shall disburse from the fund moneys deposited by the aviation industry partner and the matching funds appropriated by the General Assembly to the public aviation program. This will allow the public aviation program to maintain, acquire, or lease aviation or aviation equipment as outlined in the partnership agreement.

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

(a) Initially: Approximately \$150,000 once funding is received for awards to be made.

(b) On a continuing basis: Same as above.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: CPE staff are currently funded from appropriations made by the General Assembly in the 2022-2024 budget. Moving forward, a portion of the general fund appropriations made to the aerospace, aviation, and defense investment fund may be used for administration pursuant to KRS 164.7013(7).

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: This regulation does not assess fees. Funding is allocated for administration per the legislation.

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

(9) TIERING: Is tiering applied? Tiering is not applicable because similarly situated entities are treated similarly under this administrative regulation. However, upon advice of the advising committee, the Council may create separate pools of funding to meet geographic aviation and/or institutional needs.

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 164.7011, KRS 164.7013, KRS 164.7017

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: The Council on Postsecondary Education and any public aviation program, which would include members of Kentucky's public postsecondary education system or a public high school vocational program that issues eligible aviation credentials.

(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.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): Any public aviation program, which would include members of Kentucky's public postsecondary education system or a public high school vocational program that issues eligible aviation credentials.

(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): 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.

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: Duties related to this regulation are generally assumed by Council staff members as part of their many other responsibilities. There will be additional costs of administration of approximately \$150,000.

(b) Methodology and resources used to determine the fiscal impact: General analysis.

(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 is not anticipated to have negative impact on any regulated entities.

Participation is voluntary and this regulation establishes a program that will assist in fulfilling workforce needs and provide high wage employment which should provide a major positive economic impact to the Commonwealth.

(b) The methodology and resources used to reach this conclusion: General analysis.

**OFFICE OF ATTORNEY GENERAL
Kentucky Office of Regulatory Relief
(New Administrative Regulation)**

40 KAR 12:010. Regulatory sandbox application process and reporting procedures.

RELATES TO: KRS 15.266, 15.268, 15.272, 15.274

STATUTORY AUTHORITY: KRS 15.180, 15.266, 15.268

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15.180

authorizes the Attorney General to promulgate administrative regulations that will facilitate performing the duties and exercising the authority vested in the Attorney General and the Department of Law. KRS 15.266 and 15.268 require the Kentucky Office of Regulatory Relief ("KORR") to promulgate an application to be used by persons seeking admission to the General Regulatory Sandbox Program and to establish an application fee. KRS 15.266(4)(f) authorizes the Office to promulgate administrative regulations concerning the application process, reporting requirements of sandbox participants, and administering the General Regulatory Sandbox Program. This administrative regulation establishes the application procedures for persons seeking admission in the General Regulatory Sandbox Program, establishes the application fee, and establishes the reporting processes for Sandbox participants.

Section 1. Application.

(1) Persons seeking admission to the General Regulatory Sandbox Program shall submit an application using the "Apply to Kentucky's General Regulatory Sandbox Program application portal" available at <https://www.ag.ky.gov/Resources/Pages/Office-of-Regulatory-Relief.aspx>.

(2) Applicants shall submit additional information or documents for their application within thirty (30) days of any request by KORR. KORR may deny any application if an Applicant fails to timely provide requested information or documents.

Section 2. Application Fee. The nonrefundable application fee for persons seeking admission to the General Regulatory Sandbox Program shall be \$100. KORR shall charge the application fee to process each new application.

Section 3. Sandbox Participant Reporting.

(1) Sandbox participants with an active demonstration offering on August 15 of each year shall submit an interim report to KORR on or before September 1st of that same year using the "Submit interim report portal" available at <https://www.ag.ky.gov/Resources/Pages/Office-of-Regulatory-Relief.aspx>.

(2) Sandbox participants shall submit a final report to KORR on or before fifteen (15) days after a demonstration offering ends using the "submit final report portal" available at <https://www.ag.ky.gov/Resources/Pages/Office-of-Regulatory-Relief.aspx>.

(3) Sandbox participants shall submit additional information or documents to supplement their reports with fifteen (15) days of any request by KORR.

Section 4. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Apply to Kentucky's General Regulatory Sandbox Program application portal", Aug. 2024;

(b) "Submit interim report portal", Aug. 2024; and

(c) "Submit final report portal", Aug. 2024.

(2) This material shall be inspected, copied, or obtained, subject to copyright law, at the Office of the Attorney General Capital

Complex East, 1024 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available on KORR's Web site, <https://www.ag.ky.gov/Resources/Pages/Office-of-Regulatory-Relief.aspx>.

STEPHEN B. HUMPHRESS, Executive Director
RUSSELL COLEMAN, Attorney General

APPROVED BY AGENCY: August 14, 2024

FILED WITH LRC: August 14, 2024 at 4:15 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on Oct. 22, 2024 at 10:00 a.m. Eastern Time at the Kentucky Office of Attorney General, Kentucky Office of Regulatory Relief, 1024 Capital Center Drive, Room A, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this Office in writing at least five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. on October 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: Stephen B. Humphress, Executive Director, Kentucky Office of Regulatory Relief, Kentucky Office of Attorney General, 1024 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601, phone 502-696-5408, fax (502) 573-8317, email steve.humphress@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stephen B. Humphress

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation prescribes the application process to be used by persons seeking admission to the General Regulatory Sandbox Program, establishes the application fee, and prescribes the reporting processes for sandbox participants.

(b) The necessity of this administrative regulation: This regulation is necessary to provide the methods by which the Office of Attorney General, Kentucky Office of Regulatory Relief ("KORR"), may perform its statutory obligations.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 15.180 directs the Attorney General to promulgate administrative regulations that will facilitate the performance of duties vested in the Attorney General and the Department of Law. KRS 15.266 and 15.268 require the Kentucky Office of Regulatory Relief ("KORR") to promulgate an application to be used by persons seeking admission to the General Regulatory Sandbox Program and to establish an application fee. KRS 15.266(4)(f) authorizes KORR to promulgate administrative regulations concerning the application process, reporting requirements of sandbox participants, and administering the General Regulatory Sandbox Program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation prescribes the application processes and application fee for persons seeking admission to the General Regulatory Sandbox Program. This administrative regulation establishes the reporting processes for Sandbox participants.

(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

VOLUME 51, NUMBER 3– September 1, 2024

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation amendment will affect all persons that seek entrance to the Kentucky Regulatory Sandbox program, Sandbox participants, and KORR.

(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: Persons seeking entrance in the General Regulatory Sandbox Program will be required to comply with the regulation and use the incorporated application processes. Sandbox participants will be required to submit reports under the incorporated requirements. KORR will review submitted applications for compliance with law and review reports submitted by sandbox participants.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Persons seeking entrance in the General Regulatory Sandbox Program will be required to submit the \$100.00 application fee. Sandbox participants will have no cost in using reporting processes. KORR shall incur minor administrative costs to comply with the regulation, which are difficult to estimate at this juncture.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Persons who comply with the regulation and use the incorporated application process will be eligible for admission in the General Regulatory Sandbox Program. KORR benefits by complying with its statutory mandates.

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

(a) Initially: KORR shall bear administrative costs in implementing this regulation, which are difficult to estimate at this time.

(b) On a continuing basis: N/A

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Office of Attorney General shall incur initial costs of funding KORR.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: This regulation will necessitate an increase in fees or funding separate from the legislative creation of KORR.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: KRS 15.266(c) requires KORR to establish an application fee for persons seeking admission to the General Regulatory Sandbox program. This regulation establishes the fee to be one hundred dollars (\$100.00).

(9) TIERING: Is tiering applied? No. This administrative regulation applies equally to all persons applying to the General Regulatory Sandbox Program.

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 15.180, 15.266, 15.268.

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: Kentucky Office of Regulatory Review ("KORR") is the promulgating agency. The regulation does not affect any other state agencies.

(a) Estimate the following for the first year:

Expenditures: There are no expenditures to administer this administrative regulation for the first year.

Revenues: KORR will receive application fees which are difficult to estimate at this time but estimated to be de minimis.

Cost Savings: There are no anticipated cost savings to administer this administrative regulation for the first year.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? There are no expected expenditures, revenues, or cost savings generated from this administrative regulation in subsequent years.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): The regulation does not affect any local entities.

(a) Estimate the following for the first year:

Expenditures: This administrative regulation will not cause expenditures by local entities for the first year.

Revenues: Local entities will receive no revenues from this administrative regulation for the first year.

Cost Savings: Local entities will receive no cost savings from this administrative regulation for the first year.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? This administrative regulation will generate no expenditures, revenues, or cost savings for local entities in subsequent years.

(4) Identify additional regulated entities not listed in questions (2) or (3): There are no additional regulated entities affected by this regulation.

(a) Estimate the following for the first year:

Expenditures: This administrative regulation will not cause any additional regulated entities to have any expenditures for the first year.

Revenues: No additional regulated entities will receive any revenues from this administrative regulation for the first year.

Cost Savings: No additional regulated entities will receive any cost savings from this administrative regulation for the first year.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? This administrative regulation will not cause local entities to have expenditures, revenues, or cost savings in subsequent years.

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: KORR's operational costs result from duties created by statute, not this administrative regulation. The regulation creates an online application for businesses and does not affect other governmental agencies or local government or local entities. The licensing fees received by KORR under this regulation will be de minimis. For these reasons, the regulation is not expected to have any significant fiscal impact.

(b) Methodology and resources used to determine the fiscal impact: KORR used a quantitative methodology analysis based on history of administrative agencies which license individuals in a specific subject area and the resulting facts from this regulation. KORR also consulted with the Utah Office of Regulatory Relief which is the only other state with a regulatory sandbox program. KORR used staff resources in determining 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 not an expected major economic impact from this regulation for KORR, any other state agency, any local entities, or additional regulated entities.

(b) The methodology and resources used to reach this conclusion: KORR used a quantitative methodology analysis based on history of administrative agencies which license individuals in a specific subject area and resulting facts from this regulation. KORR used staff resources in reaching the conclusion that no overall negative or adverse major economic impact results from this administrative regulation.

PERSONNEL CABINET (New Administrative Regulation)

101 KAR 2:086. Internship interview preference.

RELATES TO: KRS 18A.030, 18A.032, 18A.110

STATUTORY AUTHORITY: KRS 18A.110

NECESSITY, FUNCTION, AND CONFORMITY: KRS 18A.030 directs the secretary of the Personnel Cabinet to establish general procedures for personnel recruitment, for certification, and for improving the efficiency of employed personnel. KRS 18A.110 requires the secretary to promulgate administrative regulations for the classified service hiring and selection process, to include (1)(a) applications and examinations, (1)(b) certification and selection of eligibles, (1)(f) registers, and (7)(j) other administrative regulations not inconsistent with KRS Chapter 18A and KRS Chapter 13A, as

VOLUME 51, NUMBER 3– September 1, 2024

may be proper and necessary for its enforcement. This administrative regulation establishes internship interview preference for the KRS Chapter 18A classified service hiring process.

Section 1. Eligibility. An applicant shall be granted an internship interview preference for the position applied for if he or she:

- (1) Meets the minimum qualifications of the KRS Chapter 18A classified position applied for; and
- (2) Provides documentation verifying his or her successful completion of an internship coordinated by the Personnel Cabinet.

Section 2. Procedures.

(1) Applicants entitled to internship interview preference as set forth in Section 1 of this administrative regulation shall be clearly identified.

(2) If the number of applicants granted an interview preference for an advertised classified position is less than five (5), the employing agency shall offer an interview to all applicants identified in subsection (1) of this section.

(3) If the number of applicants granted an interview preference for an advertised classified position equals or exceeds five (5), the employing agency shall offer an interview to no fewer than five (5) applicants identified in subsection (1) of this section.

Section 3. Restrictions.

(1) Internship interview preference shall expire:

(a) Upon initial appointment to any position in the classified service; or

(b) After five (5) years from the date of internship completion.

(2) The secretary may revoke an applicant's internship interview preference for one (1) or more positions due to factors listed in KRS 18A.032.

(3) The secretary may designate specific positions, job classifications, or agencies as exempt from internship interview preference requirements.

(4) The provisions of this administrative regulation shall be effective for KRS Chapter 18A classified positions advertised beginning July 1, 2025

MARY ELIZABETH BAILEY, Secretary

APPROVED BY AGENCY: August 9, 2024

FILED WITH LRC: August 14, 2024 at 9:00 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 21, 2024, at 10:00 a.m. at 501 High 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 October 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: Rosemary Holbrook, Executive Director, Office of Legal Services, 501 High Street, 3rd floor, Frankfort, Kentucky 40601, phone (502) 564-7430, fax (502) 564-0224, email RosemaryG.Holbrook@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Rosemary Holbrook

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes internship interview preference for the KRS Chapter 18A classified service hiring process.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to improve Executive Branch employee recruitment, implement the interview preference incentive for participants in cabinet-sponsored internships, and to strengthen enforcement authority for procedures established pursuant to KRS 18A.030.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 18A.110 requires the secretary to promulgate regulations for the classified service hiring and selection process, to include (1)(a) applications and examinations, (1)(b) certification and selection of eligibles, (1)(f) registers, and (7)(j) other regulations not inconsistent with KRS Chapter 18A and KRS Chapter 13A, as may be proper and necessary for its enforcement.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 18A.030 directs the secretary to establish general procedures for personnel recruitment, for certification, and for improving the efficiency of employed personnel. Those general procedures include a program for cabinet-sponsored internships, including interview preference for those who complete internships. Promulgating internship interview preference in regulation strengthens the enforcement authority for procedures established pursuant to KRS 18A.030.

(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: NA

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All agencies that hire for KRS Chapter 18A classified positions are subject to the provisions of 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: Hiring agencies will be required to offer interviews to job applicants pursuant to the provisions of this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Compliance does not have a direct cost. Hiring agencies will incorporate the interview requirements into existing selection procedures.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Hiring agencies will be presented with a broader pool of applicants beyond those who are minimally qualified. Applicants who have completed a cabinet-sponsored internship are anticipated to have a greater understanding of state employment opportunities and conditions.

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

(a) Initially: There are minimal costs anticipated for implementation of this regulation.

(b) On a continuing basis: There are minimal costs anticipated for continuing administration of this regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Existing agency funds will be used for implementation and enforcement.

(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: Implementation of this administrative regulation does not require an increase in fees or funding.

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

(9) TIERING: Is tiering applied? No. This administrative regulation treats all impacted entities 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 18A.110(1)(a), (1)(b), (1)(f), and (7)(j)

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: The Personnel Cabinet is the promulgating agency. All state agencies that hire for KRS Chapter 18A classified positions are subject to the provisions of this administrative regulation.

(a) Estimate the following for the first year:

Expenditures: This administrative regulation is not anticipated to have direct expenditures.

Revenues: This administrative regulation does not generate revenue.

Cost Savings: This administrative regulation will not result in cost savings.

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

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): There are no affected local entities.

(a) Estimate the following for the first year:

Expenditures: NA

Revenues: NA

Cost Savings: NA

(b) How will expenditures, revenues, or cost savings differ in subsequent years? NA

(4) Identify additional regulated entities not listed in questions (2) or (3): There are no regulated entities other than those listed in question (2).

(a) Estimate the following for the first year:

Expenditures: NA

Revenues: NA

Cost Savings: NA

(b) How will expenditures, revenues, or cost savings differ in subsequent years? NA

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: This administrative regulation does not have a significant fiscal impact.

(b) Methodology and resources used to determine the fiscal impact: The provisions of this administrative regulation were reviewed, and a significant fiscal impact was not identified.

(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) An overall negative or adverse major economic impact is not anticipated.

(b) The methodology and resources used to reach this conclusion: The provisions of this administrative regulation were reviewed, and a significant fiscal impact was not identified.

**FINANCE AND ADMINISTRATION CABINET
Department of Revenue
(New Administrative Regulation)**

103 KAR 5:200. Valuation of multi-unit rental housing subject to government restriction on use.

RELATES TO: KRS 131.130, 132.191, 132.420, Ky. Const. 172, 174

STATUTORY AUTHORITY: KRS 131.130, 132.191

NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(1) authorizes the department to promulgate administrative regulations necessary to administer and enforce Kentucky's tax laws. KRS 132.191(5)(d) requires the Department of Revenue to promulgate an administrative regulation to implement criteria for the valuation and assessment of property used as multi-unit rental housing that is subject to government restriction on use for ad valorem taxation purposes based on an income approach methodology. This administrative regulation establishes a uniform system for assessing the value of this class of property when using an annual net operating income approach to value or a ratio of restricted rent to market rent approach to value.

Section 1. Definitions.

(1) "Department" is defined by KRS 132.010(1).

(2) "Direct capitalization" means capitalization of the net operating income, that was developed using the owner's income and stabilized operating expenses based on an actual history of the property, when available, and an altered capitalization rate.

(3) "Government restriction on use" is defined by KRS 132.010(35).

(4) "Low income" is defined by KRS 132.010(36).

(5) "Multi-unit rental housing" is defined by KRS 132.010(37).

(6) "PVA" means the Property Valuation Administrator.

(7) "Ratio of restricted rent to market rent" means the percentage derived from dividing the annual gross rental income of a multi-unit rental housing property that is subject to government restriction on use by the annual gross rental income of a similar multi-unit rental housing property that is not subject to government restriction on use.

Section 2. Assessment of Multi-unit Rental Housing That is Subject to Government Restriction on Use.

(1) When using an annual net operating income approach to value multi-unit rental housing that is subject to government restrictions, a PVA shall determine the assessed value of that class of property by using the direct capitalization approach to value or the ratio of restricted rent to market rent approach to value.

(2) An owner of a multi-unit rental housing that is subject to government restrictions shall report the following information to the PVA of the county in which the property is located by March 1 of each calendar year:

(a) The full address of the property and the business name of the property;

(b) The name and address of the property owner;

(c) The total number of rental units located at the address of the property;

(d) The number of:

1. Studio apartments;

2. One (1) bedroom apartments;

3. Two (2) bedroom apartments;

4. Three (3) bedroom apartments;

5. Four (4) or more bedroom apartments;

6. Townhouses; and

7. Any other types of units;

(e) The name and full address of the person or business responsible for paying the ad valorem property tax on the real property;

(f) If the real property was subject to governmental restrictions on its use as of January 1 of the tax year;

(g) If the property is currently subject to a foreclosure action; and

(h) Income, occupancy, and expense information for the three (3) years prior to January 1 of the current tax year including:

1. All tenant rental income, including any rental subsidies;

2. All other income directly generated from the use of the property;

3. Total bad debt;

4. The average annual vacancy rate of the property;

5. Annual payroll;

6. Annual administrative expenses;

7. Annual operating and maintenance expenses, such as utilities, repairs, cleaning, and groundskeeping;

8. Annual property insurance costs; and

9. Any other information reasonably necessary to determine the fair cash value of the property.

(3) The owner shall report the information required by this section on Assessment of Multi-Unit Rental Housing Subject to Government Restrictions on Use, Form 62A320. This form and all required supporting documents and information shall be filed within sixty (60) days of:

(a) the property in question becoming subject to government restriction on use,

(b) all government restrictions on use of the property being lifted, or

(c) the owner or owner's agent for service being served with civil summons regarding a foreclosure action upon the property.

VOLUME 51, NUMBER 3– September 1, 2024

(4) If the property owner fails to file Assessment of Multi-Unit Rental Housing Subject to Government Restrictions on Use, Form 62A320, and all required supporting documents and information with the county PVA within the deadlines established in this section, the property owner may be subject to a penalty of \$100. The penalty under this subsection shall be paid by the owner of the property to the department within thirty (30) days of submitting the Assessment of Multi-Unit Rental Housing Subject to Government Restrictions on Use, Form 62A320.

Section 3. Formula for Assessing the Value of Multi-unit Rental Housing Subject to Government Restriction on Use under the Direct Capitalization Approach to Value. The formula used to determine the assessed value of multi-unit rental housing that is subject to government restriction on use under the direct capitalization approach to value shall be as follows:

(1) Actual income generated by the property shall be adjusted by deducting allowable operating expenses based on the actual history of the property. This result shall be the adjusted net income.

(2) The adjusted net income shall be divided by a capitalization rate that is determined under Section 4 of this administrative regulation.

(3) The result of that calculation is the property's assessed value.

Section 4. Web Site Subscription for Capitalization Rate Data.

(1) The department shall subscribe to www.realtyrates.com (or any successor organization) to access the most recent quarterly survey of the national average of capitalization rates for multi-family properties.

(1) The department shall publish the capitalization rate for use in the valuation of multi-unit rental housing subject to government restriction on use for each assessment year on the department's website and shall provide the capitalization rate to all PVAs to use in assessing multi-unit rental housing subject to government restriction on use.

(2) The capitalization rate used by a PVA when assessing multi-unit rental housing subject to government restriction on use shall be fifty (50) to 150 basis points (one-half percent (0.5%) to one and one-half percent (1.5%)) above the average capitalization rate obtained through the national average of capitalization rates for multi-family properties published by www.realtyrates.com or a successor organization for the fourth quarter of the year immediately preceding the January 1 assessment date.

Section 5. Formula for Assessing the Value of Multi-Unit Rental Housing Subject to Government Restriction on Use under the Ratio of Restricted Rent to Market Rent Approach to Value.

(1) The assessor shall determine the value of the property using a direct capitalization of the net operating income and allowable operating expenses and utilizing a traditional capitalization rate.

(2) The gross rent produced by the subject property in its restricted state shall be compared to the gross rent produced by a comparable unrestricted property and expressed as a ratio.

(3) The ratio shall be applied to the value determined under Section 3 of this administrative regulation to determine the value of the subject property.

Section 6. Examples.

(1) This section includes examples of the direct capitalization approach to value and the restricted rent to market rent method that may be used to determine the assessed value of multi-unit rental housing subject to government restriction on use. Both examples utilize the following information:

History of Income and Expense Statements				
Property Name:	Bluegrass County Apartments			
Address	100 Main Street, Springville, Kentucky			
	Year 2021	Year 2022	Year 2023	Three (3) Year Average

Income				
Rental Income	560,000	590,000	560,000	570,000
Vacancy & Collection Loss	-40,000	-60,000	-50,000	-50,000
Other Income (Loss)	25,000	30,000	20,000	25,000
Bad Debt	-7,000	-10,000	-10,000	-9,000
Total Income	538,000	550,000	520,000	536,000
Allowable Expenses (Actual)				
Payroll & Related	110,000	115,000	120,000	115,000
Administrative	75,000	100,000	95,000	90,000
Utilities	45,000	45,000	45,000	45,000
Operating & Maintenance	45,000	5,000	25,000	25,000
Insurance	30,000	31,000	32,000	31,000
Other	15,000	15,000	15,000	15,000
Total Operating Expense	320,000	311,000	332,000	321,000
Net Operating Income (Loss)	218,000	239,000	188,000	215,000
(Total Income Minus Total Allowable Expenses)				

(2) Direct Capitalization. The rates within the following example shall be for example purposes only and shall not be construed to be capitalization rates set by the department:

Direct Capitalization Approach	
Property Name:	Bluegrass County Apartments
Address	100 Main Street, Springville, Kentucky
Income	Stabilized Pro Forma
Rental Income	570,000
Vacancy & Collection Loss	-50,000
Other Income (Loss)	25,000
Bad Debt	-9,000
Total Income	536,000
Allowable Expenses (Actual)	
Payroll & Related	115,000
Administrative	90,000
Utilities	45,000
Operating & Maintenance	25,000
Insurance	31,000
Other	321,000
Net Operating Income (Loss)	215,000

VOLUME 51, NUMBER 3– September 1, 2024

Capitalization Rate	Low	High
Realtyrate.com 4th Quarter 2023 (Example Only)	8.43%	8.43%
2023 House Bill 360 Adjustment (50 to 150 Basis Points)	0.50%	1.50%
Tax Rate Component (Including City Taxes)	1.15%	1.15%
Total Overall Capitalization Rate	10.08%	11.08%
Direct Capitalization		
Net Operating Income	215,000	215,000
Overall Capitalization Rate	10.08%	11.08%
Indicated Value by Income Approach		
(Net operating income divided by overall capitalization rate)	2,132,937	1,940,433
Indicated Assessment Rate (Rounded to nearest thousand)	2,133,000	1,940,000

(3) Restricted Rent to Market Rent. The rates within the following example shall be for example purposes only and shall not be construed to be capitalization rates set by the department.

Ratio of Restricted Rent to Market Rent		
Property Name:	Bluegrass County Apartments	
Address	100 Main Street, Springfield, Kentucky	
Unrestricted Market Value	Percent of Stabilized Pro Forma	Stabilized Pro Forma
Potential Gross Income		
Market Rent		750,000
Vacancy & Collection Loss	4.00%	-30,000
Other Income (Loss)	-	-
Bad Debt	-	-
Effective Gross Income		720,000
Market Expenses (Rounded)		
	Percent of Effective Gross Income	
Payroll and Related	15.60%	112,300
Administrative	12.10%	87,100
Utilities	9.17%	66,000
Operating & Maintenance	9.10%	65,500
Insurance	3.80%	27,400
Other	8.60%	61,900
Net Operating Income (Loss)		299,800

(Total Income Minus Total Allowable Expenses)	
Capitalization Rate	
Realtyrate.com 4th Quarter 2023 (Example only)	8.43%
Tax Rate Component (Including City Taxes)	1.15%
Total Overall Capitalization Rate	9.58%
Direct Capitalization	
Net Operating Income	299,800
Overall Capitalization Rate	9.58%
Indicated Value by Income Approach	
(Net operating income divided by overall capitalization rate)	3,129,436
Ratio of Average Annual Rent of Restricted to Unrestricted Properties	
Potential Gross Income – Unrestricted/Market Rent	750,000
Average Annual Rent – Restricted/Contract Rent	570,000
Ratio of Restricted Rent to Market Rent	76.0%
(Average Annual Rent/Potential Gross Income)	
Adjustment of Market Value by Ratio of Rent Comparison	
Capitalized Value of Annual Net Operating Income	3,129,436
Ratio of Restricted Rent to Market Rent	76.0%
Indicated Value per Ratio of Restricted Rent	2,378,372
Indicated Assessment (rounded to nearest thousand)	2,378,000

Section 7. Forms. The form referenced in this administrative regulation may be inspected, copied, or obtained, subject to applicable copyright law, at:

- (1) The Kentucky Department of Revenue, 501 High Street, Frankfort, Kentucky 40601;
- (2) A Kentucky Taxpayer Service Center, Monday through Friday, 8:00 a.m. to 4:30 p.m.; or
- (3) The department's Web site at www.revenue.ky.gov.

THOMAS B. MILLER, Commissioner

APPROVED BY AGENCY: August 14, 2024

FILED WITH LRC: August 15, 2024 at 11:45 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public comment on this administrative regulation shall be held on October 23, 2024, at 1:00 p.m. in Room 11A, State Office Building, 501 High Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing at least 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. A transcript of the public hearing will not be made unless

VOLUME 51, NUMBER 3– September 1, 2024

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 October 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: Gary Morris, Executive Director, Office of Tax Policy and Regulation, Department of Revenue, 501 High Street, Station 1, Frankfort, Kentucky 40601, phone (502) 564-0424, fax (502) 564-3875, email Gary.Morris@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Gary Morris

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the criteria for the valuation and assessment of multi-unit housing that is subject to government restriction on use under an annual net operating income approach to value or a ratio of restricted rent to market rent approach to value.

(b) The necessity of this administrative regulation: KRS 132.191 provides that the Department of Revenue shall promulgate an administrative regulation to adopt forms, penalties, and procedures to carry out the criteria established under KRS 132.191(5) for the valuation and assessment of multi-unit rental housing that is subject to government restriction on use employing an annual net operating income approach.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The administrative regulation implements the criteria established under KRS 132.191(5) when the annual net operating income approach methodology used for the valuation and assessment of multi-unit rental housing that is subject to government restriction on use and establishes a penalty for the non-compliance by a property owner of reporting requirements under KRS 132.191(5)(c) and Section 2 of this administrative regulation.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes a uniform methodology that may be used in the assessment of multi-unit rental housing that is subject to government restriction on use under the criteria established in KRS 132.191(5).

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

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation.

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

(d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will impact all property valuation administrators (PVAs) and all owners of multi-unit rental housing situated in the Commonwealth of Kentucky subject to government restriction on use. There are 120 PVAs and approximately 1,400 impacted property owners.

(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 property owners will need to provide the required income and expense information to the PVA of the county in which the property is located. This will allow the PVA to follow the procedure detailed in this administrative regulation to derive an assessed value that may be used for the property in question.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no additional costs to the PVAs. There may be minimal costs to the property owners who must furnish the income and expense information to the PVA.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Owners of multi-unit rental housing subject to government restriction on use will have greater clarity on the income and market comparison methodology that may be used to develop the assessed values for their properties. PVAs will have a standardized method to follow when using these processes to assess these types of properties which will establish uniformity in the assessments.

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

(a) Initially: Current staff and budgeted funding will absorb any cost associated with implementation.

(b) On a continuing basis: The Department of Revenue should not incur additional costs on a continuing basis as a result of this regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The implementation of enforcement of this administrative regulation will be done with existing funds and personnel primarily through the Department of Revenue.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees. However, KRS 132.191(5)(c)(3) authorizes the Department of Revenue to determine the amount of penalty for owners who fail to comply with reporting requirements, up to \$200. This administrative regulation sets the penalty amount at \$100 to be imposed upon any owner of multi-unit rental housing subject to government restriction on use who does not timely notify the PVA of any change to the property or the necessary income and expense information necessary for the PVA to develop an assessed value for the property.

(9) TIERING: Is tiering applied? Tiering is not applied. This administrative regulation establishes a consistent and uniform method that may be used to assess all multi-unit rental housing subject to government restriction on use.

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 131.130(1), KRS 132.191(5)(d).

(2) Identify the promulgating agency and any other affected state units, parts, or divisions:

(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): All local property tax districts, for example: cities, counties, fire departments, health departments, and school districts.

(a) Estimate the following for the first year:

Expenditures: There will not be any significant increase or decrease in expenditures at the state or local level due to this administrative regulation.

Revenues: There will not be any significant increase or decrease in revenues at the state or local level due to this administrative regulation.

Cost Savings: There will not be any significant cost savings for state or local agencies due to this regulation.

(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):

(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?

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: Calculating real property tax rates involves the total assessment amount of all real property in a county. Using the income and market comparison process to assess one, or several, multi-unit rental housing properties that are subject to government restriction on use, and the subsequent increase or decrease in the assessment, may impact on the real property tax rates imposed by local jurisdictions or for state ad valorem tax purposes.

(b) Methodology and resources used to determine the fiscal impact: Kentucky revised statutes that specify the calculation of property tax rates, including KRS 132.010 and 132.017 governing property tax rate calculations for various local taxing districts were considered when determining 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) Not applicable due to an impact below the threshold of \$500,000.

(b) The methodology and resources used to reach this conclusion: See response to (5) above.

BOARDS AND COMMISSIONS
Board of Dentistry
(New Administrative Regulation)

201 KAR 8:610. Dental community health workers.

RELATES TO: KRS 309.460, 309.462, 309.464, 313.021
STATUTORY AUTHORITY: KRS 313.021(1)(a), 313.060(1)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 313.021(1)(c) requires the board to promulgate administrative regulations relating to requirements and procedures for registration, duties, training, and standards for any license or registration the board may establish. This administrative regulation establishes the requirements, scope, and procedures for certified community health workers operating in a dental health setting.

Section 1. Definitions.

(1) "Certified community health worker" is defined by KRS 309.460(2).

(2) "Dental community health worker" means a certified community health worker engaged in patient management of oral health and dental care.

Section 2. Supervision and Scope.

(1) A dental community health worker operating under this administrative regulation shall be under the oversight and scope of the ordering dentist at all times in the performance of patient management.

(2) While under the direction of the ordering dentist, a dental community health worker shall be authorized to:

(a) Support diverse patient populations by attending dental visits of the dentally vulnerable and support follow-up activities for future care or referrals to other providers;

(b) Provide culturally appropriate dental health education and information to diverse communities;

(c) Provide care coordination, case management, and system navigation services regarding dental care providers and dental insurance coverage and eligibility;

(d) Provide coaching and social support to patients and caregivers regarding oral health practices and behaviors for children, patients with special healthcare needs, and dependent elderly patients;

(e) Conduct oral screenings or risk assessments for chronic dental conditions, including caries and periodontal disease; and

(f) Encourage patient and provider participation in community-wide oral health events.

JEFFREY ALLEN, Executive Director

APPROVED BY AGENCY: August 14, 2024

FILED WITH LRC: August 15, 2024 at 11:20 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 28, 2024 at 3:00 p.m., Eastern Time at the Kentucky Board of Dentistry, 312 Whittington Parkway, Suite 101, Louisville, Kentucky 40222. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing 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 October 31, 2024. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: Jeff Allen, Executive Director, Kentucky Board of Dentistry, 312 Whittington Parkway, Suite 101, Louisville, Kentucky 40222, phone (502) 429-7280, fax (502) 429-7282, email jeffrey.allen@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jeffrey Allen

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation clarifies the role and authority of licensed dentists when working as an ordering provider to registered community health workers under KRS 205.648 and 907 KAR 3:310.

(b) The necessity of this administrative regulation: KRS 313.021(1)(a) requires the board to exercise the administrative functions of the Commonwealth in the regulation of the profession of dentistry. KRS 205.648 and 907 KAR 3:310 identifies dentists as one of several healthcare professionals that may serve as an ordering provider to community health workers. Therefore, the board wishes to add to our own regulations in 201 KAR Chapter 8 to compliment and clarify the aforementioned rules as it specifically applies to dentists and dental practice.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 313.021(1)(a) requires the board to exercise the administrative functions of the Commonwealth in the regulation of the profession of dentistry.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Dentists licensed by the Board of Dentistry will better understand the scope of their responsibilities when working with community health workers registered by the Office of Community Health Workers, thereby minimizing mistakes and maximizing their benefit to health and welfare of the people of the Commonwealth.

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

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation.

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

(d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will primarily affect dentists licensed by the Board of Dentistry who serve as operating providers to community health workers certified by the Office of Community Health Workers. While approximately 3,000 dentists are currently licensed in Kentucky, only a fraction of them are expected to be operating 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:

VOLUME 51, NUMBER 3– September 1, 2024

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No additional actions will be required of dentists, community health workers or any other regulated entity.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Dentists licensed by the Board of Dentistry will better understand the scope of their responsibilities when working with community health workers registered by the Office of Community Health Workers.

(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: No additional source of funding is necessary 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: No increase in fees or funding is required.

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

(9) TIERING: Is tiering applied? No; this administrative regulation impacts all similarly situated entities equally.

(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, this administrative regulation would not have a major economic impact.

(b) The methodology and resources used to reach this conclusion: This administrative regulation has no fiscal impact as it does not require any revenues or expenditures.

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 313.021.

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: The Board of Dentistry is the promulgating agency. The Office of Community Health Workers and the Department of Medicaid Services are relevant to this regulation but no changes or additional actions on their part should be required.

(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): No local entities are likely to be affected.

(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): 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.

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: This administrative regulation has no fiscal impact.

(b) Methodology and resources used to determine the fiscal impact: This administrative regulation has no fiscal impact as it does not require any new revenues or expenditures from any entity or individual.

(6) Explain:

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
Minutes of August 13, 2024

Call to Order and Roll Call

The August meeting of the Administrative Regulation Review Subcommittee was held on Tuesday, August 13, 2024, at 1:00 p.m. in Room 149 of the Capitol Annex. Representative Derek Lewis, Co-Chair, called the meeting to order, and roll call was taken.

Present were:

Members: Senator Stephen West, Co-Chair; Representative Derek Lewis, Co-Chair; Senator David Yates; and Representatives Randy Bridges, Deanna Frazier Gordon, and Daniel Grossberg.

LRC Staff: Stacy Auterson, Laura Begin, Emily Caudill, Ange Darnell, Emily Harkenrider, Karen Howard, Anna Latek, and Carrie Nichols.

Guests: Rebecca Gilpatrick, Kentucky Higher Education Assistance Authority; Cassie Trueblood, Education Professional Standards Board; Taylor Brown, State Board of Elections; Amy Burke, Ed Price, Office of the Attorney General; Gordon Rowe, Kentucky Personnel Board; Cary Bishop, Finance and Administration Cabinet; Eden Davis, Board of Pharmacy; Kelly Jenkins, Jeff Prather, Board of Nursing; Clay Patrick, Board of Licensure for Occupational Therapy; Dale Hamblin, Scott Wilhoit, Department of Workers' Claims; Max Fuller, David Moore, Darryl Morgan, Department of Housing, Buildings and Construction; and Andrea Day, Sam Flynn, Shelby Lewis, Oran McFarlan, Cabinet for Health and Family Services.

The Administrative Regulation Review Subcommittee met on Tuesday, August 13, 2024, and submits this report:

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY: Division of Student Financial Aid: Kentucky Higher Education Assistance Authority

011 KAR 004:080. Student aid application. Rebecca Gilpatrick, director of student aid, 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 Sections 1 and 2 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (2) to amend Section 2 to delete obsolete incorporated forms. Without objection, and with agreement of the agency, the amendments were approved.

Kentucky Educational Excellence Scholarship Program

011 KAR 015:090. Kentucky Educational Excellence Scholarship (KEES) program.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph and Sections 2 through 6 and 12 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (2) to amend Section 12 to delete an obsolete incorporated form. Without objection, and with agreement of the agency, the amendments were approved.

011 KAR 015:110. Scholarships for Registered Apprenticeship and Qualified Workplace Training programs.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 4 to comply with the drafting requirements of KRS Chapter 13A; and (2) to add a Section 5 to incorporate material. Without objection, and with agreement of the agency, the amendments were approved.

EDUCATION AND LABOR CABINET: Education Professional Standards Board: Teaching Certificates

016 KAR 002:110. Endorsement for teachers for gifted education. Cassie Trueblood, counsel, represented the board.

A motion was made and seconded to approve the following amendments: to amend the STATUTORY AUTHORITY and

NECESSITY, FUNCTION, AND CONFORMITY paragraphs to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

016 KAR 002:140. Probationary certificate for teachers of exceptional children and interdisciplinary early childhood education.

A motion was made and seconded to approve the following amendments: to amend the STATUTORY AUTHORITY paragraph and Section 1 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

016 KAR 002:170. Probationary certificate for middle school teachers.

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.

016 KAR 002:200. Probationary endorsement for teachers for English as a second language.

A motion was made and seconded to approve the following amendment: to amend the STATUTORY AUTHORITY paragraph to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendment was approved.

Alternative Routes to Certification

016 KAR 009:030E. Professional and provisional certificate for college faculty.

In response to a question by Co-Chair Lewis, Ms. Trueblood stated that this administrative regulation was filed on an emergency basis in response to Senate Bill 265 from the 2024 Regular Session of the General Assembly, which amended KRS Chapter 161 and declared an emergency.

KENTUCKY PERSONNEL BOARD

101 KAR 001:335. Employee actions. Gordon Rowe, executive director, represented the board.

A motion was made and seconded to approve the following amendment: to amend the RELATES TO paragraph to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendment was approved.

101 KAR 001:345. Disciplinary actions.

101 KAR 001:375. Employee grievances and complaints.

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.

101 KAR 001:396. Repeal of 101 KAR 001:395.

FINANCE AND ADMINISTRATION CABINET: Purchasing

200 KAR 005:021E. Manual of policies and procedures. Cary Bishop, general counsel, represented the cabinet.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph and Sections 1 and 2 to comply with the drafting requirements of KRS Chapter 13A; and (2) to update FAP 220-10-00 for clarity and to comply with Senate Bill 91 from the 2024 Regular Session of the General Assembly. Without objection, and with agreement of the agency, the amendments were approved.

BOARDS AND COMMISSIONS: Board of Pharmacy

201 KAR 002:220. Collaborative care agreements. Eden Davis, general counsel, represented the board.

Board of Nursing

201 KAR 020:320. Standards for curriculum of prelicensure registered nurse and practical nurse programs. Kelly Jenkins, executive director, and Jeff Prather, general counsel, represented the board.

A motion was made and seconded to approve the following amendment: to amend Section 3 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendment was approved.

Board of Licensure for Occupational Therapy

201 KAR 028:240. 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.

EDUCATION AND LABOR CABINET: Department for Workers' Claims

803 KAR 025:089. Workers' compensation medical fee for physicians. Dale Hamblin, assistant general counsel, and Scott Wilhoit, commissioner, represented the department.

PUBLIC PROTECTION CABINET: Department of Housing, Buildings and Construction: Kentucky Building Code

815 KAR 007:120. Kentucky Building Code. Max Fuller, commissioner; David Moore, deputy commissioner; and Darryl Morgan, electrical division director, represented the department.

Co-Chair Lewis and Senator Yates thanked the department for working with stakeholders to develop these administrative regulations.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

815 KAR 007:125. Kentucky Residential Code.

A motion was made and seconded to approve the following amendments: to amend the Kentucky Residential Code to delay implementation of portions of the 2023 National Electrical Code. Without objection, and with agreement of the agency, the amendments were approved.

CABINET FOR HEALTH AND FAMILY SERVICES: Office of the Secretary: Medicinal Cannabis Program

915 KAR 001:010E. Initial and renewal applications for cannabis business licenses. Sam Flynn, executive director; Shelby Lewis, executive policy advisor; and Oran McFarlan, deputy executive director, represented the program.

In response to questions by Co-Chair West, Mr. Flynn stated that, while landlords may enter into contingency tenant agreements with multiple potential dispensary agents, each potential applicant would have only one (1) opportunity to apply for a cultivation license in one (1) of the three (3) tiers. A potential applicant could have (1) dispensary license in each of the eleven (11) licensing territories statewide. Corporations operating and applying for licenses under multiple, smaller subsidiaries was prohibited. Each applicant was required to disclose their ownership, corporate structure, and whether or not they have a parent company. If an owner was determined to have more than ten (10) percent ownership of an LLC and filed for multiple licenses, all except for one (1) would be disallowed.

In response to questions by Senator Yates, Mr. Flynn stated that the threshold for ownership stakes in an eligible license applicant was ten (10) percent because any amount beyond that made it more difficult to establish the ownership structure of an individual company.

In response to questions by Co-Chair Lewis, Mr. Flynn stated that this administrative regulation did not provide for multiple license applications from family members or associates. It would be difficult for the program to develop regulatory structures to prohibit

intrafamilial applications.

915 KAR 001:020E. Cannabis business licenses.

Department for Community Based Services: Day Care

922 KAR 002:090E. Child-care center licensure. Andrea Day, division director, represented the department.

Other Business: Co-Chair Lewis introduced new subcommittee staff member, regulations analyst, Laura Begin.

The following administrative regulations were deferred or removed from the August 13, 2024, subcommittee agenda:

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

016 KAR 002:160. Probationary certificate for teachers of exceptional children.

STATE BOARD OF ELECTIONS: Forms and Procedures

031 KAR 004:031E. Reporting. Taylor Brown, general counsel, represented the board.

Co-Chairs Lewis and West thanked the board for continuing to work with legislative members and stakeholders regarding the issues raised by these administrative regulations.

In response to a question by Co-Chair Lewis, Mr. Brown stated that the board agreed to defer consideration of 031 KAR 004:031E, 031 KAR 004:031, 031 KAR 005:040E, and 031 KAR 5:040 to the September meeting of this subcommittee. Without objection, and with agreement of the agency, 031 KAR 004:031E, 031 KAR 004:031, 031 KAR 005:040E, and 031 KAR 5:040 were deferred.

The following amendments were approved by this subcommittee at the July 9, 2024 meeting: 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.

031 KAR 004:031. Reporting.

The following amendments were approved by this subcommittee at the July 9, 2024 meeting: 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.

031 KAR 005:040E. Questions regarding voter eligibility.

The following amendments were approved by this subcommittee at the July 9, 2024 meeting: 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.

031 KAR 005:040. Questions regarding voter eligibility.

The following amendments were approved by this subcommittee at the July 9, 2024 meeting: 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.

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, assistant attorney general, represented the department.

In response to a question by Co-Chair Lewis, Ms. Burke stated

VOLUME 51, NUMBER 3 – September 1, 2024

that the department agreed to defer consideration of this administrative regulation to the September meeting of this subcommittee. Without objection, and with agreement of the agency, this administrative regulation was deferred.

The following amendments were approved by this subcommittee at the July 9, 2024 meeting: 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.

A motion was made and seconded to approve the following amendments: (1) to amend Section 4(12)(b) and (c) for consistency with KRS 117.076; and (2) to amend Section 4(12)(d) to make a technical correction. Without objection, and with agreement of the agency, the amendments were approved.

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 002:465. Non-Resident Pharmacy Applications and Waivers.

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.

ENERGY AND ENVIRONMENT CABINET: Department for Environmental Protection: Air Quality - General Administrative Procedures

401 KAR 050:038. Air emissions fee.

JUSTICE AND PUBLIC SAFETY CABINET

Department of Corrections: Office of the Secretary

501 KAR 006:021. Repeal of 501 KAR 006:020.

501 KAR 006:280. Risk and needs assessment.

501 KAR 006:300. News media.

501 KAR 006:310. Monitoring and operation of private prisons.

501 KAR 006:320. Corrections policies and procedures: inmate funds.

501 KAR 006:330. Corrections policies and procedures: personnel.

501 KAR 006:340. Corrections policies and procedures: research and information.

501 KAR 006:350. Inmate or offender or supervision record request.

501 KAR 006:360. Corrections policies and procedures: safety and critical incident notification.

501 KAR 006:370. Corrections policies and procedures: security and control.

501 KAR 006:380. Corrections policies and procedures: special management and restrictive housing inmates, safekeepers, and contract prisoners.

501 KAR 006:390. Corrections policies and procedures: inmate diet.

501 KAR 006:400. Corrections policies and procedures: inmate health care.

501 KAR 006:410. Corrections policies and procedures: inmate life and issues.

501 KAR 006:420. Corrections policies and procedures: inmate rules and discipline.

501 KAR 006:430. Corrections policies and procedures: communication, mail, and visiting.

501 KAR 006:440. Corrections policies and procedures: inmate reception, orientation, and personal property.

501 KAR 006:450. Corrections policies and procedures: classification.

501 KAR 006:460. Corrections policies and procedures: inmate work programs.

501 KAR 006:470. Corrections policies and procedures: inmate education and training.

501 KAR 006:480. Library services.

501 KAR 006:490. Corrections policies and procedures: inmate recreation and activities.

501 KAR 006:500. Religious programs.

501 KAR 006:510. Corrections policies and procedures: release preparation and temporary release.

501 KAR 006:520. Citizen involvement, volunteer, and reentry mentor service programs.

501 KAR 006:530. Corrections policies and procedures: programs and sentence credits.

501 KAR 006:540. Inmate record.

ENERGY AND ENVIRONMENT CABINET: Public Service Commission: Utilities

807 KAR 005:015E. Access and attachments to utility poles and facilities.

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 045:001. Definitions for hemp-derived cannabinoid products.

902 KAR 045:012E. Hemp-derived cannabinoid product retail and food service establishment requirements.

902 KAR 045:012. Hemp-derived cannabinoid product retail and food service establishment requirements.

902 KAR 045:021E. Hemp-derived cannabinoid products registration, processing, manufacturing, storage and distribution requirements.

902 KAR 045:021. Hemp-derived cannabinoid products registration, processing, manufacturing, storage and distribution requirements.

VOLUME 51, NUMBER 3 – September 1, 2024

902 KAR 045:031E. Hemp-derived cannabinoid product sampling and testing requirements.

902 KAR 045:031. Hemp-derived cannabinoid product sampling and tasting 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 001:010. Initial and renewal application for cannabis business licenses.

915 KAR 001:020. Cannabis business licenses.

The subcommittee adjourned at 1:40 p.m. The next meeting of this subcommittee was tentatively scheduled for September 10, 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 HEALTH SERVICES
July 30, 2024

None

The following administrative regulations were available for consideration and placed on the agenda of the Interim Joint Committee on Health Services for its meeting of July 30, 2024, having been referred to the Committee on July 3, 2024, pursuant to KRS 13A.290(6):

The Committee rationale for each finding of deficiency is attached to and made a part of this memorandum.

July 3, 2024
201 KAR 020:360 Proposed
902 KAR 020:036 Proposed

The following administrative regulations were approved as amended at the Committee meeting pursuant to KRS 13A.320:

None

Committee activity in regards to review of the above-referenced administrative regulations is reflected in the minutes of the July 30, 2024 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

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

INTERIM JOINT COMMITTEE ON FAMILIES AND CHILDREN
Meeting of July 30, 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 July 30, 2024, having been referred to the Committee on May 1, 2024 and June 11, 2024, pursuant to KRS 13A.290(6):

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.

May 1, 2024
908 KAR 001:410

July 3, 2024
921 KAR 002:015

Committee activity regarding the review of the above-referenced administrative regulations is reflected in the minutes of the July 30, 2024 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

INTERIM JOINT COMMITTEE ON STATE GOVERNMENT
Meeting of August 22, 2024

The Interim Joint Committee on State Government met on August 22, 2024, and a quorum was present. The following administrative regulations were available for consideration, having been referred to the Committee on August 7, 2024, pursuant to KRS 13A.290(6):

31 KAR 5:026

The following administrative regulations were found to be deficient pursuant to KRS 13A.290(8) and 13A.030(2):

None

INTERIM JOINT COMMITTEE ON EDUCATION
Meeting of August 20, 2024

The Interim Joint Committee on Education met on August 20, 2024 and a quorum was present. The following administrative regulations were available for consideration having been referred to the Committee on August 7, 2024, pursuant to KRS 13A.290(6):

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:

31 KAR 5:026

013 KAR 002:120
013 KAR 002:130
704 KAR 003:550
704 KAR 007:140
780 KAR 002:031
780 KAR 003:030
780 KAR 003:035
780 KAR 003:100
780 KAR 003:120
780 KAR 003:130
780 KAR 006:010
780 KAR 006:020

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

The following administrative regulations were found to be deficient pursuant to KRS 13A.290(8) and 13A.030(2):

Committee activity in regard to review of the above-referenced administrative regulation is reflected in the minutes of the August 22, 2024 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

CUMULATIVE SUPPLEMENT

Unless otherwise noted, information contained in these indexes relates only to administrative regulations printed in this, the 49th year of the *Administrative Register of Kentucky*, from July 2022 through June 2023.

Locator Index - Effective Dates

C - 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 “47 Ky.R.” or “48 Ky.R.” notation are regulations that were originally published in previous years’ issues of the *Administrative Register of Kentucky* but had not yet gone into effect when the last *Register* year ended.

KRS Index

C - 8

A cross-reference of statutes to which administrative regulations relate. These statute numbers are derived from the RELATES TO line of each regulation submitted for publication during this *Register* year.

Certifications Index

C - 12

A list of administrative regulations for which certification letters have been filed pursuant to KRS 13A.3104 during this *Register* year.

Technical Amendment Index

C - 13

A list of administrative regulations that have had technical, non-substantive amendments made during this *Register* year. These technical changes have been made by the Regulations Compiler pursuant to KRS 13A.040(9) and (10), 13A.2255(2), 13A.312(2), or 13A.320(1)(d). Because these changes were not substantive in nature, administrative regulations appearing in this index will NOT be published in the *Administrative Register of Kentucky*; however, they are usually available for a short time on the Legislative Research Commission’s Web site.

Subject Index

C - 14

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 49. 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.

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	6-14-2024
031 KAR 003:041E	50 Ky.R. 2150	4-15-2024
E Am Comments	51 Ky.R. 219	6-14-2024
031 KAR 004:031E	50 Ky.R. 2152	4-15-2024
E Am Comments	51 Ky.R. 220	6-14-2024
031 KAR 004:220E	50 Ky.R. 2154	4-15-2024
E Am Comments	51 Ky.R. 221	6-14-2024
031 KAR 005:026E	50 Ky.R. 2158	4-15-2024
E Am Comments	51 Ky.R. 223	6-14-2024
031 KAR 005:040E	50 Ky.R. 2161	4-15-2024
E Am Comments	51 Ky.R. 224	6-14-2024
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
As Amended	474	8-13-2024
201 KAR 028:240E	50 Ky.R. 2354	5-14-2024
As Amended	51 Ky.R. 225	7-9-2024
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
202 KAR 002:020E	51 Ky.R. 471	8-6-2024
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
E Am Comments	474	8-15-2024
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	7-15-2024
915 KAR 001:020E	50 Ky.R. 2383	4-18-2024
E Am Comments	51 Ky.R. 230	7-15-2024
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	
As Amended	51 Ky.R. 483	
011 KAR 015:090		
Amended	50 Ky.R. 2240	
As Amended	51 Ky.R. 483	
011 KAR 015:110		
Amended	50 Ky.R. 2245	
As Amended	51 Ky.R. 488	
013 KAR 002:120	50 Ky.R. 2459	
013 KAR 002:130	50 Ky.R. 2461	
013 KAR 006:010	51 Ky.R. 596	
013 KAR 006:020	51 Ky.R. 598	
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	
As Amended	51 Ky.R. 489	
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	
As Amended	51 Ky.R. 490	
016 KAR 002:160		
Amended	50 Ky.R. 1934	
016 KAR 002:170	50 Ky.R. 2469	
As Amended	51 Ky.R. 491	
016 KAR 002:200	50 Ky.R. 2471	
As Amended	51 Ky.R. 492	
016 KAR 004:020		
Amended	50 Ky.R. 1557	
As Amended	2004	7-2-2024
016 KAR 004:030		
Amended	50 Ky.R. 1937	7-16-2024
016 KAR 007:011(r)	51 Ky.R. 170	
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		
Amended	51 Ky.R. 79	
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	

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	46 Ky.R. Page No.	Effective Date	Regulation Number	46 Ky.R. Page No.	Effective Date
031 KAR 005:026			As Amended	2015	7-2-2024
Amended	50 Ky.R. 2250		106 KAR 001:131		
As Amended	51 Ky.R. 244		Amended	50 Ky.R. 1563	
As Amended IJC	492	8-22-2024	As Amended	2017	7-2-2024
031 KAR 005:040	50 Ky.R. 2326		200 KAR 005:021		
As Amended	51 Ky.R. 245		Amended	51 Ky.R. 82	
040 KAR 010:010	50 Ky.R. 2111		200 KAR 014:011		
As Amended	51 Ky.R. 246		Amended	51 Ky.R. 515	
As Amended	494		200 KAR 014:081		
040 KAR 012:010	51 Ky.R. 600		Amended	51 Ky.R. 518	
101 KAR 001:325			200 KAR 014:091		
Amended	50 Ky.R. 1736	7-30-2024	Amended	51 Ky.R. 520	
101 KAR 001:335			200 KAR 015:010		
Amended	50 Ky.R. 2253		Amended	51 Ky.R. 522	
As Amended	51 Ky.R. 495		201 KAR 001:190		
101 KAR 001:345			Amended	1360	
Amended	50 Ky.R. 2255		As Amended	1869	6-4-2024
101 KAR 001:375			201 KAR 001:200	50 Ky.R. 1625	
Amended	50 Ky.R. 2257		As Amended	2020	7-2-2024
As Amended	51 Ky.R. 496		201 KAR 002:015		
101 KAR 001:396(r)	50 Ky.R. 2328		Amended	50 Ky.R. 2282	
101 KAR 002:086	51 Ky.R. 601		201 KAR 002:030		
102 KAR 001:138	51 Ky.R. 430		Amended	50 Ky.R. 2284	
102 KAR 001:320			201 KAR 002:050		
Amended	51 Ky.R. 511		Amended	50 Ky.R. 2287	
102 KAR 001:350			201 KAR 002:210		
Amended	51 Ky.R. 344		Amended	51 Ky.R. 83	
102 KAR 001:370	51 Ky.R. 431		201 KAR 002:220		
103 KAR 005:200	51 Ky.R. 603		Amended	50 Ky.R. 2091	
104 KAR 001:010			201 KAR 002:370		
Amended	50 Ky.R. 78		Amended	51 Ky.R. 87	
As Amended	51 Ky.R. 37		201 KAR 002:465	50 Ky.R. 2330	
104 KAR 001:040			Am Comments	51 Ky.R. 502	
Amended	50 Ky.R. 80		201 KAR 002:470	51 Ky.R. 171	
As Amended	51 Ky.R. 38		201 KAR 002:480	51 Ky.R. 172	
104 KAR 001:050			201 KAR 008:533		
Amended	50 Ky.R. 82		Amended	50 Ky.R. 1739	
As Amended	51 Ky.R. 39		As Amended	2393	6-18-2024
104 KAR 001:080			201 KAR 008:563		
Amended	50 Ky.R. 84		Amended	51 Ky.R. 525	
As Amended	51 Ky.R. 40		201 KAR 008:610	51 Ky.R. 607	
104 KAR 001:100			201 KAR 010:030		
Amended	50 Ky.R. 86		Amended	50 Ky.R. 1744	7-30-2024
105 KAR 001:001			201 KAR 010:040		
Amended	50 Ky.R. 2259		Amended	50 Ky.R. 1745	7-30-2024
As Amended	51 Ky.R. 247		201 KAR 010:050		
105 KAR 001:120			Amended	50 Ky.R. 1748	7-30-2024
Amended	50 Ky.R. 2262		201 KAR 010:070		
As Amended	51 Ky.R. 249		Amended	50 Ky.R. 1749	7-30-2024
105 KAR 001:140			201 KAR 010:080		
Amended	51 Ky.R. 346		Amended	50 Ky.R. 1750	7-30-2024
105 KAR 001:142	51 Ky.R. 432		201 KAR 018:010		
105 KAR 001:190			Amended	51 Ky.R. 361	
Amended	50 Ky.R. 2265		201 KAR 018:030		
As Amended	51 Ky.R. 251		Amended	51 Ky.R. 363	
105 KAR 001:215			201 KAR 018:115		
Amended	50 Ky.R. 1168		Amended	51 Ky.R. 530	
Am Comments	1704		201 KAR 018:192		
As Amended	1865	6-4-2024	Amended	51 Ky.R. 364	
105 KAR 001:390			201 KAR 018:196		
Amended	50 Ky.R. 1558		Amended	51 Ky.R. 368	
As Amended	2004	7-2-2024	201 KAR 020:056		
105 KAR 001:411			Amended	51 Ky.R. 371	
Amended	50 Ky.R. 2276		201 KAR 020:057		
As Amended	51 Ky.R. 261		Amended	51 Ky.R. 532	
105 KAR 001:451			201 KAR 020:215		
Amended	51 Ky.R. 356		Amended	51 Ky.R. 374	
105 KAR 001:455	50 Ky.R. 1614		201 KAR 020:230		
As Amended	2008	7-2-2024	Amended	51 Ky.R. 377	
105 KAR 001:470	50 Ky.R. 1622		201 KAR 020:320		

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	46 Ky.R. Page No.	Effective Date	Regulation Number	46 Ky.R. Page No.	Effective Date
Amended	50 Ky.R. 2092		301 KAR 002:178		
Am Comments	51 Ky.R. 325		Amended	50 Ky.R. 1768	
As Amended	497		301 KAR 003:030		
201 KAR 20:360			Amended	50 Ky.R. 1944	
Amended	50 Ky.R. 2095	7-30-2004	As Amended	2400	6-6-2024
201 KAR 020:370			301 KAR 003:130	50 Ky.R. 1986	
Amended	50 Ky.R. 1753	6-18-2024	As Amended	2401	6-6-2024
201 KAR 020:390			301 KAR 004:020		
Amended	51 Ky.R. 379		Repealed	50 Ky.R. 1437	6-4-2024
201 KAR 020:506			301 KAR 004:021(r)	50 Ky.R. 1437	6-4-2024
Amended	50 Ky.R. 1754	6-18-2024	301 KAR 004:050		
201 KAR 023:160	50 Ky.R. 524		Repealed	50 Ky.R. 1437	6-4-2024
201 KAR 027:006	50 Ky.R. 2481		301 KAR 005:001		
Am Comments	51 Ky.R. 504		Amended	50 Ky.R. 1365	
201 KAR 027:023	50 Ky.R. 2482		As Amended	1885	6-4-2024
Am Comments	51 Ky.R. 505		301 KAR 005:010		
201 KAR 027:041	50 Ky.R. 2485		Amended	50 Ky.R. 1367	
Am Comments	51 Ky.R. 507		As Amended	1885	6-4-2024
201 KAR 027:106	50 Ky.R. 2486		301 KAR 005:020		
Am Comments	51 Ky.R. 509		Amended	50 Ky.R. 1368	
201 KAR 028:240	50 Ky.R. 2488		As Amended	1886	6-4-2024
As Amended	51 Ky.R. 499		301 KAR 005:022		
201 KAR 036:100	50 Ky.R. 1798	6-18-2024	Amended	50 Ky.R. 2296	
201 KAR 039:001			As Amended	51 Ky.R. 271	
Amended	51 Ky.R. 89		301 KAR 005:040		
201 KAR 039:030			Amended	50 Ky.R. 2103	
Amended	51 Ky.R. 92		As Amended	51 Ky.R. 40	7-18-2024
201 KAR 039:040			301 KAR 005:200		
Amended	51 Ky.R. 94		Amended	50 Ky.R. 1371	
201 KAR 039:050			As Amended	1887	6-4-2024
Amended	51 Ky.R. 96		301 KAR 005:210	50 Ky.R. 2113	
201 KAR 039:060			As Amended	51 Ky.R. 41	7-18-2024
Amended	51 Ky.R. 98		302 KAR 045:020	50 Ky.R. 1627	
201 KAR 039:070			As Amended	2022	7-2-2024
Amended	51 Ky.R. 100		401 KAR 045:010		
201 KAR 039:075	51 Ky.R. 175		Amended	50 Ky.R. 914	
201 KAR 039:090			As Amended	2023	6-6-2024
Amended	51 Ky.R. 102		401 KAR 045:020		
201 KAR 039:100			Amended	50 Ky.R. 916	
Amended	51 Ky.R. 105		As Amended	2024	6-6-2024
201 KAR 039:120			401 KAR 045:025		
Amended	51 Ky.R. 107		Amended	50 Ky.R. 919	
201 KAR 039:130	51 Ky.R. 177		As Amended	2025	6-6-2024
202 KAR 002:020			401 KAR 045:030		
Amended	51 Ky.R. 538		Amended	50 Ky.R. 921	
202 KAR 006:090			As Amended	2026	6-6-2024
Amended	50 Ky.R. 2098		401 KAR 045:040		
As Amended	51 Ky.R. 266		Amended	50 Ky.R. 926	
301 KAR 001:001			As Amended	2030	6-6-2024
Amended	50 Ky.R. 2289		401 KAR 045:050		
301 KAR 001:140			Amended	50 Ky.R. 929	
Amended	50 Ky.R. 1756	6-6-2024	As Amended	2032	6-6-2024
301 KAR 001:146			401 KAR 045:080		
Amended	50 Ky.R. 1758	6-6-2024	Amended	50 Ky.R. 932	
301 KAR 001:150			As Amended	2034	6-6-2024
Amended	50 Ky.R. 1761	7-18-2024	401 KAR 045:100		
301 KAR 001:152			Amended	50 Ky.R. 935	
Amended	50 Ky.R. 2292		As Amended	2035	6-6-2024
As Amended	51 Ky.R. 268		401 KAR 045:105	50 Ky.R. 994	
301 KAR 001:155			Am Comments	1721	
Amended	50 Ky.R. 1568	6-6-2024	As Amended	2040	6-6-2024
301 KAR 001:201			401 KAR 045:140		
Amended	50 Ky.R. 1768	6-6-2024	Amended	50 Ky.R. 942	
301 KAR 001:410			As Amended	2043	6-6-2024
Amended	51 Ky.R. 109		401 KAR 045:160		
301 KAR 002:122			Amended	50 Ky.R. 944	
Amended	50 Ky.R. 2101	7-18-2024	Am Comments	1725	
301 KAR 002:132			As Amended	2044	6-6-2024
Amended	50 Ky.R. 1939		401 KAR 045:250		
As Amended	2397	6-6-2024	Amended	50 Ky.R. 948	

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	46 Ky.R. Page No.	Effective Date	Regulation Number	46 Ky.R. Page No.	Effective Date
As Amended	2047	6-6-2024	501 KAR 007:010		
401 KAR 050:038	50 Ky.R. 2473		Amended	50 Ky.R. 1962	
401 KAR 103:005	50 Ky.R. 1212		501 KAR 007:040		
Am Comments	1908		Amended	50 Ky.R. 1964	
As Amended	2047	6-6-2024	501 KAR 007:080		
401 KAR 103:010	50 Ky.R. 1215		Amended	50 Ky.R. 1966	
Am Comments	1910		501 KAR 007:090		
As Amended	2048	6-6-2024	Amended	50 Ky.R. 1967	
401 KAR 103:020	50 Ky.R. 1218		501 KAR 013:010		
Am Comments	1914		Amended	50 Ky.R. 1969	
As Amended	2050	6-6-2024	As Amended	51 Ky.R. 273	
401 KAR 103:030	50 Ky.R. 1221		600 KAR 004:010		
Am Comments	1917		Amended	51 Ky.R. 549	
As Amended	2051	6-6-2024	601 KAR 009:220		
405 KAR 010:001			Amended	51 Ky.R. 114	
Amended	51 Ky.R. 540		601 KAR 012:080	50 Ky.R. 1628	
405 KAR 010:015			As Amended	2053	
Amended	51 Ky.R. 543		As Amended IJC	51 Ky.R. 42	6-4-2024
416 KAR 001:001	50 Ky.R. 1799	6-6-2024	601 KAR 023:040	50 Ky.R. 1988	
416 KAR 001:010			As Amended	51 Ky.R. 42	
Amended	50 Ky.R. 1775	6-6-2024	702 KAR 001:116		
416 KAR 001:020	50 Ky.R. 1801	6-6-2024	Amended	51 Ky.R. 551	
500 KAR 013:020			702 KAR 003:320		
Amended	50 Ky.R. 1185		Amended	51 Ky.R. 116	
Am Comments	1729	7-30-2024	702 KAR 004:090		
501 KAR 001:080			Amended	51 Ky.R. 554	
Amended	51 Ky.R. 113		703 KAR 005:080		
501 KAR 002:060			Amended	51 Ky.R. 557	
Amended	50 Ky.R. 1946		703 KAR 005:240		
501 KAR 003:010			Amended	51 Ky.R. 559	
Amended	50 Ky.R. 1948		704 KAR 003:095		
501 KAR 003:040			Amended	50 Ky.R. 1572	6-4-2024
Amended	50 Ky.R. 1950		704 KAR 003:313(r)	51 Ky.R. 179	
501 KAR 003:060			704 KAR 003:305		
Amended	50 Ky.R. 1952		Amended	51 Ky.R. 562	
501 KAR 003:080			704 KAR 003:535		
Amended	50 Ky.R. 1954		Amended	51 Ky.R. 567	
501 KAR 003:090			704 KAR 003:550	50 Ky.R. 2332	
Amended	50 Ky.R. 1956		As Amended	51 Ky.R. 275	8-20-2024
501 KAR 003:100			704 KAR 007:140		
Amended	50 Ky.R. 1958		Amended	50 Ky.R. 2300	
501 KAR 003:140			As Amended	51 Ky.R. 276	8-20-2024
Amended	50 Ky.R. 1960		704 KAR 008:130	51 Ky.R. 180	
501 KAR 006:021(r)	50 Ky.R. 2490		739 KAR 001:060	51 Ky.R. 436	
501 KAR 006:280	50 Ky.R. 2477		739 KAR 001:070	51 Ky.R. 438	
501 KAR 006:300	50 Ky.R. 2491		739 KAR 002:160	50 Ky.R. 2115	
501 KAR 006:310	50 Ky.R. 2493		As Amended	51 Ky.R. 43	
501 KAR 006:320	50 Ky.R. 2495		780 KAR 002:010		
501 KAR 006:330	50 Ky.R. 2496		Repealed	50 Ky.R. 2333	8-20-2024
501 KAR 006:340	50 Ky.R. 2498		780 KAR 002:031(r)	50 Ky.R. 2333	8-20-2024
501 KAR 006:350	50 Ky.R. 2499		780 KAR 003:030		
501 KAR 006:360	50 Ky.R. 2501		Amended	50 Ky.R. 2302	
501 KAR 006:370	50 Ky.R. 2503		As Amended	51 Ky.R. 276	8-20-2024
501 KAR 006:380	50 Ky.R. 2504		780 KAR 003:035		
501 KAR 006:390	50 Ky.R. 2506		Amended	50 Ky.R. 2304	
501 KAR 006:400	50 Ky.R. 2507		As Amended	51 Ky.R. 277	8-20-2024
501 KAR 006:410	50 Ky.R. 2509		780 KAR 003:072		
501 KAR 006:420	50 Ky.R. 2510		Amended	51 Ky.R. 570	
501 KAR 006:430	50 Ky.R. 2512		780 KAR 003:080		
501 KAR 006:440	50 Ky.R. 2513		Amended	51 Ky.R. 576	
501 KAR 006:450	50 Ky.R. 2515		780 KAR 003:100		
501 KAR 006:460	50 Ky.R. 2516		Amended	50 Ky.R. 2305	
501 KAR 006:470	50 Ky.R. 2518		As Amended	51 Ky.R. 278	8-20-2024
501 KAR 006:480	50 Ky.R. 2519		780 KAR 003:120		
501 KAR 006:490	50 Ky.R. 2521		Amended	50 Ky.R. 2308	8-20-2024
501 KAR 006:500	50 Ky.R. 2522		780 KAR 003:130		
501 KAR 006:510	50 Ky.R. 2526		Amended	50 Ky.R. 2310	
501 KAR 006:520	50 Ky.R. 2527		As Amended	51 Ky.R. 279	8-20-2024
501 KAR 006:530	50 Ky.R. 2530		780 KAR 006:010		
501 KAR 006:540	50 Ky.R. 2532		Amended	50 Ky.R. 2312	8-20-2024

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	46 Ky.R. Page No.	Effective Date	Regulation Number	46 Ky.R. Page No.	Effective Date
780 KAR 006:020			Amended	51 Ky.R. 581	
Amended	50 Ky.R. 2314	8-20-2024	907 KAR 013:010		
803 KAR 025:089	50 Ky.R. 2478		Amended	50 Ky.R. 1793	6-18-2024
806 KAR 017:570			907 KAR 013:015		
Amended	51 Ky.R. 120		Amended	50 Ky.R. 1795	6-18-2024
807 KAR 005:078			907 KAR 015:005		
Amended	50 Ky.R. 2118		Amended	50 Ky.R. 1419	
As Amended	51 Ky.R. 44	7-18-2024	Am Comments	1925	
808 KAR 003:050			907 KAR 015:100	50 Ky.R. 2335	
Amended	51 Ky.R. 382		Withdrawn		6-5-2024
808 KAR 010:260			907 KAR 020:035		
Amended	50 Ky.R. 2316		Amended	51 Ky.R. 584	
As Amended	51 Ky.R. 280		908 KAR 001:410	50 Ky.R. 1441	
808 KAR 015:050	51 Ky.R. 439		Am Comments	2086	7-30-2024
810 KAR 004:070			910 KAR 001:170		
Amended	50 Ky.R. 1374		Amended	50 Ky.R. 1584	
As Amended	1890	6-4-2024	As Amended	2055	7-2-2024
810 KAR 007:040			910 KAR 001:270		
Amended	50 Ky.R. 2105		Amended	50 Ky.R. 1978	
As Amended	51 Ky.R. 48		Am. Comments	51 Ky.R. 63	
815 KAR 007:120			As Amended	281	
Amended	50 Ky.R. 1973		910 KAR 002:020		
As Amended	51 Ky.R. 500		Recodified as 922 KAR 005:150		7-23-2024
815 KAR 007:125			910 KAR 002:030		
Amended	50 Ky.R. 1976		Recodified as 922 KAR 005:160		7-23-2024
As Amended	51 Ky.R. 501		910 KAR 002:040		
900 KAR 001:009			Recodified as 922 KAR 005:170		7-23-2024
Amended	51 Ky.R. 578		910 KAR 002:060		
900 KAR 007:030			Recodified as 922 KAR 005:180		7-23-2024
Amended	50 Ky.R. 1379	6-18-2024	915 KAR 001:001	50 Ky.R. 1805	
900 KAR 007:040			Am Comments	2413	
Amended	50 Ky.R. 1382	6-18-2024	As Amended	51 Ky.R. 287	
902 KAR 004:030			915 KAR 001:010	50 Ky.R. 2550	
Amended	51 Ky.R. 138		915 KAR 001:020	50 Ky.R. 2554	
902 KAR 004:130			915 KAR 001:030	50 Ky.R. 1808	
Recodified as 922 KAR 2:130		7-23-2024	Am Comments	2416	
902 KAR 010:120			As Amended	51 Ky.R. 288	
Amended	51 Ky.R. 385		915 KAR 001:040	50 Ky.R. 1815	
902 KAR 010:122(r)	51 Ky.R. 440		Am Comments	2423	
902 KAR 010:123	51 Ky.R. 441		As Amended	51 Ky.R. 294	
902 KAR 010:125	51 Ky.R. 448		915 KAR 001:050	50 Ky.R. 1821	
902 KAR 010:127	51 Ky.R. 152		As Amended	51 Ky.R. 300	
902 KAR 020:036			915 KAR 001:060	50 Ky.R. 1823	
Amended	50 Ky.R. 1576		Am Comments	2430	
As Amended	51 Ky.R. 51	7-30-2024	As Amended	51 Ky.R. 301	
902 KAR 020:048			915 KAR 001:070	50 Ky.R. 1829	
Amended	50 Ky.R. 1385		Am Comments	2437	
Am Comments	2063	6-18-2024	As Amended	51 Ky.R. 306	
902 KAR 020:086			915 KAR 001:080	50 Ky.R. 1836	
Amended	50 Ky.R. 1396		Am Comments	2444	
Am Comments	2074	6-18-2024	As Amended	51 Ky.R. 312	
902 KAR 030:200			915 KAR 001:090	50 Ky.R. 1839	
Amended	51 Ky.R. 398		Am Comments	2447	
902 KAR 045:001	50 Ky.R. 2535		As Amended	51 Ky.R. 314	
902 KAR 045:012	50 Ky.R. 2537		915 KAR 001:100	50 Ky.R. 1842	
902 KAR 045:021	50 Ky.R. 2540		Am Comments	2450	
902 KAR 045:031	50 Ky.R. 2545		As Amended	51 Ky.R. 315	
907 KAR 001:044			915 KAR 001:110	50 Ky.R. 1845	
Amended	50 Ky.R. 1409		Am Comments	2453	
Am Comments	1920		As Amended	51 Ky.R. 317	
907 KAR 001:061			915 KAR 002:001	50 Ky.R. 2122	
Amended	50 Ky.R. 1414		915 KAR 002:010	50 Ky.R. 2124	
As Amended	2053	7-2-2024	Am. Comments	51 Ky.R. 70	
907 KAR 001:065			As Amended	320	
Amended	50 Ky.R. 1779	6-18-2024	915 KAR 002:020	50 Ky.R. 2128	
907 KAR 001:479			915 KAR 002:030	50 Ky.R. 2130	
Amended	50 Ky.R. 1786	6-18-2024	Am. Comments	51 Ky.R. 74	
907 KAR 003:066			As Amended	323	
Amended	50 Ky.R. 1417	6-18-2024	915 KAR 002:040	50 Ky.R. 2132	
907 KAR 010:015			As Amended	51 Ky.R. 324	

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	46 Ky.R. Page No.	Effective Date	Regulation Number	46 Ky.R. Page No.	Effective Date
921 KAR 002:015					
Amended	50 Ky.R. 1589				
As Amended	51 Ky.R. 58	7-30-2024			
921 KAR 003:030					
Amended	51 Ky.R. 588				
922 KAR 001:050					
Amended	51 Ky.R. 142				
922 KAR 001:060					
Amended	51 Ky.R. 146				
922 KAR 001:140					
Amended	50 Ky.R. 1595				
Am. Comments	2223				
As Amended	2402	6-19-2024			
922 KAR 001:145	50 Ky.R. 1636				
Am Comments	2226				
As Amended	2404	6-19-2024			
922 KAR 001:350					
Amended	51 Ky.R. 405				
922 KAR 001:470					
Amended	51 Ky.R. 590				
922 KAR 001:490					
Amended	51 Ky.R. 415				
922 KAR 001:495					
Amendment	50 Ky.R. 1599				
Am Comments	2229	6-19-2024			
922 KAR 001:565					
Amended	50 Ky.R. 1603				
Am Comments	2233	6-19-2024			
922 KAR 002:090					
Amended	51 Ky.R. 149				
922 KAR 002:120					
Amended	51 Ky.R. 158				
922 KAR 2:130					
Recodified from 902 KAR 004:130		7-23-2024			
922 KAR 002:160					
Amended	51 Ky.R. 420				
922 KAR 005:070					
Amended	50 Ky.R. 1606				
As Amended	2059	6-19-2024			
922 KAR 005:120					
Amended	50 Ky.R. 1610				
As Amended	2406	6-19-2024			
Amendment	51 Ky.R. 593				
922 KAR 005:150					
Recodified from 910 KAR 002:020		7-23-2024			
922 KAR 005:160					
Recodified from 910 KAR 002:030		7-23-2024			
922 KAR 005:170					
Recodified from 910 KAR 002:040		7-23-2024			
922 KAR 005:180					
Recodified from 910 KAR 002:060		7-23-2024			

SYMBOL KEY:

- * Statement of Consideration not filed by deadline
- ** Withdrawn, deferred more than twelve months (KRS 13A.300(2)(e) and 13A.315(1)(d))
- *** Withdrawn before being printed in Register
- IJC Interim Joint Committee
- (r) Repealer regulation: KRS 13A.310(3)-on the effective date of an administrative regulation that repeals another, the regulations compiler shall delete the repealed administrative regulation and the repealing administrative regulation.

KRS INDEX

KRS SECTION	REGULATION	KRS SECTION	REGULATION
2.015	922 KAR 001:350		704 KAR 003:313
13B	016 KAR 001:030		704 KAR 003:535
	016 KAR 002:030		704 KAR 008:130
	201 KAR 039:060	156.111	016 KAR 009:080
	902 KAR 010:120	156.160	702 KAR 004:090
	922 KAR 002:090		704 KAR 003:305
15.266	040 KAR 012:010		704 KAR 003:313
15.268	040 KAR 012:010		704 KAR 003:535
15.272	040 KAR 012:010		704 KAR 008:130
15.274	040 KAR 012:010	156.808	780 KAR 003:072
16.505 - 16.652	105 KAR 001:140		780 KAR 003:080
16.645	105 KAR 001:142	157	922 KAR 002:090
17.165	922 KAR 001:470	158.030	922 KAR 002:090
17.500-580	922 KAR 001:490		922 KAR 002:120
18A.095	105 KAR 001:140	158.070	704 KAR 003:535
18A.10	105 KAR 001:140	158.140	704 KAR 003:305
18A.030	101 KAR 002:086	158.141	704 KAR 003:305
18A.032	101 KAR 002:086	158.142	704 KAR 003:305
18A.095	900 KAR 001:009	158.1411	703 KAR 003:305
18A.110	101 KAR 002:086	158.1413	703 KAR 003:305
27A.090	922 KAR 001:490		704 KAR 003:535
36.042	703 KAR 005:240	158.150	703 KAR 005:240
40.360	017 KAR 004:030	158.4416	704 KAR 003:535
40.362	017 KAR 004:030	158.622	704 KAR 003:305
40.364	017 KAR 004:030	158.645	703 KAR 003:305
40.366	017 KAR 004:030		704 KAR 003:313
42.014	200 KAR 014:091		704 KAR 008:130
42.500	200 KAR 014:011	158.6451	703 KAR 003:305
	200 KAR 014:081		703 KAR 005:240
	200 KAR 014:091		704 KAR 003:313
42.505-545	200 KAR 014:091		704 KAR 003:535
42.520	200 KAR 014:011		704 KAR 008:130
	200 KAR 014:081	158.6453	703 KAR 005:080
42.525	200 KAR 014:011		703 KAR 005:240
	200 KAR 014:081		704 KAR 003:313
45A.045	200 KAR 005:021		704 KAR 008:130
45A.425	702 KAR 004:090	158.6455	703 KAR 005:080
61.505 - 61.705	105 KAR 001:140		703 KAR 005:240
61.510	105 KAR 001:451	160.151	922 KAR 001:470
61.543	105 KAR 001:451	160.160	702 KAR 004:090
61.552	105 KAR 001:451	160.180	702 KAR 001:116
61.598	105 KAR 001:142	160.290	704 KAR 003:313
61.645	105 KAR 001:142		704 KAR 008:130
	105 KAR 001:451	160.345	016 KAR 009:080
61.675	105 KAR 001:142		704 KAR 003:535
	105 KAR 001:451	160.380	016 KAR 001:030
61.685	105 KAR 001:451		704 KAR 003:535
61.870 - 61.884	922 KAR 001:350		922 KAR 001:470
61.876	922 KAR 001:470	160.431	702 KAR 003:320
61.5991	105 KAR 001:451	161.010 - 161.100	016 KAR 001:030
78.510 - 78.852	105 KAR 001:140	161.020	016 KAR 002:030
78.545	105 KAR 001:142		016 KAR 007:010
78.625	105 KAR 001:142		016 KAR 009:030
78.782	105 KAR 001:142	161.020	702 KAR 003:320
103.200	200 KAR 015:010	161.027	016 KAR 009:080
103.2101	200 KAR 015:010	161.028	016 KAR 007:011
103.282	200 KAR 015:010		016 KAR 009:010
103.286	200 KAR 015:010		016 KAR 009:030
116.048	921 KAR 003:030		016 KAR 009:100
131.130	103 KAR 005:200	161.028	016 KAR 002:030
132.191	103 KAR 005:200	161.028	016 KAR 009:080
132.420	103 KAR 005:200	161.030	016 KAR 002:030
150.010	301 KAR 001:410		016 KAR 007:011
150.070	301 KAR 001:410		016 KAR 009:010
150.175	301 KAR 001:410		016 KAR 009:030
150.235	301 KAR 001:410		016 KAR 009:100
150.445	301 KAR 001:410	161.030	016 KAR 009:080
150.620	301 KAR 001:410	161.048	016 KAR 009:010
150.990	301 KAR 001:410		016 KAR 009:030
151	922 KAR 002:120		016 KAR 009:080
156.070	702 KAR 004:090		016 KAR 009:100

KRS SECTION	REGULATION	KRS SECTION	REGULATION
161.100	016 KAR 002:030	199.898	922 KAR 002:160
161.102	016 KAR 001:030	199.8982	922 KAR 001:470
161.120	016 KAR 001:030		922 KAR 002:160
161.1211	016 KAR 009:080	199.899	922 KAR 002:160
161.220	102 KAR 001:320	200.672	902 KAR 030:200
	102 KAR 001:370	202B.010	922 KAR 001:050
161.220	102 KAR 001:350	205.520	907 KAR 010:015
161.440	102 KAR 001:138		907 KAR 020:035
	102 KAR 001:350	205.619	907 KAR 020:035
161.507	102 KAR 001:350	205.637	907 KAR 010:015
161.515	102 KAR 001:350	209	922 KAR 005:120
161.545	102 KAR 001:350	211.015	902 KAR 010:120
161.5465	102 KAR 001:350		902 KAR 010:123
161.547	102 KAR 001:350		902 KAR 010:125
161.548	102 KAR 001:350		902 KAR 010:127
161.549	102 KAR 001:350	211.090	902 KAR 004:030
161.580	102 KAR 001:138		902 KAR 010:123
161.635	102 KAR 001:370		902 KAR 010:127
161.636	102 KAR 001:370	211.180	902 KAR 004:030
161.700	102 KAR 001:320		902 KAR 010:122
161.716	102 KAR 001:320	211.205	902 KAR 010:120
162.010	702 KAR 004:090		902 KAR 010:125
164.7011	013 KAR 006:010	211.210	902 KAR 010:123
	013 KAR 006:020		902 KAR 010:127
164.7013	013 KAR 006:010	211.220	902 KAR 010:123
	013 KAR 006:020		902 KAR 010:127
164.7015	013 KAR 006:010	211.350 - 211.380	922 KAR 002:120
164.7017	013 KAR 006:020	211.684	922 KAR 001:470
164A.580	739 KAR 001:060		922 KAR 001:490
	739 KAR 001:070	211.990	902 KAR 010:120
164A.590	739 KAR 001:060		902 KAR 010:123
164A.595	739 KAR 001:070		902 KAR 010:127
164A.600	739 KAR 001:070	214.010	922 KAR 002:090
186	601 KAR 009:220	214.036	922 KAR 002:090
	922 KAR 002:120		922 KAR 002:160
189.125	922 KAR 001:350	214.155	902 KAR 003:040
	922 KAR 002:120	216.2955	922 KAR 005:120
190	601 KAR 009:220	216.380	907 KAR 010:015
194A.005	900 KAR 001:009	216B.015	922 KAR 005:120
	922 KAR 001:350	217	922 KAR 002:120
	922 KAR 001:490	217.015	201 KAR 002:210
194A.050	902 KAR 004:030	218A.010	016 KAR 001:030
194A.060	922 KAR 001:350		201 KAR 002:210
	922 KAR 002:160	218A.171	201 KAR 020:057
	922 KAR 005:120	218A.172	201 KAR 020:057
194A.062	900 KAR 001:009	218A.202	201 KAR 020:057
194A.380-383	922 KAR 001:470	218A.205	201 KAR 020:056
194A.505	907 KAR 020:035		201 KAR 020:057
194A.540	201 KAR 020:215		201 KAR 020:215
198A.740 - 198A.750	202 KAR 002:020	229.011	201 KAR 027:006
199.011	922 KAR 001:350		201 KAR 027:023
	922 KAR 001:490	229.025	201 KAR 027:006
	922 KAR 002:090		201 KAR 027:023
	922 KAR 002:120		201 KAR 027:041
199.430	922 KAR 001:350		201 KAR 027:106
199.462	922 KAR 001:490	229.031	201 KAR 027:006
199.466	922 KAR 001:470		201 KAR 027:106
199.470	922 KAR 001:490	229.035	201 KAR 027:006
199.500	922 KAR 001:060	229.061	201 KAR 027:006
199.502	922 KAR 001:060	229.091	201 KAR 027:106
199.555	922 KAR 001:050	229.155	201 KAR 027:006
	922 KAR 001:060		201 KAR 027:106
199.557	922 KAR 001:060	229.171	201 KAR 027:006
199.802	922 KAR 001:350		201 KAR 027:023
199.894	922 KAR 002:090		201 KAR 027:041
	922 KAR 002:120		201 KAR 027:106
	922 KAR 002:160	229.190	201 KAR 027:006
199.895	922 KAR 002:090		201 KAR 027:106
199.8951	922 KAR 002:120	229.200	201 KAR 027:006
199.896	922 KAR 001:470		201 KAR 027:023
	922 KAR 002:120		201 KAR 027:106
	922 KAR 002:160	229.991	201 KAR 027:006
199.896-898	922 KAR 002:090	258.015	922 KAR 001:350
199.8962	922 KAR 002:120	258.035	922 KAR 001:350

KRS SECTION	REGULATION	KRS SECTION	REGULATION
278.030		314.04	201 KAR 020:215
278.040	807 KAR 005:015E	314.051	201 KAR 020:230
278.5464	807 KAR 005:015E	314.071	201 KAR 030:230
286.3-146	808 KAR 015:050	314.073	201 KAR 020:215
286.6-095	808 KAR 003:050		201 KAR 020:230
286.6-100	808 KAR 003:050	314.091	201 KAR 020:056
286.6-225	808 KAR 003:050		201 KAR 020:057
286.6-585	808 KAR 003:050	314.103	201 KAR 020:056
286.6-715	808 KAR 003:050	314.109	201 KAR 020:056
304.2-310	806 KAR 017:570	314.161	201 KAR 020:056
304.2-320	806 KAR 017:570	314.193	201 KAR 020:057
304.3-240	806 KAR 017:570	314.195	201 KAR 020:057
304.12-020	806 KAR 017:570	314.475	201 KAR 020:056
304.14-120	806 KAR 017:570		201 KAR 020:057
304.14-640	907 KAR 020:035	314.991	201 KAR 020:215
301.14-642	907 KAR 020:035	315.010	201 KAR 002:210
304.14-500 - 3014.14-550	806 KAR 017:570		201 KAR 002:370
304.17-311	806 KAR 017:570	315.020	201 KAR 002:210
304.17A-005	806 KAR 017:570		201 KAR 002:370
304.18-034	806 KAR 017:570		201 KAR 002:480
304.28-205	806 KAR 017:570	315.030	201 KAR 002:370
304.32-275	806 KAR 017:570	315.035	201 KAR 002:470
304.33-030	806 KAR 017:570	315.036	201 KAR 002:470
304.40-075	201 KAR 008:563	315.121	201 KAR 002:370
309.300	201 KAR 039:001	315.191	201 KAR 002:210
309.301	201 KAR 039:001	315.310	201 KAR 002:480
	201 KAR 039:130	315.340	201 KAR 002:470
309.304	201 KAR 039:001	315.350	201 KAR 002:470
	201 KAR 039:030	315.405	201 KAR 002:470
	201 KAR 039:050	315.4104	201 KAR 002:470
	201 KAR 039:075	318	922 KAR 002:120
	201 KAR 039:090	322.010	201 KAR 018:010
	201 KAR 039:100		201 KAR 018:030
309.306	201 KAR 039:120	322.040	201 KAR 018:010
309.312	201 KAR 039:040		201 KAR 018:030
	201 KAR 039:030	322.040-050	201 KAR 018:115
	201 KAR 039:040	322.045	201 KAR 018:010
	201 KAR 039:050		201 KAR 018:030
	201 KAR 039:070	322.120	201 KAR 018:010
309.314	201 KAR 039:075		201 KAR 018:030
	201 KAR 039:040	322.160	201 KAR 018:115
	201 KAR 039:050	322.180	201 KAR 018:115
309.316	201 KAR 039:100		201 KAR 018:192
309.318	201 KAR 039:060		201 KAR 018:196
	201 KAR 039:100	322.190	201 KAR 018:192
	201 KAR 039:120		201 KAR 018:196
309.460	201 KAR 008:610	322.220	201 KAR 018:115
309.462	201 KAR 008:610	322.290	201 KAR 018:192
309.464	201 KAR 008:610		201 KAR 018:196
311.646	922 KAR 002:120	335B.010	900 KAR 001:009
311.720	922 KAR 001:350	335B.020	900 KAR 001:009
311.840	922 KAR 001:350	337	780 KAR 003:072
313.021	201 KAR 007:610	337.275	922 KAR 002:160
313.030	201 KAR 008:563	350	405 KAR 010:001
313.040	201 KAR 008:563	350.020	405 KAR 010:015
313.060	201 KAR 008:563	350.060	405 KAR 010:015
313.080	201 KAR 008:563	350.062	405 KAR 010:015
313.130	201 KAR 008:563	350.064	405 KAR 010:015
313.254	201 KAR 008:563	350.093	405 KAR 010:015
314.011	201 KAR 020:056	350.095	405 KAR 010:015
	201 KAR 020:057	350.100	405 KAR 010:015
	201 KAR 020:215	350.151	405 KAR 010:015
	201 KAR 020:390	350.465	405 KAR 010:015
	922 KAR 001:350	350.503	405 KAR 010:015
	922 KAR 002:090	403.190	102 KAR 001:320
	922 KAR 002:120	403.352	922 KAR 001:470
	922 KAR 002:160	424.170	702 KAR 004:090
314.025	201 KAR 020:390	439.310 - 439.440	501 KAR 001:080
314.026	201 KAR 020:390	527.070	922 KAR 002:120
314.027	201 KAR 020:390	527.100	922 KAR 001:350
314.039	201 KAR 020:057	527.110	922 KAR 001:350
314.041	201 KAR 020:230	532.040 - 532.060	501 KAR 001:080
314.042	201 KAR 020:056	532.400	501 KAR 001:080
	201 KAR 020:057	600.020	922 KAR 001:350

KRS SECTION	REGULATION	KRS SECTION	REGULATION
	922 KAR 001:470		200 KAR 014:011
	922 KAR 001:490		200 KAR 015:200
	922 KAR 002:160		900 KAR 001:009
605.090	922 KAR 001:350	29 U.S.C.	780 KAR 003:072
	922 KAR 001:490		806 KAR 017:570
610.110	922 KAR 001:350		922 KAR 002:160
605.120	922 KAR 001:490	30 U.S.C.	405 KAR 010:001
	922 KAR 002:160		405 KAR 010:015
605.130	922 KAR 001:490	34 U.S.C.	922 KAR 002:160
620.020	201 KAR 020:215	38 U.S.C.	907 KAR 020:035
	922 KAR 002:090		922 KAR 002:160
620.030	922 KAR 001:350	42 U.S.C.	806 KAR 017:570
	922 KAR 002:090		907 KAR 010:015
	922 KAR 002:120		921 KAR 003:030
620.020	922 KAR 002:160		922 KAR 001:350
620.050	922 KAR 001:350		922 KAR 001:470
	922 KAR 001:470		922 KAR 001:490
	922 KAR 001:490		922 KAR 001:060
620.050 - 620.120	922 KAR 001:470		922 KAR 002:090
620.051	922 KAR 001:470		922 KAR 002:160
620.140	922 KAR 001:350		922 KAR 005:120
620.360	922 KAR 001:350	49 U.S.C.	600 KAR 004:010
620.363	922 KAR 001:350	52 U.S.C. 20506	921 KAR 003:030
625	922 KAR 001:050	EO 2016-270	201 KAR 027:006
	922 KAR 001:060	Ky. Const. 172, 174	103 KAR 005:200
	922 KAR 001:490	Pub. L. 108-173	806 KAR 017:570
2 C.F.R.	702 KAR 004:090	Pub. L. 111-5	200 KAR 015:010
7 C.F.R.	405 KAR 010:001	Pub. L. 114-10	806 KAR 017:570
	921 KAR 003:030	Pub. L. 114-94	600 KAR 004:010
	922 KAR 002:160	Pub. L. 116-127	806 KAR 017:570
12 C.F.R.	808 KAR 003:050	Pub. L. 117-328	806 KAR 017:570
16 C.F.R.	922 KAR 001:350		
	922 KAR 002:120		
17 C.F.R.	200 KAR 014:011		
20 C.F.R.	922 KAR 002:160		
26 C.F.R.	900 KAR 001:090		
29 C.F.R.	780 KAR 003:072		
	902 KAR 010:123		
30 C.F.R.	405 KAR 010:001		
30 C.F.R.	405 KAR 010:015		
34 C.F.R.	016 KAR 009:080		
	016 KAR 009:100		
	902 KAR 030:200		
	922 KAR 002:160		
40 C.F.R.	405 KAR 010:001		
41 C.F.R.	105 KAR 001:140		
42 C.F.R.	105 KAR 001:140		
	201 KAR 002:210		
	806 KAR 017:570		
	907 KAR 010:015		
	922 KAR 001:350		
45 C.F.R.	105 KAR 001:140		
	806 KAR 017:570		
	922 KAR 001:060		
	922 KAR 001:350		
	922 KAR 001:490		
	922 KAR 002:090		
	922 KAR 002:120		
	922 KAR 002:160		
49 C.F.R.	600 KAR 004:010		
	922 KAR 002:120		
74 F.R. 18808	806 KAR 017:570		
7 U.S.C.	921 KAR 003:030		
	922 KAR 002:160		
8 U.S.C.	922 KAR 001:350		
10 U.S.C.	017 KAR 004:030		
15 U.S.C.	200 KAR 014:011		
	600 KAR 004:010		
	902 KAR 010:123		
20 U.S.C.	808 KAR 003:050		
23 U.S.C.	600 KAR 004:010		
25 U.S.C.	922 KAR 002:160		
26 U.S.C.	102 KAR 001:320		
	105 KAR 001:140		

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
004 KAR 001:010	08-12-2024	Remain in Effect without Amendment
004 KAR 001:040	08-12-2024	Remain in Effect without Amendment
004 KAR 001:050	08-12-2024	Remain in Effect without Amendment
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
201 KAR 034:020	08-02-2024	Remain in Effect without Amendment
201 KAR 034:030	08-02-2024	Remain in Effect without Amendment
201 KAR 034:050	08-02-2024	Remain in Effect without Amendment
201 KAR 044:090	08-02-2024	Remain in Effect without Amendment
201 KAR 046:095	08-21-2024	Remain in Effect without Amendment
301 KAR 006:005	07-29-2024	To be amended, filing deadline 01-29-2026
704 KAR 003:540	08-08-2024	Remain in Effect without Amendment
804 KAR 003:100	05-13-2024	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		
810 KAR 004:080	7-1-2024		
810 KAR 004:090	7-1-2024		
810 KAR 004:100	7-1-2024		
810 KAR 005:001	7-1-2024		
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		
810 KAR 005:070	7-1-2024		
810 KAR 005:080	7-1-2024		
810 KAR 006:001	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		
810 KAR 007:030	7-1-2024		
810 KAR 007:050	7-1-2024		
810 KAR 007:060	7-1-2024		
810 KAR 007:070	7-1-2024		
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		

SUBJECT INDEX

ATTORNEY GENERAL

Office of Regulatory Relief
Regulatory sandbox; application, reporting; 040 KAR 012:010

BANKING

See *Financial Institutions (KAR Title 808)*

BOARDS AND COMMISSIONS

See also *Occupations and Professions*
See listing below for other possible, specific subject headings:

Dentistry (201 KAR Chapter 008)
Interpreters for Deaf and Hard of Hearing (201 KAR Chapter 39)
Nursing (201 KAR Chapter 020)
Pharmacy (201 KAR Chapter 002)
Professional Engineers and Land Surveyors (201 KAR Chapter 18)

CHILD CARE

Centers:
Health and safety standards; 922 KAR 002:120
Licensure; 922 KAR 002:090
Child care assistance program; 922 KAR 002:160

COMMUNITY AND TECHNICAL COLLEGE SYSTEM

Board of Regents
Capital construction projects:
Contracting for; 739 KAR 001:070
Management of; 739 KAR 001:060

COMMUNITY-BASED SERVICES

See also: *Child Care (922 KAR Chapter 2)*
Family Support (KAR Title 921)
Protection and Permanency (KAR Title 922)

DENTISTRY, BOARD OF

Dental Community Health Workers; 201 KAR 008:610
Dental hygienist licensure; 201 KAR 008:563

EDUCATION

See also:
Council on Postsecondary Education (KAR Title 013)
Education Professional Standards (KAR Title 016)
Kentucky Community and Technical College System (KAR Title 739)
Teachers' Retirement System (KAR Title 102)
Technical Education (KAR Title 780)

Academic Standards
Visual and performing arts; 704 KAR 008:130
Assessment and Accountability
Administrative procedures and guidelines; 703 KAR 005:240
Administration Code for Kentucky's Educational Assessment Program; 703 KAR 005:080
Facilities Management
Property disposal; 702 KAR 004:090
General Administration
Annual in-service training of district board members; 702 KAR 001:116
Office of Instruction
High school graduation, minimum requirements; 704 KAR 003:305
Learning programs: full-time online, virtual, remote; 704 KAR 003:535
Repeal of 704 KAR 003:303; 704 KAR 003:313
School Administration and Finance
Finance officer certification requirements; 702 KAR 003:320

EDUCATION PROFESSIONAL STANDARDS

Alternative Routes to Certification:
Institute for; 016 KAR 009:100
Professional and provisional certificate for:
College faculty; 016 KAR 009:030
Exceptional work experience; 016 KAR 009:010

University-based program; 016 KAR 009:080
General Administration
Procedures for educator certificate surrender, revocation, suspension, reinstatement and reissuance, application denial; 016 KAR 001:030
Internship
Repeal of 016 KAR 007:010; 016 KAR 007:011
Teaching Certificates
Substitute teachers; 016 KAR 002:030

FAMILY SUPPORT

Supplemental Nutrition Assistance Program
Application process; 921 KAR 003:030

FINANCE AND ADMINISTRATION

See also *Revenue (KAR Title 103)*
Purchasing
Policies and Procedures Manual; 200 KAR 005:011
State Investment Commission
Guidelines for money market instruments; 200 KAR 014:091
Qualified investments; 200 KAR 014:011
Repurchase agreements; 200 KAR 014:081

FINANCIAL INSTITUTIONS

Credit Unions
Conduct of; 808 KAR 003:050
General
Out-of-State Trust Companies Operating in Kentucky; 808 KAR 015:050

FISH AND WILDLIFE RESOURCE

Fishing
Nontraditional methods; 301 KAR 001:410

HEALTH AND FAMILY SERVICES

Community-Based Services (KAR Titles 921 and 922)
Family Support (KAR Title 921)
Protection and Permanency (KAR Title 922)
Public Health (KAR Title 902)
Administration
Employee access to federal tax information; 900 KAR 001:009

HOUSING

Housing Corporation
Rural Housing Trust Fund; 202 KAR 002:020

INSURANCE

Health Insurance Contracts
Medicare supplement policies, certificates; 806 KAR 017:570

INTERPRETERS FOR DEAF AND HARD OF HEARING

Applications:
Full licensure; 201 KAR 039:030
Temporary licensure; 201 KAR 039:070
Temporary licensure extension; 201 KAR 039:070
Certification levels; 201 KAR 039:030
Complaint procedures; 201 KAR 039:100
Continuing education, requirements; 201 KAR 039:090
Definitions; 201 KAR 039:001
Ethics; 201 KAR 039:120
Licensure:
Applications, qualification for full; 201 KAR 039:030
Fees; 201 KAR 039:040
Reinstatement, disciplinary action; 201 KAR 039:060
Renewal and reinstatement; 201 KAR 039:050
Temporary licensure and extensions; 201 KAR 039:070
Registration, nonresidents; 201 KAR 039:130
Supervision; 201 KAR 039:075

JUSTICE AND PUBLIC SAFETY

Parole Board
Policies and procedures; 501 KAR 001:080

SUBJECT INDEX

MEDICAID SERVICES

Hospital Service Coverage and Reimbursement
Outpatient hospital services - payments; 907 KAR 010:015
Medicaid Eligibility
Spousal impoverishment and nursing facility requirements; 907 KAR 020:035

NATURAL RESOURCES

Mine Permits
Bond and Insurance Requirements
Definitions; 405 KAR 010:001
General bonding provisions; 405 KAR 010:015

NURSING

APRN:
Licensure and certification requirements; 201 KAR 020:056
Scope and standards of practice; 201 KAR 020:057
Continuing competency requirements; 201 KAR 020:215
Licensure and Certification:
APRN requirements; 201 KAR 020:056
Renewal of licenses; 201 KAR 020:230
Nursing Incentive Scholarship Fund; 201 KAR 020:390

OCCUPATIONS AND PROFESSIONS

See Boards and Commissions
See listings for specific subject headings

PERSONNEL

Cabinet, Classified
Internship interview preference; 101 KAR 002:086

PHARMACY

Long-term care facility services; 201 KAR 002:370
Ownership; change of; 201 KAR 002:470
Records, drug regimen review, patient counseling and final product verification; 201 KAR 002:210
Telework, electronic supervision for remote prescription processing; 201 KAR 002:480

POSTSECONDARY EDUCATION

Aviation Education Programs:
Equipment grants; 013 KAR 006:020
Training scholarships; 013 KAR 006:010

PROFESSIONAL ENGINEERS AND LAND SURVEYORS

Classes of applicants; 201 KAR 018:010
In training certificates; 201 KAR 018:030
License reinstatement; 201 KAR 018:115
Professional development:
Professional engineers; 201 KAR 018:196
Professional land surveyors; 201 KAR 018:192

PROTECTION AND PERMANENCY

Adult Services
Vulnerable adult maltreatment registry/appeals; 922 KAR 005:120
Child Welfare
Background checks for foster and adoptive parents and relative and fictive kin caregivers; 922 KAR 001:490
Central registry; 922 KAR 001:470
Federal Title IV-E adoption assistance; 922 KAR 001:060
Requirements for public child welfare agency foster parents, adoptive parents, and respite care providers; 922 KAR 001:350
State funded adoption assistance; 922 KAR 001:050

PUBLIC HEALTH

Kentucky Early Intervention System
Coverage and payment for services; 902 KAR 030:200
Maternal and Child Health
Newborn screening program; 902 KAR 004:030
Sanitation
Beaches, pools, bathing facilities:

Construction requirements; 902 KAR 010:123
Facility operations; 902 KAR 010:120
Facility safety requirements; 902 KAR 010:125
Public beach requirements; 902 KAR 010:127
Repeal of 902 KAR 010:121 and 190; 902 KAR 010:122

PUBLIC PENSIONS AUTHORITY

General Rules
Employer's administrative duties; 105 KAR 001:140
Limitations and exclusions on creditable compensation in the last five years of fiscal service; 105 KAR 001:142
Quasi-governmental employer reports on independent contractors and leased employees; 105 KAR 001:451

PUBLIC SERVICE COMMISSION

Utilities
Access and attachments to utility poles and facilities; 807 KAR 005:015E

REVENUE

Ad Valorem Tax; Administration
Valuation of multi-unit rental housing subject to government restriction on use; 103 KAR 005:200

TEACHERS' RETIREMENT SYSTEM

General Rules
Annuitization, disbursement from supplemental benefits; 102 KAR 001:370
Crediting of interest for TRS 4 members; 102 KAR 001:138
Full actuarial cost purchase; 102 KAR 001:350
Qualified domestic relations orders; 102 KAR 001:320

TECHNICAL EDUCATION

Personnel System for Certified and Equivalent Employees
Attendance, comp time, leave; 780 KAR 003:072
Duration of school term, use of school days, extended employment; 780 KAR 003:080

TRANSPORTATION

Motor Vehicle Tax
Dealer plates; 601 KAR 009:220
Civil Rights and Small Business Development
Certification of disadvantaged business enterprises; 600 KAR 004:010

VETERANS AFFAIRS

Veterans Services
Burial Honor Guard Program; 017 KAR 004:030

SUBJECT INDEX